Form 1221-2
(June 1969)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release
3-360

Date
9/23/2016

Subject
H-3600-1 – MINERAL MATERIALS DISPOSAL HANDBOOK (P) APPENDIX 11
Unauthorized Use of Mineral Materials on Split Estate Lands

1. Explanation of Material Transmitted: Appendix 11 clarifies policies for addressing unauthorized uses of mineral materials by surface estate owners, including unauthorized personal uses of the mineral materials under 43 CFR 3601.71(b).

2. Reports Required: None.

3. Material Superseded: None.

4. Filing Instructions: File as directed below.

REMOVE	INSERT
	Appendix 11 (Total: 2 Sheets)

Michael D. Nedd
Assistant Director Energy, Minerals, and Realty Management

Form 1221-2
(June 1969)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release
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09/05/2013

Subject

H-3600-1 – MINERAL MATERIALS DISPOSAL HANDBOOK (P) APPENDIX 8
Surety Bond Illustration 1

1. Explanation of Materials Transmitted: Appendix 8 presents a revised template illustrating wording for a Surety Bond for mineral materials disposal.

2. Reports Required: None.

3. Materials Superseded: This Appendix supersedes and replaces the previous Illustration 1, Surety Bond in H-3600-1, Chapter IV, page 47.

4. Filing Instructions: File as directed below.

REMOVE	INSERT
Illustration 2, Chapter IV-47 Rel. 3-315 (Total: 1 page)	Surety Bond template Illustration 1 All of Revised Appendix 8 (Total: 2 pages)

Michael D. Nedd
Assistant Director
Minerals and Realty Management

Mineral Materials Disposal

BLM Manual Handbook H-3600-1

H - 3600 - 1 MINERAL MATERIALS DISPOSAL HANDBOOK
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H - 3600 - 1 MINERAL MATERIALS DISPOSAL HANDBOOK
Chapter I

Chapter I. INTRODUCTION

A. Purpose. This handbook gives the procedures and processes to follow in implementing the regulations at 43 CFR 3600. It is to be read and used in conjunction with Bureau Manual Groups 3042, 3600, 3630, 9230 and 9235, and other issued program guidance.

B. Authority. During the days of the General Land Office, and in the first year after the Bureau of Land Management was formally created, there was no authority for the disposal of mineral materials. Many common minerals were acquired under the auspices of the 1872 Mining Law (17 Stat 91) and the 1892 Building Stone Placer Act (27 Stat 348). Claims were staked for sand, gravel, and building stone. Many commodities, such as fill dirt and caliche, could not be located with a claim.

In Section 10 of the 1939 Reclamation Project Act (53 Stat. 1196), Congress provided the Secretary the authority to ". . . permit the removal, from lands or interest in lands withdrawn or acquired and being administered under the Federal reclamation laws in conjunction with the construction or operation and maintenance of any project, of sand, gravel, and other minerals and building materials . . . .". There is a Memorandum of Understanding between BLM and Bureau of Reclamation (BOR), March 25, 1983 for disposal of sand, gravel, etc.

In 1944, Congress recognized the need to authorize the disposition of mineral materials from the public lands for wartime purposes. An Act was passed on September 27, 1944 (58 Stat 745, 50 USC App. Secs. 1601-1603), to authorize the disposal of stone, sand, gravel, and clay. This authority expired by its own terms on December 31, 1946.

On July 31, 1947, Congress passed the Materials Act (61 Stat 681), which granted the Secretary the broad authority, "under such rules and regulations as he may prescribe," to dispose of materials including but not limited to sand, stone, gravel, ... [and] common clay ... on public lands of the United States if the disposal of materials (1) is not otherwise expressly authorized by law, including the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would

not be detrimental to the public interest. BLM could now dispose of mineral materials by sale or on a free use basis to governmental units and non-profit organizations. Sales were to be made at fair market value. The 1947 Act did not bring clarity to the question whether mineral materials were locatable. There were some commodities, notably sand and gravel, which could be obtained either by purchase (or free use) or by location of a mining claim under the mining laws.

In an effort to address problems relating to the improper use of mining claims and to provide for the multiple use of the surface of mining claims, Congress passed the Surface Resources Act of 1955. This Act entirely removed from the purview of the Mining Law "common varieties" of sand, stone, gravel, pumice, pumicite, and cinders (30 U.S.C. 611).

The Federal Aid Highway Act of August 27, 1958 (23 U.S.C. 317) provided for availability of mineral materials to the states for federal aid highway construction by authorizing grants of rights-of-ways. BLM and Federal Highway Administration (FHWA) have entered into an Interagency Agreement, AA-851-IA2-40, dated July 1982 to process the ROW application.

In 1962, the Petrified Wood Act (76 Stat 652) permitted the sale or (limited) free use disposal of petrified wood from public lands, under certain specific criteria, and removed petrified wood from the category of locatable minerals.

C. References. Other sources of references include Department of the Interior (DOI) and BLM manual and handbooks, Memoranda of Understandings and Interagency Agreements, DOI Solicitor's Opinions, the Judicial and Departmental case law, especially the decisions of the Interior Board of Land Appeals, and other federal/state /agency internet web pages providing data such as labor and equipment operating costs and cost indices.

1. DOI and BLM Manual Handbooks:

a. Department of the Interior (DOI) Manual, Part 235 - BLM.

b. DOI Manual, 516 DM 6 - Appendix 5, National Environmental Policy Act (NEPA) - BLM.

c. BLM Manual 1203, Delegation of Authority.

d. BLM Manual 1372, Collections.

e. BLM Manual 3031, Energy and Mineral Resource Assessment.

f. BLM Manual Handbook H-3042-1, Solid Minerals Reclamation Handbook.

g. BLM Manual 3600, Mineral Materials Disposal.

h. BLM Manual 3630, Mineral Material Appraisal.

a. BLM Manual Handbook H-3630-1, Mineral Material Appraisal Handbook.

j. BLM Manual 9235, Mineral Trespass.

k. BLM Manual Handbook H-9235-1 Mineral Material Trespass Prevention and Abatement Handbook.

2. Memoranda of Understandings and Interagency Agreements:

a. Memorandum of Understanding between BLM and Federal Energy Regulatory Commission (FERC), July 20, 1966.

b. Interagency Agreement between BLM and Federal Highway Administration (FHWA) AA-851-IA2-40, dated July 1982.

c. Memorandum of Understanding between BLM and Bureau of Reclamation (BOR), March 25, 1983; Disposal of sand, gravel, etc.

3. DOI Solicitor’s Opinions:

a. DOI Solicitor M-Opinion M-36998, Disposal of Mineral Materials from Unpatented Mining Claims, June 9, 1999.

b. DOI Associate Solicitor, Energy and Resources, Opinion on Effect of a Withdrawal on the Materials Act, July 28, 1988.

4. Judicial and IBLA Decisions Selected References & Topics:

a. Watt v. Western Nuclear, Inc., U.S. Supreme Court June 6, 1983. The decision concluded that gravel is a mineral reserved to the United States in the Stock Raising Homestead Act lands. "Given Congress's understanding that the surface of SRHA lands would be used for ranching and farming, we interpret the mineral reservation in the Act to include substances that are mineral in character (i.e., that are inorganic), that can be removed from the soil, that can be used for commercial purpose and that there is no reason to suppose were intended to be included in the surface estate."

b. U.S. v. Coleman., U.S. Supreme Court April 22, 1968 (390 US 599). Marketability and prudent man are complimentary tests. This decision deals with a widespread quartzite deposit occurring on and off the claim. The claimant contended that the deposits are chiefly valuable for building stone, are not a common variety, and are subject to the Building Stone Act. Coleman says that the 1955 act was intended to remove common varieties of stone from the mining laws, because they are building materials.

c. Tailings
Forbes v. Gracey; 94 U.S. 762, 767 (1876); 4 Otto 762, 767 (1890).
Ritter v. Lynch, 123 Fed. 930, 936 (D of NV, 9th Cir. 1903).
Albert Steinfeld v. Omega Copper Company, 16 Ariz. 230; 141 Pac. 847, 849 (Supreme Ct. of Ariz., 1914).
2 Lindley on Mines, Sec. 426 Tailings (3rd Ed, 1914)
United States, George B. Conway, Intervener v. Antone C. Grosso; 53 I.D. 115, 126 (1930).

Commissioner of Internal Revenue v. Kennedy Mining & Milling Co., 125 F. 2d 399, 401 (9th Cir. 1942).

d. Mineral Material Reservation
Earl Williams,140 IBLA 295 (1997) - Sand & gravel reserved to U.S. - Pittman Act.
Pacific Power & Light Co., 45 IBLA 127 (1980) - Scoria reserved to U.S. - SRHA.
Denman Investment Corp., 78 IBLA 311 (1984) - Granite reserved to U.S. - SRHA
Curtis Sand & Gravel Co., 95 IBLA 144 (1987) - Sand reserved to U.S. - SRHA

e. Mineral Commodities
Maurice Tanner, 141 IBLA 373 (1997) - Humates are salable minerals.

f. Land Use Planning/Environmental Quality
Herman, 150 IBLA 243 (1999) - A sand and gravel contract is approved, even one with adverse impacts, as long as BLM has taken a hard look at the issues, and has not abused its authority.
Robert W. Hall, et al, 149 IBLA, 130 (1999) - Under the Clean Air Act, a Federal agency may not approve any activity which fails to conform to a state implementation plan.
Jenoit Mining Corp., 134 IBLA 191 (1995) - Application may be denied in lands designated as a desert bighorn sheep management area where land use plan was incomplete.

g. Determination of Alternative Access Route by BLM
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l. Refunds or Credits
American Pozzolan Corp., 17 IBLA 112 (1974) - Disputes and remedies.

m. For Profit Native Corporation
Ukpeagvik Inupiat Corp., 68 IBLA 359 (1982) - BLM may sell materials.

n. Material Site Rights-of-Way
State of Oregon, 6 IBLA 72 (1972) - FUP and Title 23 ROW.
Kenneth L. Ingram, 96 IBLA 290 (1987) - BLM's oversight responsibilities.

5. Other Sources:

a. Federal Reserve List of Acceptable Sureties - E-mail Address:
http://www.fms.treas.gov/c570/index.html

b. California Department of Transportation - Labor Surcharge & Equipment Rental Rate Book - E-Mail Address:
www.dot.ca.gov/hq/construc/equipment.html

c. California Department of Industrial Relations, Division of Labor Statistics and Research (General Prevailing Wage Rate)- E-Mail Address:
www.dir.gov.DLSR/statistics_research.html

d. Caterpillar Tractor Company, Caterpillar Performance Handbook, Peoria, Ill.

Chapter II. TYPES OF DISPOSALS

A. Exclusive Disposals. Under exclusive disposals the purchaser has an exclusive right to the materials and sole responsibility for development and reclamation of the site or a designated portion of the site. There are three types of exclusive disposals: negotiated sales, competitive sales, and free use permits.

1. Negotiated Sale. A negotiated sale is a noncompetitive sale not exceeding the limitations in volume set forth in 43 CFR Section 3602.31. Negotiated sales within the volume limitation should not be made where there is evidence of competitive interest. Steps in the issuance of a negotiated sale are as follows:

a. A written request for materials is received. The request should specify the area of the proposed disposal, the type and volume of materials needed, and the approximate length of time required for removal. If the request does not contain this information, the requester should be contacted in a timely manner to obtain this information.

b. The Bureau records should be checked to determine if the site has un-patented mining claims and requires special steps prior to a disposal (see Chapter X, Section A). The land use planning documents should be checked to assure compatibility with the proposed disposal. In urban areas, city and/or county zoning or planning departments should be consulted to identify potential conflicts or additional requirements that may be placed on the prospective operator.

c. If all records show that the site is available, and the action is compatible with land use planning, the requester should be notified to complete an application/contract form and submit a mining and reclamation plan if required. The case may be now initiated, i.e., serialized based upon procedures established by your state office. [In some states a request for a serial number is made to the state office. Whereas in others, the field offices are given a block of casefile numbers from the state office and these are assigned to the case at the field office

level]. A memorandum is sent to the state office records section requesting the platting of the site. This should be done before NEPA actions are initiated in order to lessen the risk of some encumbrance prohibiting a sale while we are processing the application.

d. In the Lower 48 the case data is entered into the Legacy Rehost 2000 Records System (LR-2000). In Alaska the case is entered into the Alaska Automated Land Records System (AALRS).

e. If required, the mining and reclamation plan should be reviewed and the applicant notified of needed changes.

f. When the mining and reclamation plan has been finalized to the satisfaction of all parties, an environmental review is performed. For sales over 50,000 cubic yards or disturbing greater than 5 acres, an environmental analysis (EA) is required. For sales that do not meet these thresholds, at a minimum a categorical exclusion (CX) review is done and an EA is performed, if necessary. Changes to the mining and reclamation plan, in the form of special stipulations, may be found necessary as a result of the environmental review. The applicant should be notified of these special stipulations prior to further case processing.

g. An appraisal is conducted to determine the fair market value of the material. The applicant should be notified of this value. Appraisals must be updated as the market changes, and at intervals of no less than 2 years.

h. For sales of $2,000 or more, the applicant must post a performance bond. For sales less than $2,000, the bonding requirement may be waived at the discretion of the Authorized Officer.

i. Prior to or immediately after contract authorization, the site should be identified (flagged, posted, etc.) on the ground and noted by the applicant to discourage unintentional trespass.

j. Upon payment of the first installment or the entire contract value, the Authorized Officer signs and dates the contract. The purchaser is provided with a copy of the contract, any special

stipulations, and the approved mining and reclamation plan. See Illustration 1 for an example of an executed contract on Form 3600-9.

2. Competitive Sale. A competitive sale is a sale exceeding the volume limitations set forth in 43 CFR Section 3602.31 or one in which there is competitive interest. Sales are initiated by request of a private party or by the Bureau. The sales are advertised and conducted through sealed and/or oral bidding. The competitive sale contract may be either, restricted to (1) single term, i.e., nonrenewable, or (2) renewable (see 3602.49). The appraised fair market value sets the minimum bid. Steps in the issuance of a competitive sale are as follows:

a. See A 1(b).

b. The case may be now initiated, i.e., serialized based upon procedures established by your state office. [In some states a request for a serial number is made to the state office. Whereas in others, the field offices are given a block of casefile numbers from the state office and these are assigned to the case at the field office level]. A memorandum is sent to the state office records section requesting the platting of the site. This should be done before NEPA actions are initiated in order to lessen the risk of some encumbrance prohibiting a sale while we are processing the application.

c. In the Lower 48 the case data is entered into the Legacy Rehost 2000 Records System (LR-2000). In Alaska the case is entered into the Alaska Automated Land Records System (AALRS).

d. An appraisal is made to determine fair market value and establish the minimum bid and bid deposit. (See 43 CFR 3602.42.)

e. An appropriate level of environmental analysis [NEPA document] is performed. If the contract is to be offered with a renewable provision, the entire tract [not just the area to be affected by the initial term of the contract] must receive clearance for cultural and T & E species. This is necessitated by the fact that larger areas within the tract, than those

identified for the first term of the contract, may be disturbed during the terms of subsequent contract renewals. Mitigation measures are derived from the NEPA document.

f. Bids are solicited by advertising in a newspaper and by distribution of a sales notice to interested parties. A material sale advertisement is composed, and published in a newspaper of general circulation in the area of the sale. The term of the contract including whether the contract is restricted to a single term or renewable will be specified in the sales notice. The advertisement must be printed on the same day, once a week for 2 consecutive weeks, ending no sooner than 1 week prior to the date of the sale. The advertisement must contain the information specified in 43 CFR 3602.42(b). The sales notice should also be posted in a conspicuous place in the District and/or Field Office. The date of posting should be noted on the face of the notice.

> Note: *In determining the size and shape of the tract offered for competitive sale consideration should be given to the economic recovery and prevention of loss of mineral material resource. To discourage speculative holding of large reserves, do not offer a renewable contract with economic reserves inside the tract that exceeds 40 years at the planned rate of production. Planned rate of production is to be derived by dividing the contract amount [cubic yard/ton] by the number of years for the first term of the* contract.

g. Sales can also be conducted by sealed and/or oral bidding. Example of a sales notice for sealed bid is shown in Illustration 2. (For sealed bidding only, follow steps 1 through 4, 9, 11, 12, 13, and 14: for oral bidding only, follow steps 2, 3, and 5 through 12):

(1) Ask for sealed bids before sale time.

(2) Read the material sales notice aloud.

(3) Post the appraisal value and minimum deposit required on the appropriate medium available at the time.

(4) Open the sealed bids and post the bid and amount of deposit of each bid on the blackboard.

(5) Announce the rules for oral bidding.

(6) Request those interested in bidding to qualify by making the required deposit as specified in 43 CFR 3602.44 and the sales notice.

(7) Call for bids.

(8) Record each bid and bidder as received.

(9) Close the bidding and announce the highest bid and bidder. Any and all bids may be rejected if it appears in the interest of the United States to do so: minor deficiencies in bids or the sale advertisement may be waived.

(10) Require that the high bidder sign a confirmation of his oral bid.

(11) Advise bidders that should the high bidder fail to submit necessary information within the time frame specified in 43 CFR 3602.45, the next highest bidder may be offered the contract for the amount of the high bid.

(12) Return the deposit checks to the unsuccessful bidders.

(13) Prepare a voucher for bid deposit.

(14) Provide the successful bidder with the contract and advise of additional pre-issuance requirements (see 43 CFR 3602.45(e)) and 30 day time limit.

h. See A 1(e).

i. See A 1(h).

j. See A 1(i).

k. See A 1(j).

3. Free Use Permits. Free use permits are contracts issued to governmental entities and nonprofit organizations or corporations for the use of mineral materials free of charge. However, there may be mitigation costs or fees, which are charged as part of the free use permit. The amount of material provided to nonprofit organizations is limited to 5,000 cubic yards per 12 consecutive month period. The issuance of a free use permit is a discretionary action and permits should not be issued where the applicant already owns or controls an adequate supply of material, or the disposal is contrary to public interest. The Materials Act dictates that minerals disposed of free of charge may not be used for commercial or industrial purposes or resale. Steps in the issuance of a free use permit are as follows:

a. A written request for materials is received. The request should specify the area of the proposed disposal, the type and volume of materials needed, and the approximate length of time required for removal. If the request does not contain this information, the requester should be contacted in a timely manner to obtain this information.

b. The Bureau records should be checked to determine if the site has un-patented mining claims and requires special steps prior to a disposal (see Chapter X, Section A). The land use planning documents should be checked to assure compatibility with the proposed disposal. In urban areas, city and/or county zoning or planning departments should be consulted to identify potential conflicts or additional requirements that may be placed on the prospective operator.

c. The case may be now initiated, i.e., serialized based upon procedures established by your state office. [In some states a request for a serial number is made to the state office. Whereas in others, the field offices are given a block of casefile numbers from the state office and these are assigned to the case at the field office level].

d. If required, the mining and reclamation plan should be reviewed and the applicant notified of needed changes.

e. When the mining and reclamation plan has been finalized to the satisfaction of all parties, an environmental review is performed. For sales over 50,000 cubic yards or disturbing greater than 5 acres, an environmental analysis (EA) is required. For sales that do not meet these thresholds, at a minimum a categorical exclusion (CX) review is done and an EA is performed, if necessary. Changes to the mining and reclamation plan, in the form of special stipulations, may be found necessary as a result of the environmental review. The applicant should be notified of these special stipulations prior to further case processing.

f. The appraisal or value is needed when reporting the disposal in the ADP systems. In the Lower 48 the case data is entered into the Legacy Rehost 2000 Records System (LR-2000). In Alaska the case data is entered into the Alaska Automated Land Records System (AALRS).

g. Bonding of free users is discretionary. Examples for requiring a bond may include past record of poor performance, failure to observe stipulations or to reclaim. It should be noted that some governmental entities, particularly the Federal Government, do not have the authority to post bonds. Thus, an agency seeking a free use permit may be unable to provide a bond for their operations.

h. The Authorized Officer signs and dates the permit. The applicant is provided with a copy of the permit, approved mining and reclamation plan, and any special stipulations. Example of a duly executed free use permit authorization, Form 5510-1 is shown in Illustration 3.

i. A memorandum is sent to the state office records section requesting the platting of the site.

j. The case is entered into the LR2000 (or AALRS in Alaska) systems.

> Note: A free use permit may <u>not</u> be issued in lieu of a <u>Material Site applied for under the Federal Highway Act</u>, 23 U.S.C. 317 (see 6 IBLA 72). Procedures for the appropriation of materials for Federal-aid Highway purposes

are outlined in Interagency Agreement AA 851-IA2-40 between the Bureau and Federal Highway Administration. This document was signed in July 1982, and became effective upon the revocation of 43 CFR 2820 - Roads and Highways, on October 28, 1982. Right-of-Way Material Sites are closed to entry under the mining laws. The mineral specialist should work with the Authorized Officer to ascertain measures and stipulations to be applied to material site appropriations to protect resource values. BLM also has oversight responsibilities to insure that mineral materials from these ROWs are not used for unauthorized purposes. See Assistant Solicitor, Energy and Resources memorandum to the BLM Director dated November 7, 1987 with attached Interagency Agreement between BLM and Federal Highway Administration AA 851-LA2-40 of July 27, 1982 [Appendix 1].

B. Nonexclusive Disposals. Nonexclusive disposals are made from sites to which the general public has access and more than one party has a right to remove materials. There are two types of nonexclusive disposal sites: the community pit and the common use area. The distinction between the two is that common use areas are generally broad geographic areas which, after removal of the minerals, do not require reclamation.

1. Community Pits are established based on an indicated need for multiple small disposals of **a particular type of commodity** in a given area. There is no limitation on the size of community pits. Steps in the designation of community pits are as follows:

a. An appropriate site is found based on: quality and quantity of material, as determined by sampling and testing where required; land availability, as determined by a review of mining claim records and MTP's; and compatibility with land use planning documents.

b. A case file is set up for the site. The serialization is based upon procedures established by your state office. [In some states a request for a serial number is made to the state office. Whereas in others, the field offices are given a block of

casefile numbers from the state office and these are assigned to the case at the field office level]. The case is entered into the LR-2000 (or AALRS in Alaska) systems.

c. A mining and reclamation plan is developed. The plan should clearly address all stages of the mining and reclamation operation. If a community pit is a large area and the mine life extends for several years, consideration should be given to segment the pit into reasonable mine-life cells. A cell could be mined out, recontoured, and seeded, while another is kept open for production. The plan should include an estimate of the total site preparation and reclamation cost divided by the total volume or weight of materials. This results in a per ton or cubic yard reclamation cost to be included in addition to the fair market value of the in-place material. A copy of the mining and reclamation plan should be placed in the case file. The plan should be modified if any deviations are anticipated or deemed necessary. Permittees should be given operating instructions which conform to the mining plan.

d. An EA is prepared if over 50,000 cubic yards are estimated to be taken or more than 5 acres will be disturbed over the mine-life of the deposit. If no more than 50,000 cubic yards are to be removed or no more than 5 acres disturbed, a categorical exclusion review is necessary. A copy of the environmental review documents should be placed in the case file.

e. An appraisal is conducted to determine the fair market value of the material. Appraisals must be updated as the market changes, and at intervals of no less than 2 years.

f. When a community pit is designated a memorandum is sent to the State Office records section requesting platting of the community pit on the master title plat. Mineral assessments and planning documents should be annotated as to the community pit designation. Individual disposals from community pits are not noted on the master title plats.

g. The site should be physically prepared. In order to recover the expenses involved in the preparation of the site, such as overburden removal or stockpiling, the work should be charged to

Treasury Account 14 X 5017, sub-activity 5320 for work on Public Lands or subactivity 5310 for work on Oregon and California Grant (0&C), or Coos Bay Wagon Road (CBWR) lands. These expenses should be calculated in the cost of reclamation and recovered through reclamation fee assessments.

h. The site is posted with signs (BLM sign No. S-37), to mark the boundaries of the community pit. This is especially important if the site is adjacent to an exclusive sale area. Tie ribbons to trees, make rock cairns, or where necessary, fence the boundaries of the site.

i. A handout should be prepared to give to purchasers. The handout should include operating instructions, stipulations, a map showing access, and the boundaries of the community pit in relationship to topographic features or other markers, and other pertinent information.

j. The establishment of the community pit should be advertised in a local paper, preferably at least a week prior to the pit opening.

2. Common Use Areas. To establish a common use area, follow the same steps as those found in the designation of a community pit with the following exceptions:

a. The designation of, or subsequent disposals from, common use areas does not have to be noted on the use plats as it does not affect subsequent use or have a segregative effect on land status.

b. No mining or reclamation plan is normally required. However, stipulations should be developed that delineate what types of activities are allowed, i.e., for example use of existing roads, hand tools only, etc.

c. Normally the site will not require preparation.

d. The established site does not need to be posted with a Bureau sign; however, some identifying land markers would be helpful.

e. The establishment of the site need not be advertised.

3. Disposals from Community Pits and Common Use Areas: Sales not exceeding $2,000 in value may be made on Form 5450-5, "Vegetative or Mineral Material Negotiated Cash Sale Contract." The term of a 5450-5 disposal contract for mineral material disposals must not exceed 90 days. See Illustrations 4 and 5 for properly completed sales contract Forms 5450-5 for PD and O&C/CBWR lands, respectively.

The purchaser should have the sales contract in hand while removing material from the site.

Note: Exclusive sales (negotiated or competitive) and Free Use Permits may be issued within the boundaries of a community pit or a common use area. BLM will decide whether to charge a reclamation fee or require the purchaser/permittee to perform the reclamation. These case types are separate from community pit or common use area case types and are to be maintained as separate cases. See Chapter XIII for details on case records requirements and case type/action code data standards.

4. Reclamation Fee.

a. How to assess reclamation fees? To assess reclamation fees for community pits, you need to (1) calculate the total amount needed to reclaim the site, (2) the amount of mineral material to be disposed of from the site, and (3) then derive the proportionate share of reclamation cost per unit of the material disposed. The reclamation cost includes all costs of reclamation, and cost of site preparation.

Use the following method in determining the amount of fee to be charged per unit of material disposed from a community pit.

URC = Unit Reclamation Cost
TRC = Total Reclamation Cost
CSP = Cost for Site Preparation (includes costs of overburden removal and stockpiling of top soil, preparation of mining/reclamation plan, and NEPA compliance)
TAM = Total Amount (Volume or Weight) of Mineral Materials to be disposed of
URC = [TRC+ CSP]/TAM

Note that the indirect costs are to be added to the direct costs in determining the total cost of reclamation. The indirect costs are determined each year by the Bureau as a percentage of the direct costs and include costs which support general office operations and cannot be directly tied to a particular program. For Fiscal Year 2001 the rate of the indirect cost is 19.6 per cent. You should check with the Chief of Administration for your office for the current rates.

A summary sheet showing the reclamation fee calculation is shown in Illustration 6.

A copy of the document showing the calculation of the reclamation fee must be placed in the community pit case file. If during the life of the pit it appears the total reclamation fee is insufficient to accomplish planned reclamation, the fee should be recalculated based on the amount of material remaining in the pit.

b. Collection of fees. Fees collected for the reclamation of material sites should be identified separately on the contract or permit forms. The total reclamation payment should be identified as fees from Public Domain (5320) or fees from 0&C and/or CBWR (5310) as shown in Illustrations 4 and 5. Proper identification ensures that funds are accurately entered into the Collection and Billing System (CBS). Printouts of properly completed CBS receipts are provided in Illustrations 7 and 8. The CBS clerk is responsible for completion of the data into the system. Reclamation fees from sales made on other forms should be properly entered into the reclamation account.

c. Provisions for Performance of Reclamation Instead of Payment of the Reclamation Fee The decision to allow a user to perform reclamation instead of payment of a fee is discretionary and should always reflect the best interest of the United States. The agreement to reclaim and the specifics of how the reclamation is to be performed should be made a part of the contractual agreement under Section 3, Special Stipulation, Form 5450-5, or as a special stipulation on other sales contracts or free use permits.

d. How to Access the Reclamation Fund When interim or final reclamation of a community pit is necessary, the cost of this work is charged to subactivity 5320 if on Public Domain or subactivity 5310 if on 0&C or CBWR lands. A log of the amount of materials disposed of and reclamation fees collected and charged against should be kept in each case file to verify available reclamation funds. This is important as other monies are kept in the reclamation account and there is no accounting method to distinguish the source of the monies.

C. Competitive Sale Contract Renewal.

There are two kinds of sales contracts subject to renewal: (1) Competitive contracts in existence on January 22, 2002, for which the BLM has decided that the contract may be renewed under the procedures outlined in 43 CFR Section 3602.49(c), and (2) Competitive contracts awarded after January 22, 2002, which states that the contract is renewable.

The steps for processing competitive contracts in existence on January 22, 2002, for which the purchaser requests BLM's decision on whether the contract is subject to renewal are as follows:

a. A written request for BLM determination is received from the purchaser.

b. BLM records and land use planning documents are checked to determine compatibility with continued mineral materials extraction from the subject parcel.

c. A determination is made if allowing a mining operation in the subject parcel is, or is not, in the public interest.

d. A decision letter is sent to the purchaser informing them of BLM's decision stating that the subject contract is either renewable or nonrenewable. If renewable, the purchaser should be advised that the procedures for application for renewal is provided in 43 CFR 3602.47. If the contract is determined to be nonrenewable, the purchaser should be advised of the appeal process (see Chapter IX).

e. If the decision was to make the contract renewable, the case data should be updated changing the case type from competitive nonrenewable sale (361311, 361312, or 361313) to competitive renewable sale (361321, 361322, or 361323), as appropriate. In the Lower 48 case data is updated in the LR2000 system and in Alaska in the AALRS system. In the General Remarks an entry must be made to note the decision and date of the decision.

