

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

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BUREAU OF LAND MANAGEMENT

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H-9235-1 - MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

1. Explanation of Material Transmitted: This release updates and revises Handbook Section H-9235-1 to conform to regulation changes in 31 CFR Chapter IX, Sections 901-904 and 43 CFR Part 3600 and Subpart 3809, and the Congressional guidance on the deposit of trespass settlements [House Appropriation Committee report for the FY 1999 Interior Appropriation Act, PL. 105-277 of October 21, 1998].
2. Reports Required: None.
3. Materials Superseded: The Manual material superseded by this release is listed under "REMOVE" below. No other directives are superseded.
4. Filing Instructions: File as directed below.

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/s/ John W. Broderick  
Acting Assistant Director  
Minerals, Realty & Resource Protection

# **Mineral Material Trespass Prevention and Abatement**

## **BLM Manual Handbook H-9235-1**

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FOREWORD

The Bureau of Land Management (BLM) is responsible for managing approximately 264 million acres of public lands in addition to 57 million acres of split-estate lands with Federal minerals located in 28 States. As part of its management of mineral resources on public lands, the BLM is responsible for a large mineral materials disposal program. Associated with the mineral materials program is the problem of unauthorized use that can occur under various situations. The BLM is responsible for resolving trespass cases in an equitable and timely manner. Aggressive trespass detection and investigation helps to assure that existing or ongoing trespass will be found, damages recovered, and losses to the government kept to a minimum. Speed is important. The recovery of damages in a trespass case seldom covers all of the costs or losses incurred by the BLM.

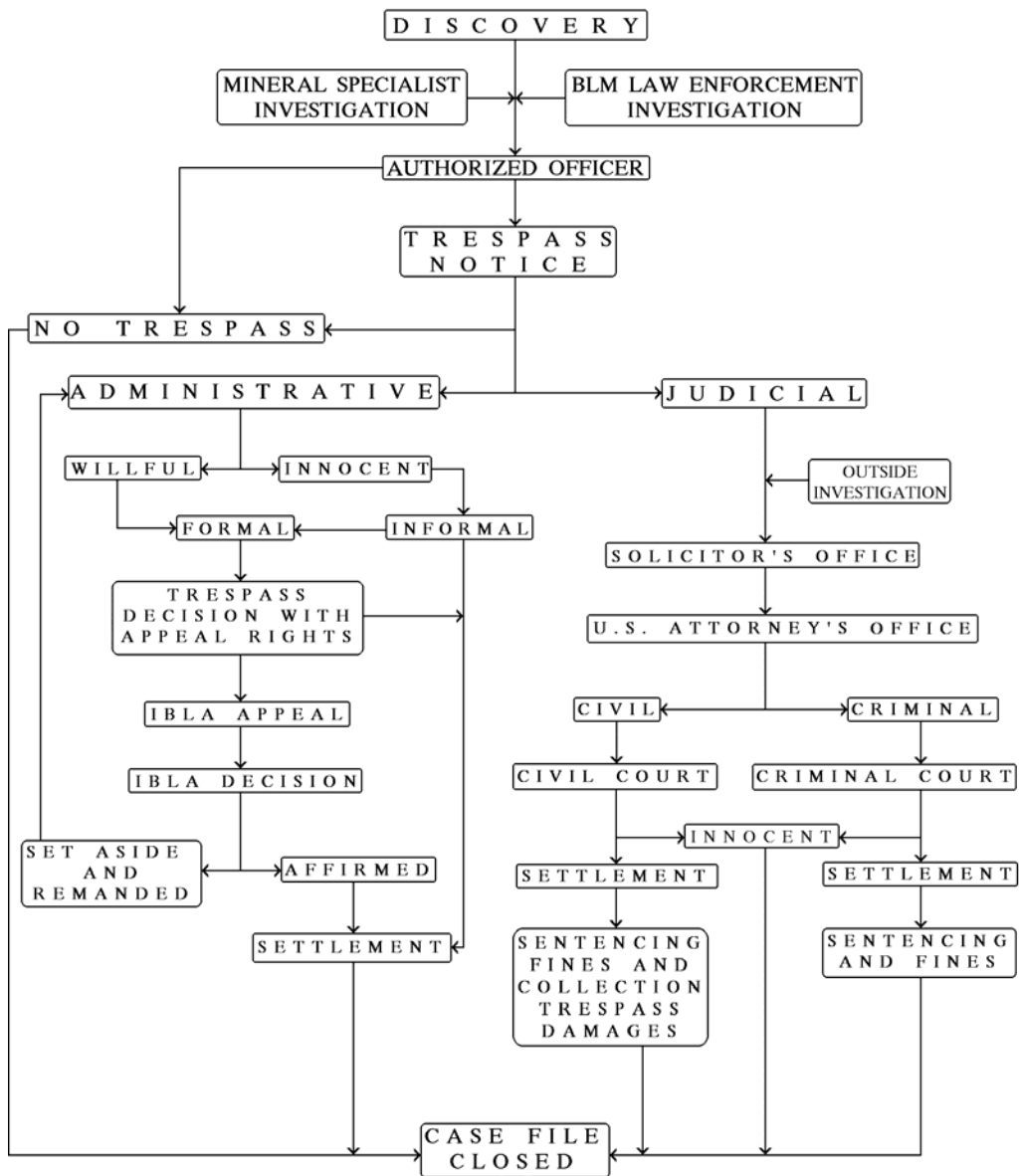
The aim of this Handbook is to outline the proper procedures for mineral material trespass abatement from initiation of BLM action to case closure. The flow chart on the next page gives a visual depiction of how a trespass should be processed within the BLM. It is intended as a quick reference on the various avenues open to the mineral specialist and management when pursuing and resolving a trespass situation. A trespass is resolved when the unauthorized activity is terminated, settlement of liabilities are agreed to by BLM and the trespasser or established by court order, liabilities have been paid, and the land has been rehabilitated or stabilized. The case file can then be closed. This Handbook is intended to give guidance on the proper documentation of the case file and negotiation of the situation to ensure successful settlement of the trespass. Also provided is a section on trespass prevention with suggestions on how to prevent or discourage future unauthorized use. A proactive program of trespass prevention and detection will do much to deter mineral material trespass.

Because circumstances arise which are unique to each situation this Handbook should not be treated as the final authoritative word.

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**MINERAL MATERIAL TRESPASS**

**FLOW CHART**



## H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

### Chapter I - MINERAL MATERIAL TRESPASS AUTHORITY, LAWS, AND REGULATIONS

The Mineral Materials Act of 1947, (30 U.S.C. 601 et seq.) requires that common varieties of mineral materials be disposed of by sale or permit. Mineral material trespass regulations collectively include 43 CFR Parts 3600, 8360 (Subpart 8365), and 9230 (Subpart 9239). The regulations provide administrative, civil, and criminal authorities for handling unauthorized use or development of Federal mineral materials where authorization must be obtained under the Materials Act of 1947 (30 U.S.C. 601 et seq.), as amended.

Criminal liability for mineral material trespass (i.e., knowing and willful trespass) is derived from the authority of Sections 303(a) through (g) of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1714) and implemented through the regulations at 43 CFR Subpart 9262. Title 18 U.S.C. 641 includes criminal penalty provisions for theft of public property. The regulations at 43 CFR 1812 governs practices before the Department of the Interior (Department) and provides that every individual who wishes to practice before the BLM must comply with the requirements of part 1 of the CFR. This includes an understanding of the regulations for permits that they are signing.

Liability claims by the United States for moneys determined to be owed to the United States from any person, organization, or entity are governed by the Federal Claim Collection Act of 1966, as amended and supplemented. The Federal Claims Collection Standards (Standards) of the Department of the Treasury and of the Department of Justice (DOJ) [31 CFR, Chapter IX, Sections 901-904, (January 1, 2002 ed.)], implement the Federal Claim Collection Act, and provide authority for initiation of collection action against a trespasser for a claim arising as a consequence of the trespass.

A. Need for Regulations, Use, and Implementation Guidance. Portions of the regulatory information, paraphrased herein, may be useful in explaining the basis of the regulations to trespassers, interest groups, the public, and public land users.

1. Need for Mineral Material Trespass Procedures. Trespass on the public lands for various mineral materials requiring authorization through a sale or permit has been a long-standing problem. Trespass activities have resulted in loss of revenues to the United States, and damage to the public land resources because of misuse, abuse, theft, vandalism, and negligence. The BLM has tried to resolve cases involving unauthorized use of mineral materials by working with the individual and negotiating an amicable solution.

In most circumstances, this has resolved the problem, but there are instances where it does not work, particularly where the trespass was knowingly and willfully committed. A procedure is needed to allow the United States to

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obtain payment for the use or removal of mineral materials and, where appropriate, to impose civil and/or criminal penalties against those trespassing on the public lands.

### 2. Use of Mineral Material Trespass Procedures.

a. BLM Manual Sections 9230 and 9235 provide policy for dealing with unauthorized use or removal of mineral material from the public lands. These sections apply to all mineral activities which are required to be authorized under applicable mineral regulations.

b. In those instances where law enforcement action is required for the prevention or abatement of unauthorized use or development, such action shall be aggressively pursued by the BLM. When appropriate, the BLM will cooperate with Federal, State, and local law enforcement agencies.

### 3. Implementation of Mineral Material Trespass Procedures.

a. Before resorting to the civil or criminal procedures provided by the regulations, management will first consult with their law enforcement staff for their opinion when determining whether to pursue administrative or judicial remedies. Consideration must be given to the nature and severity of the unauthorized use and whether failure to take action would result in damage to the mineral materials, public lands, and resources that would be unacceptable without an attempt to obtain legal redress.

b. In instances where unauthorized use, or removal of mineral materials from the public lands is verified, the BLM shall consider authorizing the use. The use must conform to BLM plans, programs, policies, and objectives, be in compliance with all applicable State and local requirements, and a satisfactory arrangement must be made for settlement of the trespass.

B. Definitions. This section contains definitions, use of terms, and selected portions of the regulations and manual relating to mineral material trespass (43 CFR 3600, and 9230) and land resource management law enforcement regulations (43 CFR 9262).

1. Unauthorized Use. Except when authorized, under the laws and regulations of the Department of the Interior, by sale, permit, or by approved plan of operations on mining claims, the extraction, severance, or removal of mineral materials from public lands under the jurisdiction of the Department of the Interior is unauthorized use. 43 CFR 3601.71 provides guidance on what constitutes unauthorized use.

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2. Unnecessary or Undue Degradation. Unnecessary or undue degradation means impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Unnecessary and undue degradation may involve failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas; creation of a nuisance; or a failure to comply with applicable environmental statutes and regulations.

3. Willful Trespass. Willful trespass refers to a trespass done deliberately, intentionally, or willfully with knowledge that it was in violation of law.

4. Innocent Trespass. Innocent trespass refers to taking of mineral materials inadvertently, and in good faith under a genuinely mistaken belief of a right to so extract the mineral.

5. False Claims Act. This Act was originally passed by Congress March 2, 1863. Numerous amendments have been made over the years and in 1986 Congress completely revised the Act by passing P.L. 99-562 (31 U.S.C. 3729 et seq.) (100 Stat. 3155, 3157). Submittal of a false production report can allow the Government to invoke the False Claims Act through civil actions. The penalty is 3 times the loss to the Government plus a penalty of \$5,000 to \$10,000 per false claim.

6. Penalties for Unauthorized Use of Public Land or Resources. Criminal provisions of the trespass regulations are derived from Section 303(a) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1733 et seq.). Any person who knowingly and willfully violates the provisions of 43 CFR 9262.1, 2920.1-2, 2801.3, and 8365 by using public lands or resources without the requisite authorization, may be tried by a United States Magistrate Judge. Further, an individual may be fined up to \$100,000 or an organization may be fined up to \$200,000. Imprisonment may not exceed one year. These criminal penalties may be imposed in addition to civil penalties, where applicable.

7. Penalties for False or Fraudulent Statements. Making false or fraudulent statements to any department or agency of the United States (e.g., production reports) is a criminal violation (18 U.S.C. 1001; 62 Stat. 749). An individual may be fined up to \$250,000 or an organization may be fined up to \$500,000. Imprisonment may not exceed six years.

8. Damages. Damages are the total value of the mineral trespass and all associated costs including but not limited to administrative and reclamation costs.

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9. Standards. Refers to the "Federal Claims Collection Standards (Department of the Treasury -- Department of Justice) Regulations. These regulations are found at 31 CFR, Chapter IX, Sections 901-904 (January 1, 2002 ed.).

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### Chapter II - STRATEGIC PLANNING FOR TRESPASS PREVENTION

Mineral material trespass prevention should be included in the development of mineral materials issues in the Resource Management Plan (RMP), discussed in the Action Plan as appropriate, and implemented through the Annual Work Plan (AWP) process. Planned actions for mineral material trespass detection and resolution should be identified in the AWP. Trespass prevention relies on a fully informed public and the involvement of BLM personnel. Trespass prevention efforts are best accomplished through public affairs initiatives, a continuous and visible field presence, and a proactive program to aggressively resolve trespass as it occurs.

Detection relies on knowledge of the location of authorized uses of public lands and an alert staff to detect unauthorized activities. Some trespass actions, such as over production, may take particular diligence and knowledge to identify and resolve. Resolution of mineral material trespass may be accomplished through termination of the trespass by payment of debts due the United States and/or authorization of the activity under mineral material authorization regulations. Authorization decisions should not be implemented until satisfactory arrangements have been made to resolve the trespass itself.

Plans and planned actions that may be taken to prevent, detect, and resolve mineral material trespass are as follows:

A. Strategic Plans. Each State should assess their trespass situation, and if necessary prepare and implement statewide plans for mineral material trespass prevention, detection, and resolution. Data from these plans should be incorporated into AWP's as appropriate. Plan implementation is achieved through the AWP process.

1. Trespass Prevention. Planned actions to prevent mineral material trespass may include these steps:

a. Signing and/or fencing public land boundaries where trespass is occurring or anticipated to occur. When the location of public land boundaries is in question, perform a site inspection to determine if the survey monuments can be identified. Perform cadastral surveys, where necessary, prior to posting boundaries.

b. Brochures to inform the public of locations of acceptable areas for mineral material disposals, requirements for authorized use of the public lands and prohibitions against mineral material trespass. Distribution may include BLM Offices, courthouses, post offices, and other appropriate public places.

c. Profiling the mineral material program with annual reporting

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to the press of quantities of material sold or permitted along with values and amounts removed. This would serve to inform the public of the active role we take in this program.

d. Limiting access points into the material site and fencing areas where restricted access may prevent trespass or facilitate monitoring and detection. This needs to be considered during the establishment of a new site, conversion of an existing unauthorized site to an authorized disposal area, or when evaluating management strategies of existing authorized sites.

e. To control over-production of contracted material, BLM should take an active role in pit design and develop terms and conditions in the authorization that specify record keeping requirements for the operator and allows for BLM's access to those records.

f. Authorize the trespass areas by issuing contracts, either noncompetitive or competitively, and then require total reclamation as a stipulation along with pit closure provisions.

g. Full reclamation of the site along with closure of access points. It may be desirable to construct berms along with the placement of large boulders to discourage entrance until vegetation has been established.

h. Identification and mapping of areas of high potential for the occurrence of saleable materials and for the potential for trespass should be part of the RMP/Strategic Plan process.

i. Increase on the ground presence by the proper utilization of BLM personnel (i.e., resource staff, volunteers, rangers) and/or State or local law enforcement officials. Use of well marked vehicles during the on site inspection is important to the success of this technique. The personnel used should be educated to the different types of commodities produced and the different types of haul trucks used (e.g., flatbed trucks for dimension stone). Law enforcement officers should be involved where confrontations and/or criminal activities are expected.

j. Media releases to local newspapers, trade magazines, and other relevant sources (e.g., rock hound shops for petrified wood) to publicize successful trespass resolution efforts.

k. Dissemination of mineral material trespass information to the public, Resource Advisory Councils, users and operators, etc. Provide information on the public costs of trespass, requirements for use authorizations, the BLM's desire to work with trespassers, etc.



