Private Use of the Public Lands – What is the Appropriate “Fair Market Value”?

Richard L. Stroup

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PRIVATE USE OF THE PUBLIC LANDS—
WHAT IS THE APPROPRIATE "FAIR MARKET VALUE"?

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(*This paper represents the views of the
author and is not a policy statement of
the Department of the Interior.)

THE FEDERAL LAND POLICY AND
MANAGEMENT ACT

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I. Introduction

A. "Fair" is in itself a term troublesome to economists as well as philosophers.

B. "Fair Market Value" (FMV) is nonetheless required in general by FLPMA, with specified exceptions.

C. Possibly the best available definition is contained in the Uniform Appraisal Standards for Federal Land Acquisitions (GPO, 1973, pp. 3-5), and relates to a market price with willing and knowledgeable buyers and sellers, in the absence of compulsion to buy or sell.

D. FMV is not the maximum attainable price.

II. Issues in Fair Market Value

A. What weight should be given to government costs of administering the lease, sale, or exchange? Who should pay the costs?

B. How should the value to the user be weighed, relative to other values foregone, or production costs?
C. How will conditions placed upon the use or development rights affect the FMV?

D. When is competition sufficient to guarantee the receipt of fair market value in an auction sale?

E. What should be done to ensure that all who have a right to bid, can bid?

F. What special rights should existing users have?

G. Should price trends be considered in determining fair market value?

H. How will product definition or tract delineation affect competition and the value to potential users?

I. What other policy goals will influence tract delineation, leasing rates, and other FMV determinants?

III. Approaches Used Now to Obtain Fair Market Value.

A. Regardless of the product, access or service to be conveyed, to understand the conveyance process and its implications for FMV, one must consider the following factors:
1. What is being sold

2. Legal basis for sale

3. Conceptual approach

4. Procedures in use

5. Special characteristics of the commodity

B. Interior deals with many commodities, each of which is handled a bit differently (See Appendixes for summaries of factors involved in each.)

IV. The Role of Uncertainty

A. When many years are involved in a contracted conveyance, the values involved will be subject to uncertainty.

B. Prices, technology of extraction, technology of use, and available substitutes, as well as transportation networks, geographical markets, and other factors change unpredictably over time.
C. Buyers, sellers, and appraisers will differ in their expectations about the future, and thus about the current value of a contract signed today. (See Knowledge and Decisions, Thomas Sowell, NY, Basic Book, 1980, pp. 3-90 for a lucid discussion of the problems faced by decisionmakers under lack of knowledge.)

V. One Theory of Fair Market Value

A. "Fair" describes a system of rules which most people would subscribe to, if they did not know in advance which roles they would play in the system influenced by the rules. (See Robert Nozick, Anarchy, State, and Utopia. Oxford, Blackwell, 1974 for an exhaustive treatment of this philosophical topic.)

B. Citizens typically want FMV procedures to insure that the government gives no favored persons special access or deal, gets enough for what is conveyed that no more could be had without causing added problems, and has procedures open for all to see and participate in; current Interior procedures seem consistent with these conditions.

C. FMV is extremely hard to determine, apart from a market setting.
References


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FEDERAL COAL LEASE SALES

I. What is Being Sold - Federal coal leases are being sold. Such leases convey a limited set of property rights and obligations. A Federal coal lease grants the holder the right to explore, develop and produce the Federal coal subject to the lease. It also imposes certain obligations upon the leaseholder, in particular, to make annual rental payments, to pay a royalty upon commencing coal production, and to comply with special environmental protection stipulations. Also, if production of coal in "commercial quantities" has not commenced within ten years of the granting of the lease, the lease will be revoked. Coal leases that meet this ten year "diligent development" requirement can be held for as long as production continues or, if production is halted, for up to ten years longer by payment of royalties equivalent to those which would have been paid if production had continued.

II. Legal Basis - The Federal Coal Leasing Amendments Act of 1976 (FCLAA) includes the requirement that:

No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease.