Contract Renewal Steps: The application for renewal is processed under 43 CFR Section 3602.47.

a. BLM receives a written request from the purchaser for renewal of a contract at least 90 days prior to the expiration of the sales contract. The request should specify the type and volume of material to be removed, area of the proposed mining, its relation to existing operations, adjustment to mining and reclamation plans, and the length of term of contract renewal.

b. BLM will make a preliminary review of the submitted application and mining plan for completeness. The applicant is notified of needed changes and when the completed documents are received BLM will conduct an additional environmental analysis to determine mitigating measures and stipulations.

c. Changes to the mining and reclamation plan found necessary as a result of the environmental analysis will be made in the form of special stipulations.

d. BLM determines if the renewal of contract term should be less than 10 years as provided in 43 CFR 3602.47(c).

e. Performance bond amount would be adjusted based on the revised reclamation requirements.

f. An appraisal is conducted to determine the fair market value of the material. Appraisals must be updated as the market changes, and at intervals of no less than 2 years.

g. Payment for the old contract must be completed prior to the renewal of the contract.

h. Upon payment of the first installment, the Authorized Officer signs and dates the renewal of contract. The purchaser is provided with a copy of the renewed contract, any special stipulations, and the approved mining and reclamation plan.

i. A memorandum is sent to the State Office records section requesting updating of the plat for the case.

j. In the lower 48 the case data is updated into the LR2000 records system. In Alaska the case data is updated into the AALRS system.

D. Authorized Uses.

Subject to Sec. 3601.21 the purchaser or permittee may use and occupy the site to the extent necessary for fulfilment of the contract or permit. These uses include mining, crushing, washing, screening, separating and stockpiling the material. Generally temporary and occasionally permanent structures such as scales, concrete or asphalt mix plants and guard house /site office are part of aggregate operations. Value-added products such as the asphalt concrete, or ready mix concrete could be considered separate from mining and processing operations and BLM could require a separate authorization such as a special use permit outside of the permit area. However, when possible, keeping all activities together and confined to a small area at the site (generally already disturbed by mining) may be beneficial to the public from an environmental point of view. Contemplated use of concrete or asphalt mix plants, and construction of any permanent structures, such as a guard house, should be included in the mining plan and considered in the analysis under the NEPA during the BLM's permitting process. Approval may also be obtained from the BLM under Sec. 3601.44 as a request for the modification of an approved plan.

Back hauling and stockpiling of minerals or trash from outside (originating beyond the boundary of the permit/contract area) to the site is prohibited.

H-3600-1 MINERAL MATERIALS DISPOSAL HANDBOOK
Negotiated Contract - Form 3600-9

Form 3600-9 (April 2002)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CONTRACT FOR THE SALE OF MINERAL MATERIALS

FORM APPROVED
OMB NO. 1004-0103
Expires: 02/28/2005
Office: **EAGLE LAKE F.O.**
Contract Number
CACA 039053

The United States of America, acting through the Bureau of Land Management (BLM), and **BIG TOE MINING** you, the purchaser, make this AGREEMENT, under the authority of the Act of July 31, 1947, 61 Stat. 681, as amended at 30 U.S.C. 601 through 604, and the regulations at 43 CFR Group 3600.

We agree:

Sec. 1. *Contract area*. Under the terms and conditions of this contract, the United States sells to you and you buy the mineral materials listed in section 2 and contained in the following lands as shown on the map and mining plan attached to this contract:

County	State	Township	Range	Section	Aliquot Parts	Meridian	Acreage
LASSEN	**CALIFORNIA**	**30N**	**14E**	**33**	**N ½ SW**	**MDM**	**80**

Pit name (if any): **BRUSH MOUNTAIN**

Sec. 2. *Amount and price of materials.* The United States determines the total purchase price by multiplying the total quantity of each kind of mineral material designated by the unit price given below, or as changed through reappraisal.

KIND OF MATERIALS	QUANTITY (Units specified)	PRICE PER UNIT	TOTAL PRICE
SAND & GRAVEL	**200,000 TONS**	**$0.50/TON**	**$100,000.00**
TOTAL	**200,000 TONS**		**$100,000.00**

BLM's determination of the amount of materials that you have taken under the contract is binding on you. You may appeal this determination as provided in section 19.

You are liable for the total purchase price, even if the quantity of materials you ultimately extract is less than the amount shown above. You may not mine more than the quantity of materials shown in the contract.

Sec. 3. *Payments, title, and reappraisals.* You may not extract the materials until you have either paid in advance for them in full $ **100,000.00**, or paid the first installment of $ **5,000.00** .

[ ] **If you pay in full in advance, BLM will check this box and subsections 3(a) through 3(c) do not apply to your contract.** You must pay in full for all sales of $2,000 or less.

(a) If you pay in installments, you must pay the first installment before BLM approves the contract.

(b) Once you start removing material, you must pay each subsequent installment payment monthly in an amount equal to the value of materials removed in the previous month. Payment must be made by the 15th day following the end of the month for which you are reporting. You must pay the total purchase price not later than 60 days before the contract expires.

(c) The United States will retain the first installment as security for your full and faithful performance and will apply it to the last installment required to make the total payment equal to the total price given in section 2.

The total purchase price equals the sum of the total quantities removed, multiplied by their respective unit prices.

If you are late making an installment payment, you **must not** remove any more material until you have paid. Removing material you have not paid for is trespass, and for trespass you must pay at triple the appraised unit price, or at triple the reappraised unit price if BLM has made a reappraisal. To resume removal operations after you were late making payments, you must obtain BLM's written approval.

(d) You receive title to the mineral materials only after you have paid for them and extracted them.

Sec. 4. *Risk of loss.* You assume complete risk of loss for all materials to which you have title. If material covered by this contract is damaged or destroyed before title passes, you are liable for all loss suffered if you or your agents are directly or indirectly responsible for the damages. If you are not responsible for the damage or destruction, you are liable only to the extent that the loss was caused by your failure to remove the material under the terms of this contract. You are still liable for breach of contract or any wrongful or negligent act.

Sec. 5. *Liability for damage to materials not sold to you.* You are liable for loss or damage to materials not sold to you if you or your agents are directly or indirectly responsible for the damage or loss. You are also liable if you fail to perform under the contract according to BLM's instructions and the United States incurs costs resulting from your breach of any contract term or your failure to use proper conservation practices. If the damage resulted from willful or gross negligence, you are liable for triple the appraised value of the damaged or destroyed materials. If the damage or destruction did not result from willful or gross negligence, you are liable for lesser charges, but not less than the appraised value of the materials.

Sec. 6. *Stipulations and reserved terms.* Your rights are subject to the regulations at 43 CFR Group 3600 and to any stipulations and the mining plan attached to this contract.

[√] BLM will check this box if there are stipulations attached to this contract.

Sec. 7. *Notice of operations.* You **must** notify BLM immediately when you begin and end operations under this contract. If BLM has specified a time frame for notification, you must comply with that time frame.

Sec. 8. *Bonds.* (a) You **must** furnish BLM with a bond in the amount of $ **18,500.00** as a condition of issuing this contract.

(b) If you do not perform all terms of the contract, BLM will deduct an amount equal to the damages from the face amount of the bond. If the damages exceed the amount of the bond, you are liable for the excess. BLM will cancel the bond or return the cash or U.S. bonds you supplied when you have completed performance under this contract.

(c) BLM will require a new bond when it finds any bond you furnish under this contract to be unsatisfactory.

Sec. 9. *Assignments.* You may not assign this contract without BLM's written approval.

Sec. 10. Modification of the Approved Mining or Reclamation Plan. You or BLM may initiate modification of these plans to adjust for changed conditions, or to correct any oversight. The conditions for BLM requiring you to modify these plans, or approving your request for modification are found in the regulations at 43 CFR 3601.44.

Sec. 11. *Expiration of contract*. This contract will expire **5** years, **0** months, **0** days from its approval date, unless BLM extends the term or renews the contract.
[ ] BLM will check this box if this contract is a renewable competitive contract.

Sec. 12. *Renewal of renewable competitive contract*. BLM will renew your contract if you apply in writing no less than 90 days before your renewable competitive contract expires and you meet the conditions in the regulations at 43 CFR 3602.47.

Sec. 13. *Violations; and cancellations.* (a) If you violate any terms or provisions of this contract, BLM may cancel your contract following the regulations at 43 CFR 3601.60 et seq., and recover all damages suffered by the United States, including applying any advance payments you made under this contract toward the payment of the damages.

(b) If you extract any mineral materials sold under this contract after the contract has expired or been canceled, you have committed, and may be charged with, willful trespass.

Sec. 14. *Responsibility for damages suffered or costs incurred by the United States.* If you, your contractors, subcontractors or employees breach this contract or commit any wrongful or negligent act, you are liable for any resulting damages suffered or costs incurred by the United States. You **must** pay the United States within 30 days after receiving a written demand from BLM.

Sec. 15. *Extensions of time.* BLM may grant you an extension of time in which to comply with contract provisions under the regulations at 43 CFR 3602.27. For contracts with terms over 90 days, you **must** apply in writing no less than 30 or more than 90 days before your contract expires. For contracts with terms of 90 days or less you **must** apply no later than15 days before your contract expires.

Sec. 16. *Time for removing personal property.* You have **90** days (not to exceed 90) from the date this contract expires to remove your equipment, improvements, and other personal property from United States lands or rights-of-way. You may leave in place improvements such as roads, culverts, and bridges if BLM consents. Any property remaining after this period ends becomes the property of the United States, but you will remain liable for the cost of removing it and restoring the site.

Sec 17. *Equal opportunity clause*. The actions you take in hiring **must** comply with the provisions of Executive Order No. 11246 of September 24, 1965, as amended, which describe the non-discrimination clauses. You may get a copy of this order from BLM.

Sec. 18. *Effective date*. This contract becomes effective as indicated below.

[√] **If this contract becomes effective on the date BLM signs the contract, BLM will check this box.**

[ ] **If this contract becomes effective only after certain conditions are met, BLM will check this box, list the conditions below, and indicate the effective date.**

Sec. 19. *Appeal*. You may appeal any decision that BLM makes in regard to this contract under parts 4 and 1840 of Title 43 of the Code of Federal Regulations.

The following parties have executed this contract as of:

PURCHASER	UNITED STATES OF AMERICA
BIG TOE MINING (Individual or Firm Name)	By **/S/**
777 UPTOWN ROAD **SOMEWHERE, CALIFORNIA 987622** (Address)	(Authorized Officer) **FIELD MANAGER** (Title)
916-239-1212 (Phone Number)	**10/22/2001** (Date)
/s/ (Signature)	
(Signature)	

If you are a corporation, affix corporate seal here.

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly or willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction, subject to a fine up to $10,000 and imprisonment up to 5 years.

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) requires us to inform you that: BLM is collecting this information to process your application and effect a binding contract. BLM will use this information to identify and communicate with applicants. You **must** respond to this request to get a benefit. A federal agency may not conduct or sponsor, and you are not required to respond to, an information collection which does not have a currently valid OMB control number. AUTHORITY: 30 U.S.C. 601 *et seq*.; 43 CFR 3600 PRINCIPAL PURPOSE: BLM uses this information to identify the parties entering into contracts for disposing of mineral materials.	ROUTINE USES: BLM will transfer information from the record or the record itself to appropriate federal, state, local, or foreign agencies, when relevant to criminal, civil, or regulatory investigations or prosecutions. EFFECT OF NOT PROVIDING INFORMATION: If you do not provide this information to BLM, we will not be able to process your application for a contract. BLM estimates the public reporting burden for this form at an average of 30 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of the Interior, Bureau of Land Management, Bureau Clearance Officer, (1004-0103), 1849 C St., NW., Mail Stop 401 LS, Washington, D.C. 20240.

NOTICE OF SAND AND GRAVEL SALE
BUREAU OF LAND MANAGEMENT, LAS VEGAS FIELD OFFICE
9:00 a.m., Thursday, December 18, 2001

The Bureau of Land Management, Las Vegas Field Office in accordance with the Materials Act of July 31, 1947 (61 Stat. 681; 30 U. S. C. et seq.) as regulated by 43 CFR Part 3600, is offering for sale by sealed bids approximately 10,000,000 tons of pit run sand and gravel from 160 acres of land in T.26 S., R. 59 E., sec. 1, SE1/4 south of Jean, Nevada. The material will be sold in one lot of 10 million tons. Processing and segregation of materials onsite is authorized. The maximum length of time the contract will run is ten years. This contract is subject to renewal pursuant to 43 CFR Sec.3602.47.

Bidders must be authorized to transact business in Nevada. Bids will be by the ton and the minimum acceptable bid is $0.60 per ton. Bids will be opened at 9:00 a. m.,Thursday, December 18, 2001, at the Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada. To be eligible to take part in the bidding, potential bidders must make a 5% deposit ($300,000.00) based on the minimum acceptable bid, no later than 8:30 a.m. on the day of the sale. Deposits must be in the form of cash, money order, bank draft, cashier's or certified check, made payable to "Bureau of Land Management". High bidder will be awarded the contract unless determined to be unqualified, or if all bids are rejected, or the signed contract is not returned within thirty (30) days of receipt. In the event of a tie among qualified bidders, the highest bid will be determined by oral auction among the parties making the high bids at a date, time and place later specified. The Authorized Officer may reject any or all bids and may waive minor defficiencies in the bids if it is in the interest of the United States to do so.

A performance bond to ensure reclamation is required prior to material removal. The bond amount will be determined by the Bureau of Land Management. The bond may be a bond of corporate surety shown in the approved list of the U. S. Treasury Department, cash, certificate of deposit, or irrevocable letter of credit.

All prospective bidders are advised to inspect the contract terms and stipulations and obtain additional information concerning this sale at the above address. In addition, all prospective bidders should be fully knowledgeable of 43 CFR 3600, as the sale and administration of the contract will be conducted in accordance with these regulations. For general information contact the minerals staff at (702) 647-5000.

_____ _____
Assistant District Manager Date
Nonrenewable Resources

Illustration 3

H-3600-1 MINERAL MATERIALS DISPOSAL HANDBOOK

Free Use Permit

Form 5510-1
(August 2001)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FREE USE APPLICATION AND PERMIT
VEGETATIVE OR MINERAL MATERIAL

FORM APPROVED
OMB NO. 1004-0001
Expires: January 31, 2004

Permit Number **IDI 033670**

Expiration Date **SEPT. 17, 2011**

APPLICATION

District **USRD BURLEY FO**

Name of applicant **BURLEY HIGHWAY DISTRICT** | Address *(include zip code)* **402 E 10 TH BURLEY IDAHO 83318**

Kind of material **SAND AND GRAVEL** | Estimated quantity **100,000 CUBIC YARDS**

Give legal land description

Township	Range	Section	Subdivision
120 S	**210 E**	**5**	**LOT 6 BOISE MER**

State of **IDAHO** | County of **CASSIA**

Materials are to be used for **ROAD MAINTENANCE**

I HEREBY AGREE TO COMPLY WITH the special conditions as set forth below. I CERTIFY that the: (materials to be removed are to be used for the purpose noted above; (b) none of the materials are to be sold or bartered; (c) removal of materials can begin only upon receipt of an approved copy of this permit; and, (d) the Authorized Officer is to be notified upon completion of removal.
I CERTIFY That I am a citizen of the United States, and of the age of majority in the State in which I reside.

I FURTHER CERTIFY That the statements made by me in this application are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

SEPTEMBER 4, 2001
(Date)

S/D/ XXXXXXXXXXXXXXXXXXXXXX
(Signature of Applicant)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly or willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representation as to any matter within its jurisdiction.

PERMIT

SPECIAL CONDITIONS

The permit is hereby issued for the materials applied for but may be cancelled if it appears that this permit was issued erroneously or the terms or conditions contained herein are not observed. It shall be subject to the following special conditions:
CONFORM TO ATTACHED SPECIAL STIPULATIONS

Conservation practices *must* be carried out as provided by CFR 5511.1-1(b),.2-3(c), and .3.3;

Equipment, personal property, and improvements *must* be removed within (90) days after expiration date 43CFR 5511.3-5;

Any use of the surface of the lands involved in this permit shall be such as not to interfere with any mining claim subject to the provisions of Section 4 of the Act of July 23, 1955 (30 U.S.C. 613);

The permittee shall clean up all work areas and shall remove or dispose of all refuge resulting from the permittee's operations;

This permit is issued under the Act of July 31, 1947, as amended, 43 U.S.C. and 1201, and under the free use privilege Act of May 14, 1898 (Alaska only).

An annual report indicating the amount (cu. yds. or tons) of material removed *must* be filed with the District office on the anniversary date of the permit, or within *thirty* (30) days *after* permit expiration (Alaska only).

SEPTEMBER 18, 2001
(Date)

S/D XXXXXXXXXXXXXXXXXXXXXX
(Signature of Authorized Officer)

Reclamation Fee Calculation Summary Sheet

Site Name: Rainbow Community Pit Serial No: NVN 098765 Site size: 10 acres Date: August 12, 2001

Total amount of materials to be disposed of: 100,000 cubic yards of gravel - **TAM**
Top soil and waste rock stored at site and available for use in reclamation 36,000 cubic yards.

1. SITE PREPARATION: Cost of Site Preparation - **CSP** [Include BLM's costs of preparing Mining/Reclamation plan, and NEPA compliance. Also overburden removal, stockpiling of top soil, etc., if applicable]

Mining and Reclamation Plan and NEPA reviews Direct Personnel Cost [Labor cost $2,200 x 1.20 fringe benefit factor x 1.18 leave surcharge factor]	...	$3,115

2. RECLAMATION: Reclamation Cost

a. Earthmoving, contouring 36,000/1912 = ~19 days [Moving and reshaping 36,000 loose cubic yards. D-8N Caterpillar removes 1912 CY per day. That is 19 days @ average operating cost of $46 per hour, $368/day]	.....	$6,932
b. Seeding - seeds @ $9.00/lb. x 71 lbs. /ac. x 10 ac.	...	$6,390
- labor @ 10 lbs/hr/person @ $24/hr	...	$1,704
c. Mobilization/demobilization	...	$2,500
d. Insurance - 1.5% of labor cost $7,819 x 1.5%	...	$117
Subtotal	...	$17,703
e. Direct Reclamation Cost $17,703 x 1.12 P&A factor... [Factor includes profit and admin. related costs]		$19,828

3. DIRECT COST Subtotal - For Site Preparation and Reclamation	...	$23,714
4. Total Reclamation Cost - **TRC** [Direct Site Preparation and Reclamation Costs $23,714 x 1.196 BLM admin cost factor]	... ...	$27,440
5. Unit Reclamation Cost - **URC** [**TRC**/**TAM**] [$0.274/CY rounded down to $0.27/CY]	... ...	**$0.27/CY**

Cash Sale CBS Transaction on a Public Domain Community Pit

United States Department of the Interior Bureau of Land Management SALT LAKE FIELD OFFICE 2370 SOUTH 2300 WEST SALT LAKE CITY, UT 84119 Phone: (801) 977-4300	Receipt	
	No:	555555

Transaction #: 777777
Date of Transaction: ***06/18/2001***

	CUSTOMER:	***DALE MARTINEZ 1194 SW 10TH AVENUE VALLEY CITY, UT 84128***			
Line #	QTY	COMMODITY/SUBJECT/ACTION/ PRODUCT	REMARKS	UNIT PRICE	TOTAL
1	***25***	***Mineral Materials/PD Mineral Materials Permit/Sand and Gravels - Tons (750)***	***PERMIT #1234***	***$2.00***	***$50.00***
2	***25***	***Mineral Materials/PD Mineral Materials Permit/ PD Reclamation Fee(5320)***	***PERMIT #1234***	***$0.50***	***$12.50***
				TOTAL:	***$62.50***

PAYMENT INFORMATION				
1	AMOUNT:	***$62.50***	POSTMARKED:	***N/A***
	TYPE:	***Cash***	RECEIVED	***06/18/2001***
	NAME:	***MARTINEZ, DALE 1194 SW 10TH AVENUE WEST VALLEY CITY, UT 84128***		

REMARKS

CASE SERIAL NUMBER INFORMATION		
TRNS#	LINE#	CASES
777777	***1***	***UTU 077758***
777777	***2***	***UTU 077758***

This is an idealized form for illustration purpose only! Actual CBS forms are electronically generated and will vary based on the types and amount of information that are entered..

Cash Sale CBS Transaction on a O&C Community Pit

United States Department of the Interior Bureau of Land Management MEDFORD DISTRICT OFFICE 3040 Biddle Road Medford, Oregon 97504 Phone: (541) 618-2400	Receipt	
	No:	555777

Transaction #: 666666
Date of Transaction: ***06/30/2001***

CUSTOMER: ***JOHN M. DOUGH***
123 ASH AVENUE
MEDFORD, OR 98765

Line #	QTY	COMMODITY/SUBJECT/ACTION/ PRODUCT	REMARKS	UNIT PRICE	TOTAL
1	***200***	***Mineral Materials/O&C Mineral Materials Permit/Sand and Gravels - Tons (755)***	***PERMIT #7777***	***$0.50***	***$100.00***
2	***200***	***Mineral Materials/O&C Mineral Materials Permit/ O&C Reclamation Fee(5310)***	***PERMIT #7777***	***$0.20***	***$40.00***
				TOTAL:	***$140.00***

PAYMENT INFORMATION				
1	AMOUNT:	***$100.00***	POSTMARKED:	***N/A***
	TYPE:	***Cash***	RECEIVED	***06/30/2001***
	NAME:	***DOUGH, JOHN M.*** ***123 ASH AVENUE*** ***MEDFORD, OR 98765***		

REMARKS

CASE SERIAL NUMBER INFORMATION		
TRNS#	LINE#	CASES
666666	***1***	***ORORO 012345***
666666	***2***	***ORORO 012345***

This is an idealized form for illustration purpose only! Actual CBS forms are electronically generated and will vary based on the types and amount of information that are entered.

Chapter III. PAYMENT METHODS, REFUNDS AND CREDITS

A. Payment Methods. Payments for mineral materials may be made by lump sum payment or by installment.

1. Sales Under $2,000. For sales valued at less than $2,000, full payment is due at contract approval and prior to removal of the material.

2. Sales Over $2,000. For sales valued at greater than $2,000, payments may be made on installments. First installment payment must not be less than $500 or 5 percent of the total purchase price, whichever is greater. The purchaser must annually produce or remove materials equal in value to the first installment or, in lieu, make an equivalent payment which may be credited to future production, but never refunded, unless upon expiration the purchaser has paid for more material than originally contracted for.

The first installment is made as a bid deposit at a competitive sale or prior to, or at approval of, a negotiated sales contract. The first installment is retained as security and used as the last payment where applicable.

Subsequent payments are made on a monthly basis, based on the value of the material removed during the prior month. Purchaser must be current on monthly payments and must not remove new materials. Reports showing “none” or “zero” production must be submitted for months during which there is no production. The balance of the contracted amount must be paid no later than 60 days prior to the expiration of the contract.

Purchaser may pay in advance for the projected production for the year. However, purchaser must resume paying on a monthly basis (as described previously) as soon as his advance payment does not cover the actual production for the current year.

If material contracted for is completely removed before the end of the contract term, and the purchaser’s obligation to perform reclamation is completed, the purchaser and Authorized Officer should terminate the contract.

Purchasers should be notified that the initial deposit and payments in lieu will be credited at the fair market value in effect at the time of removal. Therefore, where the material has been **reappraised at** a higher value, payments in lieu made **prior to the appraisal will** no longer purchase the same amount of mineral.

If the operator requests the deferral of in lieu of production payment for the year, because of legal impediments beyond his control, BLM may waive the year's in lieu payment.

B. Refunds and Credits. The regulations addressing refunds and credits for payments made for mineral materials were designed to promote diligence, while allowing equitable treatment to those operators who entered into contracts with good faith and for reasons beyond their control could not fulfill the terms of the contract. However, regardless of the circumstances, refunds will not be made where the total sum of monies paid by the purchaser does not cover the administrative costs of processing the disposal action. Purchasers should be advised of this and other requirements found in 43 CFR Section 3602.23 relating to refunds and credits. The computation of administrative costs should be documented and available to the purchaser upon his request. Bureau costs in processing the document includes direct and indirect labor and miscellaneous costs. General information is listed below, however, as the factors change over time you should contact your Chief of Administration for current fringe and leave surcharge factors and indirect costs applicable for your office. Illustration 1 provides a chart for documentation of processing costs. Explanation of terms and factors used in the chart are shown below:

"Labor Cost" is the hourly rate from the rate from the GS/WG salary schedule multiplied by processing time required.
"Direct Personnel Cost" is the product of Labor Cost times the fringe benefit factor (1.20) times the leave surcharge factor (1.18).
"Fringe Benefit Factor" is an adjustment made to Labor Cost to account for the cost of fringe benefits.
"Leave Surcharge Factor" is an adjustment of Labor and Fringe Benefit Factor to account for leave.
"Direct Miscellaneous Cost" is the cost included exclusively for the processing of a particular document or a particular step in the processing of a document. It includes such items as travel, equipment, rental, miscellaneous supplies and

materials, printing, ADP services, contractual services, etc.. "Indirect Cost" includes general administrative costs, and other customary and usual expenses that cannot be directly tied to a particular program.

Refunds or credits may be made if (1) the purchaser pays for more material than he wants and originally contracted for, or (2) it is discovered that the material contracted for is unavailable because the site contained less material than originally estimated, or (3) material will not be removed due to termination of the contract as agreed by the purchaser and Authorized Officer. Payments in lieu of production may not be refunded in cases of termination. If a negotiated sales contract is not approved, or if a bidder at a competitive sale is unsuccessful, the first installment is returned or refunded. However, if the successful bidder at a competitive sale fails to submit information needed to process the application, his bid deposit will be forfeited as provided in 43 CFR 3602.44(e).

C. Collection of Monies. The receipt of monies from the sale of mineral materials requires an accurate accounting of all monies that are collected. These monies include, but are not limited to, those collected from negotiated sales, competitive sales, and sales from community pits and common use areas. They also include monies collected as bonds for performance and reclamation, and monies collected from the resolution of trespass activities. For processing of collections, see BLM Manual 1372.

Cost Documentation Chart

Project Name:		Case Serial Number:			
Document/ Action Title		Step Description			
Employee Title	Grade/Step	Hourly Rate	Date	Time (hrs)	Labor Cost
1.					
2.					
3.					
4.					
5.					
6.					
Labor Cost Total:					$
Direct Personnel Cost: [Labor Cost x 1.20 fringe benefit factor x 1.18 leave surcharge factor]					$
Direct Equipment Cost					$
Direct Miscellaneous Cost					$
Total Direct Cost [Personnel, Equipment, & Miscellaneous]					$
Indirect Cost: BLM administrative cost @ 19.6% [Total Direct Cost x 0.196]*					$
Total Cost for this Step [Total Direct Cost + Indirect Cost]					$

* This rate varies from year to year. For current rate check with the Chief of Administration for your office.

Chapter IV. BONDING

A. Performance Bond. A performance bond is a source of funds that indemnifies the Bureau of Land Management (BLM) when the permittee/purchaser does not comply with the terms of their contract. A performance bond is required when surface disturbance or resource damage is expected or likely and the Bureau needs an assurance of proper reclamation and compliance with the protective stipulations. The bond amount may be adjusted by BLM due to reclamation performed by the permittee/purchaser during the operations, contract renewal, or changes to the mine plan as approved by the BLM.

B. Bond Maintenance. It is the responsibility of the mineral materials program personnel managing the case and the bond coordinator to assure that all instruments of bond liability are maintained. Ask your State Office, who is the designated bond coordinator for your office?

C. When Bonds are Required? Performance bonds may be required for the following activities:

1. Sampling and Testing. Bonding may be required, at the discretion of the Authorized Officer, for sampling and testing activities conducted pursuant to a letter of authorization (See 43 CFR 3601.30). The value of the bond should be sufficient to ensure proper resource protection and cover reclamation costs. These costs must be estimated using descriptions of the proposed activities in the exploration plan.

2. Sales. Bonding is mandatory for sales of $2,000 or greater and discretionary for sales less than $2,000. If the value of the material changes due to reappraisal and exceeds the discretionary bonding threshold, a bond is required.

3. Community Pit and Common Use Area Disposals. No bond is required for sales or permits when the reclamation fee is paid by the permittee/purchaser. Where reclamation is performed in lieu of payment of a fee, a bond is required to assure adequate reclamation, if the sale is over $2,000.

4. Free Use Permits. The Authorized Officer may require a performance bond from Governmental or nonprofit entities applying for a free use permit. (See 43 CFR 3604.25).

D. What is Required of Bonds in General. The following are required when accepting security for bonds:

(a) the funds must be guaranteed and negotiable at full value by the Government,

(b) the funds must be accessible to the Government at all times,

(c) the funds must not be available to the permittee/purchaser without release by the Government. This means that securities in the form of certificates of deposits and bank accounts from which the permittee/purchaser may withdraw funds are not acceptable forms of bond security. The originally executed documents should be retained by the Bureau, in the appropriate office bond file which normally would be in the State Office. A reference to the location of the bond or a copy of the bond should be held in the case file. Any securities that are bearer instruments or may be deemed negotiable (certificates of deposit, letters of credit should be physically secured in a vault or other safekeeping place and not in the bond file. A copy of such instruments may be kept in the bond file, in which case, the account numbers of time deposits must be kept from the public, redacted if necessary. In general, bond files may be viewed by an interested public party, but must be viewed under strict oversight by the BLM State Office.

In instances where a memorandum of understanding or interagency agreement provides for the acceptance of one bond to satisfy all Government bonding requirements, the Authorized Officer should be certain that: (1) the value of the bond meets the minimum limits prescribed in 43 CFR 3602.14 and is sufficient to cover expenses arising from damages incurred by violation of Federal laws, and those damages incurred by violation of rule or regulation, invoked by the other participating agency, and (2) the Bureau has the power of attorney to redeem the bond, without third party consent, if necessary to remedy breaches of contract. In all cases, the bond must consist of a bonding document and some form of security.

E. Acceptable Forms of Bond Security in Mineral Materials Program. A bond may be a surety bond or a personal bond.

1. Surety Bond: A surety bond consists of a promise to the United States by the permittee/purchaser and a surety (bonding company) that the surety company will correct any failure of the

permittee/purchaser to adhere to the activities approved by BLM under the 3600 regulations, or the surety will pay up to the limit of the bond. For all Federal bonds, the corporate surety must be certified by the U.S. Treasury Department, including surety bonds arranged or paid for by third parties. The acceptance of the surety bond by the Authorized Officer on behalf of the United States, makes the bond a three-way contract among the permittee/purchaser, the surety, and the United States. The contract can be enforced should the permittee/purchaser fail to comply with the 3600 authorization. Review of the Circular 570, containing the list of approved sureties, may be made at the US Treasury, Surety Bond Branch web site at the following address: http://www.fms.treas.gov/c570/index.html

The format to post a surety bond in mineral materials management can be found in Illustration 1 of this manual section. The bond language cannot be changed without solicitor approval which may considerably delay the start of operations. The surety must include a power of attorney with the bond which authorizes the surety's representative to execute the bond on behalf of the surety.