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### 2. Trespass Detection.

a. Plan for a systematic inventory to identify mineral material trespass activities. Utilize orthophotoquads, aerial flights and photography, remote sensing, field investigation, staff knowledge, and other data as available.

b. Concentrate inventory/detection efforts on areas particularly susceptible to trespass, such as private/public land areas with common boundaries, areas of increased industrial or construction activities, developing subdivisions, areas of mineral activity, etc. The inventory efforts should also include areas where the BLM manages subsurface resources, e.g., split estate lands.

c. Inventory on a logical geographic or township, range and section basis. Areas with a history of low mineral material trespass activity and low market demand may be excluded.

d. Record all areas of suspected trespass on planning map overlays. This includes removal of suspected common variety minerals from unpatented mining claims where the right of the claimant to the mineral materials has yet to be determined.

3. Trespass Resolution. Trespass may be resolved by terminating the action and settling the trespass liability, and in some cases authorizing the use under a contract. Termination of the trespass may be accomplished by informal or formal administrative action, by citation under 43 CFR 9230, or by civil or criminal action in the courts (see Chapter VII - Mineral Material Trespass Resolution). A mineral material use authorization may not be issued until the trespass is resolved. However, resolution of the trespass liability and processing of the use authorization may be done concurrently. Planned actions for trespass resolution may include:

#### a. Termination.

(1) When the trespass violates State or local law(s), it may be appropriate to plan for the involvement of State or local law enforcement officials in the termination action.

(2) Plan immediate posting, restoration, and rehabilitation of trespass sites to discourage new or repeat trespass.

(3) Plan for the involvement of BLM law enforcement personnel in trespasses which are, or may be, criminal in nature.

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b. Use Authorizations. Unauthorized use may be legalized following resolution of the trespass, under a use authorization, if the use is consistent with or does not conflict with BLM plans and management programs. Satisfactory arrangements for settlement of trespass liability must usually be completed prior to authorizing any continued use. Continued operation may be allowed on a short-term interim basis, following liability payment, to prevent unnecessary shutdown in operations and provide the BLM time to arrive at a decision to terminate or to authorize the use. In arriving at this decision the authorized officer should consider the nature of the trespass, the trespassers past record, and the effect authorization may have on deterrence of future trespass. Authorizations should be structured so that they do not reward trespassers or create incentives for further trespass. See also Chapter VII - Mineral Material Trespass Resolution.

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### Chapter III - BLM PLANNING SYSTEM ISSUES RELATED TO TRESPASS

A. Preliminary Scoping. Mineral material disposal and trespass actions must always be evaluated to determine whether or not it is a planning issue. This evaluation must take place for all new planning starts or plan amendments.

B. Comprehensive Planning. Mineral material trespass issues should be addressed in proportion to their significance in that particular planning unit. Emphasis should be placed on planning for realistic levels of authorized use such as developing sale disposal sites and community pits for high volume market areas. Districts where mineral material trespass is not a major problem may only need to evaluate mineral material trespass prevention as a management concern in the RMP process. Where mineral material trespass activities are not under control, the trespass issue and proposed actions can be defined in the RMP to address the problem. Implementation of RMP decisions may require activity plans for mineral material trespass prevention, detection, and resolution.

C. Planning Considerations. The following are suggested actions for mineral material trespass prevention, detection, and resolution that should be evaluated as input to the AWP or RMP as appropriate.

1. Strongly consider establishing community pits and sale disposal sites as part of the RMP process. Trespass problems may be an indication that the BLM is not meeting local needs.

2. Identification and mapping of areas of high potential for the occurrence of saleable materials and for the potential for trespass should be part of the RMP/Strategic Plan process.

D. Plan Maintenance and Utilization.

1. Review. Review planned trespass prevention, detection, and resolution actions at least annually to assure that current BLM policy, procedures, and mineral material trespass abatement directives are being followed.

2. Coordination.

- a. Coordinate plans on a Statewide basis, by District, and with adjoining States to assure that all Field Offices are working in a coordinated effort to detect, prevent, and resolve mineral material trespass.

- b. Coordinate plan implementation and maintenance efforts with other affected subactivities (including law enforcement).

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c. Coordinate plans with Federal agencies, State, and local agencies and governments on sites authorized by the BLM. Request notification of any permits issued by other agencies for active or proposed mineral material sites on BLM administered lands.

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Chapter IV - EMPLOYEE CONDUCT

Each employee of the BLM has certain responsibilities and authorities as a Federal official. When employees operate within the scope of their authority as Federal employees, they are afforded a level of protection by the United States from bodily harm and liability. However, if employees exceed their authority in trespass abatement efforts, they may be subject to legal action initiated by the other party. In cases where employees have clearly exceeded their authority, the employee may not be represented by the United States in the legal action.

A. Employee Responsibilities. Employees of the Department are required to carry out the policies and programs of the Department to ensure the success of programs (43 CFR Subtitle A). As related to trespass abatement these include:

1. All BLM Employees.

a. Knowing how to report, and reporting, incidents of trespass or suspected trespass observed during the performance of assigned duties or functions. For the purpose of reporting incidents of trespass, employees shall record all occupancy, use, and development as if it is unauthorized, pending a determination that the use, occupancy, or development has been authorized by the BLM (DM 600.4.1).

b. Reporting trespass or alleged trespass without regard to their immediate area of expertise or effect on their assigned program activity (e.g., range or realty personnel report suspected mineral material trespass).

c. Being familiar with the location of the public lands and authorized uses in order to recognize unauthorized activities.

d. Being familiar with mineral material trespass regulations listed in Chapter I, categories of mineral material trespass, and consequences of violation of the regulations (i.e., administrative, civil, and criminal penalties).

e. Emphasizing trespass abatement through contacts with local officials, operators, local press, industry meetings, and the public.

2. Mineral Material Specialist.

a. Documenting and recording all reported mineral material trespass. See Chapter V - Types of Mineral Material Trespass (Categories), and Chapter VI - Discovery, Investigation, Documentation, and Recordation.

b. Conducting preliminary trespass investigation and determining

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the trespass liability.

NOTE: If criminal activities are suspected or there is reason to expect a negative reaction by the trespasser during the on-the-ground investigation of a suspected trespass, the initial investigation should be conducted by or with the assistance of BLM law enforcement personnel.

- c. Preparing case files and records.
  - d. Providing technical support and recommending a course of action for trespass resolution.
3. Authorized Officer (AO).
- a. Carrying out an effective trespass abatement program.
  - b. Initiating trespass abatement actions.
  - c. Negotiating with trespassers on an informal basis to effect administrative resolution of the trespass whenever possible.
  - d. Initiating formal administrative resolution action when informal administrative negotiations are unsuccessful.
  - e. In consultation with BLM law enforcement personnel recommending administrative resolution, civil and/or criminal court action to the State Director.
  - f. Ensuring periodic training of employees in mineral material trespass detection, prevention, and resolution to increase employee awareness and proficiency in trespass abatement.

B. Employee Authorities. BLM employees have authority to carry out the policies and programs of the Department. BLM Special Agents and Law Enforcement Rangers have been delegated law enforcement authority beyond the authority of other employees. As related to mineral material trespass abatement, these law enforcement authorities are:

1. Criminal Investigation. Criminal investigation of knowing and willful trespass and enforcement action is limited to BLM law enforcement personnel.
2. Citation/Arrest Authority. Issuance of citation(s) or arrest of violators for willful and knowing trespass is limited to BLM law enforcement

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personnel.

3. Criminal Complaints/Grand Jury Requests. All recommendations of criminal action for willful and knowing trespass through the U.S. Attorney's Office are limited to BLM law enforcement personnel. Their recommendations are made through the State Director to the Regional Solicitor, and then to the U.S. Attorney.

C. Employee Protection. BLM employees are protected in the following instances:

1. Threat or Injury. Title 18 U.S.C. 1114, covers any officer or employee assigned to duty in the field service of the BLM. The U.S. Attorney may prosecute if, while exercising his responsibility as a Federal official, an employee is forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with by a trespasser.

2. Personal Damage Suits. The U.S. Attorney may defend BLM personnel in personal damage suits. The plaintiff must prove that the employee acted knowing that he lacked authority for the action and the action was clearly unreasonable. If the plaintiff prevails, the employee may be liable for court costs and damages.

D. Employee Liability.

1. Due Process. Certain administrative and legal rights must be provided to the alleged trespasser to assure due process pursuant to laws and regulations.

2. Employee Actions. An employee may be considered as acting within the scope of BLM employment when performing delegated duties and following and documenting proper procedures if it is necessary to destroy or impound private property located on public lands in trespass. The following guidelines must be considered prior to destroying or impounding private property located on public lands in trespass:

a. Actions relating to destruction or impoundment of abandoned private property must be thoroughly evaluated and properly documented.

b. No BLM employee may intentionally injure or destroy abandoned property in connection with their employment without, at a minimum, the written approval of the AO in whose area the property is located. BLM law enforcement personnel may impound property abandoned more than 3 days (43 CFR 8365.2-3(c)). If the property is not claimed after the BLM publishes notice in local newspapers, the property is then disposed of as provided by the Federal

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Property and Administrative Act of 1949, as amended.

3. Personal Liability. Employees who destroy, damage, or impound abandoned private property with knowledge of and without following proper procedures may be held personally liable to the owner of the property and may be considered to have acted outside the scope of their employment.

NOTE: The impoundment of equipment or personal property brings an additional associated cost and liability.



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### Chapter V - TYPES OF MINERAL MATERIAL TRESPASS (Categories)

A. Mineral Material Authorization Regulations. These include the regulations at 43 CFR 3601, 3602, and 3604 under which disposal of mineral materials are authorized.

B. Mineral Material Trespass. Mineral Material trespass is a violation of the BLM's mineral material authorization regulations and includes several forms of trespass.

C. Mineral Material Trespass Categories.

1. Removal of Material Without a Material Sale Contract or Free Use Permit. Taking mineral materials subject to sale under the Act of July 31, 1947 (61 Stat. 681, 30 U.S.C. 601 et seq.), as amended, without benefit of a free use permit or materials sale contract, is a trespass.

2. Exceeding Reasonable Amounts of 43 CFR 8365. When a public lands user removes more mineral materials than is allowed under the "reasonable amounts" clause of the 43 CFR 8365 regulations governing recreational mineral collecting, it is a trespass.

3. Removal of Material in Excess of a Material Sale Contract or Free Use Permit. When a purchaser, or permittee removes more material than specified in the permit or the sales contract, it is a trespass.

4. Improper Disposal of Mineral Materials Under a Free Use Permit. The disposal of mineral materials by a permittee through sale, barter, etc. outside the terms and conditions of the Free Use Permit is a mineral trespass. The trespasser is subject to damages.

5. Stock Raising Homestead Act and Taylor Grazing Act. Mineral materials (including sand and gravel) underlying Stock Raising Homestead Act (December 29, 1916) lands, and on lands exchanged under Section 8 of the Taylor Grazing Act of 1934, were retained by the United States in the original patents. Therefore, the unauthorized removal of sand, gravel, and other common variety minerals from these lands is considered a trespass. The use, however, of mineral materials from Stock Raising Homestead Act lands for the improvement and maintenance of those same lands is not to be considered a trespass (see footnote 14 of Watt v. Western Nuclear, Inc., 103 S. Ct. 2218 (June 6, 1983)).

Note: On April 11, 1986 the U.S. Court of Appeals, Tenth Circuit, April 11, 1986, ruled that caliche was not considered a mineral reserved under Section 8 of the Taylor Grazing Act, in Poverty Flats Land &

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Cattle Co., a New Mexico Corporation. v. United States of America, 84-1515. This was appealed from U.S.D.C. (NM), D.C. No. 82-0167-C. Thus, each action involving Taylor Grazing Act patents requires a careful review of the patent to determine what mineral reservations were made.

6. Other Split Estates. Several other Acts, such as the Pitman Act, Small Tract Act of 1938, and FLPMA, may create split estates which reserve the minerals to the United States. It should also be noted that some State statutes provide that certain mineral materials (i.e., sand, gravel, clays, etc.) are part of the surface estate. In the split estate situations involving both Federal and State interests, the Federal Acts take precedence over the State statutes. (Be sure to examine Title Document to ascertain the ownership of reserved minerals.)

Generally, the owners of the surface estate where the federal government owns the mineral estate, may use without the benefit of a sales contract or permit, minimal amounts of mineral materials for their personal use within the boundaries of the surface estate. See 43 CFR 3601.71.

7. Title 23 Rights-of-Way. Lacking a specific agreement to the contrary, the BLM retains administrative jurisdiction over lands that are used for mineral material related to highway purposes. The statute provides that mineral materials removed from Title 23 materials sites must be used for the Federal Aid Highway projects for which they were appropriated. Use of the material for any other purpose is a trespass, unless properly authorized by the BLM. Pursuit of a trespass falls within the BLM's retained administrative jurisdiction.

8. Mining Claim(s) Located for Common Varieties Prior to July 23, 1955. Trespass occurs when common varieties of sand, stone, gravel, pumicite, pumice and cinders are removed from mining claims located prior to the Act of July 23, 1955, which lacked a valid discovery on that date for these common varieties. (Administrative hearings may be necessary to determine these facts.) Trespass damages should accrue from the onset of operations on the claim(s) and liability of the parties begins from that date.

9. Mining Claim(s) Located for Common Varieties After July 23, 1955. Trespass occurs when mineral deposits are removed from mining claim(s) that the claimant(s) assert(s) are for uncommon varieties and that the BLM has determined are common variety minerals. (Administrative hearings may be necessary to determine these facts.) Trespass damages should accrue from the onset of operations on the claim(s) and liability of the parties begins from that date.

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### 10. Processing of Mining Claim Plans and Notices Under 43 CFR 3809 Regulations for Suspected Common Variety Minerals.

a. Processing of Plans Under 43 CFR 3809 Regulations. When a Plan of Operations (POO) is submitted to the BLM under the 3809 regulations, for lands not withdrawn or segregated, which includes removal of possible common variety minerals located on or after July 23, 1955, we will not approve the POO until a determination has been made on whether the subject mineral is locatable or salable. See 43 CFR Section 3809.101. The determination will be made by a certified mineral examiner. See BLM Manual Section 3895.

BLM will advise the mining claimant and operator, if other than the claimant, that they may be mining mineral materials (salable minerals) subject to the Materials Act of 1947 under the auspices of the mining law and that the BLM will conduct a common variety determination and investigate the validity of the claims. Explain procedures for purchasing the material from the BLM under the Materials Act of 1947 and 43 CFR 3600 regulations. When explaining the rationale for your opinion that the material is common, cite McClarty v. Secretary of Interior, 408 F. 2d. 907, 908 (9th Cir. 1969), and the test for common/uncommon varieties. (See also Manual Section 3891). Uncommon varieties must meet the following criteria:

1. There must be a comparison of the mineral deposit in question with other deposits of such minerals generally;
2. The mineral deposit in question must have a unique property;
3. The unique property must give the deposit a distinct and special value;
4. If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use;
5. The distinct and special value must be reflected by the higher price which the material commands in the marketplace, or by reduced cost or overhead so that the profit to the claimant would be substantially more.

b. Plan Processing - Interim Authorization. If the operator is still interested in removing the material and insists on the locatability of the subject mineral, he will be given the following option for interim authorization:

The BLM will continue processing the POO, for lands not withdrawn or segregated, provided the operator is willing to establish an escrow account for the appraised value of mineral removed. The operator must make regular payments into the escrow account in a manner similar to payments under 43 CFR 3602. The moneys in the escrow account will be disbursed to the operator or to the U.S. Treasury based on the final determination of whether the mineral is locatable or salable. See Illustration #1 as an example of an escrow

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agreement. If the material is determined to be a salable mineral, the operation approved under the P00 will be terminated, and the operator will be required to promptly close and reclaim the operations as directed by the BLM.

