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.01 Purpose. This Manual Section provides procedures for investigating and resolving mineral trespass.

.02 Objectives. The objectives are to discourage, prevent, and eliminate mineral trespass on lands under Bureau jurisdiction and to collect appropriate compensation for any mineral loss suffered by the United States.

.03 Authority.

A. The Public Land Administration Act of July 14, 1960 (74 Stat. 506, 43 U.S.C. 1364) specifically authorizes the Secretary of the Interior to conduct investigations involving protection of public lands.

B. Embezzlement and theft, public money, property, or records (18 U.S.C. 641).

C. Public Lands, coal depradation (18 U.S.C. 1851).

D. Act of July 31, 1947, as amended (61 Stat. 681, 30 U.S.C. 601).

.04 Responsibility. (See BLM Manual Section 9230.04.)

A. Trespass Investigators are responsible for:

1. Conducting mineral trespass investigations in accordance with this Manual section, and

2. Consulting with the District minerals examiner, if investigator is other than the minerals examiner.

B. Geological Survey is responsible for investigating and reporting trespasses growing out of operations conducted by mineral lessees, permittees, licensees, or applicants thereof; for taking appropriate action; and for making reports to the State Director in accordance with 600 DM 4.

.05 Definitions.

A. Willful Trespass: done deliberately, recklessly, intentionally, or willfully with knowledge that it was in violation of law.

B. Innocent Trespass: the taking of ore inadvertently, innocently, and in good faith under a genuinely mistaken belief of a right to so extract the mineral.

.06 Policy. It is Bureau policy to prevent and eliminate mineral trespasses to the maximum extent possible and collect the appropriate damages. (See 9230.06.)

.07 Historical Data. The following are decisions on willful and innocent trespasses for references:

A. "It is the duty of everyone to exercise ordinary care to ascertain the boundaries of his own property and to refrain from injuring the property of others..." (Durant Mining Company v Percy Consolidated Mining Co., 93 R. 166 (1899).) "There is a legal presumption that one who takes or converts to his own use the property of another intends so to do, and a jury may lawfully infer that such a wrongdoer had knowledge of the right and title of the owner of the property which he appropriated, and that he intended to convert it to his own use from his reckless disregard of the owner's right and title, unless the presumption is overcome by evidence of his innocence and good faith." (U.S. v Ute Coal and Coke Co., 158 Fed. 20 (1907).)

B. "The taking of common varieties of sand and gravel from a mining location perfected after July 23, 1955, by one with knowledge of the existence and date of location of the claim is willful trespass." (Solicitor's Opinion M-36467, August 28, 1957.) This refers for example, to the selling of sand and gravel from an unpatented mining claim located after July 23, 1955, for placer gold.

C. The innocent purchaser from a willful trespasser must respond by the same rule of damages as the trespasser for the trespass in the absence of a State statute on this point. (Liability of Innocent Purchaser from Willful Trespasser, 60 I.D. 6 (1947).)

D. Also, a person who aids, abets, assists, advises a trespasser or who authorizes or orders an act of trespass is jointly liable with the actual trespasser. (Kirby Lumber Corp. v Karpel, 233 F. 373 (1956).)

E. "The test to determine whether one was a willful or an innocent trespasser is not his violation of the law in the light of the maxim that every man knows the law, but honest belief, and his actual intention at the time he committed the trespass; and neither a justification of the acts nor any other complete defense to them is essential to the proof that he who committed them was not a willful trespasser." (U.S. v Homestake Mining Co., 117 Fed. 481 (1902).)

F. "One who acts in good faith upon the erroneous advice of reputable counsel upon questions of legal right concerning which a layman could hardly have actual knowledge, is not chargeable with bad faith, or with willful intent to commit a wrongful act because his counsel was mistaken in his view of the law." (U.S. v Homestake Mining Co., supra.) After this determination is made, the investigator (minerals examiner) must complete his examination under BLM Manual Section 9230.32.