2. Personal Bond: A personal bond differs from a surety bond in that no third party (surety) is involved. The permittee/purchaser, or third-party on behalf of the permittee/purchaser, posts a bond which is secured by its own funds. A personal bond appoints the Secretary of the Interior as attorney-in-fact for the purpose of negotiating the cash or other financial instrument which was pledged as security for a personal bond. The personal bond also contains language which grants BLM authority to demand immediate payment if the permittee/purchaser fails to meet the stipulations or terms and conditions of the 3600 contract. The format for a personal bond in the mineral materials management can be found in Illustration 2 of this manual section. The bond language cannot be changed without obtaining a concurrence from the Regional Solicitor's Office.

A personal bond must be accompanied by one of the following:

(a) **Certificate of deposit** that:

(i) Is issued by a financial institution whose deposits are Federally insured. FDIC coverage may be obtained from the web site at the following address: http://www.fdic.gov

(ii) Does not exceed the maximum insurable amount set

by the Federal Deposit Insurance Corporation;

(iii) Is made payable to the United States;

(iv) States on its face that the Secretary of the Interior must approve redemption by any party; and

(vi) Otherwise conforms to BLM's instructions as found in the contract terms;

(b) **Cash bond** which is pledged using a guaranteed remittance such as a certified check, cashier's check, money order, or cash. Those funds are deposited into the BLM suspense Account 14x6875 (see Manual 1372.25D). While the funds are committed the premittee/purchaser earns no interest on them. A company or bank check are not guaranteed remittances.

(c) **Irrevocable letter of credit** from a bank or financial institution organized or authorized to transact business in the United States. An irrevocable letter of credit is a mechanism through which the financial institution extends a line of credit on behalf of the permittee/purchaser guaranteeing payment to the BLM in the event that the permittee/purchaser defaults on its obligations. The BLM gets money upon presentation of certain documents in accordance with terms defined in the letter of credit. The letter of credit must be irrevocable by the permittee/purchaser during its term. A irrevocable letter of credit must meet the following requirements:

(i) Be issued by a financial institution located or authorized to do business in the United States;

(ii) Payable or assigned in part or full, upon demand for payment, to the United States;

(iii) Must contain a clause that the BLM State Office maintaining the LOC and bond will receive notification of the bank's election not to renew the LOC prior to 90 days of the expiration date. The permittee will then have 60 days to replace the security or BLM will collect on the LOC.

(iv) Must be initially issued for a period of one year and must be automatically renewable.

The most important feature of the LOC is that it is an unconditional promise by the issuing financial institution to pay. A major difference between a personal bond, including a personal bond secured by a LOC, and a surety bonds is that for a personal bond the issuing financial institution is not given the option of assuming the responsibility for the reclamation prior to the demand for the proceeds under the bond.

(d) **Negotiable Treasury securities** of the United States of a par value equal to the amount of the required bond. Treasury securities are arranged for and managed by the Negotiable Securities Manager, National Business Center, Denver, Colorado. Current guidance for pledging a Treasury security should be obtained from the National Business Center.

F. Failure to Perform and Collecting on a Bond. When it is determined that the permittee/purchaser fails to meet the terms and conditions of the contract or applicable rules, action should be taken to protect the interests of the United States. The permittee/purchaser should be notified by certified mail, with copy to surety, if applicable, of the violation and given a reasonable period of time in which to take corrective action. If the violation is not cleared to the satisfaction of the Bureau, the Bureau may take action to correct the violation, if necessary, and collect the bond security to cover the expense of the corrective action.

Where a bond is placed through a surety company, the Bureau will first request the surety to perform the corrective action. If the surety declines to perform the corrective action then the BLM will request payment, detailing the nature of the default. It is advisable to keep the surety apprized of all actions which may affect the bond or surety's obligation under the bond. Bonds secured by cash can be retrieved by transfer of the cash from the suspense account to the charging account. Where bonds are secured by Treasury bonds, the National Business Center, Denver, Colorado, is notified to cash such securities and deposit the money into the 5320 account to which corrective activities will be charged. The field office may request a separate project fund code to track and distribute the funds.

If the bond amount is not sufficient to cover the costs of the corrective action, the procedures in BLM Manual H-9235-1 should be followed to recover the additional costs. Conversely, any balances should be refunded to the surety company or contractor.

G. Release of Bond Liability. The liability under a bond may be released only under the following conditions: When all terms and conditions of the contract or permit have been complied with; A transfer of the contract with a new bond has been approved; or an acceptable substitution of bonds has been made.

After the liability under a bond has been terminated, the bond file documents should be combined with the resource file for retention. The actual bond documents are not returned to the surety or permittee because, once received by BLM, all documents become part of the public record subject to Bureau retention and disposal schedules.

H. Determining the Amount of Reclamation Bonds. Steps to determining reclamation costs:

Step 1- Identify Reclamation Tasks
- Approved mining and reclamation plan
- Environmental documentation and mitigation
- Conditions of approval and stipulations

Step 2 - Estimate Direct Reclamation Cost
- Primary reclamation tasks (such as, earthmoving, grading, spreading topsoil)
- Revegetation
- Plant structures and equipment removal
- Monitoring/miscellaneous

Step 3 - Estimate of Indirect Reclamation Cost
- Supervision
- Profit/Overhead
- Contingency
- Mobilization/Demobilization
- Redesign

Step 4 - Calculate Total Costs
- Include BLM administrative cost (19.6%)*

* Note: This is an example; for the current rate, check with the Chief of Administration for your office.

See Solid Minerals Reclamation Handbook H-3042-1 for reclamation guidelines in various situations.

Industry and Government publications and websites listed below provide cost information:

- Caterpillar Tractor Company, Caterpillar Performance Handbook, Peoria, Illinois
- California Department of Transportation - Labor Surcharge & Equipment Rental Rate Book:
  www.dot.ca.gov/hg/construc/equipment.html

Corporate Surety Bond

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

BOND UNDER CONTRACT FOR
MINERAL MATERIAL DEPOSIT
July 31,1947 (30 U.S.C. 601 et. Seq.)

Contract Number _____
Bond Number _____

KNOW ALL MEN BY THESE PRESENTS, That _____

of _____ , as principal.

and_____

of _____ , as surety,

are held and firmly bound unto the United States in the sum of _____ dollars ($ _____) , lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The conditions of this obligation are such, that whereas the said principal entered into a contract for the deposits therein and upon conditions therein expressed, which contract bears the above contract number.

NOW, THEREFORE, if the said principal, his heirs, executors, administrators, or successors, shall faithfully carry out the obligations and observe the requirements of said contract and shall duly keep, perform, and abide by each and every term and provision of said contract as therein stipulated and agreed, then this obligation shall be null and void; otherwise to remain in full force and effect.

Executed this _____day of _____, 20___ .

_____
Principal

_____ _____
By Title

_____
Business Address

_____
Surety

_____
Attorney-in-Fact

_____
Business Address

Personal Bond

Contract Number _____
Bond Number _____

PERSONAL BOND AND POWER OF ATTORNEY
UNDER CONTRACT FOR MINERAL MATERIALS
July 31, 1947 (30 U.S.C. 601 et. seq.)

KNOW ALL MEN BY THESE PRESENTS, That _____

_____ , as Obligor, is held and firmly bound unto the United States in the sum of _____
dollars ($ _____) lawful money of the United States for the use and benefit of (1) the United States and (2) any owner of a portion of the land subject to the coverage of this bond, who has a statutory right to compensation in connection with a reservation of the above-mentioned deposits to the United States, for which payment, well and truly to be made, he binds himself, his heirs, executors, administrators, successors, and assigns, jointly and severally, as a further guarantee of which a deposit has been made with the Bureau of Land Management in the sum of $ _____ in the form of _____.

The condition of the foregoing obligation is such that, whereas the Obligor has been granted the contract referred to above, upon the lands described therein and upon conditions therein expressed.

The said Obligor does hereby constitute and appoint the Secretary of the Interior as his attorney, to transfer and apply the said deposit as security for the faithful performance of any and all of the conditions or stipulations as hereinbefore set out, and it is agreed that, in case of any default in the performance of the conditions and stipulations of such undertaking, the said attorney shall have full power to assign, appropriate, transfer, and apply said deposit or any portion thereof and to apply proceeds to the satisfaction of any damages, or deficiencies arising by reason of such default as said attorney may deem best. The said Obligor hereby for himself, his heirs, executors. administrators, and successors, ratifies and confirms whatever his said Attorney shall do by virtue of these presents.

NOW THEREFORE, if said Obligor, his successors or assigns shall fully comply with the provisions of the contract referred to above, then and in that event the above obligation shall be null and void and the deposit shall be released and returned to the Obligor. Otherwise, said obligation shall remain in full force and effect.

Executed this _____ day of _____, 20 ___.

_____
Obligor

_____ _____
Signature of Authorized Representative Title

_____
Business Address

ACKNOWLEDGMENT from Notary Public:

State of _____ County of _____

Subscribed and sworn to before me this _____

by _____

_____ _____
Notary Public My commission expires

Chapter V. PRE-APPLICATION SAMPLING AND TESTING

Prior to submitting an application to BLM for a contract or free use permit, the public may desire to explore, sample, or test for mineral materials. Such exploration, sampling, and testing should be done under a letter of authorization issued by the Authorized Officer.

A. Letter of Authorization. In order for a party to obtain a letter of authorization, the nature of the activity must be known to BLM. The requester should submit a plan showing the area involved, extent of surface disturbance, amount of samples to be taken, method of testing, type of equipment to be used, method of restoration if required, etc. There is no standard form for a letter of authorization; however, each letter should describe the allowed activity (or reference and attach the plan), establish a time-frame for accomplishing the activity, and stipulate conditions for operating. See Illustration 1 for a sample of a letter of authorization. Prior to issuance of a letter of authorization, a NEPA review, which may only require a categorical exclusion should be performed. Where necessary, the Authorized Officer may require a performance bond. Reclamation may not be practicable if the deposit is subsequently developed under a use authorization. In such a case reclamation will be included under that use authorization.

B. Reporting of Sampling and Testing Data. Prior to issuance of a letter of authorization, the party should be informed of the regulatory requirement to submit his/her findings to the Authorized Officer. The information obtained should be used in establishing a mineral materials data base, provided such information is not confidential in nature. Parties submitting information should be allowed to identify that information which is believed to be exempt from disclosure under the Freedom of Information Act. (See 43 CFR Section 2.11.)

C. Use of Samples. The samples taken may not be sold or bartered.

Letter of Authorization of a Sampling and Testing Program

United States Department of the Interior
Bureau of Land Management
Price Field Office
125 South 600 West
Price, Utah 84501

Mr. Joe Doe, President
Big Eagle Sand and Gravel, Inc.
P.O. Box 889
Price, Utah, 84513

Dear Mr. Doe

On April, 18, 2001, this office received from the Big Eagle Sand and Gravel, Inc., a request to allow them to dig eight (8) test holes to test the quantity and quality of gravel deposits in Sections 26 and 27, T.35S., R.11 E., SLM. The BLM Price Field Office has completed a review of the testing plan and authorizes you to sample and test the mineral materials under the provisions of 43 CFR Section 3601.30. This authorization does not give you a preference right to a sales contract or free use permit. The authorization will terminate on July 31, 2001. You may dig the eight (8) test holes, subject to the following stipulations:

1. The Price Field Office will be notified at least 48 hours prior to the beginning of the field work of the mineral materials test program.

2. If any cultural sites are discovered during the course of operations, work will cease at the site and the Price Field Office will be notified.

3. Trash will be collected and contained and will not be allowed to accumulate. All trash will be hauled to an authorized city or county dump or landfill.

4. No oil or lubricants will be drained onto the ground surface.

5. Test pits will be opened and maintained in a safe manner. No test pit will be left open for more than seven (7) days. Upon completion of the testing program, all test pits will be filled, restored to the original contour, and seeded and mulched. Use a seed mixture of as specified below:

Grass, Shrub, and Forb Species		Pounds Per Acre
Indian ricegrass	Oryzopsis hymenoides	2
Sand dropseed	Sporobolus cryptandrus	1
Mormon tea	Ephedra viridis	1
Yellow sweet clover	Melilotus officinalis	1
	Total	5

6. A report of the results of the tests, including a map showing the location of the test pits and their access routes will be submitted within 30 days of completion of the test program to the Price Field Office.

/s/
Field Manager
May 2, 2001

Chapter VI. FILING FEES

(Reserved)

Chapter VII. COMPLIANCE INSPECTION AND PRODUCTION VERIFICATION

A. Purpose.

The BLM's goals are 1) accurate accounting of materials removed, 2) proper compensation to the Federal Government, 3) protection of the environment, public health, and safety, and 4) identification and resolution of mineral trespass.

B. Inspection and Enforcement (I&E)

I&E includes on-the-ground site visits to monitor and ensure proper compliance with the law and regulations, policy, and mine and reclamation plan. I&E also includes environmental, permit, and contract stipulation monitoring, and the identification and resolution of mineral trespass. The issuance of and follow-up on notices of noncompliance and trespass are also an inherent part of I&E.

The inspector should review the mine plan and stipulations prior to beginning the site inspection. Photographs, as appropriate, should be part of the case file and are available in recording field observations.

The BLM employee must monitor all aspects of an operation, including site development, operational phases, and reclamation for adherence to the established requirements. Problems occur with mineral material disposal because the permittee or purchaser is unaware of the established requirements. An effective method is to review the contract and stipulations with the operator in the office before mining begins. The BLM personnel should be familiar with other Federal, State, and local requirements for the mineral material disposal site. The implementation of the inspection and enforcement program may require coordination with other Federal agencies and State and local governments.

It is important that operations are conducted consistent with acceptable industry practices and that surface impacts and other environmental concerns are fully addressed.

Problems identified during an inspection will be documented in an inspection report. The operator must be notified of corrective measures and time frames for the remedial actions to be completed. Within a reasonable time period, a timely inspection of the site must be made to ensure that the operator has adequately corrected the problem.

C. Production Verification.

The purpose of conducting production checks is to independently verify reported production, thus ensuring production accountability. Monitoring and verification of reported production and payments to enforce contract provisions are integral parts of production verification (PV). Any identified deficiencies must have follow up to ensure that purchasers have made all payments required by the contract.

Techniques that may be used for PV range from visual estimates of produced volumes made during field inspections to the use of high-tech methods which quantify the volume of material removed. See
Appendix 2 for a list of types PV methods and operator submittal requirements that have been identified by BLM field personnel as useful to determine the quantity of material extracted and/or removed from the site.

The type of PV used should reflect the accuracy needed. It is important to document in the case file the method and supporting data used to determine the quantity extracted for each pit.

D. Minimum Requirements for Inspection of Sale Contracts.

The number of inspections are based on the size of disposal. The following table shows minimum frequency requirements for I&E/PV based on annual production. More frequent I&E/PV shall be conducted where conditions warrant.

Annual Production	I&E/PV Requirement
Less than 100 cubic yards (cy)	I&E/PV will be conducted at the discretion of the Authorized Officer.
Between 100 and 5,000 cubic yards (cy)	I&E/PV shall be conducted at least once during the term of the contract. For contracts of greater than 1 year, I&E/PV will be conducted at least once annually. The PV will include, at a minimum, a field inspection. A operator submittal is required at the end of the contract or annually for multiple year contracts. Other field methods may be required of the operator, as appropriate.

Between 5,000 and 15,000 cubic yards (cy)	I&E/PV shall be conducted at least twice a year. The PV will include, at a minimum, field inspection. An operator submittal is required at the end of the contract or annually for multiple year contracts. Other field methods may be required of the operator, as appropriate.
Over 15,000 cubic yards (cy)	I&E/PV shall be conducted at least twice a year. More frequent I&E/PV should be planned for larger sales, on the order of once a month. Inspections should include an examination of the operator's PV methods (i.e. survey control points, scales, etc.). The operator shall be required to provide a Pre- and Post-Survey of the disposal site. Annual surveys for pit dimensions and volume removed shall be required of contracts that exceed one (1) year in duration. At least one operator submittal is required on a quarterly basis.

State Offices will maintain an annual listing of all sites with current or potential sales of 15,000 cubic yards or more annually for which surveys have not been made. These sites should be ranked by sales volume and prioritized for survey within the limits of available resources.

E. I&E Requirements for Free Use Permits.

Compliance inspections are to be conducted at least once a year during the life of the permit. Inspections are discretionary for removals of less than 500 cy on an annual basis. The operator is required to provide annual reports on actual production. The Authorized Officer should ensure that the permittee complies with this requirement. Any other method of PV is at the discretion of the Authorized Officer.

F. I&E in Trespass Situations.

Once the BLM has determined that an operator is in trespass, the Authorized Officer shall issue a trespass notice and either conduct a survey of the site, or require the permittee/purchaser to have a survey completed. If the BLM conducts a survey, then the cost shall be added to the final dollar amount of the trespass to be recovered. Survey methods or other techniques shall be conducted to verify the amount removed (visual estimates

are not adequate). The operator shall be required to submit all documentation relating to the material removed. The Authorized Officer will increase the frequency of inspections to address the circumstances when a trespass is discovered. Inasmuch as inspection for trespass is to be an inherent part of the compliance inspection, once a trespass is identified, the trespass shall be processed as a highest priority.

G. High Demand Areas.

These are areas that the State Office, along with the Field Offices, identifies as experiencing large or multiple sales or are encountering significant trespass.

Field Offices that have high demand areas shall have office plans for I&E/PV on file. All other Field Offices are encouraged to develop office plans. An office plan will be formulated at the beginning of each fiscal year and updated as work progresses. The office plan will consist of an inspection plan and a PV plan developed at the field level that identify workload and staffing requirements. Office plans will consist of a summary sheet including an estimate of annual production, type of disposal action, number of inspections per year, and time needed to complete required inspections.

In high demand areas it is the BLM's goal that a minimum of two positions be dedicated exclusively for the mineral materials program. One individual should have a strong background in I&E/PV and the other will be used to administer all other aspects of the program.

Chapter VIII. CONTRACT AND PERMIT CANCELLATION

A. Cancellation.

Regulations contained at 43 CFR Section 3601.60 allow cancellation of a contract or free use permit under certain circumstances. These include a permittee or operator's failure to comply with the provisions of the Materials Act of 1947, and applicable regulations, or defaulting in the performance of any material term, covenant, or stipulation in the contract. Cancellations of contract or permit are drastic actions which should be taken only when it is absolutely necessary. This assumes that the BLM representative has maintained communication with the operator since the incident occurred (Example - notices of non-compliance, documented conversation logs, etc.), and that the operator should not be surprised by the final step or cancellation.

1. Notice of Intent to Cancel.

   (a) Operators are to be provided with a written notice of intent to cancel (notice) any defaults, breach or cause for forfeiture. The notice will explain the reasons for the potential cancellation, detailing the violations of statute, rules or terms and stipulations of the contract or permit. The notice will specify in detail the actions needed to prevent the cancellation of the contract or permit.

   (b) Operators are asked to fix these problems within 30 days after receiving the notice, or

   (c) Request an extension of time to correct the defaults, or,

   (d) Show to BLM's satisfaction why BLM should not cancel the contract or permit.

   An example of a notice of intent to cancel is given in Illustration 1.

2. Reasons for Cancellation of Contract - No Response, Unacceptable Explanation, or Notice Undeliverable.

The Authorized Officer may issue a decision of cancellation of

the contract or permit if the contractor or permittee,

(a) fails to respond to the proposed notice of cancellation, or,

(b) responds with what the Authorized Officer determines is insufficient justification to continue the contract or permit, or,

(c) if after the Authorized Officer's reasonable efforts to contact the contractor or permittee the delivery of the notice is refused or not completed [See 43 CFR 1810.2 for communications by mail; when mailing requirements are met].

It would be wise to consult with the Regional Solicitor's Office for help in preparing the notice. (This gives the Solicitor's Office a heads up on the action as well as helping the local office meet all legal requirements important to the Solicitor).

3. Cancellation Decision, Appeal, and Stay of Decision.

The decision of cancellation must advise the parties affected, that the decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and be accompanied by a Form 1842-1. See Chapter IX, Appeals, for details.

Notice of Intent to Cancel

NOTICE OF INTENT TO CANCEL — Contract Number

Feel Good Sand & Gravel Company — Date
P.O. Box 000
City, State, Zip Code — CERTIFIED MAIL
RETURN RECEIPT REQUESTED

A recent inspection of your operations under the above mineral materials sale contract located in
(***legal description***)

reveals the following contract violation(s):

Violation of (***state what standards are being violated***) by failure to comply with the following terms of the contract: (***state which MATERIAL terms, covenants, and stipulations of the contract are not being complied with - Itemize and refer to specific sections of the contract including maps, as appropriate***).

Within 30 days after receiving this Notice of Intent to Cancel:

(a) you must bring the operations under compliance, or (b) request an extension of time to correct the defaults, or (c) show to BLM's satisfaction why BLM should not cancel the contract.

BLM may issue a decision of cancellation of your contract if you (a) fail to respond to the notice, or (b) respond with what the Authorized Officer determines is insufficient justification to continue the contract, or (3) if after the Authorized Officer's reasonable efforts to contact you the delivery notice is refused or not completed [see 43 CFR 1810.2].

Provisions for cancellation of contract are provided in 43 CFR Section 3601.60, and the following section (s) of this contract: ***Specify***

Upon correction of the above-described violation(s), please notify the district office for further inspection.

Sincerely
yours,

/s/
District
Manager

cc.

Chapter IX. APPEALS

A. Right of Appeal. The regulations at 43 CFR Part 4.410 provide that any party to a case adversely affected by the decision of an officer of the BLM shall have a right to appeal to the Interior Board of Land Appeals.

B. Appeals Paragraph. BLM decisions from which an appeal may be taken must be accompanied by Form 1842-1, Information of Taking Appeals to the Board of Land Appeals (see Illustration 1). **Be sure to check if a new edition of this form has been issued. Use of current form is needed to assure that correct information is provided to the appellant.** At the end of all mineral materials decisions from which appeals may be taken the following appeals paragraphs should be placed:

> *This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.*
>
> *If you wish to file a petition pursuant to regulation 43 CFR 4.21, for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413), at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.*
>
> *Standards for Obtaining a Stay*
>
> *Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:*

A. The relative harm to the parties if the stay is granted or denied,

B. The likelihood of the appellant's success on the merits,

C. The likelihood of immediate and irreparable harm if the stay is not granted, and

D. Whether the public interest favors granting the stay.

C. Processing Appeals. For appeal procedures applicable to public land hearings and appeals, refer to the regulations in 43 CFR Part 4.400 to 4.478.

The following steps provide guidelines for processing appeals:

1. Time and date stamp the appeal, when it is received. Appeal must be filed in the proper BLM Office within 30 days after date of service (no extension granted). See 43 CFR 4.411. A 10-day grace period will be allowed pursuant to 43 CFR 4.401(a). The appellant does not need to state the reasons for the appeal at this time, only that there is an appeal. The appellant has 30 days after filing the Notice of Appeal to file a statement of reasons with the IBLA. A copy should be filed with the BLM during the same time period.

2. Pull from the automated case recordation system (LR2000 for all states except Alaska which uses a separate system) the current serial register page and include it in the case file. See Chapter XIII for general information on case file management`.

3. Copies of all documents pertinent to appeal must be filed in the case file, such as finding of facts and decision from which appeal is taken, and proof of service.

4. A dummy file (either a copy of the entire file or of the pertinent documents) should be made and retained in the office making the decision from which the appeal is taken. Prepare appeal transmittal memorandum to IBLA, Form 1842-2 (see Illustration 2).

5. After an appeal is received in the local BLM Office, the complete, original case file record is required to be promptly transmitted to the IBLA, including the original notice of appeal. The IBLA has defined promptly as within 10 working days of receipt of the Notice of Appeal. If for some reason the original case file

must be retained for other purposes, a certified copy should be sent to the IBLA. A note detailing the reasons for a certified copy should be included. (For example, the U. S. Attorney needs the file for another action).

6. Send copies of the transmittal, appeal letter, and the decision to the Regional Solicitor's Office with one copy also sent to Washington Office (WO 320).

7. Send copies to the surface management agency, if other than the BLM.

8. Note to the Automated Recordation System (LR-2000), that the case file was sent to the IBLA (Action Code 042,with IBLA entered in the Action Remarks).

Information on Taking Appeals to the IBLA (Form 1842-1)

Form 1842-1
(April 2002)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you,
AND
2. You believe it is incorrect.

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED.

1. NOTICE OF APPEAL . . .	Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.
2. WHERE TO FILE NOTICE OF APPEAL . . . SOLICITOR ALSO COPY TO . . .	
3. STATEMENT OF REASONS . .	Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.
SOLICITOR ALSO COPY TO . . .	
4. ADVERSE PARTIES . . .	Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose **must** be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).
5. PROOF OF SERVICE . . .	Within 15 days after any document is served on an adverse party, file proof of the service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Se. 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: *A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401 (a))*

Subpart 1821-2--Office hours; Time and Place for filing

Sec. 1821.2-1 *Office hours of State Offices.* (a) State Offices and Washington Office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of those days where the office may be closed because of a national holiday or Presidential or other administrative order. The hours during which the State Offices and the Washington Office are open to the public for the filing of documents and inspection of records are from 10:00 a.m. to 4:00 p.m., standard time or daylight savings time, whichever is in effect at the city in which each office is located.

Sec. 1821.2-2(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the State Office or the Washington Office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulation, or decision to be filed within a stated period, the last day of which falls on a day the State Office or the Washington Office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office on the next day the office is open to the public.

See 43 CFR 4.21 for appeal general provisions.

Transmittal of Appeal to the IBLA (Form 1842-2)

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Certified Mail Receipt Requested

Memorandum

To: Board of Land Appeals, Office of the Secretary

From:

Subject: Transmitting Appeal of:

Kind of Application:

Referring to the above-cited case, I am transmitting a notice of an appeal from the decision of the

_____dated_____,19_____

☐ There are no conflicting cases of record.

☐ The conflicting cases shown on the status sheet have been properly noted as to the appeal and favorable action thereon suspended pending final action on the appeal.

☐ The records of the conflicting or reference cases identified below are transmitted herewith for use in connection with the appeal:

CC. BLM; W.O. _____
With a copy of decision

Form 1842-2 (August 1988)

Chapter X. SPECIAL SITUATIONS

A. Unpatented Mining Claims. The Department of the Interior Solicitor issued an opinion on June 9, 1999 (M-36998), concluding that the Secretary may dispose of mineral materials from unpatented mining claims. See Appendix 3. The new regulations in 43 CFR 3601.14 authorize the BLM to dispose of mineral materials on lands with unpatented mining claims, if such a disposal does not endanger or materially interfere with prospecting, mining, or processing operations, or uses reasonably incident thereto.

A disposal may be initiated by BLM, or may be requested by the mining claimant or a third party applicant. Before a disposal takes place the following steps must occur:

1. A report will be prepared by a geologist or a mining engineer describing the contemplated disposal and its location in relation to the mining claim(s) along with a preliminary or 'draft' mining plan for the extraction of mineral materials.

2. BLM will consult with the mining claimant regarding the proposed disposal. At this point if the claimant decides that the disposal, with modifications as needed, would not interfere with his mining, prospecting, or processing operations then the BLM will fill in the standard waiver document (See Illustration 1) and obtain the claimant's signature.

The claimant's signature on the waiver document verifies that the contemplated disposal on all or defined parts of the mining claim will not endanger or materially interfere with prospecting, mining, or processing operations, or uses reasonably incident thereto. The claimant's waiver serves to free the common variety mineral materials on a claim within the agreed area, from any perceived encumbering interest (and a possible damage claim, however unfounded).

BLM proceeds with the next steps for the disposal, as outlined in Chapter II.

3. If the claimant refuses to sign, the Field office will do the following:

   a. Make a determination of whether or not the disposal is in the public interest. If it is not in the public interest

(that is the aggregate estimated damage to public lands and resources would exceed the estimated benefits to be derived from the proposed sale or free use), stop, do not proceed. If it is determined to be in the public interest proceed with (b) below.

b. A report will be prepared by a geologist or a mining engineer to determine if the contemplated disposal on all or defined parts of the mining claim will endanger or materially interfere with the prospecting, mining, or processing operations, or uses reasonably incident thereto. (i) If the determination shows that the disposal will endanger or materially interfere: stop, do not proceed with the disposal. (ii) If the determination shows that the disposal, with modifications as needed, will not endanger or materially interfere then, consultation will be made with the Regional Solicitor's office, and if necessary with the Solicitor's Office, before proceeding with the next steps for the disposal, as outlined in Chapter II.

B. Mine Tailings, Overburden Stockpiles, and Chemically Treated Materials:

Surface and underground mining operations and related processing operations often result in various types of stockpiles of materials on public lands. Stockpiles may include mine waste, tailings, gravels, chemically treated rocks (heap leached), materials reactive to oxidation and hydration that have been exposed to atmospheric conditions, and materials that include substances that are deleterious to human health, air and water quality (e.g. asbestos, lead, mercury, and acid generation). On the other hand stockpiles may be of benign materials such as sand and gravel or common stone.

When BLM gets a request for purchase or free use permit of materials, from such stockpiles, under the Materials Act, two questions need to be answered as part of the disposal process:

Question Number 1 - Does the U.S. own the stockpiles? If no, stop, do not proceed with the disposal process. When the U.S. owns title to the stockpiles, on active mine operations, BLM will fill in the standard waiver document and try to obtain the signature of the mining claimant or the operator associated with these stockpiles and follow the procedures

outlined in Section A of this chapter [Unpatented Mining Claims]. Where the stockpiles are not associated with any claims or known operations and appear to be abandoned no disposal will be made unless the Federal ownership of these stockpiles are determined following guidance provided by case law.

Question No. 2 - Will the stockpile material, if disturbed or disposed of, be likely to cause significant harm to air and water qualities (surface and ground water)? If yes, stop, do not proceed with the disposal.

C. Private Surface/Federal Minerals. Disposal of mineral materials from split estates where the surface owner objects to mining should be avoided where possible. However, in many areas, this is not possible and the Bureau should accommodate applicants while minimizing problems for the surface owners.