Should the operator have significant fixed improvements on site, BLM at its discretion may consider offering a noncompetitive sale contract to the operator. However, there is no implied right for mineral material sale created by the setting up of the escrow account. The BLM at its discretion may sell mineral materials from the site competitively or noncompetitively under the 43 CFR 3600 regulations.

The BLM will examine the claims and prepare a mineral report to determine whether the mineral is common variety (and therefore salable) or uncommon variety (and therefore locatable) pursuant to Manual Section 3891. If it is determined that the mineral deposit is common variety, a contest complaint will be issued. The operator should be advised that pending the outcome of the contest, the BLM would allow the following types of actions:

1. The sampling of surface mineral exposures and the minimum necessary annual assessment work. See 43 CFR 3809.101 (b) (1)&(2) and 43 CFR 3851.3.

2. Continued processing of the P00 by the BLM, with conditional approval if appropriate, provided that the operator establishes an escrow account in an approved federally insured financial institution, or a BLM suspense account, and faithfully makes payments at the BLM's appraisal rate for minerals to be mined and disposed. Failure to make continued payments may be cause for suspension of the P00's conditional approval.

The operator should be advised that removal of mineral materials without an approved P00 would be considered a willful trespass. The operation might also be subject to Title 18 criminal code violations for theft of government property, 43 CFR 8365 unauthorized destruction of natural features, and 43 U.S.C. 1733(g), unauthorized use, occupation or development.

For pre P.L. 84-167 (30 U.S.C. 611 et seq.) mining claims, the policy will apply if the Office of Hearings and Appeals or a court (if the BLM action is timely appealed) has determined that the claimant does not have the right to remove the mineral materials.

11. Mining Claim(s) Located for Minerals That Were Never Locatable. Removal of mineral materials from mining claims located at any time for fill material, "blow" sand, common clay, caliche, etc., are in trespass because these materials have never been locatable. (Administrative hearings may be necessary to determine this fact.) Trespass damages should accrue from the onset of operations on the claim(s) and liability of the parties begins from that date.

12. Disposal of Common Variety Mineral Material From Mining Claim(s). The unauthorized use or disposal of common variety mineral material from a

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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.

(Administrative hearings may be necessary to make this determination.)

Trespass damages should accrue from the onset of operations on the claim(s) and liability of the parties begins from that date. Common variety sand and gravel, which occurs with valuable minerals such as gold on unpatented placer mining claims, located on or after July 23, 1955 (P.L. 84-167) (30 U.S.C. 611 et seq.), may not be sold by the claimant, but may be used for on site mining purposes. Solicitor's Opinion M-36467, dated August 28, 1957, Disposal of Sand and Gravel From Unpatented Mining Claims states that "The taking 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." (Administrative hearings may be necessary to determine this fact.)

If the claimant is disposing of tailings as personal property then the State law affecting the claimant's property rights must be reviewed to determine if there is a trespass. However, the use of tailings for anything other than the extraction of the locatable mineral is a trespass.

13. Realty Actions which Segregate or Withdraw Operations under the Act of July 31, 1947. If a realty action, such as a Recreation & Public Purpose Act lease or patent, has segregated the land from disposal of mineral materials under the Act of July 31, 1947, the mineral materials may not be used even by the Holder of the realty authorization and such use constitutes a trespass. Please refer to the Memorandum from Office of Solicitor, July 28, 1988, BLM ER. 0618, for a discussion of the effect of a Withdrawal on the Materials Act (see Handbook H-3600-1, Appendix 4).

D. Multiple Trespasses. Multiple trespasses result when several trespass activities, such as construction of roads, stockpiles, power lines, or unauthorized removal by a mining claimant and other individuals, occur on a given land area. In these situations, the trespasses may be considered as either one trespass in a single case file and recorded under the major type of trespass, or the trespasses may be separated into multiple case files and recognized as several types of trespass (minerals, realty, etc.). The decision might be based upon such factors as ease of settlement, time frame in which different types of trespass may be settled, or proximity of one trespass type to another, etc. Mineral material trespass can also include unnecessary or undue degradation, as well as use of lands or resources in excess of those authorized, or use occurring outside the area of an approved authorization.

NOTE: Other forms of trespass such as occupancy, abandonment of property, trash, harvesting of agriculture products, etc., can occur within the perimeter of the material site. Reference should be made to the Realty Trespass Handbook, H-9232-1, for guidance in prevention and abatement of these types of trespass.

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Where realty trespass is occurring in the vicinity of a valuable mineral deposit a mineral trespass might also be occurring. This determination must be made on the basis of whether or not the realty trespass has damaged the mineral resource. If a mineral trespass has occurred due to damage of the resource then an appropriate mineral trespass action must be pursued.

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### Chapter VI - DISCOVERY, INVESTIGATION, DOCUMENTATION, AND RECORDATION

The investigation and documentation of a mineral material trespass case begins with discovery and investigation of suspected unauthorized use. Accurate and complete investigation and documentation of the trespass facts are essential to successful case processing and resolution. Any given trespass may be subject to Interior Board of Land Appeals (IBLA) review in which the merits of the case will depend on file documentation. It may also be subject to judicial review where in addition to file review, BLM employees as well as others, may be required to testify. Therefore, it is essential that a complete and factual record be established and maintained. The purpose of investigation is to determine what happened and who is responsible. Documentation provides a written record of the trespass facts. In the Lower 48 the case data is entered into the Legacy Rehost 2000 Records System (LR-2000). In Alaska the case is entered into the Alaska Automated Lands Information System (ALIS). These systems provide tracking methods for mineral trespass cases. Case processing involves all BLM action steps from discovery to case closure.

A. Discovery. Detection of trespass may involve reports by the public, surface owners of split estate, co-workers, or from competitive companies that don't appreciate their competition receiving an unfair advantage. Other forms of detection include discovering trespass during on site investigations of pits under contract or during the review of the case file. These take the form of discovering a company removing more material than contracted for under a current contract, lapse of payments on a contract, or the improper use of the pit, such as a Free Use Permit or a Title 23 ROW. It is important to remember that all trespass actions should be aggressively pursued to ensure a timely and equitable resolution of the trespass.

Discovery is the essential first step in resolution of mineral material trespass. On receipt of an Initial Report of Unauthorized Use, Form 9230-10, the investigator must determine if the activity in question involves Federal minerals and, whether it has been authorized under the BLM's Mineral Material Disposal regulations. If it is determined that the activity involves Federal minerals and is unauthorized, then a trespass has been discovered and a case file must be established. The case is serialized and recorded in LR-2000. Refer to the Mineral Material Case Type/Action Code case recordation data standards for guidance on applicable case type, action and commodity codes for unauthorized use.

NOTE: Suspected trespass, for the purposes of this Handbook, is defined as those cases where an Initial Report of Unauthorized Use has been prepared and Federal minerals status confirmed with available status data (i.e., Master Title Plats (MTP), maps, aerial

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photographs, etc.).

B. Investigation. Trespass investigation involves field examination and information collection from all sources necessary to complete the trespass record. During the investigation, do not accuse anyone of trespass. Trespass investigation strives to answer these questions: who, what, why, where, when, and how much? The initial investigation should be documented with the Unauthorized Use Investigation Report (Form 9230-24). If it is clearly a mineral trespass then the Materials Unauthorized Use Investigation Report (Form 9230-9) can be used for the initial investigation. For guidance on when to complete these forms refer to section E. of this chapter. When completing these reports be sure to use attachments as necessary to provide a complete picture of the case. A log should be started up front tracking the time and moneys spent investigating and pursuing the suspected trespass. Investigation should proceed as follows:

1. Trespass Confirmation - "Where?". A field investigation shall be conducted to confirm the trespass and verify the location, land status, and nature of the trespass with:

a. Photographs with dates showing the areas involved, equipment, any activity occurring, and any activity which would show the nature and extent of the trespass. Take sufficient photographs to document all trespass actions and related activities. The use of videotape or digital imaging with date and time imprinting can also be used. Be sure to document in the case file that videotape or digital images were taken and the location of the tape or digital images. Photographs, videotape and digital images are always considered part of the official record, and should be forwarded, when there is an appeal, with the case file.

b. Maps showing the location of the trespass, structures, equipment, identifying features, areas of public lands, Federal minerals, found corners, section lines, etc. (see Illustration 2).

c. Measurements as necessary to show the size of the trespass, including aerial extent and volume removed, location of improvements, etc. Where necessary use registered surveyors to provide accurate measurement of the volumes removed. Photogrammetric surveys might be used in lieu of an on the ground survey.

d. Unofficial survey maps and notes as used to identify boundary lines, etc.

NOTE: Requests for cadastral surveys should be kept to a minimum but may be necessary in the prospect of legal challenge, lost or



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obliterated corners, etc.

e. Copy of the current Master Title Plat (MTP) in the case file.

If the MTP was different at the time the trespass was committed then place that MTP in the case file.

2. Trespass Type - "What?". The investigation should determine the type of trespass (i.e. for free use permit, unauthorized removal, exceeding the contract volume, damage to materials, etc.) and identify all unauthorized activities that have taken or are taking place including non-mineral related activities. Be sure to identify any land and resources trespass that might be occurring that is directly related to the trespasser's activities. (Examples of related trespass include but are not limited to maintenance shops, storage sheds, and other activities that are not directly related to the processing and removal of mineral materials). Identify possible hazardous materials discovered on-site and notify the Hazardous Materials Coordinator. Document the category or categories of trespass by commodity code in LR-2000 (refer to Mineral Material Case Type/Action Code Data Standards). If knowing and willful trespass activities are suspected, or the investigator's safety could be jeopardized, suspend the investigation and request assistance from BLM law enforcement personnel.

To adequately characterize the trespass, the investigation should include:

a. The nature of the trespass, regulatory violations, type of materials being removed, permanent or temporary improvements (building, structures, trailers), abandoned property, condition of property, etc. Document with sketch maps, notes, and photos where appropriate.

b. Documents such as photographs, notes, sketches, video tape, etc., should be fully identified as to the date taken or made, location(s), photograph direction, and individual responsible for the documentation.

c. Identification of real or personal property that may require impoundment or destruction (see Chapter VIII - Settlement).

3. Initial Trespass - "When?". The investigator should establish, whenever possible, when the initial trespass occurred. This may be accomplished by:

a. Reviewing aerial photos of the area taken over time.

b. Interviewing adjoining landowners, authorized users, the individual receiving the mineral material, and the suspected trespasser, if possible. Be sure to use Form 9260-5, Interview Report to document all

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interviews.

c. Making observations of vegetation growth, tire tread marks, rust on debris left behind by the trespasser, freshness of broken tree limbs, weather history, etc., can be used as evidence to bracket the time of trespass.

4. Intent of Trespass - "Why?". This step should seek to establish the intent of the trespasser. This information will provide the AO with the information needed to determine how the trespass should be resolved (administrative, civil, or criminal). The investigation should focus on:

a. If the trespasser knew, or had reason to know, that what they were doing was unauthorized or contrary to law or regulation.

b. If the trespasser had reason to believe that they controlled title to the mineral estate (i.e., warranty deed, quit claim deed, etc.). If the trespass could be accidental or based on misinformation available, or provided, to the trespasser.

c. If the trespasser had knowledge of the location of the public lands and public minerals.

d. If a prudent person, operating on the information available to the trespasser, would arrive at the same conclusions as the trespasser.

e. If the trespasser has conducted similar activities on other federally managed mineral resources in other States.

5. Identity of Trespasser - "Who?". The identity of the trespasser may be known by adjoining landowners or identified by various means. These include:

a. Interviews, including the person reporting the trespass, adjacent owners, employees of the trespasser, and the trespasser, if appropriate. Where possible obtain signed written statements. Use Form 9260-5, Interview Report, to document the interview and then place in the case file.

b. Vehicle registration plates and serial numbers of equipment and vehicles may be helpful in identifying those responsible for the trespass.

c. Additional guidance for locating debtors (i.e., trespassers) is contained in Title 31 CFR, Chapter IX, Sections 901-904, (January 1, 2002 ed.), Federal Claims Collection Standards (Standards).

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NOTE: Close the case if the trespass is inactive and the trespasser cannot be located after a diligent search. Site reclamation should occur prior to closure of the case to deter further trespass. Funds for reclamation should come from surplus funds in the 5320 account. Document these actions in the case file with a Statement of Diligent Search and Inquiry (see Illustration 3).

d. In instances where multiple parties might be involved and a final determination of responsibility cannot be made then liability should be applied equally to all parties. This is especially true with split estate situations.

e. List equipment and personal property owned by the trespasser and observed on-site.

6. Trespass Liability - "How much?". This step of the investigation process establishes a trespasser's liability for the mineral trespass and any related land and resources trespass. Liability includes value of the mineral material, administrative costs, any applicable interest, and reclamation costs, as provided in the BLM's Mineral Material Disposal regulations. Data gathered during the investigation may include:

a. Measurements to determine the volume of severed minerals on which trespass liability claims are based. Photogrammetric surveys using pre-trespass aerial photography for original ground configuration and new aerial photography, to show the extent of the trespass, can be used for accurate volumetric measurement and graphic legal evidence. Ground panels should be used for control points and boundary identification. This evidence will help in negotiations or for use in court.

b. Estimates of reclamation/stabilization needs and costs of recommended treatment. Where split estate is involved document any agreements made with the surface owner.

c. Investigation information on when, what, and why, to fully calculate the trespasser's liability and intent of trespass (i.e., whether innocent or willful penalties are warranted).

d. Appraisal of mineral trespass value for both innocent and willful trespass where applicable. In preparing this appraisal refer to Mineral Material Appraisal Handbook, H-3630-1 and to the Uniform Standards of Professional Appraisal Practice (USPAP).

e. Where appropriate, use appraisal of rental values for realty

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trespass.

f. Estimated cost of impoundment or destruction of unauthorized real or personal property.

C. Documentation. Information documenting the facts of a mineral material trespass is placed in the trespass case file. Organize the case file data in chronological order on the right side of the jacket with the most recent information on top. Place accounting advices and bills on the left side of the jacket. The Reimbursable Project Log (Form 1323-1) is placed on top of the accounting advices on the left side of the jacket.

NOTE: Administrative cost accounting begins with the completion of the Initial Report of Unauthorized Use (Form 9230-10) and includes all costs associated with investigation, documentation, and case processing (i.e. case closure).

Documentation in the case file should include:

1. Initial Report of Unauthorized Use. (Form 9230-10).
2. Trespass Investigation Reports. Use Trespass Investigation Report (Form 9230-24) and Materials Unauthorized Use Investigation Report (Form 9230-9) to document your trespass investigation. Appropriate attachments to the report (dated and identified) include:
  - a. Field notes, sketch maps (see Illustration 2), photographs, measurements, etc.
  - b. Interviews conducted in conjunction with the trespass investigation, etc.
  - c. Summaries of trespass records (i.e., scale tickets, invoices, etc.)
  - d. Location of actual records and other relevant information.
3. Recordation. Copy of the computer generated serial register page.
4. Land Status and Location Data. Document BLM jurisdiction with Master Title Plats, survey notes, location maps, aerial photos, etc., as appropriate.
5. Meetings, Communications, and Interviews. Include in the case file:

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a. Notes from meetings with the trespasser as to why the trespass occurred, offers of settlement, attitude of the trespasser (cooperative v. uncooperative), the BLM's position on settlement, etc.

b. Correspondence concerning the trespass.

c. Records and notes of interviews and telephone conversations.

d. Other parties to trespass.

6. Real and Personal Property Actions. When unauthorized real and/or personal property is involved, the documentation required as provided in the Realty Trespass Handbook H-9232-1 in Chapter VI - Unauthorized Real and Personal Property, is included in the case file.

7. Equipment Lease, Rental, or Ownership Documents.

a. Document the serial numbers of any equipment to help in identifying ownership.

b. Copy any equipment lease, rental agreement or other ownership documents that are available.

8. Assessment Report of Unnecessary or Undue Degradation.

a. Physical description of resources present.

b. Description of unauthorized use causing unnecessary or undue degradation.

