

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
COLORADO STATE OFFICE
2850 YOUNGFIELD STREET
LAKEWOOD, COLORADO 80215-7093**

December 20, 2002

In Reply Refer To:
CO-921
3800 (P)

EMS TRANSMISSION: 12/20/2002
Instruction Memorandum No: CO-2003-007
Expires: 09/30/2004

To: Field Office Managers

From: Deputy State Director, Resource Services

Subject: Revised 3809 Memorandum of Understanding (MOU) with Colorado Division of Minerals and Geology (CDMG)

Program Area: Mining Law Administration, Surface Management

Purpose: The purpose of this Instruction Memorandum is to transmit and implement the administration of the subject MOU (attached), which provides for joint administration of the new 3809 Surface Management regulations by Bureau of Land Management (BLM) and CDMG.

Policy/Action: In order to prevent undue and unnecessary degradation of the public lands, it is essential that BLM be informed of proposed exploration activities. Under the terms of the old MOU with CDMG, the field offices were not always aware that a Notice of Intent (NOI) had been filed with CDMG. By State Statute (CRS, Section 34-32.5-113 (3)), all information provided in a NOI to conduct exploration is protected as confidential information, unless a written release is obtained from the operator. Section III. Understanding, paragraph B, of the revised MOU establishes BLM as an office of secondary control for information received under NOIs filed with CDMG. BLM is required to safeguard against unauthorized disclosure all confidential and proprietary information/data subject to penalties contained in Section 1905 of Title 18, U.S. Code.

Therefore, each field office is to ensure that a file cabinet, secured with a lock bar and lock, is provided for the safeguarding of all NOIs on file. No information contained in a NOI is to be made public unless the CDMG, or BLM has obtained a written waiver of confidentiality from the operator.

Time Frame: This policy is effective upon receipt.

Contact: If you have any questions concerning this instruction, please contact Roy Drew at 303-239-3772.

Signed by
James May
Acting Deputy State
Director, Resource Services

Authenticated by
Don Snow
EMS Operator

Attachment

***Memorandum of Understanding
Between
The Bureau of Land Management and The Division of Minerals and Geology***

This Memorandum of Understanding (Memorandum) is entered into among the Bureau of Land Management, United States Department of Interior, acting by and through the State Director, Colorado State Office, the Bureau of Land Management (BLM) and the State of Colorado, acting by and through the Department of Natural Resources, Division of Minerals and Geology (DMG).

I. Purpose

The purpose of this Memorandum is to promote Federal-State coordination in the regulation of prospecting and mining operations on public lands. This Memorandum applies to operations on public lands under the general Mining Law, 30 U.S.C. Section 22, *et sea., to* which 43 CFR 3800 applies in connection with the General Mining Laws and which are subject to C.R.S. 34-32-101 *et sea.* The BLM 43 CFR 3809 regulations include a provision for Federal-State administration and enforcement. C.R.S. 34-32-101 *et se.* provides for and indicates the need for coordination with Federal agencies having jurisdiction over mining operations.

II. Authorities

This Memorandum is based on the following authorities:

A. BLM

1. 43 U.S.C. 1201.
2. 1872 Mining Law as amended (30 U.S.C. 22, *et se.*).
3. Federal Land Policy and Management Act of 1976 (Secs. 302, 303, 601 and 603).
4. 43 CFR 3809.200.

B. Colorado

1. Colorado Mined Land Reclamation Act, Section 34-32-101 *et sea.*, C.R.S.
2. Colorado Mined Land Reclamation Board Regulations 2 C.C.R. 407-1.

III. Understanding

- A. The parties mutually affirm that they will comply with all provisions of the Memorandum. Nothing in this Memorandum shall be construed as abrogating the authority of either of the parties. Further, neither party is required to perform actions not authorized to them by law.
- B. BLM agrees to become an office of secondary control for any information received under NOIs filed with DMG. All confidential and proprietary information/data will be appropriately safeguarded against unauthorized disclosure, subject to penalties contained in Section 1905 of Title 18, United States Code.