1. 1916 Stock-Raising Homestead Act (SRHA) Patents. In 1983, the Supreme Court ruled that gravel was a mineral reserved to the United States in 1916 SRHA patents. (See Watt v. Western Nuclear, Inc., 103 S. Ct. 2218 (June 6, 1983)). Therefore, on SRHA patents where the United States still retains the mineral estate, the Bureau has the right to authorize the prospecting and removal of mineral materials from such lands. Purchasers of Federal mineral materials from SRHA patents should be advised of the three methods for providing for protection of surface owner rights. (See 43 CFR 3814 for applicable regulations.) It should also be stressed that the purchaser should not pay the surface owner for the mineral materials; and the purchaser is not obligated for damages over and above those specified in the 1916 and amendatory 1949 Act, namely, damage to crops, tangible improvements, and grazing values. The purchaser should also be aware that access to the Federal minerals across the original patent is a statutory right; however, arrangements for the compensation of damages must be made prior to entry. (See 43 CFR 3814.)

2. Lands Exchanged under Section 8 of the Taylor Grazing Act of 1934, 43 U.S.C. 315g. Disposals of mineral materials may be made from mineral estates reserved to the United States under Section 8 of the Taylor Grazing Act. (See Poverty Flats Land and Cattle Company v. U.S., U.S. District Court, for District of New Mexico.) The Taylor Grazing Act provides that authorized persons may

prospect, mine, and remove the mineral deposits, upon payment to the owner of the surface for damages to the land and improvements. Unlike the SRHA, there are no special methods prescribed for dealing with the surface owner; however, if the purchaser and surface owner cannot agree on the compensation for damages, the Bureau may also serve as an arbitrator and hold a bond to assure the surface owner adequate compensation. As with the SRHA, the purchaser should not pay the surface owner for the mineral materials, but only compensation for surface damages.

3. Other Reserved Mineral Estates. Disposals of mineral materials from split estates created by FLPMA 203 and 206 sales and exchanges and other acts which state that the Secretary may dispose of minerals pursuant to the promulgation of rulemaking, may be made under the authority of the 43 CFR 3600 regulations.

D. Federal Mineral Leases. Regulations at 43 CFR 3602.33(b), state that "If the materials remain within the boundaries of the lease, BLM will not charge for mineral materials that you must move in order to extract minerals under a Federal lease, whether or not you use them for lease development." A 1959 Departmental decision addressing the rights of an oil and gas lessee concluded that the lessee was not entitled by virtue of his leasehold interest to take and use mineral materials from the lease for operations under the lease. More recently, however, the Bureau has taken the position that where stated as a condition of a lease and where the approved plan of operations indicates, the necessary disturbance of mineral materials in the process of removing a leased mineral does not require compensation to the Government. Once the material has been disturbed, it may be used in lease development, provided the materials are not removed from the lease. Lease development includes those operations directly related to mining and processing and other related activities authorized under the lease.

Lessees will not be allowed the use of mineral materials where the mining plan for removal of the leased mineral has been designed or altered to intentionally include the disturbance of deposits of mineral materials. In other words, a mining plan which involves a greater disturbance than necessary for the removal of the leased mineral, solely for the purpose of disturbing and thereby obtaining mineral materials free of charge under Section 3602.33, should not be approved by the Authorized Officer. If, for whatever reasons, the plan is approved, such approval will not be construed to authorize the free use of minerals in lease development.

The lessee should be notified that these materials must be purchased from the BLM under a material sales contract. For instance, if a coal company expands its area of disturbance to include the mining of both the coal deposit and an adjacent mineral material deposit in one operation, the plan could be approved, but must be contingent on the purchase of the mineral materials under the 43 CFR 3600 regulations.

Principally, the Bureau's position in providing for the use of materials from Federal leases stems from a desire to minimize environmental damage resulting from additional disturbances, prevent the waste of mineral materials necessarily disturbed in the mining process, and to cooperate with lessees whose operations unavoidably disturb mineral materials. The Bureau does not have the statutory authority to dispose of mineral materials without compensation to entities other than qualified free users; hence, the regulatory restriction that the materials should not be removed from the lease. It should also be noted that lessees may purchase up to 200,000 cubic yards of material noncompetitively. (See 43 CFR Section 3602.33)

(Note: For the purpose of mineral materials use, BLM policy is to consider individual leases within the Logical Mining Unit (LMU) for the development of coal leases, as separate leases, and follow the guideline outlined in the preceding paragraph. Mineral materials removed from one lease development cannot be used free of charge in the development of another lease included in the LMU).

E. Private Minerals/Federal Surface. [Reserved]

F. Rights-of-Way Grants and Temporary Use Permits. The right-of-way regulations are explicit as to use of mineral materials in conjunction with right-of-way grants or temporary use permits. The regulations of 43 CFR 2801.1-1(d) provide for the grant holder to pay for all materials used except for those that are necessarily removed in the construction of a project and will be used in the same right-of-way grant or permit. Material removed from a cut can be used on the same right-of-way for a necessary fill operation without a sales contract. However, material excavated from a right-of-way where cuts are not necessary are subject to disposal by BLM and cannot be used without a permit or a contract..

G. Powersite Withdrawals. The July 20, 1966 memorandum of understanding (WO-12) between the Department of Interior and

Federal Energy Regulatory Commission (FERC), formerly the Federal Power Commission, gave BLM the FERC's consent to dispose of mineral materials from powersite lands. The memorandum requires that:

1. Any permit or contract so issued must contain the stipulation set forth in paragraph III of the memorandum and the powersite stipulation as follows:

Paragraph III

That the U.S., its permittees, lessees, and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any land, crops, facilities installed or erected, income, or other property or investments resulting from the use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States.

Powersite Stipulation

That in the event the said lands are required for power purposes, any improvements or structures placed thereon which shall be found to interfere with such development shall be removed or relocated as may be necessary to eliminate interference with power development at no cost to the United States, its power permittees, or licensees.

2. No disposals may be made from within an operating power project.

3. No permit or contract shall be for a term of over 5 years, except with prior consent from the Federal Power Commission.

FERC has no authority to dispose of mineral material from lands withdrawn for powersite purposes.

H. Joint BLM/Forest Service Disposals. If the Forest Service/BLM boundary divides a proposed mineral material site, it may be desirable to seek an MOU with the Forest Service, so that the site may be developed with one contract, one payment method, and one set of stipulations. The MOU should clearly specify the division of receipts to each agency.

I. Acquired Lands. The Federal Land Policy Management Act (FLPMA), as amended, regards lands or interests managed by the BLM to be Public Lands, without regard to the way the United States acquired ownership. This is true for all BLM lands except those held for the benefit of the Indians, Aleuts, and Eskimos. Thus, BLM regards mineral materials as salable on acquired lands, managed by the BLM. The 1947 Materials Act, as amended, is the authority for the disposal of mineral materials from these lands. However, the acquiring act authority and the terms of conveyance document(s) should be reviewed to determine whether it is appropriate to dispose of mineral materials from these lands.

J. Bureau of Reclamation Withdrawals. (Reserved)

K. Special Lands in Alaska.

1. NPR-A. Pursuant to the National Petroleum Reserves Production Act of 1976 (the Act), mineral material disposals from within the boundaries of the NPR-A may be made for appropriate use by Alaska natives and for uses necessary to carry out the responsibilities under the Act. Disposals within the NPR-A cannot be made for use outside the NPR-A.

2. ANCSA. (Reserved)

L. Withdrawn Lands

The memorandum dated July 28, 1988, from Associate Solicitor, Energy and Resources to Director, Bureau of Land Management provides the effect of withdrawal on the Materials Act (See Appendix 4). The Associate Solicitor concluded that,

> "Pre-FLPMA withdrawals or segregations which closed land to the operation of public land laws, including the mineral leasing laws either expressly or by interpretation, also closed land to the Materials Act. Any other withdrawal or segregation has no effect on the Materials Act. You should of course consider the purpose for which the lands were withdrawn or segregated. (If the land is administered by an agency outside Interior, consistency will be determined by that agency as part of the consent process.) You may exercise discretion under the Materials Act and decide not to hold materials sale in a given area. Such a decision is not a withdrawal and does not have to implemented under the procedures in section 204 of FLPMA."

The Materials Act would only apply to these lands if the surface management agency has no independent authority to dispose of these materials since the materials sale may only be held if there is no other express statutory authority. 30 U.S.C. § 601. Where the land has been withdrawn in aid of a function of a Federal department or agency or of a State, Territory, county, municipality, water district or other local governmental subdivision or agency, the Secretary may make disposals under this Act only with the consent of such other Federal department or agency or of such State. 30 U.S.C. § 601.

Only if the surface management agency has no independent authority to dispose of mineral materials from the withdrawn lands the BLM will dispose of materials under the Materials Act after obtaining the consent of such surface management agency.

Mineral Materials Waiver

The undersigned owner(s) of the mining claim(s) and/or millsite(s) listed below hereby waive any and all rights to any mineral materials on the listed mining claim(s) and/or millsite(s) or on the part(s) of the mining claim(s) and/or millsite(s) defined below. The Secretary of the Interior has independent authority to dispose of these mineral materials under the Materials Act of 1947, as amended, 30 U.S.C. § 601, when such disposal will not "endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto." 30 U.S.C. § 612(b). By accepting this waiver, the Bureau of Land Management does not acknowledge that the claimant has or had any rights to any of the mineral materials at issue.

List below all mining claims and/or millsites to which this waiver applies.

Claim Name	BLM Recordation Serial No.	County	Recordation Book	Page

If there are any claims listed above to which this waiver is to apply only in part, list those claims below and describe the portion of the claim to which the waiver applies.

Claim Name	Description of land portion

List below the owner(s) listed in the official record of the Bureau of Land Management for the above mining claim(s) and/or millsite(s).

H-3600-1 MINERAL MATERIALS DISPOSAL HANDBOOK

Mineral Materials Waiver

Name	Address	State	Zip

This waiver is filed by the above listed owner(s) in the State of _____.

Subscribed and sworn to before me this _____ day of _____, 20___.

_____
(Owner's Name - Please Print)

[SEAL]

_____
(Notary Public)

_____
(Owner's Signature)

_____
(Date Commission Expires)

.....

This waiver is filed by the above listed owner(s) in the State of _____.

Subscribed and sworn to before me this _____ day of _____, 20___.

_____
(Owner's Name - Please Print)

[SEAL]

_____
(Notary Public)

_____
(Owner's Signature)

_____
(Date Commission Expires)

.....

This waiver is filed by the above listed owner(s) in the State of _____.

Subscribed and sworn to before me this _____ day of _____, 20___.

_____
(Owner's Name - Please Print)

[SEAL]

_____
(Notary Public)

_____
(Owner's Signature)

_____
(Date Commission Expires)

.....

Chapter XI. ACCESS

A. Access Through Federal Surface - Public Access Available: Access to mineral material sites, where access is over Federal surface, is considered during the sale/permit process. Most proposed sites already possess roads or trails of varying quality for vehicular access. The purchaser may utilize an implied right of access from the sale, with any special concerns handled as stipulations in the sale. The conditions of the road to be built, maintained or upgraded, or where a road use fee is charged in lieu of maintenance, is considered as part of the sale/permit process.

Where a more substantial road, or an exclusive road is needed, it is appropriate to authorize the road through a Right-of-Way (ROW) pursuant to 43 CFR 2800. This has the advantage of creating a prior right of record to protect improvements in the event the land later becomes the subject of an entry or disposal.

In a rare case, where the BLM cannot grant access across the public land due to legal barriers, such as Endangered Species Act restrictions, the purchaser will need to obtain access through non-Federal land. When this situation occurs, potential purchasers should be notified of this access problem in advance of the sale.

B. Federal Ownership of Surface and Minerals - Access Through Private Property and Other Federally Managed Surfaces. The BLM does not guarantee access through private surface. The BLM's role is to educate parties about their rights but not to actively seek resolution between surface owners and private parties to resolve access disputes. If a company cannot obtain access, and there is a competitive sale involved, BLM does not refund the bid deposit. Potential purchasers should be notified of their responsibility to acquire access and the potential loss of their bid deposit. A permittee or purchaser unable to acquire access from the private landowner may be able to obtain an easement or ROW by necessity under State law. Where access to BLM minerals is through U.S. Forest Service land or land administered by a Federal agency other than BLM, that agency's consent should be obtained prior to issuing a use authorization.

Section 205 of FLPMA gave BLM authority to acquire access at Government expense, but this will not be done for mineral development. On October 6, 1981, the Director rejected a proposal for test cases in coal and geothermal development. The potential cost in money and personnel to provide access to all mineral leases would be too great.

C. Private Surface with Minerals Reserved to the U.S. - Access Across the Same. Most patents under which the minerals were reserved to the United States also reserved "the right to prospect for, mine and remove the same." The reservation for access applies to an entire patent even if it has been subdivided into separate ownerships. Otherwise, a surface owner could block access to reserved Federal minerals simply by subdividing. (See Mountain Fuel Supply v. Smith, 471 F. 2nd 59.) The 1916 Stock-Raising Homestead Act and the Taylor Grazing Act control the measure of damages owed to the surface owner for disturbances related to mineral extraction and associated access. Purchasers should be notified of the compensation provisions of the SRHA and Taylor Grazing Act and the Bureau's role in setting the appropriate bond.

Chapter XII. UNAUTHORIZED USE OF MINERAL MATERIALS

A. References. Regulations prescribing the measure of damages in mineral materials cases are found in 43 CFR Section 9239.0-8 and 43 CFR 9239.5-1 and 9239.5-3. The procedures for notification of unauthorized use and the collection of damages owed to the Government are standard for all resource trespass in the Bureau. Those procedures are found in 43 CFR Part 9230 and Manual 9230. Detailed guidance specific to mineral materials trespass from surveillance and initial discovery to final settlement is provided in BLM Manual Handbook H-9235-1.

Chapter XIII. RECORDS

A. Records Management: BLM uses both manual and automated record systems to maintain records. See BLM Manual 1220 for information on what constitutes an official record and how it is to be managed.

B. Case files: Proper documentation of a case file and subsequent record maintenance are vital to the way the BLM performs its mineral material functions. There is an increasing demand by the public to be included in our decision making process. There is more questioning of our actions on disposal of public minerals and increased requests to inspect and review our records. The need to defend an action may also arise after the principal processors have forgotten the specifics, or been replaced by new employees unfamiliar with the specifics. Proper documentation of the official case file is the only basis from which to defend the BLM's action. For proper documentation:

1. Current and accurate records are to be maintained of all mineral materials case information. Each case must be assigned a serial number and pertinent case information and actions entered into the automated records system following the business practices and data standards listed in the following sections (C, D, and E). Properly entering data as actions occur is necessary to generate a serial register page that gives an accurate abstract of case events, a very useful report for the BLM and its customers.

2. All data, documents, and analyses are to be retained in the case file until the termination or expiration of any contract, permit, authorization and trespass case, or resolution of any appeal. Thereafter these documents are to be handled in accordance with the standard BLM records retention policies.

3. Do not store duplicate copies of reports, correspondence, and other documents in the official case file, unless multiple copies were required by regulation, etc., to be submitted. If there is an essential reason to retain more than one copy of certain documents, they may be stored separately from the official case files, or in a separate folder of a multipart file.

4. Separate proprietary/confidential documents from the rest of the case file and store them in a separate locked cabinet or locked room. The information should be in a file folder labeled with the serial number and Form 1273-2 to clearly identify the confidential nature of the contents. The official case file should be noted to

show where such proprietary/confidential information is stored and who is responsible for its safekeeping. Proprietary/Confidential information is defined as: Information which is submitted to the government in expectation of confidentiality, the release of which would result in substantial competitive harm to the submitter.

5. Document conversations and meetings about important aspects of case processing with a memorandum in the case file. To be of future value, such documentation should include the names and telephone numbers of all parties involved, the role of each party, the date, meeting location, and a clear and concise accounting of what was discussed, including any agreements reached. Further, the documentation must legibly identify the preparer and be authenticated with a full signature. A professional tone should be maintained at all times in documentation of telephone calls and conversations, notes to case file, and informal transmittal memorandum.

C. BLM Automated Systems: Except for Alaska, mineral materials case records are hosted in the automated system, Legacy Rehost 2000 (LR 2000). Alaska uses its own automated system AALRS. The central computer is located at the National Business Center in Denver, Colorado and is accessible via remote terminals from all State, District and Field Offices.

The LR2000 is used to record, track, and report mineral materials cases. Whenever any action is taken, or event occurs, it is critical that these are accurately recorded in the system.

Financial data related to collection and billing is entered by the account personnel into the Collection and Billing System (CBS). CBS is the official financial records system of the BLM. As of June 19, 2001, the interface between LR2000 and CBS system for mineral materials cases has been deployed for collections only. You should check with your state office for the current status of the interface.

D. Mineral Materials data in LR2000 System: The mineral materials case data entered in LR2000 is used by the BLM at Field, State and Washington Office levels, and is also available to the public via a BLM web page. The system is used for case management and tracking units of accomplishment. This includes tracking of numbers of permits and sales issued, trespasses resolved, and compliance reports. Standard data entry procedures must be used to enter the required information into the LR 2000 system.

Appendix 5, the Case Type/Action Code Data Standards for Mineral Materials, provides guidance on what data needs to be entered and the format of the data entry by specific case type. Use the attached data standards to enter all required mineral materials data into the LR2000 system. All current cases and required data should be entered within five working days of each action.

E. Interface between the LR2000 system and the Collection and Billing System (CBS): The following business practice has been established to facilitate data transfer between the CBS and LR2000 systems and minimize duplicate data entries for the same action.

1. **All Mineral Materials Cases** (Case Types 360xxx, 361xxx, and 362xxx):

   All cases are to be established and serialized by the field or district office minerals personnel (includes other qualified person, under the direction of minerals staff), and entered into the LR2000. You should check with your state office for serialization procedures. **No new case(s) will be established or serialized at the front desk/public room/information access centers.** Any mineral materials case where money is collected and data transferred from CBS to LR2000 should always be established first in LR2000.

2. **Non Exclusive Sales Cases** (COMMUNITY PIT CASE TYPE = 3604xx, COMMON USE AREA CASE TYPE = 3605xx):

   a. Cash sales from a community pit (CP) and common use area (CUA), i.e. sales where the full contract amount is paid up front and no refunds are allowed, are issued at the public room/information access centers (front desk) by the receiving clerks at the field offices, who complete the forms (or assist the customer to fill in the form) that are signed by the customer. Form 5450-5 is designed for cash sales not exceeding $2,000 and contains boxes to mark for reclamation fees collections and fund codes for deposit of the receipts. Each sale form 5450-5 has its own identifying number but not a serial number, and this form is not to be used for exclusive sales. Form 3600-9 may be used for large or small sales both cash and installment sales, but does not have all the

features of 5450-5 form which makes that form easy to use for community pit and common use area sales. The front desk staff person completing the forms needs to be fully trained. For examples of properly filled out Form-5450 contracts see Chapter II, Illustrations 5 and 6. Examples of printouts resulting for CBS entries for these contracts are shown in Chapter II, Illustrations 8 and 9.

Only cash sales are to be made at the front desk, i.e. no installment sales will be performed by the front desk staff person.

b. Minerals personnel must provide the front desk person a data sheet on an annual basis for each CP or CUA for sales that would occur from that office. The data sheet will include, at a minimum, serial numbers of the CP or CUA, the mineral materials commodity unit price and the measures of unit, reclamation costs and other applicable fees per unit. See following example. Other documents, for example, stipulations and maps may be included.

Example of a Data Sheet for CP or CUA:

Serial # Name	Unit of Measure	Commodity	Price/Unit	Reclamation Fee/Unit	Other Fees/Unit
UTU 68865 East Sand Pit	Cubic Yards (CY)	Sand	$0.45/CY	$0.10/CY	
UTU 60003 Viejo Cinder Pit	Tons (TN)	Cinders	$0.68/TN	$0.40/TN	
OROR 064623 Beaver Pit	Cubic Yards (CY)	Sand & Gravel	$1.00/CY	$0.15/CY	$0.25/CY Road Maintenance Fee

c. The front desk person will send a copy of the signed contract to the Minerals staff.

d. Data entry into the CBS system is to be made by the CBS person. The data entered into CBS **must** include the serial number of the pit, the customer name, the contract quantity, and monies collected (contract amount and fees). For examples of data entry see Chapter II, Illustrations 8 and 9. The CBS entry will automatically input (populate) corresponding LR2000 action codes 507 (contracted-permitted cubic yards) or 508 (contracted-permitted tons), 509 (contracted-permitted total value), 537 (produced cubic yards) or 538 (produced tons), 539 (produced value), and 540 (reclamation payment received) in the LR2000, CP or CUA case records. The format of data entry will be according to the mineral materials casetype/action code data standards.

To illustrate, CBS collects $25.00 from the sale of material from a community pit. The money is for the sale of 10 tons of material at unit price of

$2.00 per ton and the reclamation fee at a rate of $0.50 per ton, from Joe Whitley on April 19, 2001. The CBS/LR2000 data interface searches the name of the customer (Joe Whitley) in the General Remarks of the subject community pit case, and finds a match in line 24.

The serial register page for the case will now show:

Action Date	Code	Action	Action Remarks
04/19/2001	508	CONTD/PMTD - TONS	10.0;24
04/19/2001	509	CONTD/PMTD - TOTAL VALUE	$20.00;24
04/19/2001	538	PRODUCED TONS	10.0;24
04/19/2001	539	PRODUCED VALUE	$20.00;24
04/19/2001	540	RECL PYMT REC	$5.00;24

General Remarks

Line Nr	Remarks
24	Whitley Joe

[Note: If no match was found, then the LR2000 would assign the next highest numeric line number from General Remarks for that customer.]

3. **Exclusive Sales** (3611xx and 3613xx Case Types):
Negotiated and competitive sales(both renewable and nonrewable), as well as small sales, outside of a designated CP or CUA will be established as a separate case, with a new serial number. NEPA review, appraisal, etc., will be entered into the LR2000 by the appropriate personnel. Minerals personnel will advise accounting personnel (CBS) on the fund codes, serial number, and other case information for depositing the payments. CBS's entry of monies collected will automatically input (populate) corresponding LR2000 action codes 144 (payment in lieu of production), 392 (monies received), 540 (reclamation payment made), 376 (bond filed) (if cash bond), and 379 (refund authorized).

4. **Trespass or Unauthorized Use** (3603xx Case Types):
Minerals personnel will establish and serialize the case. The CBS entry of monies collected for the trespass settlement will automatically input (populate) the LR2000 action code 021 (trespass payment received). The CBS

entry of monies collected as cash bond will automatically input (populate) the LR2000 action code 376 (bond filed) (if cash bond).

5. **Free Use Permits** (362xxx Case Types):
Minerals personnel will establish and serialize the case. Accounts personnel (CBS) will enter the reclamation payment and cash bond, if any, which will automatically input (populate) the corresponding LR2000 action codes AC's 540 (reclamation payment made), and 376 (bond filed) (if cash bond).

6. **Exploration Permit**s (3602xx Case Types):
Minerals personnel will establish and serialize the case. Accounts personnel (CBS) will enter cash bond, if any, which will automatically input (populate) the corresponding LR2000 action code 376 (bond filed) (if cash bond).

Associate Solicitor's Nov. 4, 1987 Memorandum to BLM Director on Title 23 ROW

United States Department of the Interior
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240
November 4, 1987

BLM-ER.0679

Memorandum

To: Director, Bureau of Land Management (330)

From: Associate Solictor, Energy and Resources

Subject: Material Trespass on Title 23 (Federal Aid Highway Act) Rights-of-Way

This responds to your memorandum of May 7, 1987, concerning trespasses occurring within material sites issued to State highway departments for federal-aid highway purposes pursuant to way purposes pursuant to 23 U.S.C. § 317. You posed several broad questions which we will answer, in order, after some general remarks.

Section 317 Of Title 23, U.S.C. § 317, which is derived from Section 17 of the Federal Aid Highway Act, 42 Stat. 212 (1921), provides as follows:

> § 317. Appropriation for highway puposes of lands or interests in lands owned by the United States
>
> (a) If the Secretary determines that any part of the lands or interest in lands owned by the United States is reasonably necessary for the right-of-way of any highway, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.
>
> (b) If within a period of four months after such filing, the Secretary of such Department shall have certified to the Secretary that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protecton and utilization of the reserve, then such land and materials may be appropriated and transferred to the State highway department, or its nominee, for such purposes and subject to the conditions so specified.
>
> (c) If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated.
>
> (d) The provisions of this section shall apply only to projects constructed on a Federal-aid system or

under the provisions of chapter 2 of this title. Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 916.

Prior to 1982, the relationships between the Bureau of Land Management (BLM), the Federal Highway Administration (FHA), and the State highway departments and the procedures implementing the Act were spelled out in the Department's regulations at 43 C.F.R., Subpart 2821. These regulations were revoked following the signing of the BLM-FHA Interagency Agreement. 1/[1] Since October 28, 1982, there have been no Department regulations on this subject and the interagency agreement is controlling.

The regulations in effect immediately prior to October 28, 1982, 2/[2] set forth procedures whereby, upon a determination by the Secretary of Transportation that the land in question was necessary for a highway material site, the land would be appropriated and transferred to the State. The mechanism for accomplishing this was a right-of-way granted by BLM directly to the State highway department. BLM could include appropriate terms and conditions in the right-of-way grant and retained general administrative jurisdiction over the land. The role of the Secretary of Transportation (and the FHA) in this process was limited to making the initial determination of necessity and providing later notification to BLM if and when the State no longer needed the land. The Department's earlier regulations contained similar provisions. See, for examples, the regulations at 43 C.F.R. § § 244.54-244.56 (1954) and 56 I.D. 533 (1938). The nature of the interest obtained by a State highway department under this procedure was clearly spelled out in the regulations as being "merely a right-of-way or right to take materials." 43 C.F.R. § 2821.1 (1982).

Under the 1982 Interagency Agreement, new procedures were adopted which provide that the public lands needed for a highway right-of-way or a materials site will be appropriated by FHA. FHA will then transfer the lands to the State. BLM may attach conditions to its consent to the transaction, including retaining the right to grant additional rights-of-way across the appropriated land. BLM may also block the transaction by disagreeing to it. If after 4 months from the receipt of FHA's request for appropriation BLM does nothing, the appropriation by FHA occurs automatically.

Upon appropriating the land, FHA has authority under the agreement to transfer the land to the State. 3/[3] FHA is responsible for administering the terms of the transfer, including any conditions imposed by BLM in its letter of consent. BLM does not resume jurisdiction over the land until the appropriated lands "revest" to BLM upon a determination by FHA that the need for the material site no longer exists.

The effect of the interagency agreement is that, upon appropriation by FHA, BLM loses jurisdiction over the lands for the purposes of the appropriation, except to the extent it has retained jurisdiction in the letter of consent. This retained jurisdiction expressly extends only to the right to grant additional rights-of-way. Such additional rights-of-way must be in the public interest, must not be directly associated with highway

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[1] 1/ The agreement (copy attached) was signed by the Director, BLM, on July 1, 1982, and by the Administrator, FHA, on July 27, 1982. The Department's regulations were removed from the C.F.R., effective October 28, 1982. 47 F.R. 45275 (Sept. 28, 1982).

[2] 2/ 43 C.F.R., Subpart 2821 (1982).

[3] 3/ The agreement does not specify the nature of the instrument of transfer from FHA to the State, merely referring to it as "a right-of-way use document."

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use, operation and highway related purposes, and must not be inconsistent with Title 23 U.S.C. Moreover, FHA must be consulted before BLM may issue any such additional right-of-way.

The agreement has many ambiguities. BLM's retained jurisdiction, as expressed in the agreement,

appears to be very limited. Under the agreement alone, in situations where BLM neither consents nor objects, and the appropriation occurs automatically, it could be argued that BLM has no retained jurisdiction whatsoever. We do not believe such a conclusion is correct, however, because it would leave a hiatus in Federal administrative jurisdiction. We think the agreement should be interpreted as transferring to FHA, at most, only the jurisdiction necessary to administer the land for the purposes of the appropriation, i.e., administration of the right-of-way granting use of the materials. All other administrative jurisdiction remains in BLM. This residual jurisdiction includes, e.g., administation of the leasable minerals. Moreover, the transfer of jurisdiction to FHA is subject to such conditions as BLM may impose to limit it, so long as the purposes of the appropriation are not frustrated.

With this background, we turn to the specific questions which you asked.

QUESTION

1. In a situation where the Title 23 material site was authorized prior to the effective date of the current

BLM/FHWA Interagency Agreement (October 28, 1982.)1/[4] and where there is a material trespass, which agency is responsible for pursuing the trespass action?

NOTE: It is the BLM's contention that since the Federal Government (1) owns the land with rights

superior to those of the State, (2) has been injured by the trespass (loss of Federal minerals), and (3) may have to issue another appropriation (through FHWA) to the State Highway Department to replace a site depleted by a trespass, the Federal Government, not the State, pursues the trespass action. Additionally, it would be inappropriate for the State to collect the damages and profit money gained from the trespass when the materials which it received were free for use on a Federal Aid Highway project. Furthermore, the BLM appears to be the logical Federal agency to pursue the trespass action in a pre-October 28 1982, appropriation because BLM did not transfer any management responsibilities to the FHWA. The fact that FHWA does not have a sufficient interest in the land to bring an action for trespass in a pre-October 28, 1982 case is supported by the enclosed September 23, 1986, letter from the FHWA Regional Counsel.

ANSWER

1. Public lands on which Title 23 material sites were issued by BLM prior to October 28, 1982, remain

lands within the administrative jurisdiction of BLM. BLM is therefore the federal agency responsible for initiating the recovery of any damages due the United States by reason of mineral trespasses committed by a

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[4] 1/ In most of these situations, a R/W grant or material site was issued by BLM directly to the State without the document/transfer going through the FHWA. [Footnote in original.]

third party. In such cases, BLM has the responsibility for referring the matter to the Department of Justice for possible litigation.

Whether the State is also entitled to sue for recovery of damages in such a case involves questions that must be addressed on a case-by-case basis. Whether the State has standing to sue and can prove that it has suffered a loss will depend on the particular facts of the matter and the rules of law in the particular jurisdiction. Assuming that the State has standing and can prove monetary harm in that it was deprived of materials which had been, in effect, given to it by the United States, and perhaps was forced to purchase replacement material, with attendant costs, from other sources, then it would appear that the State could recover damages from the trespasser. Whether the State should pursue litigation to recover damages is a matter for the State to decide. How damages should be apportioned between the State and the United States in litigation in which both are plaintiffs is a matter for the court or the jury to determine.