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The FCLAA does not define the term "fair market value." The Department uses a definition of fair market value for Federal coal lease sales that has been established for Federal land acquisitions, as follows:

"Fair Market Value" is defined as the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy.


III. Conceptual Approach - The Bureau of Land Management (BLM) relies on its own proprietary appraisals of fair market value and on a lease auction design intended to draw forth maximum available bidding competition in order to ensure the receipt of no less than fair market value for Federal coal leases. The BLM attempts to gather and use all available non-proprietary market data, including data generated by bidding at the lease
sale itself, to help it evaluate the leases and make its bid acceptance and rejection decisions.

IV. Current Procedures

a. Definition/Delineation

Tracts are delineated by the BLM based on industry submissions of data in response to a formal request by the BLM for expressions of leasing interest. The delineated Federal coal lease tracts rarely contain enough coal to support an economic mining operation by themselves. Accordingly, they generally attract only one bidder when offered for sale, by the firm who entered the expression of leasing interest. This firm usually owns or controls the coal located adjacent to the Federal coal tract. It wishes to obtain the Federal coal in order to expand or extend its current mining operation. After a BLM planning process that lasts approximately two years and features direct State involvement, tracts identified as most suitable for coal development within each region are selected and offered for lease sale.
b. Sale Procedures/Auction

Prior to the lease sale, the BLM prepares an appraisal of the fair market value of each lease to be offered. This pre-sale appraisal is kept confidential. The Auction method used is sealed bonus bidding. The high bidder for each lease is identified by reading and recording the sealed bids entered during the specified 30-day period. All bids entered must exceed a "minimum bid" announced pre-sale by the BLM in order to be considered for acceptance. This minimum bid is unrelated to the BLM's pre-sale estimates of value of the leases and is currently set at $100 per acre for all leases.

c. Appraisal

In preparing its coal lease appraisals, the BLM follows the general appraisal methods outlined in the 1973 Interagency Land Acquisition Conference Report, Uniform Appraisal Standards for Federal Land Acquisitions. Comparable sales methods are generally preferred. Discounted cash flow methods, however, are sometimes used where comparable sales data are
not deemed sufficient. Obtaining sufficient data is a major problem. The BLM's appraisals are not announced before a lease sale. After the sale, only the appraisals on tracts whose high bids were accepted are announced. Appraisals on tracts whose bids were not accepted are kept secret in consideration of possible reoffering of these tracts.

d. Acceptance/Rejection

After the bids are opened, tracts receiving two or more bids are given special attention. If two or more bids for a tract equal or exceed 25 percent of the BLM's pre-sale appraisal, the acceptance of the high bid on that tract is decided based on a special test called the averaging rule. The averaging rule adds the BLM appraisal to the sum of the bids received (that are above 25 percent of the BLM appraisal) and divides by the number of bids plus one. A high bid greater than the average for that lease is considered to be fair market value and is accepted. A high bid less than the average is rejected. This averaging rule is based on a similar rule used successfully by
the BLM in outer continental shelf oil and gas lease sales for many years. Leases receiving only one bid are next considered. Acceptance of the high bid for such leases is based solely on comparison with the BLM's appraisal of the fair market value of the lease. A high bid greater than the appraisal is accepted; a high bid less than the appraisal is rejected. The BLM would generally use its pre-sale appraisals for this test; however, if there are multiple-bid tracts whose high bids are accepted in the first phase of the bid acceptance process, then post-sale appraisals may be used for this test. The high bids accepted in the first phase provide up-to-date market data about lease values. These accepted high bids would be used by the BLM to reappraise the value of the one-bidder tracts if the multiple-bidder tracts sold and the one-bidder tracts are deemed sufficiently comparable. The actual bid acceptance/rejection decisions are made by the responsible BLM State Director based on recommendations of a sale panel composed primarily of high-level career BLM State office staff and an antitrust review by the Department of Justice.
V. Summary of Special Characteristics