.08 Case Priorities. Due to the various statutes of limitation which require that suit be brought within a specified period of time, it is necessary to process trespass cases within the period of time established by the statutes of limitation. (See 28 U.S.C. 2415.)

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.1 Investigation. Mineral trespass is much more difficult to detect than other resource trespasses. One reason for this is that the removal of the mineral may be done under the authority of a presumably valid mining claim. Mineral trespass cases must be thoroughly investigated and reported so that prompt action may be taken to terminate the trespass. Investigation reports must be prepared so as to constitute admissible evidence in court, whether at civil proceedings or criminal prosecution. BLM Special Agents should be consulted in trespass cases where it has been determined that Federally owned resources have been removed without proper authorization. The Special Agents should be utilized in these trespass cases where detailed investigation and collection of evidence is needed--particularly those of a willfull and/or criminal nature. In investigations of this nature it is essential that BLM employees who find or observe the trespass do not disturb or destroy items of an evidential nature. All request for assistance by Special Agents should be made through the State Director by the District Manager.

.11 Actions Precedent and Subsequent to Investigation.

A. Precedent Actions. For procedures on prevention and detection of mineral trespass, see BLM Manual Section 9230.1 and .2.

B. Subsequent Actions. For procedures on notices and demands, litigation and seizures, settlements, records and reports, and doing business with trespassers, see BLM Manual Section 9230.4 through .8, respectively.

.12 Mining Claim(s). The following are some of the categories in which mining on a mining claim is in trespass:

A. Mining Claim(s) Null and Void, ab initio. The mining claim was located when the lands were withdrawn, segregated, classified, or reserved from mining location, e.g., powersite (prior to P.L. 359, Act of August 11, 1955 (69 Stat. 681)), reclamation, Atomic Energy Commission, etc., withdrawals, and leasable mineral lands prior to dates affected by P.L. 250 (Act of August 12, 1953 (67 Stat. 539)), and P.L. 585 (Act of August 13, 1954 (68 Stat. 708)) and from February 10, 1954, to August 13, 1954.

B. Mining Claim(s) Located Prior to Withdrawal. Mining claims were located prior to a withdrawal, segregation, classification, or reservation of the lands from mining claim location but lacked a valid discovery prior to the withdrawal. (Contest proceedings are necessary to determine this fact.)

C. Mining Claim(s) Null and Void Due to Noncompliance. Mining claims were null and void due to noncompliance with the validity features of P.L. 250 and 585 or satisfied compliance requirements but lacked a valid discovery prior to the date of those acts. (Contest proceedings are necessary to make this determination.)

D. Mining Claim(s) Located Within Powersite Withdrawals. Placer mining claims where located after August 11, 1955 (Public Law 359), on powersite withdrawals on which placer mining was prohibited as the result of a hearing held pursuant to section 2(b) of the Act, or on which placer mining was performed before recordation in the proper BLM office.

E. Mining Claim(s) Located for Common Varieties. Mining claims were located for common varieties of sand, stone, gravel, pumicite, pumice and cinders prior to the Act of July 23, 1955 (69 Stat. 367) which lacked a valid discovery on that date (as to material mined after that date or located after July 23, 1955) for these common varieties. (Contest proceedings are necessary to determine these facts.)

F. Mining Claim(s) Located for Fill Material. Mining claims were located at any time for fill material, "blow" sand, common clay, etc., which have never been locatable. (Contest proceedings are necessary to determine this fact.)

G. Disposal of Common Variety Mineral Material. The unauthorized use of disposal of common variety mineral material from a mining claim located after July 23, 1955, is a trespass regardless of whether there is a valid discovery of other locatable minerals, such as gold. Common variety mineral material may be used by the mining claimant for mining purposes. (See Solicitor's Opinion M-36467, August 28, 1957.) Contest proceedings are necessary to make this determination.

