



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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To: All Field Offices

From: Associate State Director

Subject: Mineral Materials on School Section Conveyances

Several recent cases have shown the need to clarify who owns mineral materials in the following situation:

1. Both the surface and mineral estates were conveyed by the United States to the State of Wyoming by virtue of the State Enabling Act of July 10, 1890. In most areas, this involved conveying Sections 16 and 36 of each township (the "school sections") to the State.
2. The surface estate was later reconveyed back to the Federal government by the State, while the State reserved all minerals.
3. An applicant wants to buy sand and gravel, granite, limestone, sandstone, dolomite, clinker or other common rock for construction use as aggregate. The applicant is unsure whether the State, as mineral owner, or BLM, as surface owner, has authority to sell the material.

We have consulted with the Regional Solicitor's office and have concluded that the scope of the State's mineral reservation is determined by State law, not Federal law, in this special situation. As always, the specific wording of the non-Federal reservation needs to be examined closely to determine exactly what has been reserved. If the reservation expressly includes substances such as sand, gravel, and limestone, then those substances would be considered part of the State's reserved mineral estate. However, if the reservation only uses the general term "minerals", then the State's reservation would not include a reservation of common construction materials. This is because, under Wyoming law, substances used for common construction purposes are considered components of the surface estate rather than the mineral estate in real property. The Wyoming Supreme Court, in the case of *Miller Land & Mineral Company v. State Highway Commission of Wyoming*, 757 P.2d 1001 (Wyo. 1988), stated:

Substances such as sand, gravel and limestone are not minerals within the ordinary and natural meaning of the word unless they are rare and exceptional in character or possess a peculiar property giving them special value, as for example sand that is valuable for making glass and limestone of such quality that it may profitably be manufactured into cement. Such substances, when they are useful only for building and road-making purposes, are not regarded as minerals in the ordinary and generally accepted meaning of the word.

Consequently, in the specific circumstances described above, the common construction materials were not reserved by the State as part of the reserved mineral estate because they are not considered to be minerals under State law. Rather, in these circumstances the common construction materials would be considered part of the surface estate and BLM, as surface owner, would have authority to sell such materials.

This differs from the situation on split estate lands where BLM has reserved the mineral estate under Federal law. On Stock Raising Homestead Act patents, as decided by the U.S. Supreme Court in *Watt v. Western Nuclear, Inc.*, 462 U.S. 36 (1983), and on most other areas where BLM has retained the mineral estate, common variety materials, such as sand, gravel, and limestone, are considered part of the mineral estate under Federal law. Please note that the conclusions contained in this memorandum pertain only to lands in Wyoming, and only to lands that were reconveyed from the State of Wyoming back to the United States.

Please contact Ed Heffern, BLM Wyoming State Office, at 307-775-6259, if you have any questions.

Signed by:
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