The market for Federal coal leases is characterized by weak bidding competition -- often only one bidder for each lease. Also, data to appraise lease value are often scarce. Thus, the auction design is structured to generate maximum lease value information, and the bid acceptance process is designed to make the most of whatever information is generated. Secret Government appraisals are used to induce firms to enter bids based on their own estimates of lease value. Sealed bidding is used to induce firms other than the dominant firm to enter the auction. Under oral bidding the dominant firm would almost certainly always win which removes the incentive for other firms to even bother to enter the auction. Common aspects of this sale/appraisal/bid acceptance procedure include the sealed bid auction method which is used to sell many other Federal mineral rights, pre-sale and post-sale appraisal, the appraisal methods, and the averaging rule which has been used for many years in outer continental shelf (OCS) oil and gas lease sales. Unique aspects of this sale/appraisal/bid acceptance procedure are the 25 percent screening rule (although a somewhat similar but weaker rule is used in OCS lease sales) and the use of acceptable high bids on "competitive" tracts in the sale to appraise the value of the "uncompetitive" tracts in the sale.
I. **What is being sold:** Leases entitling lessee to explore for and produce oil and gas from a tract of 5760 acres over a term of 5 years (10 in deep water) and so long as oil and gas are being produced, subject to various lease terms, regulations and statutes.

II. **Legal Basis:** Sec. 18(a)(4) of the OCS Lands Act as amended states "Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government." Fair market value for oil and gas leases is not defined by statute.

Sec. 8 of the OCS Lands Act authorizes issuance of leases "... to the highest responsible qualified bidder or bidders by competitive bidding ..." Bidding is by sealed bid only, usually on the basis of a cash bonus with fixed royalty of at least 12-1/2%, although other bid variables and forms of payment are authorized.

III. **Conceptual Approach:** The MMS uses the Uniform Appraisal Standards definition of fair market value, "the amount in cash, or on terms
reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired, but is not obligated to buy." Although this definition points to use of a market price as fair market value, the MMS relies on a combination of the bids resulting from the competitive bidding process and tract evaluation (appraisal) to meet the fair market value requirement. This approach combines market price information with the Government's independently developed information. The Courts have upheld this general approach, ruling that "the proposed evaluation process, coupled with the Secretary's reasonable reliance on the integrity of the competitive bid process, is sufficient to assure that the fair market value is received." The Court also ruled that it was not necessary to restrict the rate of leasing to maximize revenues in order to meet the fair market value requirement (California v. Watt, 712 F.2d 584, U.S. Court of Appeals, District of Columbia Circuit, July 5, 1983).
IV. Current Procedures

a. Tract Delineation - Standard 5760 acre tracts (3 miles x 3 miles) except when smaller tracts result from curvature of the OCS boundary or the earth's surface.

b. Sale Procedures/Auction - Sealed bids accompanied by a deposit of 20% of the bonus are submitted by a specified time on a large number of tracts. Bids must exceed $150 per acre to be considered. All bids are publicly read and recorded.

c. Appraisal - Geophysical and geologic data are evaluated and maps drawn for the area being offered prior to the date of the sale. No appraisals are done before the sale. After the bids have been recorded, appraisals are done using a discounted cash flow model on tracts on economically viable prospects receiving less than 3 bids. Appraisals are also done on tracts classified as proven or drainage tracts. Tracts receiving 3 or more bids or on non-viable prospects are not appraised.
**Acceptance/Rejection** - High bids on tracts receiving 3 or more bids or on non-viable prospects are accepted. High bids on tracts receiving 1 or 2 bids on viable prospects and high bids on proven and drainage tracts are rejected if they are less than the average evaluation of the tract (AEOT) in each case. The AEOT is the average of all the bids plus the MMS appraisal.* The averaging rule, in effect, allows the market indicators of value, i.e. the bids, to outvote a widely divergent Government appraisal.