(1) Length of road

(2) Width of road

(3) Amount of surface disturbed

(4) Plants or trees destroyed

(5) Erosion potential

(6) Other environmental impacts

c. Reclamation requirements.

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d. Estimate of reclamation cost.

9. Letters - Notice of Trespass and Trespass Decisions. Document informal resolution actions including Notice of Trespass (Form 9230-1) (see Illustrations 4 or 5) and the initiation of formal administrative resolution procedures, Trespass Decision (see Illustrations 6 or 7), if informal administrative resolution action has not been successful or is not deemed appropriate.

10. Collection Efforts. Copies of bills (Form 1370-1), demand letters, bonds, etc.

11. Right-of-Appeal. Place a copy of the Decision which is being appealed and all attachments including a copy of the Instructions for filing an appeal to IBLA, Form 1842-1, in the case file. A copy of the trespasser's appeal, including any Statement of Reasons or Request for Stay, should be placed in the case file. Any response by the BLM to the appeal should be placed in the case file prior to forwarding to IBLA.

12. Diligent Search and Inquiry. Document efforts to locate trespassers (see Illustration 3).

13. A Chronological Summary of Events. If case recordation abstract/serial register page does not adequately summarize the events of the case, then a separate summary should be prepared for the case file, and placed on the top of the right hand case file jacket. Be sure to update with each new entry.

14. Reimbursable Project Log. (Form 1323-1). Document administrative costs of case processing (see Chapter VIII - Settlement). It is extremely important that the log is maintained accurately since administrative costs assessed by the BLM are subject to review by the trespasser, IBLA or judicial review.

D. Trespass Recordation. Recordation of all suspected mineral material trespasses in LR-2000 is one of the most important means available to the BLM for identifying the magnitude of mineral trespass nationwide. LR-2000 provides the data needed to show National, State, and regional trends providing a means of tracking and managing the BLM's mineral material trespass abatement program. In many instances LR-2000 data also will assist in preparation of standard reports and assist in preparation of budget requests.

E. Case Processing. Each mineral material trespass case requires certain actions (i.e., processing steps) from initiation to case closure. Each action

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should be fully explained and documented in the case file in chronological order. The following is a description of the general processing steps for a typical mineral material trespass case and the identification of BLM specialists or managers normally responsible for each.

| <u>Responsible<br/>Office/Official</u> | <u>Step</u> | <u>Action</u>  |
|--|-------------|--|
| All Employees                          | 1.          | Record on Form 9230-10 who made discovery, address, telephone number, what was observed, who is suspected, etc. Attach written statements, as necessary. Preserve private citizen confidentiality, as appropriate.   |
| Mineral Specialist                     | 2.          | Completes initial trespass documentation, checks MTP, etc., to verify that it involves Federal minerals, and records in LR-2000.   |
|  | 3.          | Prepares and completes Form 9230-24.   |
|  | 4.          | Forwards case file to AO with brief report.  |
| Authorized Officer                     | 5.          | Reviews the case, if non-mineral related criminal activity is suspected refer the case to BLM law enforcement personnel. The AO may coordinate mineral trespass cases with law enforcement. Referral of a mineral trespass case to BLM law enforcement personnel would be to determine if civil and/or criminal cases should be initiated and if the law enforcement personnel will conduct the investigation or whether the AO will assign a mineral specialist to complete case investigation. |
| Mineral Specialist                     | 6.          | Obtains additional information from person reporting trespass. Gets written statement, if necessary or possible.   |
|  | 7.          | Visits trespass area. Takes pictures, measurements and makes detailed notes. Completes Materials Unauthorized Use Investigation Report (Form 9230-9).  |
|  | 8.          | After consulting with the AO requests law enforcement personnel and other resource staff   |

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as necessary. Requests survey to determine quantity of mineral material severed and location of area disturbed, if necessary. It is recommended that certified surveys be completed by a registered surveyor for all large trespasses and in those cases where it is anticipated that they will be appealed or could go to court. Obtains old and current aerial photos to show when trespass occurred and the extent of trespass. The aerial photos can be used for volume estimates and court evidence. If no trespass, makes written report for file, updates LR-2000 and closes the case.

9. Interviews witnesses or other interested parties. Prepares written statements and obtains signatures from interviewees and otherwise documents the trespasser's identity.
10. Identifies the trespasser, if possible. If identity of trespasser cannot be confirmed, completes Statement of Diligent Search and Inquiry (see Illustration 3) and arranges for reclamation of the trespass area. (Excess funds from 5320 can be used for reclamation of mineral trespass areas.) Closes the case and updates LR-2000.

Note: Before starting on the ground reclamation activities ensure that no mining claims are involved. If claims are present consult with claimant prior to doing the work. If claimant does not agree with site reclamation, have claimant sign an acceptance of liability and inform them of their responsibilities including the filing of a notice or plan of operations under 43 CFR 3809.

11. Using an appropriate appraisal calculates innocent or willful trespass value as required by the circumstances of the trespass. Damages will include fair market value of material either as innocent or willful trespass, added to reclamation costs and administrative costs. For determining appraised value refer to Chapter



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VIII - Settlement, Section G. Recovery of Mineral Material Value.

Note: Trespasser may be given the option of completing reclamation in lieu of paying damages for reclamation.

- Authorized Officer
12. Determines preferred resolution option. (See Chapter VII - Mineral Material Trespass Resolution.)
  13. Advises trespasser by letter (see Illustration 8) of the trespass and requests a meeting. DO NOT SEND A BILL FOR COLLECTION (Form 1370-1).
  - 13a. If no response may send Notice of Trespass (Form 9230-1) (see Illustrations 4 or 5).
  14. Begins negotiations informally to resolve the trespass and recover trespass liability and avoid formal administrative or civil resolution and collection processes. (See Chapter VII - Mineral Material Trespass Resolution, Section C. Trespass Resolution Options.) (If trespasser is clearly uncooperative or unwilling to informally resolve the trespass, go to step 14b.)
  - 14a. If the trespasser presents new factual data, and/or makes settlement offer, AO evaluates offer and any additional information presented. If acceptable, and resolution action is still at the informal level, simultaneously accepts payment and issues bill (paid) for the amount agreed upon. Payment should include administrative and reclamation/stabilization costs as appropriate. Documents the case file to indicate that settlement is based on a reasoned judgment on the part of the BLM. Returns case to Mineral Specialist for reclamation and/or close case and update LR-2000.

NOTE: Acceptance of any settlement offer must be within the AO's authority (see Chapter VIII, Section D).

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- 14b. If the AO and trespasser are unable to agree on trespass liability, makes note to the case file and sends notice of trespass (Form 9230-1) (see Illustrations 4 or 5).
- 14c. If payment of liability results, accepts payment, and returns case to the Mineral Specialist for arranging reclamation and/or close case and update LR-2000. If no response, or negative response, sends Trespass Decision letter (see Illustrations 6 or 7) that includes a summary of all costs for trespass liability. Where unauthorized structures are present use Notice To Remove Unauthorized Structures (Form 9230-14) along with the Trespass Decision letter.
- 14d. If the Trespass Decision letter or Notice To Remove Unauthorized Structures (Form 9230-14) results in appeal to IBLA, and a stay is granted, suspends action only on the trespass Decision or Notice to Remove until IBLA issues a decision. Activities outside of those under appeal may be dealt with through further enforcement actions.
- 14e. If no appeal to IBLA and no payment of liability, send Bill for Collection (Form 1370-1).

NOTE: Refer to Denver Service Center's, Guidelines for Collections, May 1993 for guidance on how to process the Bill for Collection.

- 14f. If no payment on Bill for Collection is received, sends appropriate demand letters (see Illustrations 9, 10, or 11) and revised Bill for Collection (Form 1370-1).

NOTE: Once a bill and three demand letters are sent, without payment, the BLM is locked into formal administrative collection procedures established by the National Business Center (BC-

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620).

14g. If payment is received in full, arranges for reclamation, returns case to Mineral Specialist to close case and update LR-2000.

14h. If there is no reply to the third demand letter and bill is not paid or a compromise offer is not received, sends file to BC-620 through the State Office, with Case File Summary Of Final Bill, requesting collection (see Illustration 12). Please refer to Manual Section 1375 for the collection process.

NOTE: Prior to sending the case file to the National Business Center, compromise offers may be accepted by the State Director with concurrence, as required, of the appropriate Field or Regional Solicitor.

Director, BC-620

15. Turns claim over to collection agency. Agency works the claim for 6 months. If unsuccessful, agency returns claim to the National Business Center with recommendation for write-off, compromise, or civil action (see Illustrations 13 or 14). The BC-620 works with the Denver Regional Solicitor in recommending final resolution action.

State Director

16. Returns case file to the State Director with BC/Solicitor recommendation, after BC-620 action (i.e., claim collection). If claim is paid returns case file back to the originating State for closure procedures. If claim is not paid forwards case file back to originating State with recommendations. If recommendation is acceptable, implement; if unacceptable, consults with Solicitor to arrive at an acceptable resolution. State Director should give consideration to using provisions of the Federal Debt Collection Act of 1990 to obtain debt payment. State Office returns case to originating office after completing acceptable resolution.

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- Authorized Officer      17.    In cases where a bond has been posted the AO will return the case file to the mineral specialist who will take the necessary steps to forfeit bond.
- Mineral Specialist      18.    If necessary notifies trespasser in writing of BLM's intention to forfeit bond providing trespasser a complete history of the case to date. The letter should describe what actions the trespasser needs to follow to stop forfeiture procedures and establish a time line. A copy of the letter should be provided to the surety if one is involved.
- NOTE: A reasonable time line should be developed. It should not exceed 30 days.
- 18a.    If the trespasser does not respond to this notification then a formal decision letter should be sent to the surety. The decision must contain at a minimum a brief history of the case including the steps that the BLM has taken to resolve the trespass and a demand for payment by the surety for trespass damages. If reclamation costs were included in the damage calculations, the surety should be provided the option of completing the work in lieu of forfeiting that portion of the bond. Payment demand to the surety should be only for the amount owed up to the face value of the bond.
19.    Ensures that site reclamation is completed in accordance with the Solid Minerals Reclamation Handbook, H-3042-1.
20.    After taking all possible steps to complete the trespass action final documentation is placed in case file. Case closure is noted in LR-2000 and mineral specialist monitors the site following closure to ensure satisfactory reclamation/stabilization, penalties, compliance, etc.

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### Chapter VII - MINERAL MATERIAL TRESPASS RESOLUTION

A trespass is resolved when the detected unauthorized activity has been terminated; settlement of trespass liabilities are agreed upon by the BLM and the trespasser or established by IBLA or court order; and liabilities have been paid. If applicable, resolution may include the removal of improvements, the land rehabilitated and stabilized, and the case closed. A trespass is also resolved after a reasonable effort has been made to identify and/or locate the trespasser and failed, the land rehabilitated and stabilized, and the case is closed.

A. Trespasser's Intent. Trespasser's intent plays a major role in determining what course of action the BLM will take in resolving a trespass (i.e., administrative, civil, or criminal). The trespasser's intent also affects the extent of the trespasser's liability. However, where a willful trespasser cooperates with the BLM to expedite resolution of the trespass action administratively, additional trespass actions or criminal penalties may not be warranted. Proof of the willful or non-willful intent of the trespasser in committing the unauthorized act is determined from data derived from investigation of the trespass. It is mandatory that investigations be carefully conducted and pertinent facts documented in the case file. This is especially true if civil action or criminal prosecution of the trespasser is contemplated (See Chapter VI - Discovery, Investigation, Documentation, and Recordation).

B. Trespass Liability and Penalties. All trespassers, regardless of their intent or their attitude regarding trespass resolution (i.e., cooperative or uncooperative), are fully responsible for certain trespass liabilities set forth in the BLM's mineral trespass regulations and/or state regulations which may include: Fair Market Value for material removed (for current and past years of trespass), administrative costs incurred by the BLM as a consequence of the trespass, and cost of rehabilitation or stabilization of the lands affected during the trespass. Check Appendix 1 to observe the trespass case law for your state. If your state does not have a trespass law, 43 CFR 9239.5 should be followed. In situations where the trespasser is uncooperative or is responsible for repeated offenses, liabilities may be increased or criminal penalties may be warranted.

C. Trespass Resolution Options. There are four specific options available to the BLM for mineral material trespass resolution. They are (1) informal administrative resolution, (2) formal administrative resolution, (3) civil court action, and (4) criminal prosecution. If resolution is initiated at the informal administrative level and the resolution effort fails, formal administrative resolution action may be initiated, followed by civil court action if formal administrative efforts fail and the trespasser has not

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appealed to the Interior Board of Land Appeals (IBLA), (See Chapter IX on Appeal Procedures). Failure of the BLM to win a civil action will bar criminal prosecution for the same action because of the higher level of proof required for successful criminal prosecution. Successful criminal prosecution will not bar civil action for recovery of the trespasser's liability arising from the trespass. However, the courts do not look favorably on criminal prosecution for the purpose of securing a conviction in order to condition probation upon payment of a civil debt.

1. Informal Administrative Resolution. Mineral material trespass may be resolved administratively on an informal basis. Resolution action may be initiated with an informal letter (see Illustration 8) or may progress to the issuance of a Notice of Trespass (Form 9230-1) (see Illustrations 4 or 5). Informal resolution involves an agreed upon settlement of the trespass and trespass liability by the BLM and the trespasser without resorting to legal action or formal administrative procedures (e.g., formal trespass decision, billings, demand letters, etc). Informal resolution is the recommended course of action unless circumstances warrant more stringent measures. Remember, the goal is a timely resolution of the trespass. Informal administrative resolution may be successful when the following conditions exist:

a. The trespasser is willing to cooperate with the BLM to timely resolve the trespass.

b. The trespass is clearly unintentional, accidental, or a very minor infraction of the BLM regulations (e.g., unauthorized over removal of 100 cubic yards for a 10,000 cubic yard contract).

c. The trespass is minor in terms of size and impact and informal resolution would serve the best interests of all parties involved. Keep in mind regulation 43 CFR 8365.1-5(b)2 which permits the collection of reasonable amounts of minerals and rock specimens by the public.

d. Enough evidence does not exist or is not available to prove the full extent of the trespass liability in terms of previous use, time, and size.

e. The BLM accepts payment for trespass liability and closes the case. This constitutes the case being resolved by a "reasoned judgment".

NOTE: Acceptance of a negotiated trespass liability payment based on a reasoned judgment is subject to the write-off and compromise procedures (Refer to Chapter VIII - Settlement).

f. A suspected trespass cannot be confirmed as an actual trespass or the trespasser cannot be identified. Close the case and monitor

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the area.

2. Formal Administrative Resolution. Formal administrative resolution procedures must be initiated when informal resolution is unsuccessful. Formal administrative resolution actions are subject to appeal to IBLA and are initiated with a Trespass Decision (see Illustrations 6 or 7) for trespass liability (Refer to Chapter IX - Appeals, Injunctions, and Statue of Limitations). Formal administrative resolution actions may also include sending a Bill for Collection (Form 1370-1), appropriate demand letters (see Illustrations 9, 10, or 11), referring the case to the Denver Service Center for debt collection (see Illustrations 13 and 14), referring the trespasser to the Internal Revenue Service (IRS) reporting trespass damages as income, and to consumer credit agencies. Formal administrative procedures may be necessary when 1 or more of the following exist:

- a. The trespasser is clearly uncooperative.
- b. The trespasser disputes the BLM's trespass liability claim and the BLM has evidence to substantiate its claim.
- c. The size and nature of the trespass cannot be excused as unintentional even though the BLM cannot prove knowing and willful intent.
- d. Formal collection action would enhance the BLM's trespass abatement program in terms of deterrence and resolution of other mineral trespass in the area.
- e. The trespass cannot be proven as knowing and willful trespass.
- f. The BLM has expended significant sums of money (administrative costs) as a consequence of the trespass, and formal collection action is necessary for full recovery of expended funds.
- g. The trespasser has been positively identified, and evidence exists to support the identification.
- h. Offer to settle trespass liability, if any, by the trespasser cannot be justified as reasonable.

