

LEGISLATION PERTINENT TO DISPOSAL OF MINERAL MATERIALS

Act of 7/26/1866 (14 Stat 251)

All mineral lands of the public domain are open to exploration and occupation.

Act of 7/9/1870 (16 Stat 217)

Section 12 of this act provides that placer claims, including sand and gravel shall be subject to entry and patent like lode claims: legal subdivision on surveyed lands; \$2.50/Acre.

General Mining Law - Act of 5/10/1872 (17 Stat 91)

Section 1 stated that valuable mineral deposits are free and open to exploration and purchase; -section 2 stated that mining claims, veins, or lodes of quartz or other rock in place bearing gold, ...or other valuable deposits heretofore located; Section 10 the 1870 Act in full force except for the patent provisions.

Act of 6/3/1878 (20 Stat 89)

This act provided that lands chiefly valuable for stone, but unfit for cultivation could be sold in parcels up to 160 acres in size, at the rate of \$2.50/Acre.

Building Stone Placer Act - Act of 8/4/1892 (27 Stat 348)

This act provided that any person authorized to enter land under the mining laws of the United States may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims.

Mineral Leasing Act - Act of 2/25/1920 (41 Stat 437)

The Mineral Leasing Act provided that deposits of coal, phosphate, oil, oil shale, gas, and sodium could be acquired through a leasing system. The law also provides for issuance of prospecting permits prior to lease issuance and competitive bidding for certain deposits.

Act of 9/27/1944 (58 Stat 745)

The Interior Secretary is authorized by Congress to dispose of sand, stone, and gravel on public lands.

Materials Act - Act of 7/31/1947 (61 Stat 681)

Section 1 provided that the Secretary of the Interior, under such rules and regulations as he may prescribe may dispose of materials including but not limited to sand, stone, yucca,

manzanita, mesquite, cactus, common clay and timber or other forest products on public lands of the U.S. if the disposal of such materials.

- (1) Is not otherwise expressly authorized by law;
- (2) Is not expressly prohibited by law;
- (3) Would not be detrimental to the public interest.

This act provided that such materials may be disposed of upon payment of adequate compensation; but, also provided that the Secretary can permit any federal, state, or other governmental subdivision, or non-profit organization, to take and remove without charge, materials and resources for other than commercial, or industrial purposes or resale.

This 1947 Act is important because several commodities such as fill dirt or cliche couldn't be located (by court decision); this act gave the authority to sell these materials.

After this act, sand or gravel could be either sold or located.

National Forest System lands were specifically excluded from the 1947 Act.

Section 2 of this Act provided for competitive disposal of mineral materials appraised at greater than \$1000.

Mineral Leasing Act for Acquired Lands - Act of 8/7/1947 (61 Stat 913)

This Act authorized mineral leasing on acquired lands.

Surface Resources Act (P.L. 167) - Act of 7/12/1955 (69 Stat 367)

Amends the Materials Act of 1947 to provide for multiple use of surface of same tracts of public lands.

Section 1 gives the Secretary the authority to dispose of mineral materials including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay, and vegetative materials. After 1955, these listed commodities were no longer locatable.

The 1955 Act also included the same provisions for Free Use and Competitive Sale as were included in 1947.

Section 3 of the Act stated that:

A deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States, so as to give effective

validity to any mining claim hereafter located under such mining laws, provided that nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit.

Common variety doesn't include a deposit with a property giving it distinct and special value.

This act also provides for multiple use of land and surface resources on mining claims.

Petrified Wood Act - Act of 9/26/1962 (76 Stat 652)

This Act defined petrified wood as:

"agatized, opalized, petrified or silicified wood, or any material formed by the replacement of wood by silica or other matter"

This Act also included a provision that petrified wood was no longer a locatable mineral.

Free use for limited quantities was permitted under this Act.

MAJOR ENVIRONMENTAL LAWS

National Environmental Policy Act of 1969 (12 USC 4321)

Designed to establish a national environmental policy and establish the Council on Environmental Quality and to promote efforts which will prevent or eliminate damage to the environment and biosphere and to stimulate the health and welfare of man.

effect on mineral materials: An EA or EIS must be prepared on each disposal action on the public or forest lands, unless otherwise excluded. Preparation of the Ea or EIS will utilize a systematic interdisciplinary approach and will identify and develop methods and procedures (stipulations) which will insure that environmental values will be given appropriate consideration in that environmental values will be given appropriate consideration in decision-making along with the technical and economic considerations.

Endangered Species Act of 1973 (87 Stat 884)

Designed to provide for the conservation of endangered and threatened species of fish, wildlife, and plants.

Effect on Mineral Materials: This act provides that no federal action or permitted action can be allowed which will adversely affect threatened or endangered species or their habitat.

Normally BLM/FS, but occasionally USFWS will make a determination of species in an area and whether or not they would be adversely affected by a disposal action. If the determination is made that no adverse impact will occur, the project can proceed. The USFWS always has the option of comment as a project develops, if warranted.