.13 Lands Open to Mineral Entry. If the lands are open to mineral entry and remain open under the mining laws, a claimant entering thereon in good faith and in an honest effort to develop a paying mine, would, prior to the time the mining claim was finally declared invalid, have all the rights of the owner of a valid mining claim. If acting in good faith, he could appropriate and sell all valuable locatable minerals extracted in an honest effort to develop the claim or establish the validity of his discovery. Thus, a mining claimant for a locatable common place (not common variety) mineral could sell material in an attempt to show a valid discovery by developing a profitable market.

.14 Leasable Minerals. The majority of leasable mineral trespasses probably will be for coal, although trespasses for other minerals are possible. (For guidance concerning the conduct of coal trespass investigation, see Appendix 1.) An oil and gas well which bottoms on public land, even though drilled from nonpublic land, is in trespass unless a Federal oil and gas lease has been issued.

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.15 Salable Minerals. Taking of mineral materials which are subject to sale under the Act of July 31, 1947 (61 Stat. 681, 30 U.S.C. 601), as amended, without benefit of a free use permit, materials sale permit or contract, is a trespass.

A. Stockraising Homestead Act. Salable (common varieties) mineral material underlaying Stockraising Homestead Act lands, including sand and gravel, were retained by the United States in the original patents. Therefore, the removal of sand, gravel, and other common variety minerals removed from these lands are considered a trespass.

.2 Settlement of Trespass Damages. Trespass damages determined to be due must be promptly settled. Settlement should be accomplished through normal administrative action; however, there may be cases when civil action or criminal prosecution may be necessary.

.21 Administrative Action. Settlement should be accomplished through normal administrative action, if possible.

.22 Civil Actions. (See BLM Manual Section 9230.32 and .51.) Civil action to recover trespass damages should be brought only after all reasonable means to effect settlement of trespass damages by administrative action have failed.

.23 Criminal Prosecution. (See BLM Manual Section 9230.31 and .51.) Criminal prosecution is not to be used as a substitute for administrative action when the latter is sufficient.

A. Recommendations for Criminal Prosecution. Criminal prosecution should be recommended only in aggrevated cases when, in violation of a Federal criminal statute, one of the following conditions exists:

1. A mineral trespass is continued after notice of the trespass has been served on the alleged trespasser,

2. The trespass is committed in spite of foreknowledge or warning of the illegality of the act, or

3. When an important principle may be substantiated by a court decision.

.3 Statute of Limitations. Public Law 89-505, or the Act of July 18, 1966 (80 Stat. 304, 28 U.S.C. 2415) provides limitations of time during which the government may institute a suit to collect monetary damages. Basically, it provides:

.31 Time Limitation on Suits. Suits to recover money damages for a trespass on public lands are barred unless the Government files a complaint in court within 6 years after the trespass occurred.

.32 Pendency of a Contest Proceeding. The pendency of a contest proceeding in the Department does not suspend or interrupt the running of the statutory 6-year period.

.33 Strongly Probable Trespasses. In cases of strongly probable trespasses of substantial amounts involving mining claims where the validity determination is still pending, and where the 6-year statutory period probably elapses before such final determination, the Bureau could recommend that suit be instituted to collect the "trespass damages" before legal action thereon is barred.

.34 Referral of Trespass Reports to Solicitor's Office. Prompt referral of all trespass reports must be made to the Solicitor for his determination as to whether the statute of limitation has expired.

.35 Voluntary Payments. The statute of limitations, when applicable, bars only legal action in court to collect money damages for a trespass. It does not preclude the Bureau from accepting voluntary payments.

.4 Measure of Damages. The measure of damages in a mineral trespass case are the damages prescribed by the laws of the State in which the trespass was committed. The interpretation of the laws for an individual State can be obtained from the Field or Regional Solicitor. If there are no State laws governing, the measure of damages must be assessed as provided by 43 CFR 9239.5. In general, these provisions are as follows:

.41 Willful Trespass. In the case of willful trespass, the damage is assessed at the value of the mineral at the time of conversion without deducting for labor bestowed or expense incurred in removing and marketing the mineral.