QUESTION

2. If the State Highway Department is responsible for pursuing the material trespass action, could (should) the Highway Department be required to spend the damages they collected on the purchase of replacement mineral materials or would the State get to keep the damage monies and benefit from additional, appropriated free materials?

NOTE: The BLM believes that the State should not be responsible for pursuing the trespass action and collecting damages, but if it is, then it should be required to spend the damage monies collected on the purchase of other materials or otherwise use the collection as nonmatching funds on the Federal Aid Highway project.

ANSWER

2. We are aware of no way in which such a requirement could be imposed. Damages awarded to a State would serve to "make it whole," i.e., repay it for its loss. This Department has no voice in how the State uses any funds recovered. We see no basis for refusing to allow the State to obtain additional materials from the public lands.

QUESTION

3. Where BLM issues a "Letter of Consent" to the FHWA per the Interagency Agreement, what responsibilities has the FHWA accepted in relation to materials?

NOTE: It is the BLM's understanding that under the Interagency Agreement, the FHWA is responsible for ensuring the compliance with all conditions contained in the Letter of Consent. In addition, the FHWA has the responsibility for assuring proper use of the materials including trespass actions where violations occur. The BLM retains a reversionary interest in all lands appropriated under Title 23 and also retains the authority to grant additional, nonconflicting R/W uses within and across the appropriated material site.

ANSWER

3. The agreement is ambiguous on this point. Where FHA has appropriated land pursuant to the interagency agreement, it assumes full administrative jurisdiction of the lands for the purposes of the appropriation, while the appropriation continues. Arguably, this includes the authority and responsibility to request the Department of Justice to bring suit to recover damages of mineral trespasses. On the other hand, it may also be argued that having the primary jurisdiction over the public lands, encompassing all jurisdiction except that transferred to FHA, BLM has the responsibility. Any confusion on this point can be eliminated by agreement between the agencies.

QUESTION

4. Once the "Easement Deed" is signed by the FHWA, are all the salable minerals appropriated and transferred to the State Highway Department? If not, what is their status?

ANSWER

4. Section 317 of Title 23, U.S.C., contemplates that only materials useful for the construction or maintenance of highways are to be made available to the State highway department. Other components of the land are not affected. Thus, leasable minerals have been reserved to the United States when rights-of-way were issued by the Department. 43 C.F.R. § 2821.1 (1982). Locatable minerals are not subject to location while the land is appropriated, 4 / [5] but they do not necessarily belong to the State by virtue of that fact; they remain federally owned.

Where it is intended that certain minerals, otherwise useful as construction or maintenance material, shall not be available to the State, that limitation should be spelled out in the letter of consent or in the right-of-way grant, to make the government's intentions clear.

QUESTION

5. Once the "Easement Deed" is signed by FHWA, which agency is responsible for pursuing the collection of damages in the case of a mineral material trespass?

NOTE: It is the BLM's interpretation of the Interagency Agreement that the FHWA is responsible for pursuing the collection of damages in the case of mineral material trespass on a site appropriated under Title 23 authority after October 28, 1982.

ANSWER

5. See response to question number 3.

QUESTION

[5] 4 / Sam D. Rawson, 61 I.D. 285 (1953).

6. Assuming the State is responsible for management of the salable materials and they allow a trespass action to occur, does the Federal Government have any recourse against the State Highway Department such as terminating the pre-1982 materials site R/W or post-1982 appropriation (FHWA and/or requiring rehabilitation and restitution?

ANSWER

6. BLM may terminate rights-of-way issued by BLM before 1982 as is provided in the particular right-of-way grant itself and as was provided by the right-of-way regulations in force at the time the grant was issued. Those regulations were incorporated in the grants by reference. BLM has no authority to terminate appropriations made pursuant to the 1982 agreement nor the rights-of-way issued by FHA. We do not believe "allowing a trespass to occur," if that could be proved, would constitute valid grounds for termination of a BLM-issued right-of-way.

Under the interagency agreement, FHA has the responsibility for determining whether the State has reasonably rehabilitated the area. If FHA decides that the land has been rehabilitated, it automatically returns to BLM jurisdiction. It would therefore appear that BLM may not take the action you suggest.

QUESTION

7. In the "Letter of Consent" that the BLM issues to the FHWA per the Interagency Agreement, is it legal for the BLM to include as a condition of the agreement that the appropriation will automatically terminate after a period of years with the option of renewal?

NOTE: We believe that it is necessary in our role as land manager to have some method to review the continued need for material site appropriations and, therefore, consider it proper to include a condition in the "Letter of Consent" which requires mineral material sites appropriated under Title 23 to come up for renewal after a period of years (say 10 years). Similar grants pursuant to Title V of the Federal Land Policy and Management Act may contain (or by regulation) terms limiting time of use or cancellation for nonuse which we believe could also be applied to "Letters of Consent." A condition of this kind gives the BLM greater flexibility in controlling the numbers and locations of mineral material sites. Instances arise over time where the location of an appropriated site becomes incompatible with the surrounding uses of the land, and it may, therefore, be desirable to issue a new appropriation in another location, rather than renew the existing site use.

ANSWER

7. Although we are unaware of any precedents, it would appear that such a condition could be imposed under the statute. However, the Interagency Agreement appears to preclude such a condition, the agreement enunciates those conditions which may be included, and the one you suggest is not among them.

QUESTION

8. Is it legal to use mineral materials from a Title 30 U.S.C. §§ 601 et seq. authorized Free Use Permit site on a Federal Aid Highway project?

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NOTE: It is BLM's understanding that if any portion of the mineral materials are to be used in the construction, maintenance, or furtherance of any Federal Aid Highway project, then they must come from a site authorized under a Title 23 appropriation. Under § 601 of the Materials Act (30 U.S.C. § 601), the Secretary of the Interior may dispose of mineral materials on public lands "if the disposal of such mineral or vegetative materials is not otherwise expressly authorized by law." Inasmuch as a mineral material site is expressly authorized by law, i.e., the Federal Highway Act (23 U.S.C. § 317), when a grant under the Federal Highway Act is legally possible such a grant is a disposal "expressly authorized by law," as mentioned in 30 U.S.C. § 601. Therefore, it is improper to use mineral materials from a Title 30 Free Use Permit site on Federal Aid Highway project.

ANSWER

8. Section 1 of the Materials Act, as amended, 30 U.S.C. § 601, authorizes the Secretary of the Interior to dispose of mineral materials, including stone, sand, and gravel, if the disposal is not otherwise expressly authorized by law. Title 23 U.S.C. § 317 expressly authorizes State highway departments to obtain materials from federal lands for highway construction and maintenance. Therefore, disposals for these purposes may not be made under section 1 of the Materials Act.

QUESTION

9. Is it legal to use the mineral materials removed from a Title 23 materials site R/W for purposes other than the Federal Aid Highway project for which they were appropriated?

NOTE: The BLM interprets Title 23 as requiring that all mineral materials removed from an appropriated site be used on the Federal aid Highway project for which they were appropriated. Any other use of materials from a Title 23 site is not authorized.

ANSWER

9. The statute clearly provides that mineral materials removed from Title 23 materials sites must be used for the Federal Aid Highway projects for which they were appropriated. Materials from a site may be used for more than one such project, if so appropriated.

QUESTION

10. Assuming that it is illegal to use mineral materials from a Title 30 Free Use Permit site on a Federal Aid Highway project and that all Federal minerals used on a Federal Aid Highway project must be authorized by a Title 23 appropriation, would it be legal, where there is a need for use of the materials on both a Federal Aid Highway project and a State or county road which is not a Federal Aid Highway, to divide the site according to quantities required and then issue two separate authorizations, say 60 percent of the site under a Title 23 appropriation and 40 percent of the site under a Title 30 Free Use Permit?

NOTE: The BLM believes that, availability of materials permitting, it is legal to divide a site by quantities and issue two separate authorizations or divide a site by acreage and issue two adjoining authorizations.

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ANSWER

10. Such a division appears possible under the statue, which authorizes the appropriation of " any part of the lands or interests in lands owned by the United States." 23 U.S.C. § 317(a). The Interagency agreement, on the other hand, refers only to " lands," and the agreement allows BLM to issue only rights-of-way for purposes that are not directly associated with highway use, operation, and related highway purposes. Since multiple use of the materials within a site is not contemplated under the agreement, the agreement would have to be modified before such apportionment could be made.

S/D/ Thomas L. Sansonetti

Attachment

Associate Solicitor's Nov. 4, 1987 Memorandum to BLM Director on Title 23 ROW

AA 851-IA2-40

INTERAGENCY AGREEMENT

Bureau of Land Management

and

Federal Highway Administration

I. Purpose. This Interagency Agreement provides procedures by which the Secretary of Transportation acting through the Federal Highway Administration (FHWA) may appropriate public lands for highway rights-of-way and sources of materials for the Federal-aid Highway System and those classes of highways provided for in Chapter 2, 23 U.S.C. The lands appropriated are for use by the States for highways and/or highway material purposes. The appropriation is subject to conditions the Secretary of the Interior acting through the Bureau of Land Management (BLM) may deem necessary for adequate protection and utilization of the public land and protection of the public interest.

II. Authority.

A. The Federal Land Policy and Management Act of 1976, 90 Stat. 2766, 43 U.S.C. 1737.

B. The Act of August 27, 1958, as amended, 23 U.S.C. Sections 107(d) and 317.

III. Procedures. BLM and FHWA recognize the need for streamlined procedures by which the FHWA may appropriate BLM-administered public lands for highways and highway materials for the Federal-aid System and those classes of highways provided for in Chapter 2, 23 U.S.C. To accelerate the appropriation process, FHWA and BLM agree to the following procedures:

A. FHWA will notify BLM, as far in advance as possible, of a highway project being contemplated and arrange a meeting with the BLM authorized officer and the participating State agency to discuss the proposed project to ascertain whether or not the appropriation of the lands for highway or highway materials is consistent with BLM resource management programs and develop a plan of action to complete the appropriation within a reasonable time.

B. It will be the responsibility of FHWA to comply with the National Environmental Policy Act and other legal requirements in arriving at its determination that the lands are necessary for the project.

C. FHWA shall submit to the authorized officer of BLM a written request for appropriation, accompanied by a

map showing the location of lands it desires to appropriate, a statement of its determination that the lands are necessary for the project, a copy of the environmental assessment, and/or a copy of the environmental impact statement.

D. The authorized officer of the BLM, after receipt of the request and attachments, shall review the material and, within a period of four months, notify FHWA, in writing, either (a) that the appropriation would be contrary to the public interest or inconsistent with the purposes for which the public lands or materials are being managed or (b) that BLM is in agreement with the appropriation subject to conditions of adequate protection and utilization of the public lands. If within a period of four months, the Bureau of Land Management has not responded, in writing, to the request for appropriation, such lands may be considered appropriated by FHWA and transferred to the State for right-of-way purposes as requested.

E. Disagreement to the appropriation will be in the form of a letter, from BLM to FHWA, clearly stating the reasons why such an appropriation would be contrary to the public interest or inconsistent with the purposes for which the public lands or materials are being managed.

F. Agreement to the appropriation will be in the form of a "Letter of Consent" which clearly states the conditions under which the agreement is given. These conditions involve the following:

1. Resolution of existing valid claims and use authorizations.

2. Granting authority to FHWA within the appropriation is limited to rights-of-way for the Federal-aid Highway System and those classes of highways provided for in Chapter 2, 23 U.SC.

3. BLM retains the authority to grant additional right-of-way uses within and across the appropriated highway or material site right-of-way. Such additional uses include, but are not limited to, transportation and utility systems for water, power, communications, oil and gas, or any other facilities which are in the public interest, are not directly associated with highway use, operation and related highway purposes, and are not inconsistent with Title 23 of the U.S. Code. The FHWA shall be consulted prior to the issuance of such authorizations.

4. The appropriation will automatically terminate if construction is not started within ten (10) years or sooner if agreed upon.

5. Conditions providing for development and use of the adjacent public lands, such as, reasonable access and signing.

6. Conditions protecting the adjacent public lands from right-of-way construction and maintenance activities which may cause off right-of-way adverse effects, such as, wildfire, chemical control of vegetation and animals, runoff drainage and revegetation with non-native species.

G. FHWA, when transferring the highway right-of-way or highway material appropriation to the State will make it subject to BLM's conditions as contained in the "Letter of Consent". FHWA will administer these conditions. BLM will work with or through FHWA when they observe non-compliance to the appropriation "Letter of Consent" conditions.

Production Verification Methods and Operator Submittal

Standard and Alternative Production Verification (PV) methods used by the Bureau of Land Management (BLM), and types of submittal requested from the operator for production accountability are described below.

1. Standard PV Methods

Field Inspections - During compliance inspections the specialist examines the operation for compliance with established requirements. A visual estimate of the production is made to compare to the authorized volume. If the visual estimate differs significantly from the permitted volume then one of the other techniques should be employed. Inspection for trespass shall be an inherent part of the compliance inspection.

Pace and Compass - This technique is a quick approximation tool for making volume estimates. The accuracy of this technique is relatively low. An alternative technique should be employed if this method detects a discrepancy with reported volume and/or the operator disagrees with the findings.

Tape and Compass - For more exacting and detailed traverses, a tape should be used to measure pit dimensions and stockpiles. Most PV surveys utilize this method. The accuracy of this technique is also relatively low. An alternative technique should be employed if this method detects a discrepancy with reported volume and/or the operator disagrees with the findings.

Alidade - The alidade and plane table are commonly used where terrain is flat to moderately rough and accuracy is important. This method is also more accurate than the tape and compass method.

Transit - Pit dimensions requiring greater precision may be made with a transit and survey tape. If a potential trespass situation is noted, a survey crew should be utilized to make the final volume determination.

Aerial Photography - Photogrammetric volume measurements may be made by stereo aerial photography. Pre- and post-aerial photography must be available for volume calculations.

Computer Assisted Survey - A computer assisted theodolite may be used to perform surveys of sites both before and after disposal.

Global Positioning System - The Global Positioning System in conjunction with software packages may be used for plotting and volumetric calculations.

2. Alternative PV Methods

End-Use Verification - Determination of the quantity used at the construction site (i.e.) road base, landscape rock, etc.) in comparison to reported production.

New Developing Technology - Electronic scanning of truck traffic and other developing technologies that may be cost effective solutions for PV.

Factors to be considered in all of the above PV methods may include overburden, swell factor, weight versus volume, and waste (oversize and fines).

3. Operator Submittal

Trip Tickets - Estimated volume or weight tickets completed by driver or loader operator and deposited in a secure box before exiting the site.

Weight Tickets - The operator must provide copies of certified tally sheets derived from certified scales.

Production Reports - A required operator submittal to provide production information during a specified reporting period. This report should include the contract number, quantity authorized, quantity and date removed, remaining balance, and signature of the operator's authorized representative.

Pre- and Post-Surveys - Certified surveys of the site provided by the operator for determining pit dimensions and quantity removed. The survey is performed by either a surveyor or an engineer who is registered or certified within the state where the survey takes place.

Disposal of Mineral Materials from Unpatented Mining Claims (M-36998)

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

June 9, 1999

IN REPLY REFER TO:
M-36998

Memorandum

To: Acting Director
Bureau of Land Management

From: Solicitor

Subject: Disposal of Mineral Materials from Unpatented Mining Claims

I. Introduction

In 1994, the Acting Inspector General completed an audit report regarding the Bureau of Land Management's (BLM) administration of its mineral materials sales program. The report recommended, among other things, that BLM seek legal advice regarding whether BLM has authority to sell mineral materials from unpatented mining claims. Thereafter, you asked me to reexamine previous opinions which concluded that BLM has no authority to dispose of mineral materials from unpatented mining claims. This opinion responds to that request. I apologize for the delay in responding, but as you will see, we have had to plumb intricate and arcane details of Mining Law history, and some inconsistent and unsatisfactory analysis in our own past opinions, to get to the bottom of this issue and provide you with an answer.

For the reasons explained below, I conclude that -- if it changes its regulations to remove the current prohibition -- BLM has the authority to dispose of mineral materials from unpatented mining claims. Once the regulatory prohibition is removed, I recommend that BLM seek an explicitly stated waiver from the mining claimant before taking steps to dispose of these materials. If the claimant refuses to provide the waiver, BLM should consult the Solicitor's Office before deciding whether to proceed with disposition.

II. Evolving Law Regarding Authority to Dispose of Mineral Materials From Unpatented Mining Claims

A. 1872 to 1947

The extent to which mineral materials -- including sand, stone, gravel, pumice, pumicite, cinders, and clay -- were locatable under the Mining Law was a vexing subject for decades following the Law's enactment in 1872. The Mining Law itself did not expressly address the subject, speaking only of "valuable mineral deposits," and lacking a definition of "mineral." 30 U.S.C. § 22.

The issue of whether these widely occurring substances were locatable was usually, though not always, framed as whether they were "valuable mineral deposits" within the meaning of the 1872 Act, or whether lands that contained these minerals were "mineral lands" and open to the Mining Law, or not mineral in character, and open to homesteading and other nonmineral disposal. Sometimes Congress addressed such questions by special legislation. See, e.g., Building Stone Act, 27 Stat. 348 (1892) (making lands "chiefly valuable" for building stone subject to the Mining Law); Oil Placer Act, 29 Stat. 526 (1897) (making lands “chiefly valuable” for petroleum and other mineral oils subject to the Mining Law); Saline Placer Act, 31 Stat. 745 (1901) (making lands “chiefly valuable” for salt and salt springs subject to the Mining Law).

Where Congress had not resolved the issue, it fell to the Department and reviewing courts to address. The results were not always consistent, causing considerable confusion. In Zimmerman v. Brunson, 39 Pub. Lands Dec. 310 (1910), for example, the Department held that land containing ordinary sand and gravel was not mineral in character, and was therefore open to entry under the homestead laws rather than the Mining Law. In describing this result, Judge Lindley observed that “the courts follow a consistent uniformly recognized principle which establishes the test of profitable marketability. The land department follows this principle as a general rule, but disregards it in the case of the commonplace substances such as ordinary clay, sand and gravel.” 2 Curtis H. Lindley, A Treatise on the American Law Relating to Mines and Mineral Lands Within the Public Land States and Territories and Governing the Acquisition and Enjoyment of Mining Rights in Lands of the Public Domain § 424, at 996 (3d ed. 1914).

In Layman v. Ellis, 52 Pub. Lands Dec. 714, 721 (1929), the Department overruled the Zimmerman decision and held that gravel is a mineral subject to the Mining Law if it is found in land "chiefly valuable" for such, and the land contained deposits that can be "extracted, removed and marketed at a profit." The Department followed Layman thereafter, and applied the policy

that widely occurring mineral substances could be located under the Mining Law, depending upon the quantity and quality of the deposit and the comparative mineral and nonmineral values of the underlying land. The outcome had to be determined case by case, and no hard and fast rules were possible. To the extent the application of Layman yielded the conclusion that the mineral material in question was not locatable under the Mining Law, no other law authorized disposition of such mineral materials, until 1947.[1]

B. The 1947 Minerals Material Act

In the 1940s, the absence of authority to otherwise dispose of mineral materials not locatable under the Mining Law was becoming a problem. In 1946, the Secretary sent a letter to Congress explaining that the Department of the Interior had received numerous requests from railroad companies for permission to take stone, "which is not of such quality or quantity as to permit its acquisition under the mining laws," and also from counties and towns "to acquire sand and gravel, which are not of such quality or quantity as to be subject to the mining laws." S. Rep. No. 79-1402, at 2 (1946).

In 1947, Congress granted the Secretary broad authority, "under such rules and regulations as he may prescribe," to

> dispose of materials including but not limited to sand, stone, gravel, . . . [and] common clay . . . on public lands of the United States if the disposal of such materials (1) is not otherwise expressly authorized by law, including the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest.

Materials Act of 1947 § 1, 61 Stat. 681 (codified as amended at 30 U.S.C. § 601) (emphasis added).[2] Disposal was further authorized "upon payment of adequate compensation therefor, to

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[1] "Certain products of the earth have never been regarded as subject to location under the mining law, despite the fact that they might be marketable at a profit. Among these nonlocatable materials are those used for fill, grade, ballast, and sub-base." United States v. Verdugo & Miller, Inc., 37 IBLA 277, 279 (1978).

[2] The 1947 Act is similar to a temporary wartime authorization to dispose of "sand, stone, gravel, vegetation, and timber or other forest products" which Congress granted to the Secretary of the Interior in the Act of September 27, 1944, 58 Stat. 745. The 1944 Act expired

be determined by the Secretary," and if the appraised value of the material exceeded $1000, the Secretary must dispose of it "to the highest responsible qualified bidder by competitive bidding." Id.

The 1947 Act did not bring clarity to the question whether mineral materials were locatable. In fact, it only added to the confusion. By referring specifically to sand, stone, gravel, and common clay, it recognized that such materials could be disposed of under its terms, by sale, to the extent disposal was "not otherwise expressly authorized by law, including the United States mining laws." Id. (emphasis added).

As discussed in part II.A., above, the Mining Law did not directly (or "expressly") address mineral materials; specifically, nothing in the Mining Law either expressly authorized or expressly prohibited the disposition of sand and gravel and other common materials. Nevertheless, as a matter of Departmental practice at the time the 1947 Act was passed, the Department followed Layman, and allowed disposition of mineral materials like sand and gravel under the Mining Law in certain circumstances; namely, if the material could be extracted, removed and marketed at a profit and the lands were chiefly valuable for that material. When it could not be so marketed, the Department concluded that those deposits of mineral materials were not locatable under the Mining Law.

The 1947 Act was Congress's attempt to give the Secretary authority to dispose of deposits of mineral materials which were not locatable under the Mining Law. The legislative history clearly shows Congress's purpose: in the words of the House report, to authorize the disposal of materials "for the disposal of which no present authority exists. It supplements present disposal methods and does not conflict with them." H.R. Rep. No. 80-867 (1947). Congress did this by defining the nature of the mineral materials which the Secretary could dispose of (that is, any such materials not locatable under the Mining Law), rather than addressing the physical location of the mineral materials and whether the land from which the mineral materials could be disposed was or was not claimed under the Mining Law.[3] Put another way, while Congress did

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by its own terms on December 31, 1946. Id.

[3] In section 1 of the Surface Resources Act, Congress stated:

> Nothing in this Act shall be construed to apply to lands in any national park, or national monument or to any Indian lands or lands set aside or held for the use of benefit of Indians, including lands over which jurisdiction has been transferred to the Department of

not give the Secretary authority to dispose of mineral deposits which would otherwise be locatable under the Mining Law, there is no evidence on the face of the Materials Act or in its legislative history that Congress intended to restrict the Secretary from disposing of mineral materials which were not locatable from within the boundaries of unpatented mining claims. This is an important point which, as will be discussed below, has been ignored in previous legal opinions.

C. The 1955 Surface Resources Act

Congress came back to the subject of mineral materials eight years later. This time, in section 3 of the Surface Resources Act of 1955, Congress expressly and entirely removed from the purview of the Mining Law "common varieties" of sand, stone, gravel, pumice, pumicite, and cinders. 30 U.S.C. § 611. The Chair of the Committee reporting the bill explained on the floor of the House: "The reason we have done that is because sand, stone, gravel, pumice, and pumicite are really building materials, and are not the type of material contemplated to be handled under the mining laws . . .." 101 Cong. Rec. 8743 (1955) (remarks of Rep. Engle).

The 1955 Act was an amendment to the 1947 Act and left completely intact the authority given in the 1947 Act to the Secretary to dispose of mineral materials. In fact, it filled a gap on this point left by the 1947 Act, and gave the Secretary of Agriculture authority to dispose of mineral materials "where the lands involved are administered by him for national forest purposes or for the purposes of title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture." See 30 U.S.C. § 601, last sentence. The first section of the Surface Resources Act amended section 1 of the Materials Act to read:

> Section 1. The Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay) . . . on public lands of

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> the Interior by Executive order for the use of Indians.

69 Stat. 367 (1955). The Materials Act originally included the National Forests in this provision. This language shows that Congress knew how to restrict the application of the Secretary's disposal authority by defining the land to which it would apply. If Congress had intended to disallow the Secretary from disposing of mineral materials from the lands included in unpatented mining claims, it could have said so expressly in this provision.

> the United States. . . . if the disposal of such mineral . . . materials (1) is not otherwise expressly authorized by law, including but not limited to, the Act of June 28, 1934 (48 Stat. 1269), as amended, and the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest.

Surface Resources Act of 1955 §1, 69 Stat. 367.[4]

The Surface Resources Act also provided that unpatented mining claims could be used only for "prospecting, mining or processing operations and uses reasonably incident thereto." 30 U.S.C. § 612(a). Section 4(c) of the Surface Resources Act further provided that mining claimants may use vegetative and other surface resources of the mining claim only

> to the extent required for . . . prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures . . . or to provide clearance for such operations or uses, or to the extent authorized by the United States.

30 U.S.C. § 612(c). Even before 1955, the courts had long held that the Mining Law itself entitled the mining claimant to use the surface only for purposes reasonably incident to mining. See, e.g., United States v. Etcheverry, 230 F.2d 193, 196 (10th Cir. 1956) ("[G]razing rights of the public domain are not included in the possessory rights of a mining claim."); Teller v. United States, 113 F. 273, 280 (8th Cir. 1901) ("Possession of a mining claim, in accordance with the provisions of the statute, by well-settled authority, confers the right, subject to certain limitations and conditions, upon a locator, to work the claim for precious metals for all time, if he desires to do so; but confers no right to take timber, or otherwise make use of the surface of the claim,

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[4] Section 7 of the Surface Resources Act states that nothing in this subchapter and section 1 and section 3 "shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located," except as provided in sections 5 and 6. 30 U.S.C. § 615. To the extent that mining claimants have no right to dispose of common variety mineral materials or to use more of the surface of the claim than is reasonably necessary to develop the discovered valuable mineral deposit, the Secretary's disposal of mineral materials from an unpatented mining claim does not limit or restrict any existing rights of a claimant, so long as the disposal does not endanger or materially interfere with the right of the claimant to develop valuable minerals on the claim.

except so far as it may be reasonably necessary in the legitimate operation of mining."); United States v. Rizzinelli, 182 F. 675, 684 (N.D. Idaho 1910) ("the right of a locator of a mining claim to the 'enjoyment' of the surface thereof is limited to uses incident to mining operations"); see also Robert E. Shoemaker, 110 IBLA 39, 52-53 (1989), and Bruce W. Crawford, 86 IBLA 350, 359-362 (1985).

In section 4(b) of the Surface Resources Act, Congress amended the Mining Law by subjecting unpatented mining claims located after 1955

> to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources (except mineral deposits subject to location under the mining laws of the United States).

30 U.S.C. § 612(b). Section 4(b) also subjected unpatented mining claims to the right of the United States to use the surface for other purposes so long as the United States' surface use does not "endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto." Id. This provision made clear that the Mining Law's reference to the claimant's "exclusive right of possession and enjoyment" of the surface of the claim did not prevent the United States, as holder of the fee, from managing the vegetative and other surface resources of the claim and using the surface of the claim for other purposes.

The meaning of section 4(b) of the Surface Resources Act has been explored in several opinions of this office discussed in the next section.

III. Previous Solicitor's Opinions

Taken together, the 1947 Act and its 1955 amendments raise a number of questions. For example, was the 1947 Act's broad authorization to dispose of mineral materials on public lands, including on unpatented mining claims, affected by the 1955 amendments? Did the 1955 amendments' removal of "common varieties" of sand, gravel, etc., from the Mining Law enlarge the disposal authority granted by the 1947 Act? Did the 1955 amendments' continuation of authority to "manage other surface resources" on unpatented mining claims include "mineral materials" as "other surface resources"? If it did, did that restrict the government's ability to "dispose of" (as opposed to simply "manage") such materials? Some of these questions came to be answered, albeit somewhat inconsistently, in several opinions of the Office of the Solicitor issued between 1956 and 1980.

Disposal of Mineral Materials from Unpatented Mining Claims (M-36998)

In 1956, the Acting Associate Solicitor for Public Lands addressed the effect of the 1955 Act on the use of the surface of unpatented mining claims for recreational purposes and for access to adjacent lands for recreation. Effect of Public Law 167, 84th Cong., on the Use of the Surface of Unpatented Mining Claims for Recreational Purposes and for Access to Adjacent Lands, M-36389 (1956) (1956 Opinion). This opinion pointed out that while section 4(b) of the 1955 Act specifically granted disposal authority to vegetative resources, it did not include authority to "dispose of," but rather simply to "manage," other surface resources, which the Opinion seemed to assume included mineral materials. Id. at 2. This Opinion did not address the 1947 Act's grant of authority to the Secretary to dispose of mineral materials or Congress's reiteration of that authority in the first section of the 1955 Act. And it did not directly address whether sand, gravel, and other mineral materials were "other surface resources" within the meaning of 30 U.S.C. § 612.

Eight months later, the Solicitor issued an Opinion more squarely addressing the issues with which we are here concerned. Disposal of Sand and Gravel From Unpatented Mining Claims, M-36467 (1957) (1957 opinion). The first question was whether holders of unpatented mining claims could extract sand and gravel from their claims. The Solicitor's answer was divided into two parts, depending upon when the claim was located. For claims located before enactment of the 1955 Act, the Solicitor answered in the affirmative, "assuming that the sand and gravel is [sic] a valuable mineral" under applicable law. Id. at 2. But "if the sand and gravel is [sic] not a valuable mineral (see Layman et al. v. Ellis, 52 I.D. 721), [the claimant] has no authority to dispose of it prior to patent." Id. at 4.

For claims located after enactment of the 1955 Act, the claimant could not extract and sell sand and gravel at all, unless it was an "uncommon variety" and thus subject to location under the Mining Law. The claimant could "use the sand and gravel for any mining purpose, but he has no authority to appropriate and sell it." Id. at 6 (emphasis in original).

