



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release
3-347

Date
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Subject

MS-3600 – MINERAL MATERIALS DISPOSAL - APPENDIX 1
Prohibited Mineral Materials Transactions

1. Explanation of Materials Transmitted: Appendix 1 identifies transactions involving mineral materials that are prohibited because they exceed the Bureau of Land Management's authority.
2. Reports Required: None.
3. Materials Superseded: None.
4. Filing Instructions: File as directed below.

REMOVE

INSERT

None

All of Appendix 1
(Total: 3 pages)

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Assistant Director
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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

MANUAL TRANSMITTAL SHEET

Release

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Date 2/22/2002

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3600 - MINERAL MATERIALS DISPOSAL

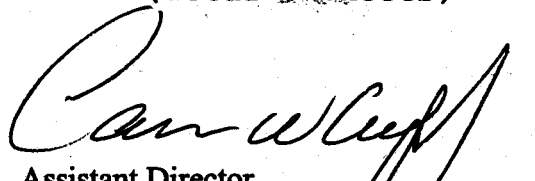
1. Explanation of Material Transmitted: This release revises Manual Section 3600 - Mineral Materials Disposal in its entirety. The revised Manual incorporates changes in policies resulting from the revision of regulations in 43 CFR 3600. Guidelines for processing disposals and all of the appendices have been deleted in an effort to eliminate technical instructions more appropriately found in handbooks.
2. Reports Required: None.
3. Materials Superseded: The Manual material superseded by this release is listed under "REMOVE" below. No other directives are superseded.
4. Filing Instructions: File as directed below.

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All of 3600 (Rel. 3-80 and 3-213)
(Total 23 sheets)

Insert

3600
(Total 6 Sheets)


Assistant Director
Minerals, Realty & Resource Protection

3600 - MINERAL MATERIAL DISPOSAL

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3600 - MINERAL MATERIAL DISPOSAL

.01 Purpose. This manual section provides the policies, procedures, and references for processing the disposal, exploration, development, and mining of mineral materials, and reclamation of lands disturbed by such activities.

.02 Objectives. To assure that mineral material disposal are processed within prescribed Departmental procedures and judicial case laws on the matter.

.03 Authority.

A. Laws.

1. The Materials Act of July 31, 1947 (61 Stat. 681, 30 U.S.C. 601 et seq.) as principally amended by:

a. The Act of July 23, 1955, Public Law 167 (69 Stat. 367, 30 U.S.C. 601) and

b. The Act of September 28, 1962 (76 Stat. 652, 30 U.S.C. 601).

2. The Federal Land Policy and Management Act of 1976 (31 U.S.C. 1732 and 1734).

3. The Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

4. The Federal Highway Act of 1958 (23 U.S.C. 107(d) and 317).

5. Stock-Raising Homestead Act of 1916 (43 U.S.C. 299, as amended; (39 Stat. 865; 107 Stat 60)).

6. Taylor Grazing Act of 1934 (48 Stat. 1272, as amended; 43 U.S.C. 315g).

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7. Small Tract Act of 1938, (52 Stat. 609), as amended by the Act of June 8, 1954 (68 Stat. 239; 43 U.S.C. 682a).

8. Alaska Native Allotment Act of 1906, (43 U.S.C. 270-273, 34 Stat. 197, as amended by 70 Stat. 954).

9. Alaska Native Claims Settlement Act of 1971, (43 U.S.C. 1601).

10. Reclamation Project Act of August 4, 1939. (43 U.S.C. 387).

B. Regulations.

1. 43 CFR 3600 - Mineral Materials Disposal

2. 43 CFR 3710 - Public Law 167; Act of July 23, 1955

3. 43 CFR 3814 - Disposal of Reserved Minerals Under the Stockraising Homestead Act.

4. 43 CFR 1810 - Public Administrative Procedures

5. 43 CFR 9230 - Trespass

C. Case Law.

1. Watt v. Western Nuclear, Inc., 103 S.Ct 2218 (June 6, 1983).

2. United States v. Coleman, 390 S.Ct 599 (April 22, 1968)

3. McClarty v. Secretary of the Interior, 408 F.2d 907, 908 (9th Cir. 1969)

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.04 Responsibility.

A. The Director and Deputy Director are responsible for establishing overall policy and guidance for the management of mineral resources administered by the Bureau of Land Management (BLM). This responsibility is exercised through the Assistant Director, Minerals, Realty and Resource Protection.

B. State Directors, or designated Authorized Officers are responsible for the management of mineral materials administered by the BLM, within their respective areas of jurisdiction.