NOTE: It is extremely important that trespass liability be accurately calculated prior to formal billing and represents the minimum amount that the BLM will accept in satisfaction of the trespasser's liability. Later downward adjustments, after billing, involve claim compromise or

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write-off (Refer to Chapter VIII - Settlement).

3. Resolution by Civil Court Action. Civil court action may be initiated where formal administrative resolution has been unproductive. Court action may also be initiated when a successful outcome and follow-up publicity would assist the BLM in eliminating other trespass in a geographic region and deterring trespass in the future. Civil actions are reviewed for adequacy by the appropriate Solicitor and initiated by the U. S. Attorney in U. S. District Court. U. S. Magistrates, if designated, may hear pre-trial matters. Upon consent of the parties, a designated U. S. Magistrate may conduct all proceedings in a civil matter and order the entry of judgment in the case. A U. S. Magistrate's jurisdiction to hear a civil case depends on designation to do so from a U. S. District Court Judge. Whether prosecution will be brought in a given case is determined by the U.S. Attorney. Finally, the U. S. Government can pursue both civil and criminal remedies concurrently for the same offense. The fact that a trespasser is convicted of knowing and willful trespass does not preclude the BLM from recovering monetary liability and court costs from the trespasser. Circumstances that may merit civil action on the part of the BLM to resolve a trespass and trespass liability include, but are not limited to, the following:

- a. The BLM has cause to believe that reclamation of the lands in trespass would not be accomplished without a court order.
- b. Attempts at informal and formal administrative resolution have been unsuccessful.
- c. The BLM has adequate evidence (i.e., a preponderance of evidence) to substantiate its case.
- d. Criminal trespass cannot be substantiated (i.e., proof beyond a reasonable doubt).
- e. The BLM's trespass abatement program in terms of prevention, deterrence, and resolution would be enhanced by successful civil court action.
- f. Termination of operation is required to resolve the trespass and a court order may be required for these actions.
- g. Personal and/or real property is involved in the trespass and a court order will assist in legally removing and/or disposing of the involved property.
- h. The trespasser's liability for the trespass is significant and successful court action and monetary recovery would serve as a deterrent



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to present and future trespass.

i. Circumstances are such that the BLM cannot accept a trespasser's liability settlement offer (if any) within the requirements of its liability collection procedures.

4. Resolution by Criminal Prosecution. As a practical matter, criminal prosecution will result in quicker resolution of trespass than civil action because of the constitutional requirement for a speedy trial for criminal offenses. Successful criminal prosecution may not result in recovery of trespass liability. However, a criminal case does not bar the BLM from recovery action under civil law. Criminal action requires proof of knowing and willful trespass beyond a reasonable doubt whereas civil action requires a preponderance of evidence. Citations for criminal trespass may be issued by BLM law enforcement personnel under 43 CFR 9262.1. When criminal prosecution or citation is contemplated, the appropriate BLM law enforcement personnel must be involved in the decision process and initiate the appropriate criminal action. Input from BLM law enforcement personnel will help to keep criminal resolution a viable option since premature administrative or civil action could jeopardize criminal prosecution. Situations where criminal citation or prosecution may be appropriate include those listed below:

- a. The trespass is clearly knowing and willful.
- b. Successful prosecution would serve as a warning and deterrent to other criminal trespassers.
- c. The BLM has probable cause to believe that a trespass of a criminal nature has occurred.
- d. Fines and/or imprisonment of the trespasser is warranted and will serve to prevent and deter present and future criminal trespass.
- e. The trespass is continuing, or repeated, after appropriate notification of the illegal nature of the act.

NOTE: Injunctive relief may be required where the trespass activities are resulting in unnecessary or undue degradation of the public land and resources (Refer to Chapter IX - Appeals and Injunctions, and Statute of Limitations).

D. Cancellation or Revocation of Use Authorizations. Under Title 31 CFR 901.6, agencies seeking collection of liability claims (i.e., trespass liability) in non-bankruptcy cases are advised to consider the suspension or

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revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay a debt. The ability to suspend or revoke licenses, permits or other privileges should be spelled out in the written demand for payment sent to the debtor. In bankruptcy cases the BLM should consult with the Solicitor prior to advising the debtor of the intent to suspend or revoke a license or permit. The Bankruptcy Code, particularly 11 U.S.C. 362 and 525 may restrict taking such an action. Follow the procedures listed in 43 CFR 9239.0-9(b) when disqualifying a contractor or permittee from further sales of mineral materials.

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### Chapter VIII - SETTLEMENT

A mineral material trespass establishes a liability claim by the United States against a trespasser under FLPMA and the BLM's mineral material trespass regulations for money owed the United States as a consequence of the trespass. Settlement includes methods of determining the value of mineral materials and land rent liability (calculated on the basis of fair market rental value), negotiations, trespass penalties, bonding, reclamation, general billing procedures, and referral to the National Business Center (BC) for collection action. Settlement of that liability occurs through the BLM debt collection procedures that implement the Standards of the Federal Claims Collection Act of 1966, as amended and supplemented (Standards). The Federal Claims Collection Standards (Standards) of the Department of the Treasury and of the Department of Justice (DOJ) [31 CFR, Chapter IX, Sections 901-904, (January 1, 2002, ed.)], which implement the Federal Claim Collection Act, provide the authority for initiation of collection action against a trespasser for a claim arising as a consequence of the trespass.

A. Trespass Liability. Trespass liability includes the value of mineral materials removed, penalties if applicable, all costs of trespass resolution, (i.e., administrative costs), restitution for damage to the land or resource(s) reclamation costs, and if appropriate, land rent liability (e.g., use of land for stockpile or crusher sites, asphalt plants, etc.).

1. Satisfactory Settlement. Settlement of trespass liability is met when the appropriate following steps are accomplished:

a. Payment of all monetary liabilities is made or a promissory note for payment is executed and approved.

b. Reclamation is successfully accomplished by the trespasser through performance of reclamation or payment to cover BLM costs for reclamation.

c. Reclamation on private surface/Federal mineral estate involves coordination with the surface owner, if the surface owner is not involved in the trespass. Where reclamation is completed it must be acceptable to the surface owner and/or provide compensation for damages to the surface under general land laws.

d. Unauthorized real property (e.g., buildings and structures more or less fixed to the land such as asphalt plants, scales), and personal property (machinery, trailers, vehicles, mining equipment, etc.), are removed voluntarily or by the BLM under impoundment and disposal proceedings or

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authorized by permit, lease, etc. Before seizing property, care should be taken to verify that the seizure is in the government's best interest. For example, impoundment of equipment may be questionable where the government's holding and disposal costs exceed the value of the equipment or where seizure may involve a hazardous materials site. Refer to H-9232-1 Realty Trespass Abatement, Chapter VI, Unauthorized Real and Personal Property, for procedures on possession, removal, care, or disposal of unauthorized real and personal property.

2. Other Settlement. Trespass liability may also be settled in the following ways:

a. Liabilities are compromised and the amount paid or written-off, and the case closed.

b. The case is referred to Department of Justice (DOJ) for resolution.

c. Court ordered settlement has resolved trespass liabilities.

B. Negotiation of Settlement. When the trespass investigation and documentation are complete, and before a notice of trespass letter or a trespass decision and bill for trespass liability is sent, a meeting with the trespasser is recommended. The time and place of the meeting should be established by an informal letter (Illustration 8), or telephone, or by direct contact. The purpose of the meeting is to inform the trespasser of the BLM's information concerning the trespass activity (i.e., suspected trespass), regulatory provisions for trespass resolution, and trespass liability claim collection procedures. The meeting should also be directed toward gathering new information from the trespasser and refining existing BLM information. Factual, proven data are not subject to negotiation, but many items can vary, such as quantity removed, acreage involved, year-to-year use, type and value of improvements, damage to surface or minerals, production measure (tons, cubic yards, in-place vs. loose, waste), and prices received. The trespasser should be given the opportunity to present information on his behalf prior to any demands for settlement. The tone of the meeting should be cordial, while attempting to effect an informal administrative resolution of the trespass. Avoid threats in the meeting (negotiations), but explain the following to the trespasser:

1. Administrative Costs. The trespasser is liable for costs incurred by the BLM as a consequence of the trespass, and these costs can increase the longer it takes to reach a settlement. Administrative costs should be tracked throughout the entire process.

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2. Value of Mineral Materials. The measure of damages in a mineral trespass case is the damages prescribed by the laws of the State in which the trespass was committed. The following describes the general criteria. In an innocent trespass, the liability includes the current and past years of trespass based on the fair market value of the materials at the time of removal. The measure of damages is assessed at the value of the mineral taken less the expense of removal, or the royalty value of the material of the mineral in place, whichever is higher. Mineral materials liability for knowing and willful removal without a contract may be 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. (see Appendix 1 - State Court Decisions and Decisions of the Interior Board of Land Appeals).

3. Land Rent Liability. If applicable, refer to Realty Trespass Abatement handbook H-9232-1, Chapter VIII - Settlement of Realty Trespass Liability, Section I. Trespass Penalties.

4. Resolution Options. The options available to the BLM for trespass resolution action if informal procedures break down include formal administrative action, civil court action, and criminal prosecution for willful trespass. (see Chapter VII - Mineral Material Trespass Resolution.)

5. Referral. The BLM's formal administrative resolution process (i.e., debt collection procedures) includes billing, demand letters, and referral of delinquent accounts to debt collection contractors, the IRS, consumer credit agencies, and other procedures.

6. Administrative Offset. The BLM may collect the trespass liability by administrative offset against IRS tax refunds or government subsidies.

7. Reports to IRS. Debts owed to the United States that go unpaid, are income to the debtor (i.e., trespasser) and may be reported as income earned to the IRS. Also explain that the difference between an accepted compromise and the BLM's bill for payment in full may also be reported to the IRS as earned income. Trespass liability may also be reported to IRS as addition to income.

8. Doing Business with Trespassers. The Standards suggest that the BLM should strongly consider cancellation of any disposal authorization held by the trespasser if trespass liability is not paid. The AO may refuse to authorize disposal of materials to a trespasser under a sale or permit if a satisfactory arrangement for payment of the debt due the United States has not been made within a reasonable time after demand for payment has been served, and there is reason for the AO to believe payment will not be made.

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Satisfactory arrangement shall be deemed to have been made by:

a. Payment by the trespasser of the amount found to be due by the AO, by a final court, or pursuant to a compromise settlement accepted by the United States; or

b. Execution by the trespasser of a promissory note or installment agreement, satisfactory to the AO, so long as the agreed-upon payments are made on schedule; or

c. Delivery by the trespasser of a bond guaranteeing payment to the United States of the amount found to be due by the AO or by a court of competent jurisdiction; or

d. Cancellation of the debt due the United States by a discharge in bankruptcy; or

e. Inclusion of the following provision as a condition of any contract or permit:

"This contract (permit) is conditioned on agreement between the authorized officer and the permittee as to the liability of the permittee for payment of trespass damages due to the Government. Failure to agree upon satisfactory payment terms within six months after issuance of this contract (permit) will result in termination of this contract (permit) by the authorized officer. This condition shall not be construed to constitute a waiver of any other legal rights the Government may have to collect trespass damages for past unauthorized use."

f. Contracts or permits may also be issued to persons who have not made a satisfactory arrangement for payment of debt if the AO establishes in writing that the three conditions found in 43 CFR 9239.0-9(c) are met:

(1) There is no other qualified bidder or no other qualified bidder will meet the high bid;

(2) The sale or permit to the trespasser is necessary to protect substantial interests of the United States either by preventing deterioration of, or damage to, resources of the United States or by accepting an advantageous offer; and

(3) The resource management programs of the United States will not be adversely affected by the action.

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9. Fines and/or Imprisonment. The BLM has the authority under 43 CFR 9262 to bring the trespasser before a U.S. magistrate (for a trespass knowingly and willfully committed) and the magistrate may impose a fine (in addition to trespass liability) of up to \$1,000 and imprisonment of not more than 12 months, or both. For false or fraudulent statements to a government agency a violator may be subject to a fine of up to \$10,000 or imprisonment of up to 5 years or both (62 Stat. 749).

NOTE: If the meeting(s) result in mutual agreement on trespass resolution, complete a trespass settlement agreement.  
(Form 9239-1)

C. Administrative Actions to Settle Trespass Liability Claims in Full. The following are actions the BLM may initiate to resolve liability claims as prescribed by the Standards (see also Chapter VII - Mineral Material Trespass Resolution):

1. Informal. The BLM should attempt to reach a mutually acceptable agreement with a trespasser prior to initiation of formal claim collection procedures. Such agreement should be discussed in personal interviews. Document the settlement agreement in the case file.

2. Formal. If it has been determined that an informal agreement is inappropriate a formal process may be necessary. The formal process is started with a Formal Decision followed by a Bill for Collection (see Chapter VI - Discover, Investigation, Documentation, and Recordation).

3. Other Costs. The BLM shall add interest and administrative costs of collection to claims arising from mineral material trespass. Before assessing these charges (costs), the BLM must send by certified mail return receipt requested, or hand-deliver with service, a written notice to the trespasser explaining the charges and requirements for payment.

4. Written Demands. Appropriate written demands for payment (see Illustrations 9, 10, or 11) may be made upon a trespasser in terms which inform the trespasser of the consequences of failure to cooperate. Demand letters should be mailed, return receipt requested, or hand delivered, with service, on the same day that they are actually dated (31 CFR 901.2(c)). Document personal service in the case file (see Illustration 15).

5. Failure to Make Payment. The BLM is required to give serious consideration to suspension or revocation of contracts, permits, or other privileges (i.e., licenses) authorized by the BLM to a trespasser for any inexcusable, prolonged, or repeated failure to pay a claim arising from the

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trespass (31 CFR 901.6).

6. Payments. Whenever feasible, trespass liability payments shall be collected in full, in one lump sum. However, if the trespasser is financially unable to pay the BLM's claim in one lump sum, payment may be accepted by promissory note (Form 1372-1) or in regular installments, under certain conditions (31 CFR 901.8).

7. Collection Agencies. The BLM has the authority to contract with collection agencies for collection of trespass claims (31 CFR 901.5).

8. Credit Bureaus. Delinquent trespass claims may be reported to consumer credit bureaus and automated databases (31 CFR 901.4).

9. Documentation. All administrative collection action shall be documented and the basis for compromise or for write-off (i.e., termination or suspension of collection action) explained in detail (see Illustrations 13 or 14). Such documentation shall be retained in the trespass case file.

D. Standards for Collection, Compromise and Write-off of Trespass Liability. State Directors have delegated authority to accept compromise trespass liability settlement offers for claims up to \$20,000, exclusive of interest. Acceptance of compromise settlement offers must be based on concurrence of Field or Regional Solicitors. State Directors may write off (i.e., suspend collection action) uncollectible trespass liability claims up to \$600 without Solicitor concurrence. Write-offs in the amounts of \$601 up to \$20,000 need the concurrence of Field or Regional Solicitors (see Illustrations 13 or 14).

NOTE: When a claim, exclusive of interest, penalties and administrative costs, exceeds \$20,000 the authority to compromise the claim, suspend or terminate collection action rests solely with the DOJ.

***Write-off amounts and concurrence levels may increase over time. Refer to BLM Manual 1203 - Delegation of Authority and check with the National Business Center (BC-620) for current write-off and concurrence levels as well as write-off procedures.***

The Standards and their application to trespass claims are interpreted, and instructions issued, by the Washington Office (WO) Division of Finance through the Director BC-620. Specific questions on implementation should be directed to the District or State Office Accounts Clerk or the Director BC-620. A brief discussion of the Standards is presented herein for the information of the Handbook user, with the summarized sections referenced in parentheses. The following table gives a quick overview of the write-off limitations.