.42 Innocent Trespass. In the case of innocent trespass, the damage is assessed at the value of the mineral taken less expense incurred in taking same; i.e., the value of the mineral in place. In determining the value in place, direct mining, treating, and transportation costs are allowable deductions from the value of the mined mineral; however, the following are not allowable deductions: depreciation, depletion, general expenses, insurance, taxes, and profit margin. Union Pacific Coal Company, 1958125 "L", July 3, 1947.

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Guidelines for Coal Trespass Investigation

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I. Introduction.

A. Purpose. The purpose of this Appendix is to establish in one document a set of chronological, step-by-step procedures for identifying, investigating, and resolving coal trespass based on the procedures and instructions in BLM Manual Sections 9230 and 9235. Although this Appendix provides a basic working guide for trespass actions which the employee may be required to take, it is essential that he/she also become thoroughly acquainted with information contained in BLM Manual Sections 9230 and 9235.

B. Background. Coal trespass can occur in a variety of ways under a number of different conditions. Although it is most likely to occur on land where the surface and mineral estates have been severed and the surface estate is non-Federal, coal trespass can also occur on public land under the jurisdiction of the BLM or on Federal land under the jurisdiction of other Federal agencies. Coal trespass involves not only mining of Federal coal without a Federal coal lease but also coal exploration on unleased Federal coal land without an exploration license. Any coal removal under an exploration license beyond that which is needed to establish the quantity and quality of Federal coal also constitutes coal trespass.

C. Application. The procedures contained in this appendix are intended to be used to resolve coal trespass regardless of the circumstances under which it occurs. It is incumbent upon all Bureau employees working in areas containing Federal coal to be alert for evidence of possible coal trespass. Establishing and maintaining active, comprehensive land-use planning and resource management programs are the most effective ways to identify past and present coal trespass and to prevent future coal trespass.

II. Identifying Coal Trespass.

Indications of possible coal trespass may come to the attention of Bureau employees in a variety of ways, including those listed below. Every employee is responsible for taking followup action in accordance with BLM Manual Sections 9230 and 9235 and this Appendix, or for reporting the possible coal trespass to appropriate Bureau personnel for followup action. Bureau employees reporting possible coal trespass, or receiving reports from non-Bureau personnel, should note for future reference the name (and address and telephone number, if appropriate) of the individual reporting the possible trespass, the date the possible trespass was identified, the location of the possible trespass, a brief description of the possible trespass activities, and the names of any other people present at the time the possible trespass was identified.

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A. Detection. Following are examples of methods for detecting coal trespass:

1. Mineral Resource Inventories and Land-Use Planning Documents. Compare Mineral Resource Inventory and land-use planning overlays depicting existing and abandoned coal mines with maps or overlays depicting Federal coal ownership to determine where the mining of Federal coal has taken or is taking place. (This should be done at the time these overlays are being prepared, but it also can be done using existing overlays.) Consult coal-leasing records to determine if leases were ever issued for the mined lands. If so, consult the leases and coal production records maintained by the Geological Survey (GS) to determine if all coal mining took place during the time the lease was in effect.

2. Resource Management Activities. Bureau employees engaged in resource management activities should become familiar with the location of existing authorized coal mines on Federal lands and adjacent non-Federal lands. Bureau field personnel should inform the appropriate minerals specialist or supervisor of any new or expanded coal mining operations so that followup action can be taken to determine if the operations have been properly authorized.

3. Map and Remote Sensing Imagery Interpretation. Compare aerial photos and other remote sensing imagery, land-use maps, orthophoto quads, and other data sources with maps depicting Federal coal ownership to determine if surface disturbance indicating possible coal trespass is present on land containing Federal coal resources.

4. Information from Other Federal and State Agencies. Encourage employees of the U.S. Geological Survey, Office of Surface Mining, U.S. Forest Service, and other Federal agencies to be alert for evidence of coal trespass during the performance of their duties and to report suspected coal trespass to the Bureau promptly. Consult mining records of State agencies to determine if the State has authorized coal mining on land that might contain unleased Federal coal.