**Summary of Special Characteristics.** Although many of the tracts sold receive only 1 or 2 bids, OCS lease sales are highly competitive in that many firms participate and are possible bidders on each tract. Many tracts receive only 1 bid because a vast majority of tracts are of such uncertain value that only one firm thinks it worth bidding. The inherent geological uncertainty about the presence and extent of oil and gas resources makes bids and appraisals vary

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* The AEOT is actually calculated geometrically as opposed to arithmetically. A geometric average is the $n^{th}$ root of the product of $n$ values.
widely and causes substantial differences between the value of each lease when sold and its value after exploratory drilling.
Land Exchanges

I. What is being sold - Public lands or interests therein for non-Federal lands and interests therein.

II. Legal Basis

FLPMA Section 206 specifies

"...the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired." "The value of the lands exchanged by the Secretary under this Act...either shall be equal or, if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership."

Section 209 states:

"All conveyances of title issued by the Secretary,
except those involving land exchanges provided for in Section 206, shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law.

III. Conceptual Approach

Exchanges follow a set process to establish that there is a net gain in public benefit from the exchange and to equalize values.

IV. Current Procedures

a. Definition/Delineation - "Public lands" means any lands or interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

b. Sale Procedures - Most exchanges occur as a result of applications for exchange from the public from other
Federal agencies, or at the specific direction of Congress. Exchanges occur in an environment conducive to negotiation.

c. Appraisals - Appraisals are conducted in accordance with the principles in the Department of Justice's "Uniform Appraisal Standards for Federal Land Acquisitions." Special procedures for appraisal have been set up for exchanges involving oil shale based on equalizing the quantity of similar quality resource. The Project Bold Exchange would be conducted with retention of rights to 50% of the royalty mineral income by the original owner of the lands.

d. Acceptance/Rejection - If an offer is made, government appraisers derive the offer based on their evaluation of the lands involved, which is then accepted or rejected by the exchange proponent.

V. Summary of Special Characteristics - Exchanges occur off budget. Even the monies derived from equalization payments go into a special fund. Thus, the question of the accuracy of the fair market value estimate of the government lands seldom is an issue to anyone other than
parties directly affected. The BLM (and the Forest Service) have considerable motivation to keep their total holdings of lands at the level they were prior to an exchange. Valuation errors tend to be self cancelling. The exchange process is quite often drawn out over several years.
Livestock Grazing Fees

What is Being Sold -- The BLM rangeland program charges ranchers according to the number of "animal unit months" (AUMs) of livestock grazing on public land. One AUM consists of one cow (or five sheep) grazing for one month on public lands.

Legal Basis
- The Taylor Grazing Act of 1934
- The Federal Land Policy and Management Act of 1976 (FLPMA)
- The Public Rangelands Improvement Act of 1978 (PRIA)

Conceptual Approach -- There is a single grazing fee for livestock grazing on BLM rangeland throughout the U.S. ($1.37 per AUM this year). This fee is based on an examination of private grazing lease rates, adjusted for differences in the circumstances between public grazing and private grazing leases. The grazing fee is adjusted every year for inflation, according to an index of changes in private grazing lease rates. Since passage of PRIA in 1978, the fee has also been adjusted every year for changes in beef prices and costs of ranching operation. This is done according to a formula mandated by PRIA.

Current Procedures -- There is no auction or competitive bidding for public grazing (except in a few special cases). Ranchers are entitled to use public rangeland according to historic patterns.
The grazing fee calculation at present is largely mechanical, using indices provided by the Agriculture Department.

Special Characteristics -- A joint Interior and Agriculture grazing fee study is to be submitted to Congress in 1985. The current fee formula expires in 1985 and new legislative action on grazing fees is expected.
Timber Sales

What is Being Sold -- The BLM sells the rights to harvest all the timber in a given area within an allowed maximum amount of time (usually three years or less). Various harvesting conditions are imposed as terms of the sale. The Department makes an estimate of the board feet of timber being sold, but does not guarantee its accuracy.