The 1957 Opinion went on to address whether the United States had authority to sell the sand and gravel from the claim. The Solicitor answered this question in the negative, opining that "[p]rior to a final determination that a mining claim is invalid, the Bureau has no authority to sell the sand and gravel in or on the claim regardless of when the claim was located." Id. at 7. This was because, according to the Solicitor, before enactment of the 1955 Act, the United States "had no authority to dispose of the surface resources on an outstanding, unpatented mining

claim."[5] Id. (emphasis in original). While section 4 of the 1955 Act, according to the 1957 Opinion, "confers on the United States the right to manage and dispose of the surface resources," the Solicitor explained that "sand and gravel is not a 'surface resource.' It necessarily extends downward from the surface and is, therefore, a below the surface resource." The Solicitor then concluded that "[i]n those cases where [sand and gravel] is not a valuable mineral within the meaning of the mining law, its status, so far as its availability for sale by the United States is concerned, is identical with that of timber on a mining claim prior to July 23, 1955." Id.[6]

Curiously, the Solicitor failed to address the authority supplied by the 1947 Act, which was retained by the 1955 Act, for the Secretary to dispose of sand and gravel on an unpatented mining claim. This omission is surprising for two reasons. First, earlier in the 1957 Opinion the Solicitor had recognized that sand and gravel "is a material . . . in contemplation of the Materials Act of 1947." Id. at 4. Second, the logical consequence of the Solicitor's holding that sand and gravel are not "surface resources" under section 4(b) of the 1955 Act is that sand and gravel are

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[5] The Solicitor cited United States v. Deasy, 24 F.2d 108 (N.D. Idaho 1928), as support for this conclusion. In that case, the United States sought to enjoin mining claimant defendants from interfering with a sales contract for timber to be cut and removed by a third party from defendants' mining claims. The court noted that defendants had filed affidavits contending that they needed all of the timber growing on the claims for their mineral development. The court concluded that if it were to restrain the defendants from cutting the timber which is under the sales contract between the United States and the third party, the third party is

> permitted to deprive the locators of the necessary use of [the timber] in the development of their claims, then we have a situation of the government first, by statute, granting to the defendants, as locators, the exclusive right to the timber, and thereafter conveying it to another, thus depriving the first locators of their statutory right of use.

Id. at 111.

[6] In effect, the Solicitor seemed to be assuming that mineral materials, though not a "surface resource" under the 1955 Act, had a status similar to surface resources for purposes of the pre-1955 claims. In the 1957 Opinion, the Solicitor also incorrectly described section 4 of the 1955 Act as conferring on the United States the "right to manage the surface and to manage and dispose of the surface resources." In fact, as mentioned earlier, the 1955 Act confers a right to manage and dispose of vegetative surface resources but only to manage other surface resources.

not subject to Departmental “management” under that section. This would eliminate the argument that section 4(b) of the 1955 Act, by expressly authorizing "management" but, by implication, not authorizing disposal of such surface resources, might limit the authority of the Secretary to sell ordinary sand and gravel from unpatented mining claims under the 1947 Act, as amended by the first section of the Surface Resources Act. The 1957 Opinion was silent on these issues (which are discussed further below).

Two decades elapsed before the Solicitor’s Office returned to this subject. In January 1978, the Assistant Solicitor for Onshore Minerals, Division of Energy and Resources, reviewed a draft BLM instruction memorandum proposing to authorize disposal of common variety minerals from unpatented mining claims. Proposed Instruction Memorandum: Disposal of Mineral Material from Unpatented Mining Claims (1978) (1978 Opinion). Without extended analysis or citing any previous Opinion, the Assistant Solicitor concluded that the BLM could not dispose of common variety minerals from unpatented mining claims without changing its regulations. BLM's regulations, first adopted in 1960 and reissued in slightly variant forms in 1964, 1970 and 1983, explicitly prohibit such disposal prior to cancellation of the mining claim in appropriate legal proceedings. 43 C.F.R. § 3601.1 (1997).[7] The Assistant Solicitor stated, "If the Bureau wishes to dispose of mineral materials . . . [on unpatented claims], I recommend that it revise the regulations in 43 C.F.R. Part 3600." 1978 Opinion, at 1. This Opinion expressed no doubt about BLM’s authority to dispose of these materials from unpatented mining claims.

Six months later, in July 1978, BLM proposed a rulemaking to remove the restriction on the disposal of mineral materials from unpatented lode claims, but not placer claims. 43 Fed. Reg. 29,150 (1978).[8] The preamble to the proposed rule explained that the restriction in the existing regulations “precludes the Secretary of the Interior from effectively managing the surface resources, especially the mineral materials resources, on public lands.” The preamble then describes three issues “being reviewed by the Solicitor’s Office”:

> (1) Does the power to manage other surface resources (i.e., mineral) include the power to dispose; (2) does the term “other surface resources” embrace mineral deposits which

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[7] None of the preambles to these rules mentioned any Solicitor’s Opinions.

[8] BLM did not propose removing the restriction for placer claims “because of the possible conflicts between common varieties of mineral materials and locatable minerals that may be associated with the common varieties of mineral materials” such as placer gold mixed with sand and gravel. 43 Fed. Reg. at 29,151.

> extend into the subsurface as well (i.e., sand and gravel deposits, etc.) and (3) is the provision [in the proposed regulation] allowing a mining claimant access to mineral materials located off his mining claim for the purpose of prosecuting his claim authorized by either the Surface Resources Act of 1955 or Materials Act of 1947 as amended 30 U.S.C. 601. [sic]

Id. at 29,151. The preamble explained that if the answer to either of the first two questions is no, the proposed regulation cannot be promulgated under existing authority.[9] The preamble also stated that if the answer to the third question is no, the proposed regulation would have to be redrafted.[10]

The Associate Solicitor for the Division of Energy and Resources held the proposal was not lawful. His March 8, 1979 Opinion relied on the 1956 Opinion to conclude that the grant of the power "to manage other surface resources" in section 4(b) of the Surface Resources Act "does not include the authority to dispose of those resources." Disposal of Mineral Materials from Unpatented Mining Claims, at 4 (1979) (1979 Opinion).

This Opinion contained what seems to be a serious internal inconsistency. That is, it began by observing that the Secretary "is granted authority to dispose of mineral materials under the Materials Act of 1947 . . .." Id. at 2. Deciding two pages later that the 1955 Act contained no authority to dispose of mineral materials, the Opinion does not go back to explore whether the 1947 Act disposal authority was retained when the 1955 Act amended the 1947 Act, or whether the 1955 Act otherwise affected the 1947 Act authority. Finally, examining whether the phrase "other surface resources" included sand and gravel, the Associate Solicitor noted that "there is some ambiguity in the phrase," but that it was unnecessary to resolve the issue for purposes of that Opinion.

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[9] The conclusion that there would be no authority for mineral material disposal from unpatented mining claims if mineral materials are not considered a surface resource is not correct. As explained in more detail below, whether or not mineral materials are "surface resources" under section 4(b) of the 1955 Act, they are subject to the 1947 Act disposal authority, as amended by the first section of the Surface Resources Act. See infra, p. 13.

[10] Neither the Materials Act nor the Surface Resources Act authorizes a mining claimant to use off-claim mineral materials unless the claimant enters into a sales contract with BLM for those materials.

Disposal of Mineral Materials from Unpatented Mining Claims (M-36998)

The fifth and last Opinion, in 1980, also came from the Associate Solicitor for Energy and Resources. Disposal of Mineral Materials from Unpatented Mining Claims (1980) (1980 Opinion). This Opinion reaffirmed the 1979 and 1956 Opinions, concluding that BLM has no authority under section 4(b) of the 1955 Act to sell mineral materials from unpatented mining claims. The Associate Solicitor, in footnote 10 of the opinion, further concluded:

> The fact that a claimant might "consent" to such a sale would not operate to invest the Secretary with such disposal authority. In the first place, the mining claimant has no alienable interest in the mineral materials (his "title" or interest being limited to use) and in the second, the action of a third party in concert with the Secretary cannot operate to bestow powers not granted by Congress.

Id. at 6. This 1980 Opinion, like the one eighteen months earlier, did not address whether the Materials Act of 1947 or the first section of the 1955 Act itself provided the authority to dispose of mineral materials from unpatented mining claims. The question posed was only "whether the Secretary is authorized to make sales of mineral materials from unpatented mining claims under the provisions of section 4(b) of the Surface Resources Act of 1955 . . .." Id. at 1. The failure to address the 1947 Act and the first section of the 1955 Act is all the more curious because the 1980 Opinion also recognizes that, "[b]y the Materials Act of 1947, 61 Stat. 681, Congress made mineral materials subject to sale." Id. at 2. Further, in footnote 7 of that Opinion, the following statement is made: "When Congress intends to grant the power of sale or other disposition it knows how to do so. See section 1 of the Mineral Materials Act of 1947, as amended, 30 U.S.C. § 601 ('The Secretary . . . may dispose of mineral materials . . .')." Id. at 5 n.7.

The 1980 Opinion did say that, "[p]rior to passage of the 1955 Act, certainly, the Secretary could not enter a properly located mining claim for the purpose of selling mineral materials since the mining claimant had a right until the invalidity of the claim was established, to all the valuable minerals within the boundaries of the claim." Id. at 3 (footnote omitted). As the discussion early in this Opinion shows, supra, at 5 and 6, this is a considerable oversimplification of the rights of the mining claimant, and ignores the question of whether mineral materials, which are widely occurring substances, are "valuable minerals" under the Mining Law.

The 1980 Opinion emphasizes that the purpose of the 1955 Act was to confirm and clarify that there were limits on the rights of mining claimants and to confirm and clarify the authority of the United States with regard to mineral materials and other resources found on unpatented mining claims. Yet, in reaching its result, it ignores the irony that it construed that same Act as also placing limits on the right of the United States to dispose of these mineral materials -- a right

generally established in the 1947 Act.[11]

Remarkably, this Opinion also concluded, without distinguishing or even referring to the 1957 Opinion, that common varieties of mineral materials are one of the "other surface resources" embraced within section 4(b) of the Surface Resources Act. Id. at n.1. The Associate Solicitor reasoned that the parenthetical that follows in the statute, which excludes locatable minerals, would be superfluous if the phrase "other surface resources" did not include some mineral deposits.

In sum, past Solicitor's Office analysis of these issues has been marked by inconsistency and, at times, outright errors. While the Office has concluded that BLM lacks authority under section 4(b) of the Surface Resources Act to dispose of mineral materials from unpatented mining claims, in none of these Opinions is there a serious examination of the authority Congress gave the Secretary in the Materials Act of 1947 or in the first section of the 1955 Act to dispose of mineral materials from unpatented mining claims. Specifically, nowhere has there been any attempt to reconcile the conclusion that section 4(b) of the 1955 Act does not provide the Secretary with authority to dispose of mineral materials with the fact that the 1947 Act and the first section of the 1955 Act provide such authority.

III. Analysis

As previous Solicitor's Office opinions have noted, section 4(b) of the Surface Resources Act explicitly subjected unpatented mining claims to the rights of the United States to manage and

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[11] Although the legislative history of the 1955 Act shows concern for protecting the interests of mining claimants, as noted by the Associate Solicitor, see 1980 Opinion, at 6, it also shows a willingness to amend the Mining Law and impose restrictions on mining claimants. A primary motivation behind the 1955 Act was "eliminating the filing of phony mining claims" and dealing with thousands of stale and dormant mining claims, according to Representative Engle. 101 Cong. Rec. 8742 (1955) (remarks of Rep. Engle). He said that "the purpose of the legislation is to amend the general mining laws to permit a more efficient management and administration and to provide for multiple use of the surface of the same tracts of public lands." Id. He explained that the bill would amend the Mining Law by giving the United States authority to manage "other surface resources thereof (except minerals subject to the mining laws)." Id. He concluded by saying, "Now, boiled down in simple terms, that simply means that [the United States] can take timber and use the surface of mining claims for the purpose of disposing of grass and other forage for animals." Id.

dispose of vegetative resources and to manage all other surface resources. Regardless of whether mineral materials are a surface resource, we agree with those previous Solicitor's Office opinions concluding that section 4(b) of the Surface Resources Act does not give the Secretary authority to dispose of "other surface resources" from unpatented mining claims. However, that does not mean the Secretary lacks authority to dispose of mineral materials from unpatented mining claims.

The Secretary obtains this authority elsewhere. The 1955 Act did not repeal, expressly or by implication, the disposal authority granted to the Secretary in the 1947 Act. Indeed, it expressly retained that authority in the first section of the 1955 Act. It confirmed it further by giving the Secretary of Agriculture disposal authority also.[12] See 30 U.S.C. § 601, last sentence.

As noted above, the Materials Act of 1947 and the first section of the Surface Resources Act of 1955 give the Secretary of the Interior a broad grant of authority to dispose of mineral materials from the public lands if the disposal (1) "is not otherwise expressly authorized by law," (2) "is not expressly prohibited by the laws of the United States" and (3) "would not be detrimental to the public interest." 30 U.S.C. § 601. Disposal of common varieties of mineral materials by the Secretary from unpatented mining claims is neither expressly authorized nor expressly prohibited by any of the laws we have been discussing or any other law. Indeed, rather than prohibiting mineral materials disposal by the Secretary, the Surface Resources Act merely disallows surface use by the United States which would "endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto." 30 U.S.C. § 612(b). Congruently, the claimant's interest in the surface and vegetative or other surface resources of a valid mining claim is limited to use for "prospecting, mining or processing operations or uses reasonably incident thereto," or "for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States." 30 U.S.C. § 612 (a) and (c).[13]

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[12] The legislative history indicates that the 1955 Act was drafted in a joint conference between representatives of the Department of the Interior, the Department of Agriculture, and various conservation groups, the National Lumber Association, the American Mining Congress and representatives of the lumber industry. Id. at 8743 (remarks of Rep. Engle).

[13] The 1980 Opinion places some emphasis on the fact that the 1955 Act does not provide the mining claimant with "free use" of off-claim mineral materials resources useful in mining operations, even though it does provide the claimant with free use of off-claim timber resources necessary for mining operations on the claim, when the United States has entered the

Disposal of Mineral Materials from Unpatented Mining Claims (M-36998)

Disposal of common varieties of mineral materials from unpatented mining claims would not be detrimental to the public interest. As mentioned in the Associate Solicitor's 1979 opinion, at 1, mineral materials are often waste from mining operations which the claimant does not need. In many instances, contract disposal of mineral material overburden could be both a service to a mining claimant and the surrounding community, as well as a financial benefit to the United States.

Consequently, for all of the foregoing reasons, I construe the Materials Act and the first section of the Surface Resources Act to grant to the Secretary sufficient authority to dispose of mineral materials from unpatented mining claims.[14] The disposition must not "endanger or materially interfere with [the claimant's] prospecting, mining or processing operations or uses reasonably incident thereto." 30 U.S.C. § 612(a).

The Secretary's authority to dispose of mineral materials from unpatented mining claims should be exercised judiciously. A mining claimant has a right to use the claim surface for prospecting,

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claim and disposed of timber resources on the claim under authority granted in the 1955 Act. 1980 Opinion**,** at 4. Congress's failure to treat mineral materials in the same way it treated timber could mean nothing more than that Congress did not believe claimants had a similar right to use mineral materials which it needed to protect. Or it could mean that Congress knew the Secretary already had authority to dispose of mineral materials and claimants could not expect to be compensated for mineral materials disposed of by the Secretary. Since the Mining Law is a land grant statute, albeit one that grants property interests on a self-initiated basis, the principle still applies "that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are any doubts, they are resolved for the Government, not against it." United States v. Union Pacific R. Co., 353 U.S. 112, 116 (1957). Nothing in the Mining Law specifically grants mining claimants a right to mineral materials which are not locatable under the Mining Law. Moreover, nothing in the Mining Law states that mineral materials are part of the surface to which claimants were granted "the exclusive right of possession and enjoyment."

[14] The 1947 Act, as amended by the 1955 Act, also authorizes the Secretary, at his discretion, "to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this Act, for use other than for commercial or industrial purposes or resale." 30 U.S.C. § 601. Consequently, the Secretary may also dispose of mineral materials from unpatented mining claims under this provision.

mining or processing operations and uses reasonably incident thereto. Id. The claimant may try to assert that mineral materials are part of the surface or a surface resource and may try to assert a right to use so much of the mineral materials as is necessary for development of the valuable mineral deposit on the unpatented mining claim.

However, the Secretary's authority to dispose of mineral materials from unpatented mining claims does not depend on whether mineral materials are considered a surface resource.[15] Nothing in the Materials Act or the Surface Resources Act expressly states that mineral materials are among the "other surface resources." In addition, whether or not mineral materials are part of the "other surface resources" at issue in section 4(b) of the Surface Resources Act, the Materials Act of 1947, as amended by section 1 of the 1955 Act, still authorizes the Secretary to dispose of mineral materials from unpatented mining claims. Interestingly, the legislative history of the 1955 Act indicates that Congress's intent in using the term "other surface resources" was to protect the "right of trespass" for "recreationists, sportsmen, and others to use the national forests for hunting, fishing, and recreation." 101 Cong. Rec. 8746 (June 20, 1955) (remarks of Rep. Ellsworth). In framing the bill, "the language of subsection (b) of section 4 was very, very carefully considered and carefully written with this thought in mind." Id. This purpose had nothing to do with mineral materials disposition and thus suggests that the reference in section 4(b) to managing surface resources was not intended to affect mineral materials disposition at all.

In order to avoid disputes with claimants over BLM's disposal of mineral materials from unpatented mining claims, BLM should seek from the holder of the unpatented mining claims an explicitly stated waiver of all rights to use any mineral materials on all or any defined part of the unpatented mining claims. The waiver should state that BLM does not acknowledge that the claimant has the rights being waived. The claimant's waiver serves only to free the common variety mineral materials on a claim from any perceived encumbering interest (and a possible damages claim, however unfounded) and does not serve to invest the Secretary with any

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[15] The question of whether mineral materials are a surface resource contemplated by section 4(b) of the Surface Resources Act need not be decided here. However, it is interesting to note that in case law regarding the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1611, 1613, sand and gravel are considered part of the subsurface. See, e.g., Tyonek Native Corp. v. Cook Inlet Region, Inc., 853 F.2d 727 (9th Cir. 1988); Chugach Natives, Inc. v. Doyon, Ltd., 588 F.2d 723 (9th Cir. 1978); and Aleut Corp. v. Arctic Slope Regional Corp., 421 F. Supp. 862 (D. Alaska 1976). In addition, under the Stockraising Homestead Act, gravel is considered part of the mineral estate reserved to the United States, as opposed to the surface estate conveyed to the homesteader. Watt v. Western Nuclear, Inc., 462 U.S. 36 (1983).

authority he does not already have.[16] The Secretary would not be disposing of the materials under section 4(b) of the Surface Resources Act but would do so under the broad grant of authority under the Materials Act, as retained in the first section of the Surface Resources Act.

Where such a waiver is not obtained, and BLM determines that it can proceed without endangering or materially interfering with the right of the claimant to develop valuable minerals on the claim, BLM should consult closely with the Solicitor's Office on how to proceed.[17]

IV. Conclusion

The Secretary may dispose of mineral materials from unpatented mining claims. However, BLM must first amend 43 C.F.R. § 3601.1 to allow such dispositions. This Opinion supersedes all previous Solicitor's Office opinions which conflict with this Opinion. This Opinion was prepared with the substantial assistance of Karen Hawbecker of the Division of Mineral Resources, Office of the Solicitor.

/s/ John D. Leshy

John D. Leshy
Solicitor

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[16] This waiver should not be confused with the waiver referenced in section 6 of the Surface Resources Act by which a claimant who holds a pre-1955 Act claim can relinquish all rights that conflict with the limitations in section 4 of the Surface Resources Act.

[17] In Cliff Gallaugher, 140 IBLA 328 (1997), the Interior Board of Land Appeals concluded that absent evidence that a specific surface management action under section 4(b) of the Surface Resources Act endangers or materially interferes with actual, established prospecting, mining, or processing operations or reasonably related uses, BLM's approval of the specific surface management action will be approved despite allegations that the action will impede future, potential mining and related activities on the claims. Although mineral materials disposal is not governed by section 4(b), BLM may nevertheless be guided by this decision in determining whether disposal will endanger or materially interfere with the right of a claimant to develop the valuable minerals on a claim.

Disposal of Mineral Materials from Unpatented Mining Claims (M-36998)

I concur: __/s/ Bruce Babbitt_____ __6/10/99_____
Secretary of the Interior Date

Associate Solicitor's July 28, 1988, Memorandum to BLM Director on Effect of Withdrawal on the Materials Act

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240
July 28, 1988

BLM.ER.0618

Memorandum

To: Director, Bureau of Land Management

From: Associate Solicitor, Energy and Resources

Subject: Effect of Withdrawal on the Materials Act

You have asked (1) whether a withdrawal or a segregation by application for withdrawal closes land to the operation of the Act of July 31, 1947, 30 U.S.C. §§ 601-604 (1982) ("Materials Act"), and (2) whether a withdrawal is necessary to close lands to the operation of the Materials Act. Some, but not all, withdrawals close land to the operation of the Materials Act, depending on the intent of the withdrawal. However, a withdrawal is not necessary to close land to the operation of the Materials Act; you may use the Secretary's discretion to do so.

I. The Statutes

The Materials Act authorizes disposition of vegetative and mineral materials on public lands of the United States. Section 1 vests this authority in the Secretary of the Interior, except for lands in national forests. 30 U.S.C. § 601.

The Federal Land Policy and Management Act of 1976 (FLPMA) defines "withdrawal" as:

> (j) The term "withdrawal" means withholding an area of Federal land from settlement, sale, location or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

43 U.S.C. § 1702(j) (1982). FLPMA also establishes procedures for the exercise of the withdrawal authority in section 204, 43 U.S.C. § 1714 (1982). Prior to FLPMA, withdrawals were issued under the Pickett Act, 43 U.S.C. § 141 et seq. (1970), or under the implied authority of the President. The Pickett Act authorized the withdrawal of public lands from "settlement, sale, location or entry" under the mining law as to nonmetalliferous minerals such as coal, oil, and gas, as well as under the nonmineral public land laws. The implied authority of course had no specific language for withdrawal and had no limitation on its scope. Congress repealed the Pickett Act as well as the implied

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authority of the President in section 704(a) of FLPMA.

II. Discussion

The Materials Act grants the Secretary the discretion to dispose of mineral materials: "[the Secretary,] under such rules and regulations as he may prescribe, may dispose of mineral materials" on public lands so long as such disposal is not otherwise expressly authorized or prohibited by law, or so long as such disposal would not be detrimental to the public interest. 30 U.S.C. § 601. A citizen interested in buying sand and gravel cannot initiate a claim by settlement, entry or location but instead must obtain a contract from the Secretary. Issuance of the contract, whether by negotiation or by competitive sale, does not, of course, result in a patent which alienates the title of the United States but merely authorizes the removal of specified material. This discretionary process is similar to the oil and gas leasing authority of sections 1 and 17(a) of the Mineral Leasing Act, 30 U.S.C. §§ 181, 226(a) (1982), which the Supreme Court found to be discretionary in Udall v. Tallman, 380 U.S. 1, 4 (1965). Our analysis examines how this discretion was exercised given the variety of land segregations and withdrawals in existence and how it interacts with the withdrawal authority of FLPMA.

Withdrawal authority under the Pickett Act was exercised to prevent alienation of federal title, the alienation process being initiated by acts of "settlement, sale, location or entry." See Udall v. Tallman, supra at 19. The mining law and many public land laws in effect in 1910 were "entry" laws, that is, the citizen initiated the claim by "settlement" or "location," the Secretary then "entered" it in the land records and issued patents after verifying compliance with the law. A few public land laws authorized the straight "sale" of land. ("Sale" as used in the Pickett Act referred to disposition of title to the land as opposed to the sale under the Materials Act of material found on the land.) The implied authority was also used to prevent alienation of the title but the Department may have used language different from the Pickett Act, such as withdrawal from "all forms of appropriation."

Generally, a withdrawal closes lands to the exercise of discretion to dispose of mineral materials only if the Secretary intends that result, usually by an express reference in the withdrawal. Udall v. Tallman, 380 U.S. 1 (1965); Meecham v. Udall, 369 F. 2d 1 (10th Cir. 1966). However, withdrawals rarely refer to the Materials Act and thus we must consider the language used in the withdrawal in order to ascertain the intent.

In a 1952 unpublished decision, the Department considered the very question you have asked and concluded:

> Neither the language of Public Land Order No. 576 nor the purpose for which the land was withdrawn from appropriation under the public land laws suggests an intention to exclude disposals under the Materials Act from the scope of the order.

Mrs. A.T. Van Dolah, A-26443 (October 14, 1952). Public Land Order No. 576 was a withdrawal "from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws." The Department concluded that the scope of the withdrawal was broad enough to encompass materials sales.

Two key elements in the Van Dolah decision are the withdrawal "from all forms of appropriation" and the inclusion of the mineral leasing laws in the withdrawal. Such language exhibits an intent to close lands to the exercise of discretion to dispose of minerals. Any withdrawal or segregation that closes lands to the operation of public land laws, and expressly includes the mineral leasing laws, should be construed to close lands to the operation of the Materials Act, whether it uses the Van Dolah language or a similar formulation. If the withdrawal or segregation is

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silent as to mineral leasing but has been construed to prohibit it, you should consider the land closed to the Materials Act also.[1] Otherwise land remains open to the Materials Act. If the withdrawal or segregation closes lands to "settlement, sale, location or entry," you should apply the same principles, that is, land is closed to operation of the Materials Act only if the withdrawal or segregation closes the land to the mineral leasing laws. [2]

Our conclusion that a withdrawal or segregation does not automatically close the land to the Materials Act is supported by the following sentence in section 1:

> Where the land has been withdrawn in aid of a function of a Federal department or agency or of a State, Territory, county, municipality, water district or other local governmental subdivision or agency, the Secretary may make disposals under this Act only with the consent of such other Federal department or agency or of such State.

30 U.S.C. § 601. If Congress had intended that all withdrawals would bar materials sales, then this sentence would have no meaning. Instead, Congress provided a consent mechanism to insure that any sale is consistent with the purpose of the withdrawal. [3] Therefore, only withdrawals which fall within the scope of the Van Dolah decision should be construed as closing lands to the operation of the Materials Act. However, if land is subject to a withdrawal, the purpose of the withdrawal must weigh heavily on the exercise of discretion whether to hold a sale under the Materials Act.

The above conclusions must be applied consistent with the preliminary injunction in National Wildlife Federation v. Burford, Civil no. 85-2238 (D.D.C. February 10, 1986), that is, withdrawals in effect as of January 1, 1981, remain in effect. However, the preliminary injunction allows BLM to take actions which are consistent with the specific restrictions of a withdrawal. Thus, if the withdrawal did not close the land to the operation of the Materials Act, you may hold a materials sale.

As explained above, decisions to hold sales under the Materials act are discretionary. As the courts have recognized on several occasions, the discretion to act includes the discretion to decide not to act. Udall v. Tallman supra at 19-20; Wilbur v. United States ex rel. McLennan, 283 U.S. 414 (1931); Duesing v. Udall, 350 F. 2d 748 D.C. Cir. (1965), cert. denied, 383 U.S. 912 (1966); Learned v. Watt, 528 F. Supp. 980 (D. Wyo. 1981). Nothing in the legislative history of FLPMA suggests that the Congress intended to affect any statutory grant of discretion when it enacted the withdrawal provisions of FLPMA. Indeed, section 701(f) of FLPMA states that nothing in FLPMA shall

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[1] The intent of various closure statements which you quoted is, for the most part, self-evident. In some cases, such as "withdrawn from lease or other disposal," you will have to inquire into the intent of the specific withdrawal and how it has been construed.

[2] We expect that any withdrawal or segregation which intends this result was issued under the Pickett Act since BLM policy is not to use FLPMA withdrawals to close land to discretionary action. However, in the event of a withdrawal under FLPMA is being examined, these same principles would apply.

[3] The Materials Act would only apply to these lands if the surface management agency has no independent authority to dispose of these materials since the materials sale may only be held if there is no other express statutory authority. 30 U.S.C. § 601.

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repeal by implication any prior grant of statutory authority.

We are aware of course of the two Wyoming decisions which held that a lengthy delay in processing oil and gas lease applications must eventually be reported to the Congress under FLPMA as a withdrawal. Mountain States Legal Foundation v. Hodel, 668 F. Supp. 1521 (D. Wyo. 1987); Mountain States Legal Foundation v. Andrus 499 F. Supp. 383 (D. Wyo. 1980). We view these cases as limited to their facts. Both decisions addressed situations where BLM and the Forest Service postponed decisions whether or not to accept oil and gas lease applications and issue leases until various environmental studies were completed and then took several years to complete the studies.

Closing land to the operation of the Materials Act is clearly not a delay in processing applications but is the sort of discretionary decision not to act that has been ratified by the courts, including the District of Wyoming, in Learned v. Watt, supra. Your proposal to exercise this discretion through land use planning decisions under section 202 of FLPMA, 43 U.S.C. § 1712, is thus fully supported by law.

FLPMA does not require that the Secretary exercise his discretion under the Materials Act (or any other law) by means of a withdrawal if the discretionary decision is not to hold a sale. Furthermore, we understand that current BLM policy is not to use withdrawals as the means to implement discretionary decisions. If you wish to include the Materials Act in a withdrawal, you should do so by express reference to the law and the U.S. Code, "Act of July 31, 1947, 30 U.S.C. §§ 601-604."

III. Conclusion

Pre-FLPMA withdrawals or segregations which closed land to the operation of public land laws, including the mineral leasing laws either expressly or by interpretation, also closed land to the Materials Act. Any other withdrawal or segregation has no effect on the Materials Act. You should of course consider the purpose for which the lands were withdrawn or segregated. (If the land is administered by an agency outside Interior, consistency will be determined by that agency as part of the consent process.) You may exercise discretion under the Materials Act and decide not to hold materials sale in a given area. Such a decision is not a withdrawal and does not have to implemented under the procedures in section 204 of FLPMA.

/s/
Thomas L. Sansonetti

H3600-1 MINERAL MATERIALS HANDBOOK
Appendix No. 5

43 CFR 3600

MINERAL MATERIALS

CASE TYPE/ACTION CODE DATA STANDARDS

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Mineral Materials Case Types

The Mineral Materials Case Types are six digits numeric codes that describe both the mineral material type of activity and case land status involved. Case Types are coded using code selections from Data Element (DE) 2912 where you will find the mineral material disposal Case Type codes from which to choose. The Case Types for mineral material disposal have been abstracted from the Corporate Data Dictionary (CDD)/ Corporate Metadata Repository (CMR) for easy reference and are found in Table 1.

Table 1. Case Type Data Element Codes for Record 1

As a rule, mineral material case types:

Ending in **11** indicates that the US owns only the surface estate;
Ending in **12** indicates that the US owns only the subsurface, or mineral estate;
Ending in **13** indicates that the surface and mineral estates are owned by the US.

