

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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Instruction Memorandum No. 2014- 085

Expires: 09/30/2015

To: All Field Office Officials

From: Assistant Director, Energy, Minerals, and Realty Management

Subject: Unauthorized Use of Mineral Materials on Split Estate Lands

Program Area: Mineral Materials.**Purpose:** This Instruction Memorandum (IM) clarifies policies for addressing unauthorized uses of mineral materials by surface estate owners, including unauthorized personal uses of the mineral materials.**Policy/Action:** Processing mineral materials trespass is a high priority for the Bureau of Land Management (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.

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. 58894 (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, and crushed rock used for ground cover. 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 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.

Any separation or alteration of the various constituents of the material, through methods such as screening or crushing, constitutes a mineral use of the materials and requires a contract or permit. Furthermore, any use of the materials in a construction project, such as for road base, building foundations, or ornamentation, also constitutes a mineral use of the materials – even if the material was not altered in any way – and also requires a contract or permit.

Timeframe: Effective immediately.**Budget Impact:** This policy will not result in any additional impact to mineral materials budgets.**Background:** On split estate parcels, mineral materials can be reserved under numerous Federal and State laws. Title to reserved mineral estate can be complex and individual situations must be analyzed to determine if mineral materials are reserved. BLM regulations at 43 CFR 3601.71(b)(1) do not quantify the minimal amount allowed for personal use and the *Federal Register* preamble explanation of minimal quantities is not reproduced in the regulations. Handbook H-9235-1, *Mineral Materials Trespass Prevention and Abatement*, provides extensive guidance on investigation and enforcement procedures but it does not define limited personal use.**Manual/Handbook Sections Affected:** This IM transmits interim policy that we will incorporate into H-3600-1, *Mineral Materials Disposal Handbook*, at Section X.C., and H-9235-1, *Mineral Materials Trespass Prevention and Abatement Handbook*, at Sections V.5 and 6 during the next revision.**Coordination:** The Division of Solid Minerals consulted with State Offices, and coordinated preparation of this guidance with the Office of the Solicitor.**Contact:** If you have any questions concerning the content of this IM, please contact me at 202-208-4201, or your staff may contact Mitchell Leverette, Division Chief, Solid Minerals (WO-320), at 202-912- 7113 or mleverette@blm.gov, or

George Brown, Geologist, Solid Minerals (WO-320), at 202-912-7118 or g1brown@blm.gov.

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

Authenticated by:
Ambyr Fowler
Division of IRM Governance, WO-860

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