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TABLE

| If trespass settlement is:               | and actual damages are:                     | then accepting officer is:                              | with concurrence of:  | reference                      |
|--|---|---|---|--------------------------------|
| Full Payment                             | No Limit                                    | State Director ***                                      | None  | Manual 9230, 6A<br>Manual 1203 |
| Write-Off (Bad Debt)                     | \$ 0 - 600<br>601 - 20,000<br>Over \$20,000 | State Director**<br>State Director<br>Dept. of Justice  | None<br>Field or Regional Solicitor<br>Recommendation of Director and Solicitor | Manual 9230.6B<br>Manual 1203  |
| Compromise Offer                         | \$ 0 - 20,000*<br>Over \$20,000             | State Director<br>Dept. of Justice                      | Field or Regional Solicitor<br>Recommendation of Director and Solicitor         | Manual 9230.6C<br>Manual 1203  |
| Not possible - Liability Not Established | \$ 0 - 600<br>601 - 20,000<br>Over \$20,000 | State Director **<br>State Director<br>Dept. of Justice | None<br>Field or Regional Solicitor<br>Recommendation of Director and Solicitor | Manual 9230.6<br>Manual 1203   |

\* Exclusive of Interest

\*\* May be Re-delegated

1. Referral of Trespass Liability Claims to Field or Regional Solicitors and the Department of Justice.

a. Any trespass in which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of a trespasser, or any other party having liability in the trespass action, must be referred to the Field or Regional Solicitor for possible litigation. They in turn may refer the case to the DOJ (31 CFR 900.3).

b. When a claim against a trespasser, exclusive of interest, penalties and administrative costs, exceeds \$100,000, the decision to accept a compromise offer or to suspend or terminate collection action rests solely

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with the DOJ (31 CFR 902.1, 903.1, and 904.1).

c. Any claim over \$600 on which aggressive collection action has been taken by the BLM and which cannot be compromised or terminated, must be referred promptly to the Field or Regional Solicitor. Once the claim is referred to the DOJ [by the Solicitor], the BLM must refrain from having any contact with the trespasser concerning the trespass action. The trespasser should be directed to the appropriate DOJ office (31 CFR 904.1).

d. Claims against trespassers of less than \$2,500, exclusive of interest, penalties and administrative costs, are not referred to the DOJ (through the Field or Regional Solicitor) unless referral is important to a significant enforcement policy or the trespasser clearly has the ability to pay the claim (31 CFR 904.4).

E. Compromise or Write-off Actions For Trespass Liability Claims. The effect of compromise and write-off, and the justification for these methods, are as follows:

1. Compromise. Compromise differs from write-off in that it extinguishes the trespasser's liability for the unpaid portion of the debt. The amount accepted is a compromise between full liability payment to the BLM and a reduced payment by the trespasser. Accordingly, collection action terminates with the acceptance of the compromise by the BLM and payment of the reduced amount by the trespasser. However, the difference between full payment and the compromise settlement, may be reported by the Director BC-620 as earned income to the Internal Revenue Service (IRS) if the compromise involves extinguishing a legitimate debt. However, if there is real doubt as to the BLM's ability to prove the full amount of trespass liability due, a compromise offer may be accepted and the difference not reported to the IRS (see Illustration 13). Trespass liabilities are normally compromised after referral, through the Director BC-620, to a debt collection contractor and a subsequent recommendation by the Director BC-620 to the State Director for compromise. When a compromise offer is accepted and paid, the trespass case is closed. The BLM may consider a compromise of a trespass liability claim under the following criteria of the Standards:

- a. A trespass claim may be compromised (reduced) if the BLM cannot collect the full amount because of the trespasser's inability to pay or refusal to pay the claim in full and the BLM is unable to collect in full within a reasonable time, 90 days, by formal collection proceedings. Factors that may be considered in determining a trespasser's ability to pay include, but are not limited to, age, health, present and potential income, assets, and inheritance prospects, etc. [31

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CFR 902.2(a)].

b. A trespass claim may be compromised if there is real doubt concerning the BLM's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts. Factors that may be considered include court costs if the BLM loses the case, availability of witnesses, evidence, and probability of full or partial recovery [31 CFR 902.2(d)].

c. A trespass claim may be compromised if the cost of collection does not justify the collection of the full amount. The amount accepted may reflect a discount for the probable administrative and litigation costs of collection and time involved in collection. However, the cost of collection does not necessarily mean that a claim should be compromised. Formal collection may demonstrate to other trespassers that resistance to payment is not likely to succeed [31 CFR 902.2(d)].

d. Claims including value of mineral materials, reclamation and administrative costs incurred by the BLM, and other damages may be compromised if the BLM's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of a compromise offer. Accidental or innocent trespass may be dealt with less severely than willful and substantial trespass (31 CFR 902.3).

e. When two or more trespassers are jointly and severally liable to the BLM for costs arising from the same trespass, collection action shall not be withheld against one until the other(s) pay their proportionate share. Care should be taken that a compromise agreement with one does not release the BLM's claim against the remaining parties (31 CFR 902.4).

f. If the BLM has a firm written offer of compromise, which is substantial in amount, and the BLM is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim through the Field or Regional Solicitor to the DOJ. The DOJ may act upon the offer or return it to the BLM with instructions or advice (31 CFR 902.5).

2. Write-off, Suspension or Termination of Trespass Liability Claims. Collection activity is not terminated with write-off of a trespasser's liability, nor is the liability for the debt extinguished by a write-off. Writing off a debt is the accounting recognition that a debt is unlikely to be collected. Debts are normally written off only after referral, through the Director BC-620, to a debt collection contractor and a subsequent recommendation to the State Director by the Director BC-620. When a trespasser's liability has been written off and the public land vacated and

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reclaimed if necessary, the case may be closed even though collection action has been suspended. Notify the Director BC-620 of the write-off (see Illustration 13). Monitor the trespass area to prevent reoccurrence of the trespass.

The BLM may suspend or terminate collection activity on a trespass liability claim under various criteria of Part 903 of the Standards. Suspension is a temporary measure, whereas termination permits the BLM to close the trespass case. Criteria in the Standards for both suspension and termination are very similar. The following generally relate to both suspension and termination of claims under the Standards. Specific criteria for each may be determined by referring to 31 CFR Part 903.

a. The BLM cannot collect a significant sum from the trespasser because of age, lack of assets, etc. [31 CFR 902.2(a) and (b)].

b. The BLM has identified, but is unable to locate the trespasser. Suggested sources of assistance in locating trespassers include telephone directories, city directories, postmasters, drivers license records, automobile title and registration records, State and local government agencies, the IRS, employers, relatives, credit agency skip locate reports, and credit bureaus [31 CFR 903.2(a) and (31 CFR 903.3(a))]. The BLM law enforcement personnel may be helpful in locating trespassers.

c. Collection action may be terminated on a trespass liability claim when it is likely that the cost of further collection action will exceed the amount recoverable [31 CFR 903.3(a)].

NOTE: The BLM's trespass regulations provide for recovery of administrative costs, including cost of collection. However, there will be situations where the trespasser may not have sufficient assets to cover his trespass liability (i.e., value of mineral materials, administrative costs, reclamation costs, etc.). The BLM may terminate collection actions when the cost of recovery would exceed the amount that can be recovered. The rationale for termination should be well documented as a reasoned judgment on the part of the BLM.

d. Collection action on a trespass liability claim should be terminated immediately whenever it is determined that the claim is legally without merit [31 CFR 903.3(a)(4)].

e. Collection action should be terminated when it is determined that the evidence necessary to prove the trespass cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary liability

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payment are unsuccessful [31 CFR 903.3(a)(5)].

F. Administrative Cost-Liability and Calculation. The trespasser's liability is for the actual costs to the United States incurred by the BLM in resolving the trespass, (i.e., salary and benefits, travel, materials, equipment and facilities, and utility costs). These costs begin with the confirmation of trespass and are categorized according to labor costs, operation costs, and indirect administrative costs. The definitions of each and the calculations for determining the total administrative costs are provided in Chapter II of the Annual Work Plan (AWP) Handbook (H-1681-1). Administrative costs assessed to individual trespassers may be subject to various levels of administrative and judicial review; therefore, it is extremely important that all costs and collections are properly deposited and documented. Form 1323-1 (Reimbursable Project Log) must be used to track these costs. Administrative costs and the log cover the period from case file establishment to the point the BLM no longer controls the resolution action. Administrative costs are calculated according to the following formula:

|       |           |            |                |
|-------|-----------|------------|----------------|
| Total | + Total   | + Indirect | = Total        |
| Labor | Operation | Costs      | Administrative |
| Costs | Costs     |            | Costs          |

1. Labor Costs. When determining BLM labor costs to resolve a mineral material trespass calculate the full cost of personnel salaries and benefits, including the cost of leave (leave costs are a legitimate BLM incurred labor cost). Although there are three common methods available to calculate full labor costs in the AWP Handbook (H-1681-1, Chapter II), the hourly rate method will be sufficient to calculate liability for most mineral material trespasses. Hourly rate is calculated as follows: from the GS/WG salary schedules, use the hourly rate for the proper grade level and step of the employee(s) who work on the trespass. Then determine the number of hours spent in performing the work. Remember, this is direct time and must be adjusted to account for leave surcharge because leave has not been included in the hourly calculations. This method also requires an adjustment to add employee fringe benefits. The formula for total labor costs using this method is:

|                |            |         |            |               |
|----------------|------------|---------|------------|---------------|
| Hourly Benefit | x Fringe   | x Hours | x Leave    | = Total Labor |
| Rate           | Benefit    |         | Surcharge  | Cost          |
|                | Adjustment |         | Adjustment |               |

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### Example

$$\$16.50 \quad \times 1.2^* \quad \times 200 \quad \times 1.18^* \quad = \$4,672.80$$

\* Current rates are provided by the WO Budget Group

2. Operation Costs. In addition to full labor costs, operation costs incurred as a consequence of the trespass must be calculated. All direct costs such as travel, appraisals, transportation, and contracts including rental of equipment must be included. Equipment purchase costs should not be included in the calculation unless the equipment purchase is necessary to resolve the specific trespass case.

3. Indirect Administrative Costs. After the labor costs and direct operation costs have been calculated, add the BLM wide indirect cost rate. This rate covers the BLM's cost of providing administrative support services, including those that cannot be identified as a direct cost, incurred as a consequence of the trespass. This rate is calculated and provided to Field Offices each year by the WO Budget Group (WO-880). The indirect cost rate for the Fiscal Year (FY) 2003 is 17.8 percent. As with leave costs, these are legitimate administrative costs attributable to each trespass resolution action. Total administrative cost is arrived by multiplying the sum of the total labor costs and operation costs by one plus the indirect cost rate.

4. Administrative Cost Documentation. The IBLA has upheld the BLM's recovery of administrative costs for trespass settlement in Henry Deaton, 101 IBLA 177 (1988). However, in this decision the IBLA closely examined the fairness of the administrative costs claimed by the BLM. Therefore, it is very important that a record of administrative costs (e.g., Form 1323-1, Reimbursable Project Log) specific to each trespass be maintained. This record will also be valuable in the future for the development of administrative cost recovery schedules specific to mineral material trespass abatement.

G. Recovery of Mineral Material Value. The United States is entitled to recover the value of mineral materials removed for the current and all past years, and portions thereof, for which the unauthorized activities can be substantiated, subject to the appropriate statute of limitation. There are several methods that may be used to determine liability for mineral material trespass. Whatever method is used, the values should reflect the value in the local market for similar materials used for the same or similar purposes as the trespassed public lands. In each case, exercise judgment in the method used for determining the amount due. Liability may be determined or calculated on the basis of the following:

1. Appraisal. The standard method of determining fair market value

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for BLM purposes is through an appraisal. Appraisals are conducted in accordance with the BLM Manual 3630 - Mineral Material Appraisal and the Uniform Standards of Professional Appraisal Practice (USPAP). The value of improvements to, or on, the public lands is not included in the appraisal of market rent unless the improvements are owned by the United States and their value/use is a legitimate appraisal consideration. The cost of appraisal is an administrative cost that is passed on to the trespasser. The potential of this added cost should be explained to the trespasser at the negotiation stage. Appraisals should be requested if there is a strong likelihood for litigation. However, it should not be assumed that site-specific appraisals are always required to determine the value of mineral materials.

2. Market Area Appraisals. District-wide or market area appraisals that reduce the BLM administrative cost of mineral material value determination may be developed. For example, a District wide or market area appraisal may give a reasonable estimate of commodity value at the trespass site. The administrative costs of preparing an appraisal would have to be passed on to the trespasser. If a more precise determination would not be beneficial to the government, and preparation of a site specific appraisal would require spending unreasonable amounts of time and money that would have to be passed on to the trespasser as administrative costs, then, a District wide or market area appraisal can be used. If the trespasser requests a site-specific appraisal, it must be prepared or reviewed by the BLM at the expense of the trespasser. District wide or market area appraisals should not be used where a site-specific appraisal may provide a higher net return to the government.

H. Recovery of Surface Damage Values. The United States is entitled to recover the value of surface damages for the current and all past years, and portions thereof, for which the unauthorized activities can be substantiated, subject to the appropriate statute of limitation. Calculation of damages to surface resources is applicable to cases involving Federal surface, and to split estate cases where the mineral estate is Federal and the surface estate is non-Federal. There are several methods that may be used to determine surface damage liability for mineral material trespass. Whatever method is used, the values should reflect the value in the local market for similar lands or resources used for the same or similar purposes.

On split estate lands, damages to surface resources may involve crops, improvements, etc. When the trespasser is a third party, the BLM may need to require reclamation that is acceptable to the surface owner, and/or collect payment for surface damages for the benefit of the surface owner. In each case, exercise judgment in the method used for determining the amount of land rent due. A detailed summary of how land rent liability may be determined or calculated is presented in H-9232-1, Realty Trespass Abatement, Chapter VII,

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Section G. Examples of applications of methods covered under realty procedures include:

1. Rent or Fee Schedules. (e.g., crusher or stockpile sites, asphalt plants).
2. Appraisal. (e.g., same as 1; damages to improvements under Stock-Raising Homestead Act).
3. Right-Of-Way Rent and Maintenance Fees. (e.g., access roads).

I. Trespass Penalties. The measure of damages, in a mineral trespass case is the damages prescribed by the laws of the State in which the trespass was committed, as well as in BLM contracts (see Appendix 1, State Court Decisions and Decisions of the Interior Board of Land Appeals).

When the trespass is innocent, the measure of damages selected is the one most beneficial to the government, unless otherwise specified by State law. The measure of damages is assessed at the value of the mineral taken less expense incurred in removal, or the royalty value of the material or mineral in place, whichever is higher.

Mineral material liability for knowing and willful removal without a contract may be assessed at the value of the mineral at the first point of sale, without deducting for labor bestowed or expense incurred in removing and marketing the mineral.

J. Reclamation of Trespass Lands. Reclamation liability includes all costs associated with reclaiming the lands to a post disturbance condition compatible with the current land use plan. Reclamation liability also includes all costs associated with planning for and monitoring reclamation results.

1. Planning for Site Reclamation. Reclamation of sites following termination of a trespass could involve significant surface disturbance requiring NEPA analysis and documentation. Administrative costs for planning and completing reclamation of damaged areas are part of the trespass liability (See Chapter VIII - Settlement). Please refer to the BLM Solid Minerals Reclamation Handbook (H-3042-1) for appropriate site reclamation standards. Costs associated with reclamation of disturbed lands, including NEPA analysis and documentation, should be charged to 5320-10 where the trespasser can not be determined or pay. The following concerns frequently involve special requirements and should be considered as part of the NEPA process prior to the initiation of any reclamation efforts:



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a. General. The reclamation work must be properly "engineered" to avoid unnecessary adverse physical and environmental effects on plant and animal species (e.g., plugged water channels, erosion, gullies, etc.).

b. Cultural Resources. Evaluation of cultural resources by appropriate BLM specialists is required because damage may have already occurred from the trespass action. In some cases reclamation could adversely affect cultural resources on or adjacent to the trespass site.

c. Threatened and Endangered Species. An initial investigation by a specialist should be conducted to determine if these resources have already been impacted by the trespass action. Reclamation impacts on known habitats of threatened and endangered plant and animal species should be evaluated and reclamation directed to enhance species recovery whenever possible. Disturbance of new lands in a Threatened & Endangered Species habitat requires section 7 consultation under the Endangered Species Act.