If adverse effects will result from a disposal, Section 7 of this act requires consultation with the USFWS. They will assess the situation and provide a Biological Opinion on the subject and may recommend mitigation, such as seasonal use, or may recommend the disposal action be denied if threatened or endangered species or their habitat cannot be protected.

Endangered means any species which is in danger of extinction through out all or a significant portion of its range.

Threatened means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Contributing factors to a T&E determination are the present or threatened destruction, modification or curtailment of the habitat or range, over utilization for commercial sporting scientific or educational purpose; disease or predation; the inadequacy of existing regulatory mechanisms; other factors affecting the

continued existence.

Resource Conservation and Recovery Act of 1976 (42 USC 6901)

Authorizes EPA to manage, by regulation, hazardous wastes on active disposal operations. The act waives sovereign immunity so that Federal agencies are subject to all State and local requirements developed under EPAs guidelines.

Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 USC 9601)

Provides for liability, risk assessment, compensation, emergency response, and cleanup (including the cleanup of inactive sites) for hazardous substances. It requires Federal agencies to report sites where hazardous wastes are, or have been stored, treated or disposed.

Clean Water Act of 1977 (33 USC 1251)

Requires that BLM to participate in State and Federal water quality planning, and permitting activities, which require exchanging data, resource planning, revising standards and developing management practices for the control of nonpoint source pollution.

Clan Air Act of 1977 (42 USC 1701)

Requires that BLM protect air quality, maintain Federal and State designated air quality standards, and abide by requirements of the State implementation plans.

Forest and Rangeland Renewable resources Planning Act of 1974 (88 Stat 476)

This Act provided for ten year resource assessments which is to include inventory, supply and demand analysis, and policy considerations.

The Act also provided that the FS shall develop, maintain, and revise land and resource management plans for units of the National Forest System.

National Forest Management Act of 1976 (90 Stat 2949)

Amended many of the provisions of the above act.

Federal Land Policy and Management Act of 1976 (90 Stat 2473)

FLPMA is a multi purpose act addressing a multitude of issues affecting public land management. Those sections most pertinent to mineral material disposal are: Section 201 requiring inventory and identification of resources; Section 202 addressing Land Use

Planning; Section 302 dealing with management of use, occupancy and development of the public lands, requires the Secretary to prevent undue and unnecessary degradation; Section 603 provides for designation of wilderness areas.

Effect on Mineral Materials - Mineral material resources need to be considered in inventory and land use planning efforts. Operations within WSAs must meet the non-impairment criteria.

EO 11988 Floodplain Management 1977 (42 F.R. 26951)

This Executive Order was signed by President Jimmy Carter, after the Bib Thompson Field in Colorado to reduce the risk of floodplain loss, to minimize the impact of floods on human safety and to restore and preserve natural values.

Effect on Mineral Materials - A federal agency must evaluate the effects of federal or permitted actions in a floodplain; and must consider all alternatives. If there is no alternative to the location of the action in a floodplain, the agency must propose mitigation (seasonal use) and publish a notice about the proposed use.

A floodplain is a lowland and relatively flat area adjoining inland and coastal waters including floodplain areas subject to a one percent flood.

Executive Order 11990 (F.R. 26961)

Provides for Protection of Wetlands - Directs that wetland and riparian habitats on the Public Lands be identified, protected, enhanced, and managed.

CULTURAL LAWS

There are many cultural/historic resource laws which affect the actions BLM and the FS may take on their respective lands. Generally, a cultural clearance is required prior to any surface disturbance. Major laws include:

1906 Allotment Act

First legislation to grant title to natives. Alaska sand and gravel is not considered to make allotments mineral in character.

1906 Antiquities Act (16 USC 432)

Provides for protection of archeological resources.

1966 National Historic Preservation Act (80 State 915)

To expand and maintain national register district and to provide grants to further this work, and to require consultation from Advisory Council within eligible or exciting archeological districts. Set up and defined the Advisory Council.

1971 E.O. 11593

Preserve cultural properties under their control for the future. Initial measures to direct policies, plans and programs to preserve, restore and maintain sites. Request agencies to inventory, nominate and locate appropriate sites for the national register.

1974 Reservoir Salvage Act (88 Stat 174)

To provide for preservation of historical and archeological data which might be lost because of dam construction.

1974 Archeological Resource Protection Act (P.L. 96-95)

To protect archeological values by providing stiff penalties for illegal removal and excavation of cultural resources from the public lands.

1978 American Indian Religious Freedom Act (92 Stat 469)

Established policy to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites.

Sec. 2, directs the various Federal agencies to evaluate and determine appropriate changes necessary to protect and preserve

Native American religious cultural rights and practices.

EXERCISE #1

Situation: A member of the public has come into the office. They wish to obtain mineral materials from the bank of the Animas River, approximately 2.5 miles south of town. They advise you of the following information and ask you what is legally required for them and for the agency to do. After reviewing the information, please list the appropriate law or laws which apply, the effect of each law on the request, and the correct citation.

