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

1. Explanation of Materials 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. Materials Superseded: Appendix 11, issued 09/23/2016

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Assistant Director Energy, Minerals, and Realty Management

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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 uses or removals of mineral materials on or from split estate land in accordance with established trespass procedures whenever the BLM identifies such uses or removals. As part of the investigation, all the BLM offices must verify, with the Office of the Solicitor, that the reserved mineral estate includes mineral materials. Determining title to reserved mineral estates can be complex and individual situations must be analyzed to determine if mineral materials are reserved.

Under 43 CFR 3601.71(b)(1), a surface owner may only use (e.g., utilize, extract, sever, remove) minimal amounts of mineral materials from split estate land for personal use while improving the surface, even if the mineral materials remain within the boundary of the surface estate. This rule, as described by 43 CFR 3601.71(b)(1), is commonly referred to as "minimal personal use."

The preamble to the final rule, as published in the *Federal Register*, said very little when describing 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. 58,891, 58,894 (Nov. 23, 2001).

The term "landscaping" in the preamble explanation should not be confused with specific mineral materials landscaping products, such as decorative boulders, flagstone for walls and walkways, or crushed rock used for ground cover, etc., all of which would require a contract or free use permit prior to their use. 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 or free use permit, be spread on other parts of the surface of that same property, regardless of the amount, so long as the mineral materials are unaltered and are not used for or in connection with any commercial construction enterprise.

The following situations generally would not be considered minimal personal use of federally owned mineral materials, and would likely require a contract or free use permit: (1) any use of federally owned mineral materials that involves some level of separation or alteration of those mineral materials into their component parts (e.g., screening, washing, crushing); (2) blending

federally owned mineral materials with another product (e.g., cement, sand, soil, gravel); (3) recombining or reconstituting federally owned mineral materials with native or other mineral materials to form road base, adequate foundation subgrade (for houses, buildings, etc.), topsoil, utility trench liners, etc.; and (4) any use of mineral materials for a commercial construction purpose beyond the activities described in the paragraph below.

The preamble language was not intended to remove recognition of "basic surface grading" as an allowable activity by the surface estate owner. Basic surface grading is simply moving mineral materials for the purposes of grading, flattening or leveling portions of land, in connection with the surface owner's use of the surface estate. Basic surface grading is not a mineral material use and does not require a contract or free use permit, regardless of the volume, distance or method used to move those mineral materials. However, excess mineral materials that are removed from one subdivision (e.g., as cut material) and used as fill at another subdivision, even when located within the same original patent boundary, is not basic surface grading and may be considered use, thereby, requiring a contract or free use permit from the BLM.

Any movement of mineral materials from the point of origination to locations outside of the original patent boundary may require a contract or free use permit from the BLM.

This guidance is not an absolute directive and should be considered in the context of a given factual scenario. For example, if certain native mineral materials within a split estate patent boundary have a composition which would naturally form a road base, and the surface owner would have to purchase those mineral materials if they did not naturally occur within the split estate patent boundary, then basic surface grading of those mineral materials into a road base may be considered a mineral materials use and require a contract or free use permit, even if the movement of mineral materials is within the split estate patent boundary.

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

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

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

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

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.

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

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

TABLE OF CONTENTS

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.