

Enforcement Tools for Mineral Trespass

In situations where the minerals are:

- (a) wholly owned by the Federal government,
- (b) partially owned by the Federal government,¹ or
- (c) owned by an Indian tribe or by an individual Indian in trust/restricted fee,²

and the party drilling the oil and gas well(s) is not a Federal or Indian lessee or a co-tenant of the mineral estate, the drilling party is engaged in a mineral trespass; that is, producing oil or gas and/or collecting data through removal of drill cores or other information gathered without a lease or permit from the Bureau of Land Management (BLM).

Department of Justice (DOJ) Enforcement: For Federal and Indian leased lands, the United States' monetary recovery for trespass would ordinarily be limited to royalties, plus interest, and civil and criminal penalties under the Federal Oil and Gas Royalty Management Act (FOGRMA). 30 U.S.C. §§ 1719, 1720, 1721. For Federal and Indian unleased lands, the enforcement tools include all of the following:

- A. Assessment of trespass damages – If the law of the state in which the trespass is located prescribes a measure of damages for trespass, then that law controls under 43 CFR § 9239.0-8. If no measure of damages is prescribed by state law, then the measure of damages under 43 CFR § 9239.5-2 is either the value of the oil or gas produced by the trespasser minus the costs of production (if the trespass is innocent) or the value of the oil or gas produced without deducting the costs of production (if the trespass is willful). The BLM's position is that trespass damages may be assessed by administrative order, as well as through a civil enforcement action brought by the Justice Department. Furthermore, BLM may recover its "administrative costs incurred in processing the trespass notice and related documents," pursuant to section 304(b) of FLPMA. 43 U.S.C. § 1734(b).
- B. The BLM may request that the Justice Department institute a civil action in Federal district court to enjoin further production – DOJ may seek to enjoin further trespass, i.e., further production from the well. In addition, if the lands are public domain, 30 U.S.C. § 195(a) and (c) grant DOJ authority to sue to enjoin any scheme, arrangement, plan, or agreement to circumvent or defeat the Mineral Leasing Act (MLA) or its implementing regulations and also to seek a civil penalty of not more than \$100,000 for each violation.

¹ Note, when a well is drilled with the consent of a non-Federal joint owner of the minerals, DOI will not assert its rights under trespass law. The BLM will assert its rights as a non-participating joint owner under State law. If you suspect oil and gas partially owned by the United States is being produced by or with the consent of a non-Federal partial owner, please contact the Solicitor's Office before deciding to take any action.

² The Bureau of Land Management (BLM) should coordinate with the Bureau of Indian Affairs for trespass of an Indian mineral estate.

Furthermore, the United States obtained injunctions against mineral trespass long before section 195 was added to the MLA in 1987, and thus may obtain injunctions against mineral trespass on acquired lands.³

- C. The BLM may request that DOJ pursue criminal prosecution under the MLA in appropriate cases – In an appropriate case, the DOJ may pursue criminal prosecution under section 41(b) of the MLA, 30 U.S.C. § 195(b), for violations of the provisions in section 41(a) of the MLA, 30 U.S.C. § 195(a). The MLA provides for a fine of not more than \$500,000, imprisonment for not more than five years, or both. Note that section 195 of the MLA does not apply to trespasses on acquired lands.
- D. The BLM may also request that DOJ pursue criminal prosecution for theft of government property – There are sections of the criminal code, which apply without regard to whether the lands are public domain or acquired. DOJ could pursue criminal prosecution for theft of government property under 18 U.S.C. § 641, or for injury to or depredation against government property under 18 U.S.C. § 1361.

³ See, e.g., *El Dora Oil Co. v. United States*, 229 F. 946 (9th Cir. 1915).