Legal Basis
- O & C Act of 1937
- Federal Land Policy and Management Act of 1976

Conceptual Approach -- The Department seeks to achieve fair market value by competitive sales of timber cutting rights. A BLM appraisal sets a reservation price below which BLM will not accept a high bid.

Current Procedures -- Timber auctions are currently conducted by oral bidding. The appraisal is currently based on a cash flow analysis—the estimated value of the timber minus the harvesting and milling costs. If the high bid exceeds the appraised value, the bid will be accepted.

Special Characteristics -- BLM is currently testing new methods of appraising timber that would require less site-specific information and be less costly. One of these methods would
involve a comparable sales approach, as an alternative to the current cash flow approach.
Right-of-Way

I. What is being sold - Right-of-way grants over, under or through the public lands.

II. Legal Basis

FLPMA, Section 204(g) provides: "The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary . . . (Note: Enrolled bill H.R. 2211, expected to be signed by the President, exempts electric and telephone facilities assisted under the Rural Electrification Act from rental payments.)

III. Conceptual Approach - The Department follows a straightforward process of determining right-of-way annual rents based on comparable value of private sector right-of-way rents.

IV. Current Procedure

a. Definition/Delineation - A right-of-way grant authorizes the use of public lands for construction, operation, maintenance and or termination of a transportation or other system. The grant may or may not include the right to use the vegetative and mineral
materials found along the right-of-way. Most right-of-way applications require some degree of cost recovery.

b. **Sale Procedures/Auction** - The right-of-way applicant is presented with the rental fee as one of the terms of the grant.

c. **Appraisal** - The rental is determined by appraisal by the authorized officer. The authorized officer may establish an estimated rental fee and collect this fee with the provision that upon receipt of an approved fair market value appraisal, the advanced fee shall be adjusted as appropriate.

d. **Acceptance/Rejection** - Acceptance of the rental fee occurs through the applicant's signing and returning the grant to the authorized officer.

V. **Summary of Special Characteristics** - Some relief from fair market value rental levels is available in certain situations. Rental fees may be initiated or adjusted whenever necessary to reflect current fair market value.
I. **What Is Being Sold** - Oil shale leases issued in 1984 permit the lessee to recover oil shale during the primary term of the lease, which is twenty years and as long thereafter as there is production in paying quantities. The proposed lease for additional prototype tracts would permit the lessee to recover other inorganic minerals, principally nahcolite and dawsonite, found in the mineral estate. The Secretary has not made a decision on the scope of the mineral lease for additional leases granted under the prototype or permanent leasing programs.


III. **Conceptual Approach** - It is likely that the Department will continue to use the approach that was used in 1974 when the first prototype oil shale tracts were issued. In 1974 a pre-sale reservation price was calculated. The high bid on any tract which exceeded the reservation price was accepted. Because the high bids on all four of the offered tracts exceeded the established reservation prices, all were leased.
IV. **Current Procedures**

a. **Definition/Delineation** - The BLM uses a call for expressions of interest along with current knowledge of the geology to delineate tracts that have commercial potential. With the call for expressions of interest, the BLM asks the public for nominations of individual tracts in which the nominee is interested in bidding. Nominations are also permitted for tracts which the nominee feels are particularly ill-suited for development. In the end, the BLM uses these nominations along with its understanding of the geology and other factors to delineate particular tracts for leasing.