5. Information from the Public. Maintain good working relations with the public and encourage the public to report any suspicions regarding unauthorized coal mining to Bureau personnel.

B. Verification. Indications of possible coal trespass detected under IIA above are based on little more than suspicion at this point. Each report of possible coal trespass should be carefully screened by a BLM minerals specialist to verify that activity signifying possible coal trespass has occurred.

1. Preliminary Field Inspection. Visit the site of the possible coal trespass to ascertain that mining activity has occurred or is occurring. Verify that this mining activity involves coal rather than another mineral. If the mining activity involves another mineral, identify the ownership of this mineral to determine if it is being mined in trespass.

2. Preliminary Ownership Determination. Consult Master Title Plats and other ownership documents to verify that the mine is located on or near land containing federally owned coal resources. Consult BLM records to determine if coal exploration or mining took place or is taking place under a valid exploration license or Federal coal lease.

C. Documentation. BLM employees must document and report all cases of suspected coal trespass verified under IIB, using the procedures described in BLM Manual Section 9230.21. Report all suspected coal trespass unless the verification procedures taken under IIB indicate beyond any doubt that:

1. There is no evidence of coal mining,

2. There are no federally owned coal resources near the site of the mining activity, or

3. The federally owned coal resources were leased and the mining definitely occurred while the lease was in effect.

III. Investigating Suspected Coal Trespass Cases.

A. Assigning Case to Investigator. The District or Area Manager assigns verified cases of suspected coal trespass to an investigator, preferably but not necessarily a mineral resource specialist, who has had training or experience in trespass investigation. The investigator obtains assistance from other resource specialists as needed. However, if evidence of possible criminal activity is identified at any time or if the magnitude or sensitivity of the case warrants, the District Manager immediately refers the case to the State Director for referral to the Federal Bureau of Investigation (FBI) or for assignment to a BLM Special Agent (see BLM Manual Sections 9230.31 and 9230.32F.)

B. Investigation. The investigator conducts an investigation using the procedures described in BLM Manual Section 9230.32D, Steps 1 through 6 and 9 through 12. As part of this investigation, the investigator should:

1. Document in detail all activities and findings, including negative findings, relating to the investigation.

2. Obtain copies of all documents pertaining to land and mineral ownership, use authorizations, and surveys available from BLM, State, and local records and place them in the case file.

3. Note the date, time of day, location, object or scene portrayed, the name of the photographer, and any other pertinent information on the reverse side of all photographs and, if possible, include readily identifiable landmarks in the field of view of the photographs.

4. If possible, conduct interviews in the presence of another BLM employee to verify the accuracy of the investigator's interview report. (This step is not necessary if the interviewee agrees to provide a signed statement.)

C. Case Review. The investigator submits his trespass report and the case file to the Area or District Manager, who reviews the case and takes one of the following actions:

1. Returns the case to the investigator for further investigation,

2. Closes the case if the investigation clearly indicates that no unauthorized mining of Federal coal has occurred, or

3. Forwards the case to the State Director for further action as described in IV and V below if the investigation confirms that trespass has occurred.

IV. Investigating Confirmed Trespass Cases. The State Director is responsible for completing the investigation, to: determine the identity of the trespasser, if not determined during the preliminary investigation; determine if the trespass was willful or innocent; obtain a cadastral survey of the lands involved, if not obtained during the preliminary investigation; and obtain a trespass liability determination.

A. Assigning Case to BLM Special Agent. The State Director assigns the case to a BLM Special Agent for further investigation to determine the identity of the trespasser, if not yet known, and to determine if the trespass is willful or innocent and if the trespass involves a suspected violation of a Federal criminal statute. (See BLM Manual Section 9230.32F.)

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B. Investigation. The Special Agent conducts whatever investigation is necessary to achieve the objectives specified above and submits a report on the investigation to the State Director. It is incumbent upon the BLM to conduct a thorough investigation of each coal trespass case to obtain all available evidence pertaining to the trespasser's knowledge and intent. BLM Special Agents, because of their training and experience in investigative methods and their knowledge of the legal requirements of case investigation, are the most appropriate BLM employees to conduct careful, systematic, and legally acceptable coal trespass investigations. The following are examples of procedures that can be used to establish the identities of coal trespassers and the willful or innocent nature of the trespass.