IV. Division of Approval Responsibilities

- A. DMG shall assume primary responsibility for, the administration, review, and permitting of Notices of Intent (NOI) for prospecting and/or drilling and all other mining operations subject to 43 CFR 3809 regulations which otherwise fall under the jurisdiction of the DMG. Such mining operations include the prospecting and mining of base and precious metals, uranium and other uncommon varieties of minerals locatable under the 1872 Mining Law.
- B. BLM and DMG will exchange information to prevent inconsistent and confusing action and to reduce duplication.
- C. BLM, as the Office of Secondary Control, will keep confidential all information contained in a Notice of Intent to conduct prospecting (NOI). DMG will require operators to certify that they have notified the jurisdictional BLM office and submit a copy of their filing made with BLM. Processing of the NOI will not begin until the operator has made the above certification to DMG.
- D. Within five (5) working days after an application/revision is filed with DMG, a complete copy will be forwarded by DMG to the jurisdictional BLM office.
 - 1. BLM will review the application to ensure that the proposed operation is in conformance with the 43 CFR 3809 regulations and complete an Environmental Assessment (EA), as required by the National Environmental Policy Act (NEPA). BLM will forward to DMG all correspondence and additions to the application that are developed during the review and NEPA process. DMG may choose to be a cooperating agency in the NEPA process. BLM will send DMG the EA and any stipulations, conditions or modifications necessary to prevent undue and unnecessary degradation.
 - 2. Within and consistent with authorities of the Colorado Mined Land Reclamation Act, Section 34-32-101 *et se .*, C.R.S., modifications and stipulations contained in the EA will then be incorporated into DMG's final permit approval. Any additions to the application or correspondence that are developed during the review by DMG will be forwarded to BLM. DMG and BLM will review and consult on the terms and conditions of the proposed permit. A copy of the issued permit will be provided to BLM.
 - 3. DMG will deny or recommend denial of any permit application where BLM has advised that the proposed operation would be in violation of Sec. 7 of the Endangered Species Act or Sec. 106 of the National Historic Preservation Act.
- E. The parties agree to try and resolve conflicts at the operating manager level. Any unresolved conflicts will be reported to the BLM Deputy State Director, Energy, Lands, and Minerals and to the DMG Director for further consideration.

V. Bonding

DMG is the lead bonding authority. Reclamation bonds will be issued in the name of

the State of Colorado and the Department of the Interior, Bureau of Land Management, Colorado State Office (BLM), and will be administered by DMG. BLM will be consulted on bond amount (sufficiency). BLM retains authority to require a separate bond if deemed necessary.

- B. BLM will provide funding to DMG, in an amount negotiated annually, for bond administration.
- C. As the administrator of bonds issued to both DMG and BLM, DMG retains the initial and primary bond forfeiture authority of such bonds. Written concurrence from both BLM and DMG must be obtained prior to any act to forfeit or redeem a bond. In some cases, verbal concurrence from both agencies may be appropriate.
- E. Upon bond forfeiture, DMG will, to the extent practicable, with proceeds received under the bond, cause the reclamation work to be performed in accordance with the reclamation standards set out in the approved plan.

VI. Inspection

- A. DMG will be the point of contact in dealing with the operator, concerning operations and compliance with NOIs and permits.
- B. DMG and BLM will conduct inspections as necessary. Joint inspections are recommended (especially for pre-operation on-sites). Final inspections of operations will be preceded by notice, from either party, of intent to inspect. Final inspections should be jointly conducted. Inspection reports will be routinely exchanged to facilitate review and compliance of the operation.
- C. Noncompliance with the NOI/Permit, State law or regulations, or 43 CFR 3809 will be promptly exchanged among all parties. The appropriate agency will take necessary action with noncompliance.

VII. Enforcement

- A. DMG will be the primary enforcement authority. BLM retains authority to undertake independent enforcement action against operators when necessary, especially for violations of the Endangered Species Act, National Historic Preservation Act, and activities that occur outside DMG Permit boundaries.
- B. The DMG and BLM will promptly notify each other of all potential violations of applicable laws, regulations, orders, approved permits, plans, licenses, or notices subject to the Memorandum, and of all appropriate actions taken with respect to such violations.

VIII. Amendment or Termination

- A. The existing Memorandum of Understanding, dated June 28, 1984, between DMG and BLM is hereby superseded with the implementation of this Memorandum.
- B. Either Party has the right to renegotiate this Memorandum or parts thereof after 30

days notice. Both parties agree to review this Memorandum annually to ensure its proper implementation consistent with the stated purposes.

- C. Nothing in this Memorandum will limit or affect the authority and legal responsibility of the DMG or BLM, or cause either to perform beyond their respective authority or expend any sum in excess of available appropriations.
- D. This Memorandum may be terminated by either party, for any reason, upon ninety (90) days' notice to the other party.
- E. The parties agree to implement the terms and conditions of this Memorandum as of the date of the final signature below.

Ronald Cattary

December 16, 2002

DATE Director, Division of Minerals Ad Geology Department of Natural Resources
State of Colorado

12/18/02 *[Signature]*
DATE BL

M Deputy State Director, Minerals
Department of Interior