b. **Sale Procedures/Auctions** - Oil shale is leased to the high bidder in a cash bonus, fixed royalty bidding system. A sealed bid auction is used. Unlike an oral auction in which bidders continue to bid against each other until only one bidder remains, the sealed bid auction requires each interested firm to submit a single bid which is evaluated against all other bids received, the highest sealed bid winning the auction.
c. **Appraisal** - The approach used in 1974 was to estimate the present value of the deposit by calculating the value of the kerogen at the minemouth and estimating the number of years the lease will be in production. Important variables in the calculation are the mineral assay of the oil shale (i.e. the number of gallons per ton), the cost of mining (considering the depth of the deposit and the amount of overburden), the assumed mining method, the cost of retorting the shale oil, oil prices, and the discount rate. In 1974 the appraisal of economic value occurred before the lease sale, but the results were not made public. It is still unclear whether a pre-sale appraisal will be used in upcoming lease sales.

d. **Acceptance/Rejection** - In 1974 high bids were accepted if they exceeded the pre-sale appraisal.

V. **Summary of Special Characteristics** - Estimates of economic value for oil shale are highly uncertain. Uncertainty is based on several factors. First, oil shale is perceived to be valuable only when oil prices are high and rising in real terms. Secondly, the
technology used to recover shale oil is still evolving and the costs are highly uncertain.
Recreation Permits

I. **What is Being Sold** - Special recreation permits are required for (a) commercial use, (b) competitive use, (c) major off-road vehicle events, and (d) special area use.

II. **Legal Basis** - Broad authority for this program exists within Section 302 of the Federal Land Policy and Management Act and the Land and Water Conservation Fund Act. FLPMA, as a matter of policy, promotes the recovery of fair market value.

III. **Conceptual Approach** - Currently permit fees are set on the basis of a system of fee formulas of about $25/100 user days for commercial use; the greater of 5% of gross receipts or $1 per participant day or $10 for competitive use; and $1 per permit for special area use fees. Proposed regulations would adopt a fee schedule for commercial users roughly based on 3% of the commercial charge; for competitive events they would require 3% of gross receipts or $2 per user day, whichever is greater, and for special use areas set a minimum of $2 per user day. The purpose of the new fee schedule is to help reimburse the United States for costs incurred in permitting recreational use of public lands.
IV. Current Procedures -

a. **Definition/Delineation** - The carrying capacity determining the number of permits available is set by BLM recreational planning specialists.

b. **Sale Procedure** - Permits are made available to commercial operators on a first-come first-served basis when the use is within the maximum use level. Permits in an area at its use level are allocated based on historical use; based on ensuring existing commercial permit holders continue to operate; based on compensating displaced commercial permittees or through competitive sales.

c. **Appraisal** - No appraisals are involved in this program.

d. **Acceptance/Rejection** - Permits are issued in accordance with the decisions of the authorized officer.

V. **Special Characteristic** - Commercial permits are transferable with permission of the authorized officer.
I. What is Being Sold - Public land identified through the BLM planning process as no longer needed for the purpose for which it was acquired, that would serve an important public purpose if sold or that is difficult or uneconomic to manage by BLM or another Federal agency.

II. Legal Basis

Land Sales - Federal lands Policy and Management Act, Section 203(d): "Sales of public lands shall be made at a price not less than their fair market value."

PLPMA Section 203(f) states that: "sales of public lands shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper in order (1) to assure equitable distribution among purchasers of lands, or (2) to recognize equitable considerations of public policies, including, but not limited to, a preference to users, he may sell those lands with modified competitive bidding or without competitive bidding..."
III. Conceptual Approach - Procedures for land sales are in the process of being revised. The three methods of sale are provided for are competitive, modified competitive, and direct. Competitive sales occur in a situation where there are a number of bidders expected to be interested in the tract. Modified competitive permits the existing grazing user or adjoining landowner to meet the high level at public sale. Direct sales are used for lands with no public access or lands needed by State or local governments or non-profit corporations. In no case are lands sold for less than fair market value. Sales requiring cancellation of grazing permits may require compensation of the permit fee for the fair market value of this interest in authorized range improvements.