EXPLORATION

360211 - Exploration Permit - Surface
360212 - Exploration Permit - Mineral
360213 - Exploration Permit - All

TRESPASS

360311 - Unauthorized Use - Surface
360312 - Unauthorized Use - Mineral
360313 - Unauthorized Use - All

NONEXCLUSIVE SALES

360411 - Community Pit - Surface
360412 - Community Pit - Mineral
360413 - Community Pit - All

360511 - Common Use Area - Surface
360512 - Common Use Area - Mineral

360513 - Common Use Area - All

SALES

361111 - Negotiated Sales - Surface
361112 - Negotiated Sales - Mineral
361113 - Negotiated Sales - All

361311 - Competitive Nonrenewable Sales - Surface
361312 - Competitive Nonrenewable Sales - Mineral
361313 - Competitive Nonrenewable Sales - All

361321 - Competitive Renewable Sales - Surface
361322 - Competitive Renewable Sales - Mineral
361323 - Competitive Renewable Sales - All

FREE USE

362111 - Free Use - Government Subdivision - Surface
362112 - Free Use - Government Subdivision - Mineral
362113 - Free Use - Government Subdivision - All

362211 - Free Use - Nonprofit Organization - Surface
362212 - Free Use - Nonprofit Organization - Mineral
362213 - Free Use - Nonprofit Organization - All

For O&C TIMBER MANAGEMENT

362913 - Mineral Material BLM Quarry - All *****

***** Removal of mineral materials for roads and sites in support of O&C timber sale.

Mineral Materials Commodity Codes

Data Element (DE 2303) in the Corporate Data Dictionary (CDD)/ Corporate Metadata Repository (CMR) contains many commodities and their associated numeric codes, from which to identify the mineral material which you are disposing. The CDD/CMR also describes and indicates which commodities are considered salable. The commodities in the CDD/CMR are grouped into categories of similar commodities for organizational clarity and annual Public Land Statistics (PLS) reporting purposes.

The Commodity Group codes are non input codes which are used to generate output reports only. Individual commodity codes can be used to generate input and output reports. For example, a sale of the mineral material, rip-rap, would be input using commodity code 563; a sale of moss rock would be input using code 565. The user could request an output report information aggregating the category, stone, by entering at an appropriate point in the output report request the code for stone, 56, which would in the output report total the rip rap and moss rock disposals, or the user could ask for an output of only moss rock disposals, using code 565. The commodity categories and individual salable commodities in the DE 2303 are shown below in Table 2.

Table 2. Category and Individual Commodity Codes for Mineral Material Disposal

Category - Calcium

091 Calcium, Limestone
092 Calcium, Shell or oyster
093 Calcium, Marl
094 Calcium, Brine
095 Calcium, Dolomite
097 Calcium, Sulfate, anhydrite
098 Calcium, Caliche
099 Calcium, Sulfate, gypsum

Category - Clay

131 Clay, Kaolin
132 Clay, Ball

133 Clay, Fire/refractory
134 Clay, Brick
135 Clay, Bentonite
136 Clay, Fullers earth
137 Clay, Common

Category - Abrasives

181 Abrasives, Emery
182 Abrasives, Corundum
183 Abrasives, Diamond
184 Abrasives, Garnet
185 Abrasives, Tripoli
186 Abrasives, Feldspar

NOTE: **All Disposals for Abrasives must Be Entered by Volume, in Cubic Yards**

Category - Gemstones

256 Gemstone, Semiprecious
257 Gemstone, Nonprecious *****
258 Gemstone, Coral, common
259 Gemstone, Coral, precious

*** 257 Nonprecious Gemstone Includes Petrified Wood. All Disposals for Gemstones must Be Entered by Volume, in Cubic Yards**

Category - Pumice

491 Pumice, Pumicite
492 Pumice, Volcanic ash
493 Pumice, Volcanic cinder
494 Pumice, Volcanic dust
495 Pumice, Scoria

Category - Sand and Gravel

521 Sand and Gravel, Sand
522 Sand and Gravel, Shale
523 Sand and Gravel, Gravel
524 Sand and Gravel, Clinker
525 Sand and Gravel, S&G

Category - Stone

561 Stone, Dimension
562 Stone, Crushed & broken
563 Stone, Rip-rap
564 Stone, Weathered granite
565 Stone, Specialty
566 Stone, Tufa

Category - Soil/Other

891 Soil/Other, Fill
892 Soil/Other, Topsoil
893 Soil/Other, Peat/humus
894 Soil/Other, Diatomite

NOTE: **Do not report restoration or reclamation as a material or commodity. Restoration or reclamation is an action which will be handled elsewhere in Case Recordation.**

Case Types and Action Codes

The information found in the Action Record of the standard Case Recordation System case abstract is designed to present an encapsulated history of major actions entered in sufficient detail to permit the user to recover minimum reporting requirements (such as the supporting data for the annual PLS report). These records consist of four items, action date, action code (AC), action remarks, and pending action.

Numerous Action Codes can be found in DE 2910 of the CDD/CMR. The standard sequence of Action Codes for mineral material disposal is listed in Table 3 by case type.

GENERAL RULES FOR Reports Production

(1) Action codes preceded by the pound symbol, #, are necessary for production of the annual PLS report.

(2) Action codes preceded by the asterisk symbol, *, are necessary for the production of monthly, quarterly, semiannual, and annual mineral material reports.

(3) At a minimum, the action codes indicated in (1) and (2) above and listed for the individual case types are mandatory to be entered for each case in order to generate a report.

Adhering to this requirement for data entry will enable the Mineral Material program office to meet basic program reporting need's bureau-wide and provide a degree of entry standardization.

Additional codes, not shown here, may be entered at the discretion of the state or field offices.

NOTE: AC 124 - APPLICATION RECEIVED **Should *Only* Be Used in the Following Case Types:** 360211, 360212, 360213, 361111, 361112, 361113, 361311, 361312, 361313, 361321, 361322, 361323, 362111, 362112, 362113, 362211, 362212, 362213, and 362913.

AC 387 - CASE ESTABLISHED **Should *Only* Be Used in the Following Case Types**: 360311, 360312, 360313, 360411, 360412, 360413, 360511, 360512, and 360513.

NOTE: AC 005 - NEPA Analysis Received ***must* be entered as one day later than the date entered for** AC 124 - Application Received**. This is necessary because the case recordation system is designed so that the smaller number AC will appear first if all ACs have the same date. Put the actual date of the NEPA document in Action Remarks.**

NOTE: **In all case types** (361111, 361112, 361113, 361311, 361312, 361313, 361321, 361322, 361323, 362111, 362112, 362113, and 362913) **that require an** AC 132 - Appraisal/Reappraisal Approved, **the** AC 132 **will be entered prior to the entry of** AC 507 (CONTRACTED CUBIC YARDS) **or** AC 508 (CONTRACTED TONS). **The definition of** AC 132 **has been amended to include a unit of measure for use in Mineral Materials (3600) cases.**

Table 3. Standard Action Code Sequences by Case Type for Mineral Materials

EXPLORATION PERMIT

CASE TYPES: 360211, 360212, 360213

ACTION CODE SEQUENCE

*	124	Application Received	*(date the application is received)*
	669	Land Status Checked	*(date the land status is checked)*
+	005	NEPA Analysis Received	*(date the NEPA report is received)*
*	276	Permit/License Issued	*(date permit/license is issued)*
	763	Expires	*(date permit/license expires)*
*	125	Application Rejected/Denied	*(date application is rejected or denied)*
*	130	Application Withdrawn	*(date application was withdrawn)*
*	041	Compliance Report Rec'd	*(date a compliance report is completed)*
*	234	Expired	*(date the case expired)*
*	970	Case Closed	*(actual date the case is closed)*

\+ *NOTE*: **Must be at least one day later than** AC 124.

GENERAL RULES FOR Reports Production

(1) Action codes preceded by the pound symbol, #, are necessary for production of the annual PLS report.

(2) Action codes preceded by the asterisk symbol, *, are necessary for the production of monthly, quarterly, semiannual, and annual mineral material reports.

(3) At a minimum, the action codes indicated in (1) and (2) above and listed for the individual case types are mandatory to be entered for each case in order to generate a report.

UNAUTHORIZED USE

CASE TYPES: 360311, 360312, 360313

ACTION CODE SEQUENCE

*	387	Case Established	*(date the case is established)*
	669	Land Status Checked	*(date the land status is checked)*
	017	Notice of Trespass Sent	*(date the initial trespass notice is sent)*
+	167	Administrative Negotiations	*(date notice of trespass is acknowledged by trespasser; case resolution is pending administrative negotiations)*
*	132	Appraisal/Reappraisal Approved	*(date the appraised value is received from Appraisals)*
*	023	Trespassed Quantities Determined - Cubic Yards	*(total amount trespassed in cubic yards as determined by BLM)*
*	024	Trespassed Quantities Determined - *Tons*	*(total amount trespassed in tons as determined by BLM)*
*	041	Compliance Report Received	*(date the compliance report is completed)*
	019	Trespass Payment Requested	*(date and amount of monies requested for trespass settlement)*
*	120	Appeal Filed++	*(date the alleged trespasser appeals trespass notice)*
	021	Trespass Payment Received	*(date and amount of monies requested for trespass settlement is received)*
	186	Debt Declared Uncollectible	*(date determined monies requested are uncollectible)*
*	018	Trespass Resolved	*(date trespass is determined to be resolved)*
	402	Trespass Unresolved	*(date the trespass is determined to be unresolvable)*
*	970	Case Closed	*(actual date the case is closed)*

\+ *NOTE*: **Must be one day (at least) later than** AC 387.

++ *NOTE*: **Additional codes must be entered to portray the appeals process accurately.**

NOTE: AC 005 - NEPA Analysis **may be required for some BLM driven actions.**

NOTE: AC 018 - Trespass Resolved or AC 402 - Trespass Unresolved, **sets case disposition to authorized.**

GENERAL RULES FOR Reports Production

(1) Action codes preceded by the pound symbol, #, are necessary for production of the annual PLS report.

(2) Action codes preceded by the asterisk symbol, *, are necessary for the production of monthly, quarterly, semiannual, and annual mineral material reports.

(3) At a minimum, the action codes indicated in (1) and (2) above and listed for the individual case types are mandatory to be entered for each case in order to generate a report.

COMMUNITY PITS AND COMMON USE AREAS

COMMUNITY PITS

CASE TYPES:360411, 360412, 360413

COMMON USE AREAS

CASE TYPES: 360511, 360512, 360513

ACTION CODE SEQUENCE

#	387	Case Established	*(date the case is established)*
	669	Land Status Checked	*(date the land status is checked)*
	005	NEPA Analysis Received	*(date the NEPA report is received)*
#	022	Reclamation Cost Determined +	*(total amount needed for reclamation of a pit)*
#	132	Appraisal Approved++	*(date the appraised value is received from Appraisals)*
#	276	Permit/License Issued+++	*(date permit/license is issued)*
#	507	Cubic Yards	*(total cubic yards contracted for by applicant)*
#	508	Tons	*(total tons contracted for by applicant)*
#	509	Total Value	*(total value of an amount contracted for)*
#	537	Produced Cubic Yards	*(amount of production reported in cubic yards)*
#	538	Produced Tons	*(amount of production reported in tons)*
#	539	Produced Value	*(value of the amount of production reported)*
	540	Reclamation Payment Received	*(amount of a reclamation fee that is collected)*
*	041	Compliance Report Received	*(date the compliance report is completed)*
*	244	Terminated ++++	*(date the case is terminated)*
#	970	Case Closed +++++	*(actual date the case is closed)*

\+ *NOTE*: **Represents the total cost of pit reclamation. In Action Remarks enter total cost of reclamation and also the fee set per cubic yard or per ton.**

++ *NOTE*: **Enter this code each time the commodity is reappraised.**

+++ *NOTE*: **This code changes the case disposition to authorized. Its action date is the day the authorized officer signs the document establishing the community pit or common use area. Do *not* use this AC for individual sales from the pit or area**.

++++ *NOTE*: **Used to indicate that sales are no longer being made from this pit or area. Changes case disposition to terminated.**

+++++ *NOTE*: **Enter after all reclamation is complete and case closed.**

NOTE: **AC's 507 and 508 along with corresponding 509, 537, 538 and 539 indicate individual sales and productions that occur within the community pit or common use area. See examples provided later in the document.**

GENERAL RULES FOR Reports Production

(1) Action codes preceded by the pound symbol, #, are necessary for production of the annual PLS report.

(2) Action codes preceded by the asterisk symbol, *, are necessary for the production of monthly, quarterly, semiannual, and annual mineral material reports.

(3) At a minimum, the action codes indicated in (1) and (2) above and listed for the individual case types are mandatory to be entered for each case in order to generate a report.

NEGOTIATED SALES AND FREE USE PERMITS

NEGOTIATED SALES

CASE TYPES:361111, 361112, 361113

FREE USE PERMITS

CASE TYPES:362111, 362112, 362113, 362211, 362212, 362213, 362913

ACTION CODE SEQUENCE

#	124	Application Received	*(date the application is received)*
	669	Land Status Checked	*(date the land status is checked)*
+	005	NEPA Analysis Received	*(date the NEPA report is received)*
#	132	Appraisal/Reappraisal Approved	*(date the appraised value is received from Appraisals)*
#	276	Permit/License Issued	*(date permit/license is issued)*
	763	Expires	*(date permit/license expires)*
*	125	Application Rejected-Denied	*(date application is rejected or denied)*
*	130	Application Withdrawn	*(date application was withdrawn)*
#	507	Cubic Yards	*(total cubic yards contracted for by applicant)*
#	508	Tons	*(total tons contracted for by applicant)*
#	509	Total Value	*(total value of an amount contracted for, or issued as a free use permit.)*
#	537	Produced Cubic Yards	*(amount of production reported in cubic yards)*
#	538	Produced Tons	*(amount of production reported in tons)*
#	539	Produced Value	*(value of the amount of production reported)*
*	041	Compliance Report Received	*(date the compliance report is completed)*

*	244	Terminated	*(date the case is terminated)*
*	234	Case Expired	*(date the case expired)*
#	970	Case Closed	*(actual date the case is closed)*

\+ *NOTE*: **Must be at least one day later than** AC 124.

GENERAL RULES FOR Reports Production

(1) Action codes preceded by the pound symbol, #, are necessary for production of the annual PLS report.

(2) Action codes preceded by the asterisk symbol, *, are necessary for the production of monthly, quarterly, semiannual, and annual mineral material reports.

(3) At a minimum, the action codes indicated in (1) and (2) above and listed for the individual case types are mandatory to be entered for each case in order to generate a report.

NONRENEWABLE COMPETITIVE SALES

CASE TYPES:361311, 361312, 361313

ACTION CODE SEQUENCE

#	124	Application Received	*(date the application is received)*
	669	Land Status Checked	*(date the land status is checked)*
	005	NEPA Analysis Received	*(date the NEPA report is received)*
#	132	Appraisal/Reappraisal Approved	*(date the appraised value is received from Appraisals)*
#	132	Appraisal/Reappraisal Approved+	*(value of the high bid received, if any)*
#	276	Permit/License Issued	*(date permit/license is issued)*
	763	Expires	*(date permit/license expires)*
	291	Proof of Publication	*(date(s) of publication)*
*	125	Application Rejected-Denied	*(date application is rejected or denied)*
*	130	Application Withdrawn	*(date application was withdrawn)*
#	507	Cubic Yards	*(total cubic yards contracted for by applicant)*
#	508	Tons	*(total tons contracted for by applicant)*
#	509	Total Value	*(total value of the amount contracted for)*
	392	Monies Received	*(amount and type of monies received)*
#	537	Produced Cubic Yards	*(amount of production reported in cubic yards)*
#	538	Produced Tons	*(amount of production reported in tons)*
#	539	Produced Value	*(value of the amount of production reported)*
	392	Monies Received	*(amount monies for production received)*
*	041	Compliance Report Received	*(date the compliance report is completed)*
*	234	Case Expired	*(date the case expired)*
*	244	Terminated	*(date the case is terminated)*
#	970	Case Closed	*(actual date the case is closed)*

\+ *NOTE*: **Enter in action remarks the accepted "high bid" value for the unit of material, if higher than the appraised value, and note "high bid" in the general remarks.**

GENERAL RULES FOR Reports Production

(1) Action codes preceded by the pound symbol, #, are necessary for production of the annual PLS report.

(2) Action codes preceded by the asterisk symbol, *, are necessary for the production of monthly, quarterly, semiannual, and annual mineral material reports.

(3) At a minimum, the action codes indicated in (1) and (2) above and listed for the individual case types are mandatory to be entered for each case in order to generate a report.

RENEWABLE COMPETITIVE SALES

CASE TYPES:361321, 361322, 361323

ACTION CODE SEQUENCE

#	124	Application Received	*(date the application is received)*
	669	Land Status Checked	*(date the land status is checked)*
	005	NEPA Analysis Received	*(date the NEPA report is received)*
#	132	Appraisal/Reappraisal Approved	*(date the appraised value is received from Appraisals)*
#	132	Appraisal/Reappraisal Approved+	*(value of the high bid received, if any)*
#	276	Permit/License Issued	*(date permit/license is issued)*
	763	Expires	*(date permit/license expires)*
	291	Proof of Publication	*(date(s) of publication)*
*	125	Application Rejected-Denied	*(date application is rejected or denied)*
*	130	Application Withdrawn	*(date application was withdrawn)*
#	507	Cubic Yards	*(total cubic yards contracted for by applicant)*
#	508	Tons	*(total tons contracted for by applicant)*
#	509	Total Value	*(total value of the amount contracted for)*
	392	Monies Received	*(amount and type of monies received)*
#	537	Produced Cubic Yards	*(amount of production reported in cubic yards)*
#	538	Produced Tons	*(amount of production reported in tons)*
#	539	Produced Value	*(value of the amount of production reported)*
	392	Monies Received	*(amount monies for production received)*
*	041	Compliance Report Received	*(date the compliance report is completed)*
*	314	Renewal Application Filed	*(date the renewal application is received)*
*	279	Permit/License Renewed	*(date permit/license is renewed)*
	392	Monies Received	*(amount and type of monies received)*
#	507	Cubic Yards	*(total cubic yards contracted for by applicant)*
#	508	Tons	*(total tons contracted for by applicant)*

#	509	Total Value	*(total value of the amount contracted for)*
	392	Monies Received	*(amount monies for production received)*
*	234	Case Expired	*(date the case expired)*
*	244	Terminated	*(date the case is terminated)*
#	970	Case Closed	*(actual date the case is closed)*

\+ *NOTE*: **Enter in action remarks the accepted "high bid" value for the unit of material, if higher than the appraised value, and note "high bid" in the general remarks.**

GENERAL RULES FOR Reports Production

(1) Action codes preceded by the pound symbol, #, are necessary for production of the annual PLS report.

(2) Action codes preceded by the asterisk symbol, *, are necessary for the production of monthly, quarterly, semiannual, and annual mineral material reports.

(3) At a minimum, the action codes indicated in (1) and (2) above and listed for the individual case types are mandatory to be entered for each case in order to generate a report

Table 4. Additional Optional Action Codes

Several additional AC's are recommended, but are optional. Some are listed below.

For additional codes refer to DE 2910.

144	Payment in Lieu of Production (redefinition in DE 2910) *
235	Extended
247	Future Action Suspense
278	Pmt-Lic Modified
279	Pmt-Lic Renewed or extended
376	Bond Filed (Bond Number)
392	Monies received (monies which are not identified by any other 'dedicated' action code)
379	Refund Authorized
501	Reference Number (Contract Number)
600	Records
763	Expires
887	Agreement Signed
909	Bond Accepted

Can be used in Negotiated Sales, Case Types 361111, 361112, 361113, Nonrenewable Competitive Sales, Case Types 361311, 361312, 361313, **and** Renewable Competitive Sales, Case Types 361321, 361322, 361323.

Note: If bond is not held by BLM but by another entity (such as a state or a county with which BLM has a memorandum of understanding or interagency agreement) an entry should be made to the General Remarks section as to the bond amount and the bond holders name.

Selected Action Codes and Optional and Mandatory Remarks

There is a 21-character field following the AC's called Action Remarks, which allows for the entry of additional "free format" type information. In order to collect mineral materials data which cannot be obtained using the basic screen abstracts format, we have established mandatory Action Remarks formats for data entry. These Action Remarks must be entered in the standardized format for automatic computation purposes. This format includes delimiters, or symbols, which are used to separate types of information.

Table 5 identifies select AC's and provides a description of appropriate use, and illustrates some optional and **all** mandatory Action Remark entries and formats. Refer to the Service Center Case Recordation User Guide for conventions commonly used in the Action Remarks field. Following these guidelines will help to avoid the common data entry errors observed in this Case Recordation System program.

NOTE: **There are some conventions that *must* be followed in the data entry so that Public Land Statistics (PLS) output reports can be generated from the Case Recordation System. Whereas** Table 5 **provides the details, requirements for those items where most errors have been observed in data entry, are summarized below:**

A. Action Remarks **(MANDATORY)**

1. Dollar values are entered with the **$** sign, the whole number without commas, decimal, cents amount (2 places), and ***must*** end ***with a*** semicolon. If the value is less than a dollar, one zero must precede the decimal.

   For example: $2,500 is entered as **$2500.00;**
   75 cents is entered as **$0.75;**

2. Volume (or weight) values are entered without commas. At least one numeric character

must be entered to the right of the decimal point.

For example: 12,120 cubic yards are entered as **12120.0;**
13,330 tons is entered as **13330.0;**

3. Semicolon in Action Remarks: **One and only one** semicolon is allowed per line in Action Remarks.

B. General Remarks **(MANDATORY)**

Presently, the only mandatory mineral material information to be stored in the General Remarks record is the customer name from community pit and common use area. The two digit number after the semicolon in Action Remarks corresponds to the line number in General Remarks on which the applicants name is entered.

For example: If production of 2,000 cyds by John Smith has been entered in Action Remarks of AC 537 and the Action Remarks identified his production quantity followed with a 03 as **2000.0;03**, then John Smith's name is entered as **Smith John** in General Remarks on line 03.

C. Community Pit and Common Use Area Serial Numbers **(OPTIONAL)**

Large cases (e.g., with over 100 permits issued yearly) may be reserialized at the beginning of each FY. This option decreases the size of the case and Serial Register Page.

When reserializing an old case cross reference the serial number of the new case in the General Remarks of the old case and enter AC 970 as of the end of the FY in the old case.

In the new case, record the original dates from the original case for action codes 387, 669, 005, 106, 276, and the latest 132. Cross reference the serial number of the old case in the General Remarks. Summarize the total permitted, produced, value, and reclamation cost up through the end of the previous case(s). This will assist in tracking and calculating amount of reserves remaining in the pit and reclamation

amounts received. Continue entering the permitted, produced, and reclamation action codes and customer name in General Remarks for each new permit.

Table 5. Selected Action Codes

Optional & Mandatory Remarks

At a **minimum**, the AC's indicated below and listed for the individual case types are **Mandatory** to be entered for each case in order to generate a report.

Sales and Free Use Permits

124 - Application Received	All cases other than trespass, community pit, or common use areas are started with AC 124.	**MANDATORY**
387 - Case Established	Use for establishment of community pits, common use areas and trespass.	**MANDATORY**
276 - Permit/ Contract Issued	Enter when permit/contract is authorized, or when letter of authorization is issued of com. pit or common use area is approved. AC 276 should not be used for each sale or permit within a case (e.g., individual sales from a community pit.)	**MANDATORY**
763 - Expires	Enter the future date when the authorized permit/contract expires. AC 763 should not be used for each sale or permit within a case (e.g., individual sales from a community pit.)	**MANDATORY**

132 - Appraisal/Reappr Apprvd	Enter the value of material per unit of measurement. The remarks information is used to compute total values and produced values by multiplying the value of AC 132 by the values in AC's 507 or 508 to equal AC 509 and AC 132 by AC 537 or AC 538 to equal AC 539. The action date for appraisals made prior to case establishment, such as the area-wides, is the date the appraisal is applied to the subject case.	**MANDATORY** Enter the dollar sign, the whole number, without commas, the decimal, cents amount, and an ending semicolon. **After the semi-colon a unit of measure is required.** If the value is less than a dollar, one zero must precede the decimal. Ex: $1000.00;TN or $0.50;CY *NOTE*: **The actual date of the appraisal is stored in General Remarks.**

	For reporting purposes, this date must not precede the date of AC 124. See 2nd example to the right.	Public Land Statistics (PLS) output reports require only one semicolon per Action Remarks line. The PLS report also **REQUIRES** that you enter two decimal places after the decimal point in Action Remarks, as well as entering the ($) dollar symbol. The PLS programs **REQUIRE** that the initial appraisal AC 132, **PRECEDE** AC's 507 (cyds) or 508 (tons). This is to indicate the current appraised value of the contract/permit in force. For subsequent reappraisals, AC 132 should be placed in logical date sequence as they occur during the lifetime of the case. Each time the contract/permit is reappraised with a value assigned, there needs to be a different appraised AC 132 that **PRECEDES** the renewed 507 or 508 action code figure. For Community Pits and Common Use Areas, where the AC's 507 and 508 may appear multiple times during the case history, it is only necessary that the AC 132 **PRECEDE** those 507 or 508 action codes that relate to reappraisals for renewal.

144 - Payment in lieu of Production	Enter Date Payment Received in lieu of Production or operations. Use for 3140, 32, 34, 35 and 36 case groups. For case group 36, use when payment is made in lieu of production.	Enter amount, semicolon, and applicable year in action remarks. Ex: $3840.00;11th year For amount entry format, see AC 132.

507 - CONTD/PMTD - CUYDS	Defined as contract/permit total yards. Enter (contract/permit) volume in cubic yards when contract/permit is authorized. Show the total amount of material to be removed during the life of the case. Negative entries can be made when contracted volumes have to be adjusted. Each individual small sale contract volume from community pits (case type 3605) are entered as individual 507 or 508 action codes as appropriate.	**MANDATORY** There are 10 available positions to enter numbers to the left of the decimal point. **DO NOT USE COMMAS.** *NOTE*: **The entry of commas has been a common mistake during the history of the data entry program. Do not use commas with numbers. Follow whole numbers by entering a decimal point, and next enter one numeric character to the right of the decimal point. End the line with a semicolon.** Ex: 12,560 cyds is entered as 12560.0; in Action Remarks *NOTE*: ***ONE AND ONLY ONE*** **semicolon is allowed per line in Action Remarks. For sales from a community pit, a two digit code such as "01" is entered *after* the semicolon and the sale is reference to the customer name in General Remarks. DO NOT add a second semicolon after the "01".** See AC 106 for negative entry format. *NOTE*: **The PLS program**

508 - CONTD/PMTD - TONS	Defines as Contract/Permit Total Tons.	See AC 507 above for entry convention.
509 - CONTD/PMTD Total Value	Defined as Contract/Permit Total Value. Compute total value as shown in AC 132 above and enter the dollar figure in Action Remarks.	**MANDATORY** As in any dollar value, (see format for AC 132), enter the $ followed by up to 10 numeric characters (for whole numbers) a decimal point and 2 characters (to the right of the decimal point) for cents, and end the line with a semicolon. Ex: $15757.00; *NOTE*: **You *MUST* enter both** AC 509 and AC 539. **The reason that these quantities must be entered is that the Case Recordation System data base does not perform any computations. Therefore, in order to see these items displayed on routine Serial Register pages or Case Abstracts, users must enter the Total and Produced Value quantities.** (The PLS output reports: M19, M20, and M21 contain programming which does perform computations to achieve quantities for AC's 509 and 539.)

022 - Reclamation Cost Determined	Use to enter dollar value for the total reclamation cost for the site, and the per unit reclamation fee along with unit of measure (3604 & 3605 case types). AC 022 is also used to show adjustments in this cost target for reclamation when the permittee performs reclamation In-lieu of the reclamation fee.	**MANDATORY** Enter estimated amount to reclaim the pit and the per unit reclamation fee. Ex: $98000.00;$0.10/CY or $98000.00;$0.10/TN In-lieu work is entered as a negative number. Ex: -$1250.00;02 Permittee is identified by the suffix "02".
537 - Produced CUBIC YARDS	Enter production units when paid for or removed. The first payment should be entered as production, even if it is the only payment.	**MANDATORY** Enter units as in AC 507.

	Enter Disposals from community pit or common use area with a two-digit identifier in the action remarks which corresponds with General Remarks on which the producers is listed.	For cases where there is more than one party removing from the pit, such as in community pits, identify each producer by a two-digit number corresponding to the same line number in General Remarks. Ex: 125.5;02. Where “02" corresponds to line “02" in General Remarks which contains the customers last name followed by the customer’s first name, and if necessary the customer’s middle initial. *NOTE*: **The PLS program *REQUIRES* that the user enter a decimal point, and at least 1 position to the right of the decimal point, even for zero production in recording the produced quantity in Remarks.** Ex: Zero production is entered in Action Remarks as, 0.0;
538 - Produced Tons	Follow instructions for AC 537 above.	See AC 537 above.

539 - Produced Value	Enter the dollar value of production by multiplying the last appraised value (AC 132) by the number of yds (AC 537) or tons (AC 538) produced	**MANDATORY** Follow Dollar entry guidelines outlined in the previous instructions for data entry for AC 132 and AC 509. Identify individual customers from nonexclusive sites using the line number reference guidance related in the previous instructions and discussions for (AC 537) above. *NOTE*: **You *MUST* enter both** AC 509 **and** AC 539 **data.** The PLS program **REQUIRES** the entry of a dollar ($) symbol, up to 10 positions to the left of the decimal point, a decimal point, and at least two positions to the right of the decimal point. Ex: $50,000.00 as $50000.00; 50 cents as $0.50;
540 - Reclamation Payment Received	For use with community pit & CUA. Use to show reclamation fee paid on production. Enter reclamation in lieu as negative value -$00.00; The value of such work should be subtracted from the total cost of pit reclamation, by coding in a negative entry.	**MANDATORY** Enter dollar amount in standard format. Identify producers with the same numeric indicator as in AC 537.

244 - Case Terminated	This action code is one of two AC's which must be used to set the Case Disposition when closing out a case. This code is used when either as the result of Bureau decision or proprietor's exhausting of the resources of the authorized area the land no longer supports the original authorization. This code is reserved for situations where the resources are exhausted or the authorization is terminated **PRIOR** to the authorization expiration date.		
234 - Expired	This AC is the second of the mandatory AC's used to set the Case Disposition when closing out a case. AC 234 is used when authorization expires in accordance with contract or permit conditions.		
970 - Case Closed	This action code **must** be used to close out all cases. Sets the case disposition to closed.		