1. The material is located within five feet of the water, and the river is well below high water mark (at least 15 feet).

Law
Citation
Effect

2. There is a small pit house located on the bank just above the high water line, in the area where excavation is proposed.

Law
Citation
Effect

3. There is a small lizard, with variegated markings, which lives in the pit house. It is suspected that the lizard may be an endangered species.

Law
Citation
Effect

4. The proposed excavation is anticipated to cover more than 50 acres, is expected to cause visual degradation of the area, may impact air quality, and, as proposed, could result in serious reclamation problems.

Law
Citation
Effect

5. The site is located immediately adjacent to the Animas Mountain proposed wilderness area.

Law
Citation
Effect

6. This portion of the Animas River is designated as a Scenic River under the Wild and Scenic Rivers Act.

Law
Citation

Effect

7. Mining claims, located the previous year, overlay the proposed excavation area.

Law

Citation

Effect

8. The Animas River is habitat for anadromous fish.

Law

Citation

Effect

9. The lands where the proposed excavation is located are encumbered by an oil and gas lease.

Law

Citation

Effect

10. A pair of bald eagles have nested on a tree in the area.

Law

Citation

Effect

11. The Chickasaw Tribe has a ceremonial religious site located on the banks of the Animas River in this vicinity.

Law

Citation

Effect

12. The proposed operation may result in water pollution

Law

Citation

Effect

ROLE PLAY

A member of the public (JOHN Q) is seeking to obtain mineral materials from government land. he goes into the nearest government office (FS/BLM) to make his request and discuss his proposal.

JOHN Q: I want to get some rock from government land. I need this rock as soon as possible because I have a contract with the State and I also need the roc' for other personal uses. I heard I could get it for free since I pay my taxes.

AGENCY REP; John, thanks for coming in. We'll be gland to work with you, but before we can do that, we are going to need to get more information. Such as what type of material are you dealing with?

JOHN Q: Well, it's just a bunch of brown and green schist.

AGENCY REP: How much will you need?

JOHN Q: I think I'll be needin' about 600,000 yards.

AGENCY REP: Wow, that's a lot of material. Where is it located?

JOHN Q: Let's see, it's located on them mining claims up on Crap creek, below Billy's Bottom in Schist Canyon.

AGENCY REP: How long do you expect to mine this site?

JOHN Q: Twenty to thirty years.

AGENCY REP: That's a long time. What are you gonna use it for?

JOHN Q: Well, I got a contract with the State to build some roads, and I also got a market for this fine schist up in Sedalia.

AGENCY REP: Will you be the operator?

JOHN Q: Well, at first I'll be doing some of the work. However, later on I'm going to Baja and my brother in law will be taking over the contract.

AGENCY REP: How much material will you need to fulfill your contract with the State?

JOHN Q: I expect, I'll need nearly 300,000 yards.

AGENCY REP: John, we have a lot of demand for mineral materials in this area. We may want to allow other people to obtain materials from the pit you are working in. Why don't you leave your proposal so that we can review it and we'll get back to you in a few days.

Questions on Mineral Materials Regulations

Exercise #2

1. Can Mr. Q. allow his brother-in-law to take over the contract?
2. What are the disposal methods which are possible for mineral materials. Which disposal method(s) is most appropriate for this situation?

You have just found out that the proposal is on Acquired Lands. How will this affect disposal of the mineral material.
3. Can disposal occur from an active mining claim?
4. Is a performance bond required for the method(s) of disposal your selected? If so, what is the appropriate amount of the bond, and why?
5. Is there a charge for the material? What should it be? How, when, and how often is it determined?
6. What provisions are there for exploration prior to issuance of a permit or contract? Can we give Mr. Q. a prospecting permit?
7. Can we establish an extraction area solely for the use of Mr. John Q.?
8. Is a written plan required to discuss what Mr. John Q. wants to do? If so, what is required by the plan?
9. Is an environmental assessment required for all operations?
10. Will any reclamation of the site be necessary? Will Mr. Q. be required to use native grasses for any reseeding?
11. Under what conditions would Mr. Q. be able to acquire the material under a Free Use permit?
12. What must be done with the mining claims located in Schist Canyon?
13. What compliance activities, if any, should the agency undertake?
14. What do the regulations require if there is unauthorized use of the mineral materials?
15. If mr. Q. decides to close the operation before he can go to Baja, what provisions are there for any payments he may have made?

16. What steps are necessary for production verification?
17. What is the maximum time allowed for various permits/contracts?

Can they be extended?

What about Acquired Lands?
18. How do we determine how much material Mr. Q. has removed from the pit?
19. Can we allow other individuals to extract materials from the pit along with Mr. Q. If so, how is it permitted? How are development of the mining and reclamation plans accomplished?
20. Are you having fun yet?