

Sec. 299. RESERVATION OF COAL AND MINERAL RIGHTS

I. General provisions

(a) All entries made and patents issued under the provisions of this subchapter shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal. Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented, as provided by this subchapter, for the purpose of prospecting for coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in form and in accordance with rules and regulations prescribed by the Secretary of the Interior and to be filed with and approved by the officer designated by the Secretary of the Interior of the local land office of the district wherein the land is situate, subject to appeal to the Secretary of the Interior or such officer as he may designate: Provided, That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notations declaring them to be subject to the provisions of this subchapter with reference to the disposition, occupancy, and use of the land as permitted to an entryman under this subchapter.

(b) Exploration; location of mining claims; notices

(1) In general

(A) Notwithstanding subsection (a) of this section and any other provision of law to the contrary, after the effective date of this subsection no person other than the surface owner may enter lands subject to this subchapter to explore for, or to locate, a mining claim on such lands without -

(i) filing a notice of intention to locate a mining claim pursuant to paragraph (2); and (ii) providing notice to the surface owner pursuant to paragraph (3).

(B) Any person who has complied with the requirements referred to in subparagraph (A) may, during the authorized exploration period, in order to locate a mining claim, enter lands subject to this subchapter to undertake mineral activities related to exploration that cause no more than a minimal disturbance of surface resources and do not involve the use of mechanized earthmoving equipment, explosives, the construction of roads, drill pads, or the use of toxic or hazardous materials.

(C) The authorized exploration period referred to in subparagraph (B) shall begin 30 days after notice is provided under paragraph (3) with respect to lands subject to such notice and shall end with the expiration of the 90-day period referred to in paragraph (2)(A) or any extension provided under paragraph (2).

(2) Notice of intention to locate a mining claim

Any person seeking to locate a mining claim on lands subject to this subchapter in order to engage in the mineral activities relating to exploration referred to under paragraph (1)(B) shall file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the Secretary shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. The legal description shall be based on the public land survey or on such other description as is sufficient to permit the Secretary to record the notice on the land status records of the Secretary. Whenever any person has filed a notice under this paragraph with respect to any lands, during the 90-day period following the date of such filing, or any extension thereof pursuant to this paragraph, no other person (including the surface owner) may -

(A) file such a notice with respect to any portions of such lands;

(B) explore for minerals or locate a mining claim on any portion of such lands; or

(C) file an application to acquire any interest in any portion of such lands pursuant to section 1719 of this title. If, within such 90-day period, the person who filed a notice under this paragraph files a plan of operations with the Secretary pursuant to subsection (f) of this section, such 90-day period shall be extended until the approval or disapproval of the plan by the Secretary pursuant to subsection (f) of this section.

(3) Notice to surface owner Any person who has filed a notice of intention to locate a mining claim under paragraph (2) for any lands subject to this subchapter shall provide written notice of such filing, by registered or certified mail with return receipt, to the surface owner (as evidenced by local tax records) of the lands covered by the notice under paragraph (2). The notice shall be provided at least 30 days before entering such lands and shall contain each of the following:

(A) A brief description of the proposed mineral activities.

(B) A map and legal description of the lands to be subject to mineral exploration.

(C) The name, address and phone number of the person managing such activities.

(D) A statement of the dates on which such activities will take place.

(4) Acreage limitations The total acreage covered at any time by notices of intention to locate a mining claim under paragraph (2) filed by any person and by affiliates of such person may not exceed 6,400 acres of lands subject to this subchapter in any one State and 1,280 acres of such lands for a single surface owner. For purposes of this paragraph, the term 'affiliate' means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

(c) Consent Notwithstanding subsection (a) of this section and any other provision of law, after the effective date of this subsection no person may engage in the conduct of mineral activities (other than those relating to exploration referred to in subsection (b)(1)B) ⁽¹⁾ of this section) on a mining claim located on lands subject to this subchapter without the written consent of the surface owner thereof unless the Secretary has authorized the conduct of such activities under subsection (d) of this section.

(d) Authorized mineral activities The Secretary shall authorize a person to conduct mineral activities (other than those relating to exploration referred to in subsection (b)(1)B) of this section) on lands subject to this subchapter without the consent of the surface owner thereof if such person complies with the requirements of subsections (e) and (f) of this section.

(e) Bond

(1) Before the Secretary may authorize any person to conduct mineral activities the Secretary shall require such person to post a bond or other financial guarantee in an amount to insure the completion of reclamation pursuant to this subchapter. Such bond or other financial guarantee shall ensure -

(A) payment to the surface owner, after the completion of such mineral activities and reclamation, compensation for any permanent damages to crops and tangible improvements of the surface owner that resulted from mineral activities; and

(B) payment to the surface owner of compensation for any permanent loss of income of the surface owner due to loss or impairment of grazing, or other uses of the land by the surface owner to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the commencement of mineral activities.