UNAUTHORIZED USE		
387 - Case Established	Used for trespass cases, and establishing community pits and common use areas.	Enter the date when case was established. For trespass enter date when trespass was discovered.
017 - Notice of Trespass Sent	For recording when notice is sent.	Enter date notice was sent.
167- Administrative Negotiation		Enter when the trespasser has acknowledged the trespass and the case is in administrative negotiation.
021-Trespass Payment Received		Enter as in any dollar value (See format for AC 132).
018 - Trespass Resolved		Enter if trespass is settled or no trespass occurred.
402 - Trespass Unresolved	Case cannot be resolved.	Enter if trespass actually occurred but trespasser cannot be found.
244 - Terminated		
967 - Case Closed without Action		
970 - Case Closed		

Examples of Mineral Material Case Entries into the Case Recordation System

A. Negotiated Sale - Case Type 361113

Events	Entry
1. On May 28, 1987, Robert Jones Construction applies for 45,000 cyds of sand & gravel at a certain location.	Build the case abstract using case type 361113 and commodity code 525. To complete Record 5, use action date **05/28/1987** and AC 124.
2. Land Status was Checked on May 29, 1987	Enter **05/29/1987**, and AC 669
3. After the land is determined to be available, a NEPA analysis is done and approved or signed on June 10, 1987.	Call up your abstract or action update and enter the date, **06/10/1987**, AC 005, and any action remarks you may want to include.
4. On June 12, 1987, it is determined that an area-wide appraisal approved 02/10/1987 applies for the material in this site. The material is valued at 50¢/cyd.	Enter the date, **06/12/1987**, AC 132, and $0.50;CY in Action Remarks. The area-wide appraisal information (02/10/1987) should be placed in General Remarks.

5. Authorized officer approves and signs a contract for 45,000 cyds, on 06/20/1987, which expires 06/20/1992.	Enter **06/20/1987**, AC 276. On next line enter same date, AC 507 and 45000.0; in Action Remarks. *NOTE*: **Remember to *ALWAYS* enter a decimal point and at least 1 (for volume) and 2 (for Dollar Values) positions to the right of the decimal point. The PLS *REQUIRES* this to correctly calculate totals. On next line enter same date**, AC 509 **and** 22500.00; **in Action Remarks (the result of multiplying** AC 507 (45000) by AC 132 ($0.50/CY)). Enter AC 763 with expiration date **06/20/1992**;
6. The next day, Mr. Jones comes to pick up the contract and pay for 4,500 cyds. of sand & gravel to be removed immediately.	Enter **06/21/1987**, AC 537 & in Action Remarks, 4500.0; On the next line, enter same date, AC 539 and in Action Remarks enter $2250.00; the result of multiplying AC 537 by the most recent AC 132.
7. May 15, 1989, Jones makes a payment **in-lieu of production** equal to 10 percent (%) of total contracted value, or $2,250. This pays for 4,500 cyds.	Enter **05/15/1989**, AC 144 and $2250.00; 2nd year in Action Remarks.
8. April 1, 1990 the office receives a check from Jones for 20,500 cyds. Applying his in lieu payment of 4,500 cyds, he now removes 25,000 cyds.	Enter **04/01/1990**, AC 537 and 25000.0;. On the next line, enter same date, AC 539 and in Action Remarks, $12500.00; the result of (25000 x $0.50).

9. Compliance check is performed. Report is finalized 05/10/1990.	Enter **05/10/1990**, AC 041 and any pertinent comments or perhaps date of actual inspection in Action or General Remarks. Date would be entered in the format **MM/DD/YYYY**
10. 05/20/1991 it is determined that the site contains 2,000 cyds **less** than originally contracted for. The contract is amended.	Enter **05/20/1991**, AC 507 and in Action Remarks -2000.0;. On the next line enter the same date, AC 509 & in Action Remarks, -$1000.00;
11. New appraisal approved **05/30/1991** establishes new value of 60¢ per cyd.	Enter **05/30/1991**, AC 132 and in Action Remarks $0.60;**cy**
12. Jones pays for 6,000 cyds on 06/30/1991.	Enter **06/30/1991**, AC 537 and in Action Remarks 6000.0;. On the next line, enter same date, AC 539 and in Action Remarks $3600.00;
13. On March 01, 1992, Jones pays for the remaining 7,500 cyds.	Enter **03/01/1992**, AC 537 and in Action Remarks 7500.0;. On the next line, enter same date, AC 539 and in Action Remarks $4500.00;
14. June 10, 1992, site is inspected and found satisfactory	Enter **06/10/1992**, AC 041 and any pertinent comments in Action or General Remarks.
15. June 20, 1992, contract term expired	Enter **06/20/1992**, AC 234
16. August 10, 1992, case closed	Enter **08/10/1992**, AC 930

B. Community Pit Establishment & Disposal - Case Type 360413

Events	Entry
1. An area is sited for a community pit on 01/15/86,	Build the case abstract using case type 360413, the proper commodity code and begin the action record sequence as: **01/15/1986**, AC 387
2.Land status is checked	**01/15/1986**, AC *669*
3. NEPA analysis is completed.	**01/29/1986**, AC 005
4. The NEPA analysis reveals a needed change in location	Go into the case abstract and modify the location and acreage as necessary.
5. Appraisal on 02/10/1986 determines the value of material as 50¢ per cyd.	Enter **02/10/1986**, AC 132, and Action Remarks $0.50;CY
6. Total estimated cost to reclaim pit is $12,500 at a reclamation fee of 10¢ per cyd. Determination made on 02/13/1986.	Enter **02/13/1986**, AC 022, and Action Remarks $12500.00;$0.10
7. Community Pit approved, on 02/15/1986.	**02/15/1986**, AC 276, 125000.0; In Action Remarks enter estimated total volume of removable materials cyds. (As an option decided to record this in Action Remarks for future reference.

8. **02/16/1986** Sam Smith buys 500 cyds. (Also pays reclamation fee)	**02/16/1986**, AC 507, 500.0;01 **02/16/1986**, AC 509, $250.00;01 **02/16/1986**, AC 537, 500.0;01 **02/16/1986**, AC 539, $250.00;01 **02/16/1986**, AC 540, $50.00;01 (On line 01 in General Remarks enter Smith Sam)
9. 03/15/86, Joe White, contracts for 6,000 cyds. of material. Pays up front the total contract amount including the reclamation fee.	**03/15/1986**, AC 507, 6000.0;02 **03/15/1986**, AC 509, $3000.00;02 **03/15/1986**, AC 537, 6000.0;02 **03/15/1986**, AC 539, $3000.00;02 **03/15/1986**, AC 540, $600.00;02 (On line 02 in General Remarks enter White Joe)
10. Rivers construction buys 100 cyds. on July 5, 1986 (plus reclamation fee).	**07/05/1986**, AC 507, 100.0;03 **07/05/1986**, AC 509, $50.00;03 **07/05/1986**, AC 537, 100.0;03 **07/05/1986**, AC 539, $50.00;03 **07/05/1986**, AC 540, $10.00;03 (On line 03 in General Remarks enter Rivers Construction)
11. August 20, 1986, Joe White pays for an additional 1,000 cyds. of material under the 3/15/86 contract, plus reclamation fee.	**08/20/1986**, AC 537, 1000.0;02 **08/20/1986**, AC 539, $500.00;02 **08/20/1986**, AC 540, $100.00;02
12. 03/18/87 material in pit is reappraised at 75¢ per cyd. and so on for the life of community pit.	**03/18/1987**, AC 132, $0.75;CY

C. Exploration Permit - Case Type 360213

Event	Entry
1. On May 11, 1990, Chavez County applies for an exploration permit for caliche.	Build the case abstract using Case Type 360213, commodity code, 098, and begin action record sequence as: **05/11/1990**, AC 124
2. Land status is checked on 5/15/1990	**05/15/1990**, AC *669*
3. Roswell Resource Area staff complete an Environmental Assessment (EA) on the proposed site, including an archeological clearance, on June 15, 1990. The result of the EA is a recommendation for authorization.	**06/15/1990**, AC 005
4. On June 18, 1990, the Area Manager approves a 30-day exploration permit and the Chavez County Commissioner signs the permit.	**06/18/1990**, AC 276 **07/18/1990**, AC 763
5. On June 20, 1990, an auger working for Chavez County completes a test drilling program on the site with the District geologist witnessing the operation. The results of the drilling program are negative. The geologist files a compliance report with the Resource Area Office.	**06/20/1990**, AC 041

6. The expiration date of the permit passes without correspondence from the County.	**07/18/1990**, AC 234
7. The District Geologist contacts the Chavez County Commissioner to inquire if there is still interest in the permit.	**07/19/1990**, AC 104
8. Chavez County informs the Resource Area on July 20, 1990, that it has no interest in site. The Resource Area staff close the case.	**07/20/1990**, AC 103 **07/20/1990**, AC 970

D. Unauthorized Use - Case Type 360313

Event	Entry
1. On April 2, 1990, Resource Area range staff identify a new pit where trucks and equipment are mining and hauling sand and gravel from the site.	Build the case abstract using Case Type 360313, commodity code, 525, and begin the action sequence as: **04/02/1990**, AC 387
2. On April 3, 1990, the Area Geologist checks land status and finds no authorization for removal of mineral materials from this site exists.	**04/03/1990**, AC 669
3 The Area Geologist visits the site and verifies that extraction is occurring and identifies the operator as ACNE Sand and Gravel.	**04/15/1990**, AC 041
4. He serves the foreman with a Notice of Trespass, and follows up with a certified copy to the company headquarters.	**04/15/1990**, AC 017
5. On May 11, 1990, BLM computes the volume of material removed as 10,000 cubic yards, assigns a value of $0.25 per cubic yard from an area-wide appraisal dated 12/1/1989.	**05/11/1990**, AC 132, $0.25;CY **05/11/1990**, AC 023, 10000.0;
6. On May 12, 1990, BLM sends a trespass payment request to ACNE Sand and Gravel for $2,700 which includes $2,500 as value of trespassed material plus $200 other applicable costs related to the trespass.	**05/12/1990**, AC 019, $2700.00;

7. On May 16, 1990, ACNE Sand and Gravel pays $2,700 for the trespass settlement, and completes reclamation.	**05/16/1990**, AC 019, $2700.00;
8. On July 16, 1990 after compliance inspection BLM determines the site to be responding to the reclamation	**07/16/1990**, AC 041
9. On September 14, 1990, after compliance inspection the reclamation is found to be completed. Trespass is resolved.	**09/14/1990**, AC 041 **09/14/1990**, AC 018
10. On September 18, 1990, the BLM formally closes the trespass case.	**09/18/1990**, AC 970

APPENDIX 5a - Reporting of Reclamation Acreage

The purpose of this Appendix is to provide guidance for reporting reclamation performance.

It is Bureau of Land Management (BLM) policy to collect and report entry of reclamation data in the Legacy Rehost 2000 (LR2000) for casetypes 35xxxx and 36xxxx. Use of Action Codes 528 (acres disturbed) and 529 (acres reclaimed) is mandatory.

The Department of the Interior's (DOI) Strategic Plan Performance Measure 2.3.09 requires monitoring the number of acres of non-energy mineral operations reclaimed to appropriate land condition and water quality standards. Field offices obtain data for this performance measure from LR2000 and the Alaska Land Information System (ALIS). Use of these action codes in LR2000 for the mineral materials and non-energy leasing casetypes was optional, causing inconsistent reporting by offices. Reporting this data and use of these codes is now mandatory.

Accuracy and the proper coding of this work are essential to the BLM's success to direct funding to priority work and account for performance to the Congress, Office of Management and Budget, and DOI. Accurately accounting for our work and funds will provide the BLM an accountability tool to successfully compete for funds in the increasingly constrained Federal budget. The BLM will be able to provide timely responses to questions on where we spend our money and what we are accomplishing with those dollars.

AC 528-529 Data Standards - Reclamation Action Codes in LR2000

Domain Code	Domain Name	Line #	Description
528	ACRES DISTURBED	1	ENTER DATE OF INSPECTION. USE ON 35, 36,
		2	3715, 3802, 3809 & 3814 CASE TYPES.
		3	ENTER NUMBER OF ACRES DISTURBED
		4	FOLLOWED BY A SEMICOLON IN ACTION
		5	REMARKS. EXAMPLE: 7.5;
529	ACRES RECLAIMED	1	ENTER DATE OF RECLAMATION
		2	COMPLETED. USE ON 35, 36, 3715, 3802,
		3	3809 & 3814 CASETYPES.
		20	ENTER NUMBER OF ACTUAL ACRES
		22	RECLAIMED FOLLOWED BY A
		30	SEMICOLON IN ACTION RMKS,
		50	EXAMPLE: 5.0;

APPENDIX 6 – Free Use Permits for Mineral Materials Production and Use by the Bureau of Land Management

This Appendix provides guidance to ensure that the Bureau of Land Management (BLM) issues free use authorizations in a consistent manner.

The BLM requires a free use permit for any action by the BLM that involves excavation of in-place mineral materials, rock stockpiles (e.g., mine waste rock dumps, abandoned placer tailings) or boulders to obtain materials for BLM use for construction, road maintenance, or project-related uses. Title 43 CFR 3604.12 provides, "Any Federal…agency…may apply for a free use permit to extract and use mineral materials."

Simple earthwork that involves cut and fill and re-contouring of mineral materials on public lands for mine site or stream channel reclamation does not require a permit. The BLM must use the appropriate National Environmental Policy Act (NEPA) review (e.g., categorical exclusion, environmental assessment (EA), or environmental impact statement (EIS)) for the action proposed for the pit and the overall project.

The BLM must self-issue a free use permit and conduct, monitor, and track BLM operations and work performed by any designated agents. The permit duration must be appropriate for the proposed use. The BLM must properly document all permits, inspections, and production in the case records and the BLM computer database systems (i.e., Legacy Rehost 2000/Alaska Land Information System and Management Information System/ Performance Management Data System). Field offices must identify both special projects and base programs in the Budget Planning System to the extent feasible.

The BLM is subject to the same regulatory and statutory requirements as other agencies. The BLM uses mineral materials for a wide variety of construction and maintenance projects in support of other programs and must follow consistent business practices for such activities. The BLM may fund these construction or maintenance projects through benefiting subactivities that initiate the project or by cooperating entities. The BLM may conduct the work directly through BLM operations crews or BLM-designated agents, such as contractors, cooperating agencies, companies, or project volunteers.

Common mineral material uses for gravel and rock materials by BLM include fill and base for construction of BLM roads, top surfacing, and road maintenance. Other common material uses by the BLM include abandoned mine reclamation (e.g., cover materials for repositories), dam construction, and wildlife/fisheries habitat improvement projects (e.g., check dams, boulders).

APPENDIX 7 – State Certification of Weight Scales Used by the Bureau of Land Management for Mineral Materials Production Verification

This appendix provides guidance to ensure the accuracy of production reports from purchasers and permittees. The Royalty Policy Committee has required that the Bureau of Land Management (BLM) obtain documentation verifying State certification of scales that purchasers or permittees use for production reporting and verification where the State requires weight-scale certification.

Whenever the BLM offices issue mineral materials sales and permits requiring production reporting by weight, the BLM offices must obtain copies of the State certification of weight scales whenever the State requires weight-scale certification. This policy applies to any weight scales used for a mineral materials sales contract or permit (public scales and portable scales).

Whenever possible, a BLM representative must witness the scale certification process by the State. The field office must document actual state certification of weight scales, and place any reports of BLM-witnessing actions in the applicable case files. If the BLM witnesses a scale certification, record the action in Legacy Rehost System 2000 (LR2000) as "**Witness scale cert**" in the Action Remarks field of Action Code 041. Documenting the BLM-witnessing in LR2000 completes that inspection action. Report the completed work as one unit of NF in the Performance Management Data System (PMDS).

If the State does not require certification of scales, or where a purchaser or permittee uses other weight measurement devices, the BLM must document the accuracy and reliability of the devices used in determining production payments and place the documentation in the applicable case files.

APPENDIX 8 – Surety Bond Template – Illustration 1

Contract Number _____

Bond Number _____

SURETY BOND
UNDER CONTRACT FOR MINERAL MATERIALS
July 31, 1947 (30 U.S.C. 601 et. seq.)

As expressly stated herein and pursuant to 30 U.S.C. § 601 *et seq.,* 31 C.F.R. part 223, Department of the Treasury Circular 570, 43 U.S.C § 1733, and 43 C.F.R. part 3600,
_____, as principal, and
_____, as surety, are held and firmly bound unto the United States in the sum of _____ dollars ($_____), lawful money of the United States, which may be increased or decreased by a rider hereto executed in the same manner as this bond, for the use and benefit of (1) the United States and (2) any owner of a portion of the land subject to the coverage of this bond, who has a statutory right to compensation in connection with a reservation of the above-mentioned deposits to the United States, for the payment of which we bind ourselves, and each of us, and each of our heirs, executors, administrators, successors, and assigns, jointly and severally.

Whereas the principal entered into the contract bearing the above contract number for the deposits therein, upon the lands described therein and upon conditions and stipulations therein expressed, in the event of any default on the part of the principal in the performance of those conditions and stipulations, it is agreed that the principal/surety will apply the bond or any portion thereof, to satisfy any damages, reclamation, assessments, penalties, or deficiencies arising by reason of such default, and any and all other conditions and stipulations set forth in this bond, the contract, and the regulations at 43 CFR part 3600. The principal and surety further agree that the United States Bureau of Land Management (BLM) may commence and prosecute any claim, suit, or other proceeding against the principal and surety, or either of them, without the necessity of joining the other principal(s) covered by the contract.

The surety's liability under this bond may not be terminated, and remains in full force and effect, unless:

1. The surety gives the principal and the BLM not less than 90 days written notice of the proposed termination by certified mail, return receipt requested, at their respective addresses as stated herein. The address for service to the BLM concerning this bond is
   _____
   _____;
   and

2. A replacement bond or other acceptable instrument that protects the interests of the BLM by covering all past, current, and future liability of the surety, is in place and has been accepted by the BLM.

NOW THEREFORE, if the principal, his or her successors and assigns, fully comply with the provisions of the above-referenced contract, as determined by the BLM, the above obligation will be null and void and this bond will be released and returned to the principal.

Executed this _____ day of _____, 20___.

_____
Obligor/Principal

_____

Authorized Representative and Title (Print Name)

_____
Signature

_____
Business Address

_____
Surety

_____
Attorney-in fact (print name)

_____
Signature

_____
Business Address

_____
Bureau of Land Management Authorized Official

APPENDIX 9 – Personal Bond Template – Illustration 2

Contract Number _____

Bond Number _____

PERSONAL BOND AND POWER OF ATTORNEY
UNDER CONTRACT FOR MINERAL MATERIALS
July 31, 1947 (30 U.S.C. 601 et. seq.)

As expressly stated herein and pursuant to 30 U.S.C. § 601 *et seq.,* 31 C.F.R. part 223, 43 U.S.C. § 1733, and 43 C.F.R. part 3600,
_____, as Obligor, is held and firmly bound to the United States in the sum of _____ dollars ($_____) lawful money of the United States, which may be increased or decreased by a rider hereto executed in the same manner as this bond, for the use and benefit of (1) the United States and (2) any owner of a portion of the land subject to the coverage of this bond, who has a statutory right to compensation in connection with a reservation of the above-mentioned deposits to the United States, for the payment of which the Obligor binds himself or herself, and each of his or her heirs, executors, administrators, successors, and assigns, jointly and severally. The Obligor hereby affirms he or she is obligated for the aforementioned amount and this bond is accompanied by the instrument specified below in that same amount:

___ Certificate of deposit

___ Cash bond with power of attorney

___ Irrevocable letter of credit

___ Negotiable Treasury bond of the United States

Whereas the Obligor has entered into a contract for the deposits therein, upon the lands described therein and upon conditions therein expressed, which contract bears the above contract number, the said Obligor does hereby, under the authority of Section I of the Act of September 13, 1982 (31 U.S.C. § 9303), constitute and appoint the Secretary of the Interior as his or her attorney-in-fact for the purpose of negotiating the certificates of deposit, cash, letters of credit, or negotiable Treasury bonds, and to transfer and apply the instrument identified above as security for the faithful performance of any and all of the conditions or stipulations set out in the contract referred to above. The Obligor further agrees that, in case of any default in the performance of the conditions and stipulations of such undertaking, the Secretary will have full power to assign, appropriate, transfer, and apply the instrument identified above or any portion thereof to the satisfaction of any damages, reclamation, assessments, penalties or deficiencies arising by reason of such default, and any and all other conditions and stipulations set forth in this bond, the contract, and the regulations at 43 CFR 3600 .

NOW THEREFORE, if said Obligor, his or her successors or assigns, fully comply with the provisions of the contract referred to above, as determined by the BLM, the above obligation will be null and void and the instrument will be released and returned to the Obligor. Otherwise, this obligation will remain in full force and effect unless replaced by a substitute bond or other acceptable instrument to protect the interests of the BLM and such bond or instrument is accepted by the BLM.

Executed this _____ day of _____, 20___.

_____
Obligor

_____
Signature of Authorized Representative and Title

_____
Business Address

_____
Bureau of Land Management Authorized Official

ACKNOWLEDGEMENT from Notary Public:

State of _____ County of _____

Subscribed and sworn to before me this _____

By _____.

My commission expires on _____.

Appendix 10

Number

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MINERAL MATERIAL
NONEXCLUSIVE CASH SALE CONTRACT

($2,000 or less for mineral material)

State:	**Date of Sale:**
Field Office/District:	
Community Pit/Common Use Area Serial Number:	
Site Name (if any):	
Name of Purchaser (First, Middle, Last)	
Address (include zip code):	

KIND OF MATERIAL	**UNITS (CY or TN)**	**QUANTITY**	**PRICE PER UNIT ($)**	**TOTAL PRICE ($)**
ROAD MAINTENANCE FEE				
RECLAMATION FEE				
	TOTAL PURCHASE PRICE			$

Purchaser is liable in advance for total price shown above. There will be no refunds. Additional materials will require an additional contract and payment before materials can be removed. This contract is made under the terms of Sec. 1 and the stipulations indicated in Sec. 2 and 3.

Contract Expires 11:59 P.M. – DATE (not to exceed 90 days):	**ALL MATERIAL MUST BE REMOVED FROM THE CONTRACT AREA BY MIDNIGHT OF THIS DATE**

Location of Sale (Contract Area):

RECEIVED AS PAYMENT IN FULL

ACCOUNT	**COUNTY**	**AMOUNT ($)**
P.D. (5881)		
O & C (5882)		
CBWR (5897)		
Road Maintenance Fee (9110)		
Road Maintenance Fee (9120)		
Reclamation Fee (5330)		

Purchaser certifies that he/she is not considered a minor under the laws of the State in which the lands covered by this contract are located. Purchaser acknowledges that he/she has read and understands the terms and conditions of this contract and any attached provisions.

Signature of Purchaser

Signature of Authorized Officer

SEC. 1 CONTRACT TERMS

(a) All material in contract area in excess of the authorized quantity is reserved by the United States.
(b) The quantity of material for removal is a predetermined amount.
(c) A new contract and payment in advance is required prior to Excavation, Processing and/or Removal of additional units which exceed the authorized quantity.
(d) Excavation, Processing and/or Removal in excess of the authorized quantity will subject the Purchaser to trespass action.

SEC. 2 GENERAL STIPULATIONS

Removal of all material must be in strict accordance with instructions of the Authorized Officer and the following conditions and requirements:

(a) No material may be excavated, processed or removed unless it is located within areas designated by the Authorized Officer. Title to material sold under this contract will remain in the United States and will not pass to Purchaser until such material has been removed from the contract area.
(b) Any property remaining on site after this contract expires, including extracted material, becomes the property of the United States.
(c) Nothing herein may be construed to relieve the Purchaser from liability for any breach of contract or any wrongful or negligent act or for any violation of any applicable regulation of the Department of the Interior.
(d) The Purchaser must take such measures for prevention and suppression of fire on the contract area and other United States lands as are required by applicable laws and regulations.
(e) The Purchaser must dispose of refuse in accordance with instructions of the Authorized Officer.
(f) If the Purchaser violates any of the provisions of this contract, the Authorized Officer may, by written notice, suspend any further operations of the Purchaser, except such operations as may be necessary to remedy any violations.
(g) If the Purchaser fails to remedy all violations within thirty (30) days after receipt of the suspension notice, the Authorized Officer may, by written notice, cancel this contract, and take appropriate action to recover all damages suffered by Government by reason of such violation.

SEC. 3 SPECIAL STIPULATIONS
(check appropriate block)
Attached
☐ Special Provisions (e.g., from mining/reclamation plan)
☐ Map(s)
☐ Other:
are made a part of this contract and must be complied with.

Form 3603-10

Original – Retain By BLM

INSTRUCTIONS

1. Monies collected from the sales of mineral material on Public Domain lands, Oregon and California Grant lands, or Coos Bay Wagon Road lands should be identified as 5881, 5882, or 5897 respectively.
2. Road maintenance fees collected on O&C and CBWR lands should be identified to Subactivity 9110 and those fees collected on Public lands to Subactivity 9120. Identify the proper subactivity by crossing out the non-applicable subactivity.
3. Fees collected for reclamation of mineral sites on O&C and CBWR lands should be identified to Subactivity 5310, and those fees collected on Public Domain lands to Subactivity 5330. Identify the proper subactivity by crossing out the non-applicable subactivity.

NOTICE

The Privacy Act of 1974 and the regulations in 43 CFR 2.48(d) provide that you be furnished the following information in connection with information required by this contract.

AUTHORITY: 30 U.S.C. 601, et seq.; 43 U.S.C. 1181a; 43 CFR 5400

PRINCIPAL PURPOSE: The information is to be used to identify the parties entering into a contractual agreement for the disposal of mineral.

ROUTINE USES: (I) Contact applicants or permittees about matters pertaining to a contract for the sale of mineral from public lands. (2) Report sales information to Congress pursuant to 30 U.S.C. 601 et seq. (3) Execute a contractual agreement for the disposal of mineral from public lands. (4) Information from the record and/or the record will be transferred to appropriate Federal, State, local and foreign agencies, when relevant to civil, criminal or regulatory investigations or prosecutions.

DISCLOSURES: Providing this information is voluntary. However, failure to provide the requested information will result in denial of the contract for the disposal of mineral from public lands.

APPENDIX 11
Unauthorized Use of Mineral Materials on Split Estate Lands

This Appendix clarifies Bureau of Land Management (BLM) policies for addressing unauthorized use of mineral materials by surface estate owners on split estate lands.

Processing mineral materials trespasses is a high priority for the BLM. Field offices must investigate and take enforcement actions on unauthorized removals of mineral materials from split estate land in accordance with established trespass procedures whenever the BLM identifies such removals. As part of the investigation, all BLM offices must verify, with the Office of the Solicitor, that the reserved mineral estate includes mineral materials. Title to reserved mineral estate can be complex and individual situations must be analyzed to determine if mineral materials are reserved.

A surface owner may extract, sever, or remove only minimal amounts of mineral materials from split estate land for personal use under 43 CFR 3601.71(b)(1) for purposes of improving the surface, even if the materials are not removed off of the tract.

The preamble to the *Federal Register* notice publishing the regulations explained the type of use that is regarded as "minimal personal use" for the purpose of 43 CFR 3601.71 (b)(1). The preamble reads:

> [W]ithout a contract or permit, or other express authorization, a surface estate owner may make only minimal personal use of federally reserved mineral materials within the boundaries of the surface estate. Minimal use would include, for example, moving mineral materials to dig a personal swimming pool and using those excavated materials for grading or landscaping on the property. It would not include large-scale use of mineral materials, even within the boundaries of the surface estate.

66 Fed. Reg. 58,894 (Nov. 23, 2001).

Do not confuse the term "landscaping" in the preamble explanation with specific mineral material landscaping products, such as decorative boulders, flagstone for walls and walkways, or crushed rock used for ground cover, all of which would require a sales contract. The phrase "using those excavated materials for grading or landscaping on the property" means that mineral materials that must be excavated in connection with surface use of the property may, without a contract, be spread on other parts of the surface of that same property regardless of the amount, so long as the material is unaltered and is not used for or in connection with any construction purpose.

The following situations generally would not fit within the minimal personal use exception as explained in the preamble, and would likely require a sales contract: (1) Any use of the mineral materials that involves some level of separation or alteration of the material into its component parts (e.g., screening, washing, crushing), blending with another product (such as cement), and/or otherwise recombining or reconstituting with native or other materials to form road base

material, building foundations, topsoil, utility trench liners, etc.; and (2) Any use of mineral materials for a construction purpose, such as for road base, building foundations, or ornamentation of individual residences or large projects, even if the material is not altered in any way.

Additionally, the preamble language was not intended to remove recognition of basic surface grading, leveling, etc. as an allowable activity by the surface estate owner. Simply grading, flattening, leveling or pushing material around within a site is distinguished from use for a construction purpose, and would likely be considered a non-use for which no contract would be required. This would be the case even for those areas where eventual road base material is placed or a building foundation is constructed.

This guidance is not an absolute directive and should be considered in the context of a given factual scenario. For instance, if certain native material has a consistency which would naturally form a road base, then grading, leveling, etc., of that material into a road base may be considered a mineral materials use and require a contract. Also, severing mineral materials from one site as cut material and then placing those materials at another site as fill material is considered severing the material for a mineral materials use and would likely require a contract.

In relation to housing development projects, the following guidelines are recommended.

(1) Grading, flattening, leveling, reshaping, etc., or cutting and filling of material at a site is likely non-use and would not require a contract from the BLM.

(2) Use of mineral materials (e.g., road base, building foundations) will generally be evident, and thus likely require a contract from the BLM, when native material is reconstituted in different combinations or blended with another non-native material, has another non-native material blended with it, or is altered in some way through a screening or crushing process.

(3) Exporting material from one site and hauling it to another site is considered severing the mineral estate and requires a contract.

Defining a "site" remains dependent on a reasonable interpretation of a given factual scenario. As an example, a "site" could be described as the boundaries of an individual patent for smaller patents (e.g., 5 acres or less). For larger patents, a "site" could be described as the individual sub-developments or subdivisions within the original patented parcel.