2. Reclamation Plan. A reclamation plan should be prepared for each site where reclamation at the expense of the trespasser is appropriate. The plan should provide for monitoring and accounting of moneys provided by the trespasser for reclamation. The plan may be minimal in scope, however, it may be a major document requiring extensive environmental documentation (EA/EIS), especially if hazardous materials or waste is involved. The time frame covered by the plan is important. Long-term monitoring may be required where revegetation, stabilization, and long-term health hazards are involved. The plan should define satisfactory reclamation in terms of when a trespasser may be released from reclamation liability. Where a realty trespass occurs in conjunction with a mineral material trespass, plans should be coordinated with realty trespass provisions under H-9232-1, Realty Trespass Abatement, Chapter VII, Section J. Rehabilitation/Stabilization of Trespass Lands.

3. Substance Removal. When mineral material trespass involves concurrent dumping of residential, commercial, or industrial waste, violation(s) of local, county, or State laws or ordinances may also have occurred (see Chapter VI - Discovery, Investigation, Documentation, and Recordation, C. 6. Real and Personal Property Actions; and also Chapter X - Assistance in Mineral Material Trespass Abatement, A. 9. State and Local Law Enforcement Officials). Requiring the removal of the dumped materials may be sufficient. In some cases, however, toxic, flammable, or other health or safety endangering materials may be present which require extensive cleanup and sanitizing measures. There may be a need to keep the public away from the contaminated area, as well as surrounding areas. Long-term monitoring of the site and off site areas may be necessary. When mineral materials have been damaged and land has been rendered useless or cannot be reclaimed, the penalty (requested in a legal action) should be no less than the fair market value of

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the mineral materials damaged for which the unauthorized activity can be substantiated as well as the value of the land during the time period that the land is rendered useless. Where criminal intent can be established, a fine and/or imprisonment under 43 CFR 9262 may also be appropriate. Refer hazardous waste trespass matters to the Hazardous Waste Coordinator and BLM law enforcement personnel.

4. Reclamation by the Trespasser. The trespasser may perform the reclamation requirements instead of paying such costs, if it is determined by the Authorized Officer (AO) to be to the advantage of the U.S. Government. Consideration by the AO shall include the difficulty and extent of reclamation needs, financial and technical capability of the trespasser to accomplish the job, equipment and manpower availability, and overall reliability of the trespasser. These considerations should be measured against the BLM's ability to accomplish the same job within personnel, time, and budget constraints. A performance bond for the amount of the reclamation cost estimate is required if the AO determines the trespasser may do the work (see the discussion of performance bonds at Items 5. Surety Bonds, and 6. Personal Bonds, of this Section). The mere act of initially performing reclamation work (e.g., seeding or planting) does not necessarily fulfill the trespasser's reclamation liability. Several treatments may be required before success is achieved and an acceptable vegetative stand is established. The case file is not closed nor is the trespasser relieved of reclamation liability until successful reclamation has been achieved.

5. Reclamation by the BLM. The trespasser may, at the option of the AO, provide the BLM with the funds necessary for reclamation of the public lands damaged as a consequence of the trespass. The decision to accept reclamation funds, and thereby, the responsibility for successful reclamation, must be carefully weighed. The disadvantage of this option is that the BLM absolves the trespasser of liability for reclamation of the damaged lands. Advantages may include cost effectiveness or savings which may be utilized on other public lands, or the BLM may have expertise i.e., archaeologic, cultural, endangered species, etc.) that is required for successful reclamation (see Chapter VIII- Settlement, Section L. Deposit and Use of Funds Collected).

6. Surety Bonds. A surety bond consists of a promise to the United States by the holder (i.e., trespasser) and a surety (bonding company) that the surety company will correct any failure of the holder to meet his obligations (i.e., under a reclamation plan) or the surety will pay up to the United States to the limit of the bond. For all Federal bonds, the surety corporation must be certified by the U.S. Treasury Department as an acceptable surety. The bond is a three-way contract between the holder, the surety, and the United States that can be enforced should the holder fail to complete the

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reclamation, or provide reclamation funds to the BLM, as required. Refer to BLM Manual H-3600-1, Mineral Materials Disposal Handbook, Chapter IV.E.1 for additional information on surety bonds.

7. Personal Bonds. With a personal bond, the holder (trespasser) may post a bond secured by its own funds to furnish cash to the United States to ensure adherence to reclamation requirements. Refer to BLM Manual H-3600-1, Mineral Materials Disposal Handbook, Chapter IV.E.2 for information on personal bonds and what types of financial instruments are acceptable.

K. Liability Collection. Liability billing procedures are found in BLM "Collection Reference Guide" May, 1993 prepared by the Denver Service Center. Contact your Collection Officer for a copy of this reference guide. The following is provided for the general information of this Handbook user.

1. Request for Payment. When total trespass liability (administrative costs, value of mineral materials removed, restitution for land or resources used or damaged, reclamation costs, etc.) has been determined and informal administrative resolution is unsuccessful, a trespass decision (see Illustrations 6 or 7) is issued which documents the liability. If the decision is not appealed, a request for payment is made (Form 1371-22). (see Chapter IX - Appeals, Injunctions, and Statute of Limitations.) The decision and billing request should be made only when the AO has completed all negotiations and liability values are firm. Consult with the District or State Office Accounts Clerk for payment procedures.

2. Settlement Offer. After initiation of formal administrative action, the AO can accept offers of settlement for full liability only. If the trespasser offers to pay the full amount of liability, acceptance is by the AO. All payments should be held until cleared (if by check) before closing the case file. If there are unmet liabilities and a third demand letter (see Illustration 11) is ignored, the claim is referred to the Director BC-620, through the State Director, for collection action (see Illustration 12).

3. Promissory Notes. In cases where the trespasser is willing to meet full liability, but is not able to pay the obligation in full, a promissory note, not to exceed 3 years, may be executed (Form 1372-1). The note may provide for a single payment or installment payments. When payment schedules are not met, reissue the third demand letter. If the debt remains unpaid, send a case file summary to the Director BC-620 for action (i.e., referral to a collection agency, the Denver Regional Solicitor, and/or the IRS).

4. Delinquent Accounts. Prior to referring delinquent trespass

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claims to the Director BC-620, the following sequence of events must be accomplished by the Accounts Clerk in the originating office:

a. Bill for Collection. If no payment is received on a formal decision the Accounts Clerk will send a Bill for Collection (Form 1370-1).

b. Demand Letters. A total of three progressively stronger written demand letters should be issued, unless a response to the first or second demand letters indicates that a further demand would be futile and the debtor's response does not require rebuttal.

(1) Issue the first Demand Letter 31 days from the receipt (service of the Trespass Decision) of the original bill (see Illustration 9).

(2) If payment has not been received within 15 days of the issuance of Demand Letter No. 1, issue the second Demand Letter (see Illustration 10).

(3) If payment has not been received within 15 days of the issuance of Demand Letter No. 2, then issue a final Demand Letter signed by the State Director or delegated official (see Illustration 11).

c. Referral for Collection. If the trespass claim is still outstanding after the third demand letter after 90 days from the receipt (service of the Trespass Decision of the original bill), then the delinquent account file is forwarded to the Director BC-620 (Illustration 12) for appropriate collection action (i.e., possible referral to a Debt Collection Contractor, the Denver Regional Solicitor for litigation, or the IRS).

5. Collection by Administrative Offset. Collection of trespass liability claims by administrative offset may be accomplished under regulations of the IRS and other agencies. Recovery under the IRS regulations is offset against income tax refunds. Collection by administrative offset is handled by the National Business Center Debt Collection Coordinator (BC-620).

Action to collect trespass liability by administrative offset is initiated by State Directors through the Service Center. The essential requirements to be met in administrative offset are:

a. A statement that the BLM has, before requesting offset, first attempted to collect trespass liability and that all collection resources available to it have been exhausted.

b. The specific debtors' names, address, and the county in which the offset should be taken, a brief statement as to the basis for the debt, and the appropriate claim number used to identify the debt.

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c. The amount of the debt set forth separately as to principal and interest. Interest, if any, shall be computed to a date shown on the offset request. If interest continues to accrue after this date, the annual rate of interest and the amount of interest accruing on a daily basis shall be provided.

d. Certification that the debtor owes the debt and that the BLM has complied with the administrative offset requirements of the Debt Collection Act (31 U.S.C. 3716) and the Federal Claims Collection Standards (31 CFR Part 901).

e. Whether or not the debtors, for whom offset is requested, have filed for bankruptcy. If so, the BLM must enclose with its offset request a copy of the bankruptcy court order relieving the BLM from the automatic stay provisions of the bankruptcy code.

NOTE: The cited statute and regulations require that an Agency, before collection by offset, provide a debtor with a written notice that provides: The nature and amount of the debt and the Agency's intention to collect by offset; an opportunity to inspect and copy Agency records pertaining to the debt; an opportunity to obtain review within the Agency of the determination of indebtedness; and an opportunity to enter into a written agreement with the Agency to repay the debt.

6. Compromise Offers and Liability Write-Off. Any offer less than the amount identified in the demand letter is a compromise offer and must be settled under procedures established by the Director BC-620. Under these procedures State Directors at certain authorized levels may either accept compromise offers or write-off liabilities (see Illustrations 13 or 14). The District Accounts Clerk and/or the Director BC-620 must be consulted for established settlement procedures. Also see Chapter VII, Section E. Compromise or Write-off Actions for Trespass Liability Claims.

### L. Deposit and Use of Funds Collected.

1. Deposit of Funds Collected. All collections from mineral materials trespass settlements or bond forfeiture (including penalties and forfeitures) are to be deposited to account 14X5017.2, Fees, Charges, Deposits, and Forfeitures, BLM, within subactivity Repair of Damaged Lands 5310 (O&C Lands) or 5320 (Public Domain Lands). This includes:

a. Any moneys received as a compromise or settlement of any claim

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involving mineral materials trespass, whether in tort or contract, including trespass liability fund inclusive of value of the materials and trespass penalties.

b. Moneys received as the result of the forfeiture of a bond or deposit by a mineral materials purchaser or permittee who does not fulfill the requirements of the contract or comply with the regulations.

The House Appropriations Committee report for the FY 1999 Interior Appropriation Act, PL. 105-277 of October 21, 1998, provides a clear guidance on which funds are to be deposited to the repair of damaged land accounts. The Committee report states the following: "The Committee believes that funds received for the repair of damaged lands as provided for and described in this appropriation account includes funds collected for administrative, reclamation, resource value, liability and penalty costs." The Committee report further states that: "If the Department's Office of the Solicitor holds a different opinion regarding the collection and use of such funds, it should provide a formal written opinion summarizing the Department's position to the Committee by March 1, 1999." The Bureau has not been advised by the Department of any contrary advice to the intent of the Congress for these collections and distributions.

2. Use of Funds Collected. The Interior Appropriations Act P.L. 105-83 of November 14, 1997 provides that collections received as a result of forfeiture, compromise, or settlement, are available to BLM until expended to improve, protect, or rehabilitate damaged public lands that are administered by BLM. Any collections received that are in excess of amounts needed to repair damage to the exact land for which the funds were collected may be used to repair other damaged public lands.

These collections are available to the BLM to offset the administrative and reclamation costs of trespass settlement or bond forfeiture.

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### Chapter IX - APPEALS, INJUNCTIONS, AND STATUTE OF LIMITATIONS

A. Appeal Procedures. Any person adversely affected by a decision to resolve a mineral material trespass (e.g., termination of operation, settlement of liability, etc.) may appeal that decision to the IBLA under the provisions of 43 CFR Part 4. In order to preserve an alleged trespasser's right of due process and the BLM's options for resolution, including addition of penalties, the following procedure should be closely adhered to in cases where formal administrative resolution procedures are required.

1. Trespass Notice. Trespass Notices (see Illustrations 4 or 5) are interlocutory and, therefore, are not subject to IBLA appeal during the compliance period as identified on the back of the notice of trespass (Form 9230-1). Following the compliance period the BLM, based on lack of response or evidence and information provided by the trespasser, may:

- a. Reconsider the validity of the trespass.
- b. Adjust the liability based on information provided by the trespasser (i.e., area, duration of trespass, etc.).
- c. Accept payment of trespass liability.
- d. Decide whether trespass penalties are warranted.
- e. Close the case for lack of evidence.

2. Trespass Decision. If following the compliance period and evaluation of any information or evidence provided by the trespasser the trespass remains unresolved, a trespass decision letter (see Illustrations 6 or 7) is issued. The decision may include value of mineral material removed, administrative and rehabilitation /stabilization costs, and trespass fines. The decision must also inform the trespasser of the right of appeal to IBLA. At the end of the appeal period, if the trespasser has not appealed to IBLA and has not made payment the collection process should be followed (see Chapter VI - Discovery, Investigation, Documentation, and Recordation and Chapter VIII - Settlement).

3. Right of Appeal. In the decision letter the trespasser must be notified of their right of appeal to IBLA with an appeal statement. The standard appeals statement paragraphs are provided in Chapter IX - Appeals, Injunctions, and Statute of Limitations in the Mineral Materials Disposal Handbook (H-3600-1). Appeals are referred to in accordance with the regulations at 43 CFR 4.400 and all appeals must follow the procedures

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outlined in Form 1842-1, Information on Taking Appeals to the IBLA. The appellant has the burden of showing that the decision appealed from is in error.

4. Effect of Appeal. When an appeal has been filed, IBLA has exclusive jurisdiction over the matter and BLM can take no action on the decision being appealed. If the applicant wishes to continue negotiating for settlement the BLM should first consult with the appropriate Solicitors office.

5. Request for Litigation. A request for litigation will be prepared in the form of a confidential memorandum to the Field or Regional Solicitor. This memorandum is from the State Director and describes the history of the case, potential witnesses, and requested action (see Illustration 16).

6. Civil Action. If a trespasser does not appeal to IBLA and does not respond to liability collection action (i.e., three demand letters and collection by a debt collection contractor), civil action may be appropriate.

7. Criminal Action. Criminal prosecution actions are not subject to IBLA appeal.

B. Injunctive Relief. Injunctions cannot be used to resolve mineral material trespass. From a management standpoint, it must be clearly understood that injunctive relief cannot be considered as a "management tool"; because of its extraordinary legal nature, it can be considered only as a legal remedy that is available in certain cases. Injunction is primarily a preventive remedy; its province is to afford relief against future acts actually threatened or apprehended with reasonable probability, and to preserve the status quo rather than to remedy or to punish for wrongful acts already committed. There are various forms of injunctive relief that can be utilized by attorneys. (Please refer to Manual 9236 - Litigation and Injunction and Black's Law Dictionary for a more complete description of injunctive relief.) Three forms of injunction that we utilize the most are:

1. Preliminary Injunction. A preliminary injunction includes any interlocutory injunction granted after the respondent has been given notice and the opportunity to participate in a hearing on whether or not that injunction should issue. Also referred to as a temporary injunction.

2. Temporary Restraining Order. A temporary restraining order (TRO) is an emergency remedy of brief duration. It may be issued in exceptional circumstances and only until the trial court can hear arguments or evidence on the subject matter of the controversy and otherwise determine what relief is



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appropriate. A TRO differs from a preliminary injunction primarily in that it is issued *ex parte*, with no notice or opportunity to be heard granted to the respondent. TRO's supply the need for relief in those situations in which the petitioner will suffer irreparable injury if relief is not granted immediately, and time simply does not permit either the delivery of notice or the holding of a hearing.

3. Permanent Injunction. One intended to remain in force until the final termination of the particular suit. Also referred to as a final injunction.