(2) In determining the bond amount to cover permanent loss of income under paragraph (1)(B), the Secretary shall consider, where appropriate, the potential loss of value due to the estimated permanent reduction in utilization of the land.

(f) Plan of operations

(1) Before the Secretary may authorize any person to conduct mineral activities on lands subject to this subchapter, the Secretary shall require such person to submit a plan of operations. Such plan shall include procedures for -

(A) the minimization of damages to crops and tangible improvements of the surface owner;

(B) the minimization of disruption to grazing or other uses of the land by the surface

owner; and (C) payment of a fee for the use of surface during mineral activities equivalent to the loss of income to the ranch operation as established pursuant to subsection (g) of this section.

(2) The Secretary shall provide a copy of the proposed plan of operations to the surface owner at least 45 days prior to the date the Secretary makes a determination as to whether such plan complies with the requirements of this subsection. During such 45-day period the surface owner may submit comments and recommend modifications to the proposed plan of operations to the Secretary.

(3)

(A) The Secretary shall, within 60 days of receipt of the plan, approve the plan of operations if it complies with the requirements of this subchapter, including each of the following:

(i) The proposed plan of operations is complete and accurate.

(ii) The person submitting the proposed plan of operations has demonstrated that all other applicable Federal and State requirements have been met.

(B) The Secretary shall notify the person submitting a plan of operations of any modifications to such plan required to bring it into compliance with the requirements of this subchapter. If the person submitting the plan agrees to modify such plan in a manner acceptable to the Secretary, the Secretary shall approve the plan as modified. In the event no agreement can be reached on the modifications to the plan which, in the opinion of the Secretary, will bring such plan into compliance with the requirements of this subchapter, then the Secretary shall disapprove the plan and notify both the surface owner and the person submitting the plan of the decision.

(C) The 60-day period referred to in subparagraph (A) may be extended by the Secretary where additional time is required to comply with other applicable requirements of law.

(D) The Secretary shall suspend or revoke a plan of operation whenever the Secretary determines, on the Secretary's own motion or on a motion made by the surface owner, that the person conducting mineral activities is in substantial noncompliance with the terms and conditions of an approved plan of operations and has failed to remedy a violation after notice from the Secretary within the time required by the Secretary.

(4) Final approval of a plan of operations under this subsection shall be conditioned upon compliance with subsections (e) and (g) of this section.

(g) Fee The fee referred to in subsection (f)(1) of this section shall be -

(1) paid to the surface owner by the person submitting the plan of operations;

(2) paid in advance of any mineral activities or at such other time or times as may be agreed to by the surface owner and the person conducting such activities; and (3) established by the Secretary taking into account the acreage involved and the degree of potential disruption to existing surface uses during mineral activities (including

the loss of income to the surface owner and such surface owner's operations due to the loss or impairment of existing surface uses for the duration of the mineral activities), except that such fee shall not exceed the fair market value for the surface of the land.

(h) Reclamation Lands affected by mineral activities under a plan of operations approved pursuant to subsection (f)(3) of this section shall be reclaimed, to the maximum extent practicable, to a condition capable of supporting the uses to which such lands were capable of supporting prior to surface disturbance. Reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities.

(i) State law

(1) Nothing in this subchapter shall be construed as affecting any reclamation, bonding, inspection, enforcement, air or water quality standard or requirement of any State law or regulation which may be applicable to mineral activities on lands subject to this subchapter to the extent that such law or regulation is not inconsistent with this title.

(2) Nothing in this subchapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, the interest of such person in water resources affected by mineral activities.

(j) Inspections Should any surface owner of land subject to this subchapter have reason to believe that they are or may be adversely affected by mineral activities due to any violation of the terms and conditions of a plan of operations approved under subsection (f) of this section, such surface owner may request an inspection of such lands. The Secretary shall determine within 10 days of the receipt of the request whether the request states a reason to believe that a violation exists, except in the event the surface owner alleges and provides reason to believe that an imminent danger exists, the 10-day period shall be waived and the inspection conducted immediately. When an inspection is conducted under this paragraph, the Secretary shall notify the surface owner and such surface owner shall be allowed to accompany the inspector on the inspection.

(k) Damages for failure to comply

(1) Whenever the surface owner of any land subject to this subchapter has suffered any permanent damages to crops or tangible improvements of the surface owner, or any permanent loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner, if such damages or loss result from -

(A) any mineral activity undertaken without the consent of the surface owner under subsection (c) of this section or an authorization by the Secretary under subsection (d) of this section; or

(B) the failure of the person conducting mineral activities to remedy to the satisfaction of the Secretary any substantial noncompliance with the terms and conditions of a plan under subsection (f) of this section; the surface owner may bring an action in the appropriate United States district court for, and the court may award, double damages plus costs for willful misconduct or gross negligence.