1. Check appropriate State agency records for mining permits or applications to identify the mining company and the corporate officers.

2. Check BLM records to determine if the alleged trespasser purchased any material relating to Federal coal ownership, such as Surface-Minerals Management Quad maps or Master Title Plats.

3. Check expressions of interest in Federal coal leasing to determine if the land involved in the trespass was nominated by the alleged trespasser company or any other company. If a company other than the alleged trespasser company submitted a nomination for the land, attempt to determine if any information relating to Federal coal ownership was exchanged between the two companies before or during the mining. Check BLM correspondence records to determine if the trespasser company or any representatives thereof inquired about or initiated any coal leasing action for the land involved.

4. Check local courthouse records to determine to what extent they reveal coal ownership on the land in question, the availability of these records to the public, and the length of time they have been available.

5. Contact and interview the surface owners if the surface is non-federally owned. Ascertain the surface owners' knowledge of mineral ownership on their property and determine what transpired during negotiations between the mining company and the surface owners. Examine private mineral leases and title abstracts, if available, for any information relevant to mineral ownership. Also check any tonnage and royalty statements in the possession of the surface owners for information on shipment dates, tonnage removed, and royalty payments made. Obtain copies of the aformentioned records, if possible.

C. Consultation with Field Solicitor and U.S. Attorney. The State Director:

1. Transmits a copy of the case file to the Field Solicitor for review and guidance in the investigation at the same time the case is assigned to a Special Agent.

2. Transmits a copy of the case file to the U.S. Attorney if the U.S. Attorney is involved in the case, or if the Field Solicitor recommends this action based on indications of possible criminal activity.

3. Transmits a copy of the Special Agent's investigative report to the Field Solicitor and, if appropriate, to the U.S. Attorney.

4. Requests an opinion from the Field Solicitor as to whether the trespass should be considered willful or innocent.

5. Relinquishes direction of the case in favor of the U.S. Attorney if the U.S. Attorney decides that the evidence in the case warrants criminal proceedings.

D. Cadastral Survey. The State Director obtains a cadastral survey of the trespass site if a survey was not performed as part of BLM Manual Section 9230.32D, Step 6 (see IIIB above.) A survey is necessary to establish property lines and verify the location of the trespass site, and may also be necessary to establish the location and size of the area from which coal was illegally mined. A survey is usually required in order to verify this information in any subsequent legal proceedings. It may be necessary to have a geologist or mining engineer mark the boundaries of the mined-out area, which is usually smaller than the total disturbed area.

E. Decision on Willful or Innocent Trespass. The State Director determines whether the trespass should be considered willful or innocent, based on his review of the case file and investigative reports and on the recommendations of the Field Solicitor and the U.S. Attorney.

V. Determining Trespass Damages. The measure of damages in a coal trespass case is determined according to the provisions of 43 CFR 9239.5-3 and BLM Manual Section 9235.4.

The State Director asks the Area Mining Supervisor of the Geological Survey (GS) for a calculation of trespass damages. This is in accordance with Secretarial Order 2948 which stipulates that the GS is responsible for mineral resource and economic value determinations. If the GS indicates that it does not have the present capability to calculate the trespass damages and agrees to transfer this function to the BLM, the State Director may assign qualified BLM employees to calculate trespass damages. Coal resource investigations may be required to determine the amount of coal removed. This may necessitate the use of earth-moving equipment or drill rigs to locate the boundaries of the mined-out area and determine the thickness and quality of the coal. The agency calculating the trespass damages is responsible for doing this if needed.

VI. Case Disposition. The State Director returns the completed case file to the District Manager. (Refer to BLM Manual Section 9230.32D, Steps 15 through 21, for case disposition procedures.)

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