.05 References. See BLM Handbook H-3600-1

.06 Policy. It is BLM policy to dispose of mineral materials, provided adequate measures are taken to protect the environment and that damage to public health and safety is minimized. Since disposal of mineral materials is discretionary, no disposals will be made if it is determined by the Authorized Officer that the total damage to public lands and resources would exceed the expected public benefits derived from any proposed disposal.

.07 File and Record Maintenance. Refer to GRS/BLM Combined Records Schedule.

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.1 Limitations.

A. Disposal Prohibited. The BLM will not dispose of mineral materials if any of the following conditions exist:

1. The lands are included in National Parks, National Monuments, National Forests, National Wilderness Areas, or Indian Lands.

2. There are conflicting non-mineral applications or entries pending which involve title to the mineral estate, such as sales or exchanges.

3. Disposal would be in conflict with the current BLM land use plan.

4. Disposal is otherwise prohibited by law.

B. Disposal Restricted.

1. Withdrawn Lands. Disposals may be made from lands withdrawn on behalf of another Federal department or agency (other than Interior), State or local government agency, if the other department or agency consents to the disposal. (See 43 CFR 3601.13.)

2. Restricted Lands.

a. Disposal of mineral material from powersite lands, administered by the Federal Energy Regulatory Commission (FERC), is allowed under a July 20, 1966, memorandum of understanding between the BLM and FERC.

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b. Disposals from lands withdrawn or acquired on behalf of the Bureau of Reclamation are allowed pursuant to a March 25, 1983, memorandum of understanding between BLM and the Bureau of Reclamation.

3. Stockraising Homestead Act (SRHA) Lands. Disposal of mineral materials from SRHA lands may be made by the BLM, provided conditions found in Section 9 of the 1916 Act and in 43 CFR 3814 are met.

4. Acquired Lands. Material disposals may be made from acquired lands managed by BLM under the same procedures and authorities as disposals from public lands, unless otherwise prohibited by terms of the conveyance document. For disposals from Section 8, Taylor Grazing Act acquisitions, each conveyance document must be reviewed to determine the extent of the mineral reservation and any additional provisions governing the disposition of minerals.

5. Small Tract. Disposal of mineral materials from Small Tract lands (lands patented under the Small Tract Act of 1938) may be made by the BLM under the same procedures and authorities as disposals from public lands, unless otherwise prohibited by terms of the conveyance document. Each Small Tract conveyance document involved in the disposal must be reviewed to determine the extent of the mineral reservation and any additional provisions governing the disposition of minerals.

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6. Alaska. BLM may not dispose of mineral materials from lands included in a native allotment either before or after a certificate of allotment under the Alaska Native Allotment Act of May 17, 1906, has been issued. Disposal from lands selected, but not conveyed, under the Alaska Native Claims Settlement Act (ANCSA) may be made only under provisions of 43 CFR 2650.1 and special procedures provided by the Secretary. Disposals may not be made from lands selected by, but not yet conveyed to, the State of Alaska. In addition all disposals must be made in accordance with Chapter II of BLM Manual Handbook H-3600-1.

7. Jurisdictional Boundaries. Material disposals, that which by nature of the mining unit necessitate overlaps between Forest Service and BLM jurisdictional boundaries may be accomplished by a specific memorandum of understanding.

8. Lands Encumbered with Unpatented Mining Claims. BLM will not dispose of mineral materials from unpatented mining claim if such a disposal would endanger or materially interfere with the mining, processing, or exploration and reasonably incident activities.

The BLM will not dispose of mineral materials from a pre-July 23, 1955, unpatented mining claim without making a determination that it has a right to dispose of mineral material from the claim.

Chapter X of BLM Manual Handbook H-3600-1 provides guidance for disposal from unpatented mining claims.

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.2 Unauthorized Use. Except when authorized by sale, permit, or other authorized use under the laws and regulations of the Department of Interior, the extraction, severance, or removal of mineral materials from public lands under the jurisdiction of the Department of the Interior is unauthorized use. Procedures for reporting and processing unauthorized use cases must conform to BLM Manual 9230, 9235, and BLM Manual Handbook H-9235-1. Procedures for collection of damages can be found in BLM Manual 9235 and BLM Manual Handbook H-9235-1.

APPENDIX 1 – Prohibited Mineral Materials Transactions

This Appendix identifies transactions involving mineral materials that are prohibited because they exceed the Bureau of Land Management's (BLM) authority.

All offices must ensure that authorizations for disposals of mineral materials are in accordance with the law and regulations to prevent augmentation of BLM's appropriation, which is illegal.

Periodically, field offices propose to (Scenario 1) trade mineral materials to private contractors as payment for services for a variety of projects, or (Scenario 2) engage the services of an operator who has a mineral materials contract to extract and crush additional materials for BLM use in a nearby project (e.g., reclamation, road maintenance work) in exchange for the BLM's release of the operator's contractual obligation to pay the purchase price and/or reclamation fees for some or all of the materials included in its mineral materials contract.