IV. Current Procedures

a. Definition/delineation - Under current regulations, only public lands (i.e., BLM lands) identified through the planning process for sale are offered. The amended regulations would allow the public to nominate lands for sale. O&C lands, lands in national preservation system, withdrawn land, and unsurveyed land are not subject to sale. All lands
sold contain a reservation of mineral rights to the United States.

b. **Sale Procedures/Auction** - Sealed bids together with earnest money in the amount of one fifth of the bid are collected at an announced place up to an announced deadline. Oral bidding may be used if the authorized officer has provided for it. Public lands not sold at auction may remain available for sale over-the-counter. For modified competitive bidding certain bidders are allowed to meet the highest bid. Non-competitive sales require the would-be purchaser to submit an offer to purchase that is treated as the high bid at a sale.

c. **Appraisal** - Fair market value is determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the *Uniform Appraisal Standards for Federal Land Acquisitions*. Technical review and approval for conformance with appraisal standards shall be conducted by the authorized officer.
d. Acceptance/Rejection - The decision to accept or reject offers to purchase rests with the authorized officer. Sales of over 2500 acres requires 30-days notice to the Congress. Other than for failure to receive fair market value, offers may be rejected that are inconsistent with existing law, appear collusive, or encourage or promote speculation.

V. Summary of Special Characteristics - Existing law favors the retention of public lands in Federal ownership.

Special features of the law allow for:

1. Conveyance of mineral interests owned by the United States where the surface is or will be in non-Federal and ownership where there are no known mineral values. Such transfers require payment of processing costs as well as, the fair market value of the interests conveyed. The applicant may be required to pay for an exploratory program to demonstrate positively the absence of mineral values.

2. The recreation and Public Purposes Act allows conveyance of public lands (or leases) to State and local governments for less than fair market value.
R&PP lands may be identified through petition or by the Bureau. Recreation and historic monument lands are conveyed without costs. All other conveyances are at a price established by the Secretary based on appraisals; i.e., percent of fair market value. A $100 application fee is collected.

3. The Burton-Santinni Act of 1980 directs BLM to sell public lands around Las Vegas, Nev., to provide funds for purchase of lands in the Tahoe Basin. The act requires that land sales be consistent with the provisions of FLPMA except to the extent necessary to expeditiously carry out the purpose of the act.
Tar Sands

I. What is Being Sold - Tar sands are leased as part of a "combined hydrocarbon lease" which conveys the right to recover any gas or nongaseous hydrocarbon substance other than coal, oil shale or gilsonite, but including conventional oil and gas. Such leases must be issued within a Special Tar Sand Area as identified by BLM. Tar sands may be leased competitively, or existing oil and gas leases within a Special Tar Sand Area may be converted to a combined hydrocarbon lease to permit mining of tar sands.


III. Conceptual Approach - No competitive lease sale under the Combined Hydrocarbon Leasing Program has yet been held.

IV. Current Procedures - No procedures have been definitely established.
V. **Summary of Special Characteristics** - Tar sands is a unique resource in that the combined hydrocarbon lease permits the recovery of both tar sands and conventional oil and gas. Since this is an unconventional resource, the technology for its recovery and the costs of recovery are somewhat uncertain.
I. **What is Being "Sold":** All hardrock minerals other than those specified for disposal through leasing or for direct sale as a common building material.

II. **Legal Basis:** Mining Law of 1872.

III. **Conceptual Approach**

A. **Location**

1. No lode claim can be located until after the discovery of a lode or vein within the limits of the claim.

2. One discovery of mineral is required to support a placer location.

3. A mill site may be located if used or occupied distinctly for mining or milling purposes.

4. A tunnel claim to minerals can be made on up to a 3,000 foot tunnel run in good faith.

B. **Assessment Work**

Lode or placer claims require $100 worth of labor or improvements on the claim to maintain them.

C. **Patents**

1. A lode claim may be patented where the BLM determines a valuable deposit of mineral actually exists within the claim. The service charge is $25.00.
2. Patent claims are judged similarly to lode claim. A price of $2.50 per acre is charged for patenting the claim.