(2) The surface owner of any land subject to this subchapter may also bring an action in the appropriate United States district court for double damages plus costs for willful misconduct or gross negligence

against any person undertaking any mineral activities on lands subject to this subchapter in violation of any requirement of subsection (b) of this section.

(3) Any double damages plus costs awarded by the court under this subsection shall be reduced by the amount of any compensation which the surface owner has received (or is eligible to receive) pursuant to the bond or financial guarantee required under subsection (e) of this section.

(1) Payment of financial guarantee The surface owner of any land subject to this subchapter may petition the Secretary for payment of all or any portion of a bond or other financial guarantee required under subsection (e) of this section as compensation for any permanent damages to crops and tangible improvements of the surface owner, or any permanent loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner. Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages and to insure the required reclamation.

(m) Bond release The Secretary shall release the bond or other financial guarantee required under subsection (e) of this section upon the successful completion of all requirements pursuant to a plan of operations approved under subsection (f) of this section.

(n) Conveyance to surface owner The Secretary shall take such actions as may be necessary to simplify the procedures which must be complied with by surface owners of lands subject to this subchapter who apply to the Secretary to obtain title to interests in such lands owned by the United States.

(o) Definitions For the purposes of subsections (b) through (n) of this section -

(1) The term "'mineral activities'" means any activity for, related to or incidental to mineral exploration, mining, and beneficiation activities for any locatable mineral on a mining claim. When used with respect to this term -

(A) the term "'exploration'" means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade and value;

(B) the term "'mining'" means the processes employed for the extraction of a locatable mineral from the earth; and

(C) the term "'beneficiation'" means the crushing and grinding of locatable mineral ore and such processes are employed to free the mineral from the other constituents, including but not necessarily limited to, physical and chemical separation techniques.

(2) The term "'mining claim'" means a claim located under the general mining laws of the United States (which generally comprise 30 U.S.C. chapters 2, 12A, and 16, and sections 161 and 162) subject to the terms and conditions of subsections (b) through (p) of this section.

(3) The term "'tangible improvements'" includes agricultural, residential and commercial improvements, including improvements made by residential subdividers.

(p) Minerals covered Subsections (b) through (o) of this section apply only to minerals not subject to disposition under -
(1) the Mineral Leasing Act (30 U.S.C. 181 and following);
(2) the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.);

or

(3) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).

B. 43 CFR 3814

Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.

(a) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

(b) Said section 9 also provides that any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented under the Act, for the purpose of prospecting for the coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting. Under the Act of June 21, 1949 (30 U.S.C. 54), a mineral entryman on a stock raising or other homestead entry or patent is also held liable for any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals except that vested rights existing prior to June 21, 1949, are not impaired.

(c) It is further provided in said section 9 that any person who has acquired from the United States the coal or other mineral deposits in any such land or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal, or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; or, second, upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure payment of such damages to the crops or tangible improvements of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon. This bond on Form 3814 must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved, as directed in said section 9, as principal, with two competent individual sureties, or a bonding company which has complied with

the requirements of the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13), as amended by the Act of March 23, 1910 (36 Stat. 241; 6 U.S.C. 8, 9), and must be in the sum of not less than \$1,000. Qualified corporate sureties are preferred and may be accepted as sole surety. Except in the case of a bond given by a qualified corporate surety there must be filed therewith affidavits of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster as to the identity, signatures, and financial competency of the sureties. Said bond, with accompanying papers, must be filed with the authorized officer of the proper office, and there must also be filed with such bond evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

(d) If at the expiration of 30 days after the receipt of the aforesaid copy of the bond by the entryman or owner of the land, no objections are made by such entryman or owner of the land and filed with the authorized officer against the approval of the bond by them, he may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said authorized officer, the said officer will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration he shall find and conclude that the proffered bond ought not to be approved, he will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Director of the Bureau of Land Management from the action in disapproving the bond so filed and proffered. If, however, the authorized officer, after full and complete examination and consideration of all the papers filed, is of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof do not set forth sufficient reasons to justify him in refusing to approve said proffered bond, he will, in writing, duly notify the homestead entryman or owner of the land of his decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Director of the Bureau of Land Management. If appeal from the adverse decision of the authorized officer be not timely filed by the person proffering the bond, the authorized officer will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the authorized officer adverse to the contentions of said homestead entryman or owners of the lands, said authorized officer may, if all else be regular, approve the bond.

(e) The coal and other mineral deposits in the lands entered or patented under the Act of December 29, 1916, will become subject to existing laws, as to purchase or lease, at any time after allowance of the homestead entry unless the lands or the coal or other mineral deposits are, at the time of said allowance, withdrawn or reserved from disposition.