Such transactions are not acceptable because they violate the BLM's mineral materials disposal authority and inappropriately augment the BLM's appropriation.

Regarding the first scenario above, BLM trading mineral materials for services, mineral materials disposal is governed by the Materials Act, as amended, 30 U.S.C. § 601 *et seq.* Mineral materials may be disposed of “*only in accordance with the provisions*” of that act, and “upon the payment of adequate compensation therefore, to be determined by the Secretary.” (30 U.S.C. § 601 (emphasis added)). An exception authorizing free use is provided for noncommercial, nonindustrial use by government agencies or nonprofit organizations (30 U.S.C. § 601). The implementing regulations require appraisals and provide for sales contracts for the disposal of materials, other than for free use (43 CFR 3602.13(a), 3602.21). A mineral materials buyer must pay either a first installment of at least \$500, or the full contract price, before the BLM will award the contract (43 CFR 3602.21(a)). All mineral materials disposal must be conducted through the procedures outlined in the regulations. Because trading mineral materials for in-kind services is not in compliance with the Materials Act, or the Act's implementing regulations, it is prohibited. In addition, even if the BLM initially obtained materials under a free use permit, regulations prohibit the BLM from bartering or selling those materials (43 CFR 3602.22(a)).

Regarding the second scenario above, the BLM accepting mineral materials-related payments in lieu of monetary payments or fees, the payment due for mineral materials or for reclamation fees constitutes a material term of a mineral materials sales contract and cannot be waived by a BLM office. If an operator fails to tender all monetary payments required by the contract, the contract is subject to cancellation under the regulations (43 CFR 3601.61(c)). Similarly, an operator's obligation to perform reclamation that the BLM has agreed it may perform in a community pit or common use area in lieu of paying a reclamation fee under 43 CFR 3603.22(b) is a material term of the contract; a BLM office cannot waive that obligation in return for the operator's performance of other services for the BLM. Thus, the BLM cannot allow an operator to substitute services (i.e., extracting and crushing materials for the BLM's use) for the monetary payments or reclamation required by the contract.

Moreover, both of these scenarios would illegally augment the BLM's appropriation. As the Comptroller General has explained:

The "miscellaneous receipts" statute, 31 U.S.C. § 3302(b) provides that: "an official or agent of the government receiving money for the government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim." This forms the basis of the prohibition against augmenting appropriations. When Congress makes an appropriation, it is establishing an authorized program level beyond which an agency cannot operate. Allowing an agency to exceed this level with funds derived from some other source would usurp congressional prerogative and undercut the congressional power of the purse. See 69 Comp. Gen. 260, 262 (1990); 62 Comp. Gen. 678, 679 (1983).

72 Comp. Gen. 164; 1993 U.S. Comp. Gen. LEXIS 561 (April 9, 1993). An agency may retain revenues not included in its appropriation only when specifically allowed to do so by Congress under another law (e.g., collection of cost recovery fees for sale processing; collection of reclamation fees for community pits).

The BLM's appropriation limits the activities in which the BLM can engage by restricting its activities to those which can be paid for from appropriated funds. "Paying" with mineral materials for services that the BLM would otherwise have to pay for with appropriated funds would allow the BLM to operate at a level beyond its appropriation; the value of the government-owned mineral materials would accrue to the BLM instead of being deposited into the United States Treasury. This action would thus illegally augment the BLM's appropriation.

The same is true of a scenario in which the BLM proposes to "pay" for the extraction and crushing of materials for the BLM's use by releasing an operator from its contractual obligation to pay monies due, or perform reclamation, under its mineral materials contract. The BLM would otherwise have to pay for the extraction and crushing services with appropriated funds. Again, this would allow the BLM to operate at a level beyond its appropriation; the value of the payments due under the operator's mineral materials contract would accrue to the BLM (in the form of services received) instead of being deposited into the United States Treasury or to other recipients designated by Congress.¹ This action would also illegally augment the BLM's appropriation.

¹In the case of a proposed arrangement for an operator to perform extraction and crushing services for the BLM instead of contractually obligated reclamation operations in a community pit or common use area under 43 CFR 3603.22(b), this may appear on the surface to simply substitute one service for another. However, the BLM would receive the financial benefit of the extraction and crushing services immediately, while its eventual expenditures for the reclamation that the operator would otherwise have performed may not occur in that fiscal year. This would amount to an augmentation of appropriations for the fiscal year in which the extraction and crushing services were received. Even if the extraction and crushing and the BLM's reclamation

expenditures were to occur in the same fiscal year, a BLM office has no authority to alter the contract in such a manner, as mentioned above.