Injunctions will not be issued by the courts to restrain a trespasser merely because he is a trespasser; there must be irreparable harm occurring or of immediate threat. If a situation arises where lands administered by the BLM are being subjected to, or threatened with, resource damage from trespass of such a nature as to require preventive action by the BLM, the facts of the case shall be presented to the appropriate Regional or Field Solicitor for advice as to whether injunctive relief should be sought. Injunctive relief will restrain a trespasser from continuing a trespass or initiating an action that would constitute trespass. It will not satisfy the trespasser's liability for trespass. Injunctions are not required to restrain a criminal trespass. BLM law enforcement personnel have the authority to arrest or otherwise restrain a criminal trespasser. Normally, an injunction should be sought for one of the following two reasons:

a. Existing Trespass. A trespass is continued after service of a Trespass Notice or a trespass decision letter and irreparable resource damage is occurring or life or property is threatened.

b. Expected Trespass. A trespass is anticipated in spite of warnings issued to the persons involved that their action would cause irreparable harm and would constitute trespass on the public lands.

C. Statute of Limitations. In all trespasses, the BLM should attempt to collect the total amount for materials severed and the notice of trespass should reflect that total. However, the BLM should be aware that where the amount of damages are in dispute, the trespasser may be liable for only those damages accruing within the statute of limitations period. There may also be situations where the statute of limitations period may not apply, making the trespasser liable for damages incurred outside of the normal statute of limitations period.

In 1966, Congress enacted Public Law 89-505, which established a 6 year statute of limitation from the date of the trespass for prosecuting a claim in Federal court. Title 28 U.S.C. 2415 provides: "That an action to recover

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damages resulting from trespass on lands of the United States \* \* \* may be brought within six years after the right of action accrues \* \* \*". The BLM's "right of action" under the statute pertains to the right to remedy and relief (i.e., termination and recovery of damages) from trespass through judicial procedure. This right of action occurs each day a trespass is continuing and does not necessarily rely on the date the trespass was initiated for purposes of calculating the 6-year limitation on initiating the BLM's right of action.

The Statute of Limitations is a defense that an alleged trespasser can only invoke in civil court. The Statute of Limitations does not bar the BLM from informal or formal administrative action for collection of money owed the United States for all years, or portions thereof, where the trespass can be substantiated. Also, Section 102(a) (9) of FLPMA requires that the United States receive fair market value for the use of the public lands and their resources unless otherwise provided for by statute. Thus, the BLM is required by FLPMA and Mineral Material regulations to recover fair market value for all years of trespass, unless the BLM is limited by the court in a civil action to recovery under the Statute of Limitations.

Title 28 U.S.C. 2416 provides that for the purpose of computing statute of limitation periods, time may be excluded from the limitation period for those periods in which "\* \* \* facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act \* \* \*". Thus the BLM's "right-of-action" on a trespass that has gone undetected (for good cause) for a number of years may not be constrained by the 6-year Statute of Limitations.

When seeking punitive damages under State law, the statute of limitations specified by such State law must be used. It is advisable to consult the Regional or Field Solicitor to determine the statute of limitations that would apply to the case.

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### Chapter X. - ASSISTANCE IN MINERAL MATERIAL TRESPASS ABATEMENT

Mineral material personnel and the AO have access to various BLM specialists and legal and law enforcement personnel who can provide direct assistance in trespass abatement. Additionally, some public and private entities may provide indirect assistance in deterring, preventing, and resolving mineral material trespass and trespass liability. Coordination with, and utilization of, these various resources will enable the BLM to establish an effective mineral material trespass abatement program. This chapter provides information on assistance that may be available in mineral material trespass abatement and coordination of mineral material trespass abatement efforts.

NOTE: In most cases State Directors or the Service Center have established formal contact procedures with many of the individuals and entities discussed herein. These procedures should be adhered to at all times.

#### A. Legal and Law Enforcement Assistance.

1. Special Agents. The Special Agent-in-Charge (SAC), located at the State Office, is responsible for the overall law enforcement program within that respective State. Depending on the program size, the law enforcement staff may consist of additional Special Agents and District and Area Rangers. One of the major responsibilities of Special Agents is to investigate known or suspected violations of law that pertain to the management, occupancy, development, and use of the public lands and protection of natural resources. Special Agents have the authority to carry firearms, make arrests, and conduct undercover operations, searches, and seizures (43 CFR 1733(c)(2)). The BLM Special Agents can participate in trespass abatement actions in various ways, including those listed below:

- a. Review mineral material trespass situations prior to formal trespass notice to determine if sufficient evidence exists and criminal prosecution is warranted.
- b. Conduct investigations relative to trespass.
- c. Provide technical assistance to District and Area personnel in the conduct of trespass investigations.
- d. Perform trespass investigations and collect evidence.
- e. Investigate and identify willful or innocent intent of

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trespass (i.e., criminal or civil). Offer advice on options to pursue for trespass resolution.

f. Issue citation(s).

g. For criminal actions the Special Agent works directly with the U.S. Attorney's Office.

2. Law Enforcement Rangers. The BLM Law Enforcement Rangers are the uniformed division of the BLM's law enforcement program. They have identical law enforcement authority as the Special Agents. However, they are utilized differently than Special Agents to assist in accomplishing the overall objective of the BLM's law enforcement and resource protection program. By design, these uniformed Rangers provide high visibility on the public lands through constant patrol in marked vehicles. Their overall purpose is to protect the public lands and natural resources through deterrence. Rangers can assist in mineral material trespass abatement actions in the following manner:

a. Provide personal service of letters, notices of trespass, trespass decisions, etc.

b. Provide security for District Office and Resource Area personnel during trespass investigation or contact with trespassers.

c. Conduct interviews.

d. Issue citation(s).

e. For criminal actions the Law Enforcement Ranger works directly with the U.S. Attorney's Office.

3. Field or Regional Solicitor. The Field or Regional Solicitor's Office may provide assistance in mineral material trespass abatement in the following ways:

a. Concur in State Director decisions to compromise or write off trespass liability claims (Illustrations 13 or 14).

b. Review information relating to a mineral material trespass case and advise on the legal sufficiency of the BLM's case.

c. Represent the BLM before the IBLA and Hearing Examiners of the Office of Hearings and Appeals.

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d. Provide advice on appropriate action by the BLM when appeal of a trespass action is before the IBLA.

e. Advise on injunctive relief to restrain a trespasser or prevent expected trespass.

f. Serve as primary contact with the U.S. Attorney on civil trespass cases of the BLM. Assist the U.S. Attorney if a BLM trespass case goes to court.

4. U.S. Attorney/Assistant U.S. Attorney. The U.S. Attorney's Office, Department of Justice, must be associated with any action, criminal or civil, involving the Federal court system. The U.S. Attorney prosecutes criminal violations for the U.S. Government. Civil actions are initiated by the BLM, through the Solicitor, and are prosecuted in the Federal court by U.S. Attorney. The Office of the U.S. Attorney may also defend the United States or its employees from civil or criminal complaints filed by other parties. The U.S. Attorney also has the responsibility to review for legal sufficiency any criminal investigations conducted by other Federal agencies; represent the BLM in civil and criminal matters in U.S. District Court, determine the type of case (civil or criminal) the Government will initiate and makes the decision as to whether or not a trespasser will be prosecuted by the United States.

5. U.S. Magistrate. The U.S. Magistrate is a Federal judicial officer. In the Federal court system, U.S. Magistrate Judges may conduct many of the preliminary or pretrial proceedings in both civil and criminal cases. U.S. Magistrate Judges will try most criminal trespass violations according to regulations promulgated under Section 303(a) of the FLPMA. If arrest, search, or seizure warrants are needed to conduct criminal investigations, they are normally secured through the U.S. magistrate. BLM Special Agents and Law Enforcement Rangers may appear before U.S. Magistrates acting on behalf of the U.S. Attorney.

6. U.S. District Court. Normally, the U.S. District Court will try the civil complaints filed with the court on behalf of, or against, the United States. The U.S. District Court Judge will also try the more serious criminal violations resulting from criminal investigations conducted by BLM Special Agents. Upon request of the defendant, misdemeanor violations also can be heard by the U.S. District Court Judge.

7. U.S. Parole and Probation Officers. These officials may also become involved with mineral material trespass abatement. If the BLM initiates criminal action and the defendant is convicted, normally a pre-sentence investigation will be conducted by the parole and probation officer. During the course of that investigation, key BLM personnel may be contacted

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concerning the trespass or other violation. Their input may become part of the pre-sentence investigation which is the basis for recommending an appropriate sentence to the court.

8. U.S. Bankruptcy Court. The trespasser may file for bankruptcy to avoid payment of the outstanding claim. Even though the individual or company has filed for bankruptcy they may still have a debt owed to the U.S. Government that can only be decided by the Bankruptcy Court. The BLM should file a claim with the court. The trespass charges should include all costs of trespass resolution (i.e., value of mineral materials removed, administrative costs, and reclamation costs).

9. State and Local Law Enforcement Officials. Various State and local law enforcement officials may become involved in trespass abatement actions. It is appropriate to involve those officials as cooperative or participating parties in resolving trespass that violates State or local law or permitting or authorizing authority. These same officials can be valuable sources of information in investigations of trespass cases and also can be utilized as witnesses where appropriate.

B. Indirect Trespass Abatement Assistance. The BLM has assistance available, which while not directly related to mineral material trespass on the public lands, can aid in the prevention and deterrence of trespass and the settlement of trespass liability claims. This assistance derives from the Federal Debt Collection Act and implementing Standards (see Appendix 1). Any trespass liability claim that is not properly resolved may be referred to tax, credit, or collection entities under the Standards and the BLM's debt collection procedures. The potential of such referral should help prevent new trespass, deter existing trespass, and expedite resolution of trespass liability claims. The possibility of such referral should be well publicized in the local area of trespass occurrence and explained to trespassers in the early stages of trespass resolution negotiations. The referral entities and actions on unpaid trespass liability claims are discussed below:

1. Internal Revenue Service (IRS). Any unpaid trespass liability claim of the BLM may be reported to the IRS as possible additions to the trespasser's income for Federal income tax reporting and payment purposes. Also the difference between the BLM's trespass liability claim and compromise offer of the trespasser accepted by the BLM may be reported by the Service Center Director (BC-620) to the IRS as earned income. Where these moneys (additions to income) are not reported by the trespasser to the IRS, the trespasser may be subject to income tax penalties. Further, the BLM may ask the IRS to recover trespass liability by offset against any income tax refunds due the trespasser. Requests for offset are initiated by the State Director through the Director BC-620 (see Chapter VIII - Settlement).

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2. Agricultural Stabilization and Conservation Service (ASCS). The ASCS may assist the BLM in the settlement of trespass liability claims by offset of the amount of the claim against any ASCS program payments being received by the trespasser. The program payments to be offset need not be directly related to the land in trespass. The primary criteria are that the trespasser is receiving ASCS payments and is financially liable to the BLM for public land trespass (see Chapter VIII - Settlement).

3. Debt Collection Contractors. A trespass liability claim which remains unpaid after issuing a Bill for Collection and three required demand letters is referred to the Director BC-620. The BC may refer this claim to a debt collection contractor who has 6 months to attempt to collect the debt.

4. Consumer Credit Agencies. Any uncollected mineral material trespass liability claim may be reported to consumer credit agencies. This unpaid liability may adversely affect a trespasser's credit rating.

C. Coordination of Trespass Abatement Actions. Whenever civil or criminal action to resolve a trespass is considered, close coordination with the BLM's law enforcement personnel and legal counsel is mandatory. In criminal cases, the SAC will coordinate actions with the State Director and U.S. Attorney. In civil actions, direct contact with Field and Regional Solicitors may be limited to the State Director and delegated officials. In all instances, the State Director or other authorized official must be informed prior to initiating civil or criminal action. Coordination with minerals personnel is mandatory in the resolution of trespass on mining claims. Collection action on trespass liability claims is initiated by BLM Accounts Clerks. Other specialists should be consulted as appropriate to each individual trespass case. Key coordination points are listed below.

1. Accounts Clerk. Close coordination must be maintained with State and District Office Account Clerks for current procedures and guidance on billing and collection of mineral material trespass claims. The Accounts Clerk initiates trespass claim collection action (billing and demand letters) and may request guidance on specific billing/collection action from the BLM's Debt Collection Coordinator, Branch of General Accounting, BC-620.

2. Mineral Examiners. BLM Manual Section 3890 provides guidance on common versus uncommon varieties of mineral materials, and the procedures for determining when mining activity may involve a valid mining claim. Please refer to Chapter V-C.10. [Types of Mineral Material Trespass, Processing of Plans and Notices Under 43 CFR 3809 Regulations for Suspected Common Variety Minerals], for procedures. Mineral examiners make the recommendations on validity and need for contest actions against mining claims. Where the

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materials are determined to be common varieties, their removal constitutes trespass. Resolution of mining claim material trespass must be a coordinated effort by mineral specialists and mineral examiners. Guidance contained in



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Manual Section 3890 must be followed in conjunction with procedures in this Handbook. The goal should be prompt and efficient resolution of the trespass and restitution to the United States for unauthorized removal of common variety mineral materials.

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### GLOSSARY OF TERMS

- A -

abate: to reduce in amount, intensity, to put an end to or to suppress something (a nuisance).

administrative costs: all costs incurred by the BLM as a consequence of a mineral material trespass. Administrative costs include labor, operation, and indirect administrative costs.

administrative resolution: the resolution of a mineral material trespass utilizing informal or formal administrative procedures available to the BLM without resorting to civil or criminal resolution procedures.

authorized officer: any person authorized by law or by delegation of authority to or within the BLM to perform the duties described in this Manual.

- C -

civil resolution: resolution of a trespass in the civil court. Civil resolution is initiated when administrative resolution efforts are unsuccessful.

civil trespass: any mineral material trespass where knowing and willful trespass cannot be substantiated. Civil trespass may be resolved administratively on an informal or formal basis; or, by civil court action.

criminal penalty: According to 18 U.S.C. 3571(b), Federal Sentencing Guidelines, an individual may be fined not more than \$100,000 for a Class A misdemeanor, and an organization may be fined not more than \$200,000. Imprisonment may not exceed one year for a Class A misdemeanor, according to 18 U.S.C. 3581(b). Under the Federal Sentencing Guidelines, an individual may be fined not more than \$250,000 for a Class D felony, and an organization may not be fined more than \$500,000. Imprisonment may not exceed six years for a Class D felony. A trespass penalty may also be applied.

- D -

damages: includes trespass liability, trespass penalties and any court ordered monetary award to punish or deter future trespass.

- F -

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formal administrative resolution: settlement of trespass and trespass liability under formal administrative procedures available to the BLM (i.e., termination, debt collection, citation, and other manualized or regulatory processes).

- I -

informal administrative resolution: settlement of trespass and trespass liability without resorting to formal procedures available to the BLM (i.e., formal administrative resolution).

- K -

knowing and willful trespass: violation of the BLM's mineral material trespass regulations committed deliberately, not accidentally, repeatedly, or with prior knowledge or intent.

- L -

liability compromise: an agreed upon settlement of a trespass liability claim for less than the BLM's total liability claim against a mineral material trespasser.

liability write-off: suspension or termination of trespass liability claim collection action, generally in recognition that the collection of the claim is unlikely. Write-off does not extinguish a trespasser's liability.

- M -

mineral material trespass abatement: all actions to prevent, detect, and resolve mineral material trespass on the public lands.

- N -

nonwillful trespass: unintentional or unknowing violation of the BLM's mineral material trespass regulations or violation where knowing and willful intent cannot be substantiated.

- P -

penalty: see trespass penalty and/or criminal penalty.

- R -

reasoned judgment: a decision, based on documented facts, that would be

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arrived at by a majority of knowledgeable individuals when presented with the same factual information.

rehabilitation/stabilization costs: all costs of returning lands damaged as a consequence of the trespass to their original productive capability; or, measures designed to halt damage to the land in order to permit natural processes to restore the land to its condition prior to the trespass activity.

- S -

Standards: the Federal Claim Collection Standards (Title 31 CFR Chapter IX) which implement the Federal Claims Collection Act of 1966, as amended.

suspected trespass: any mineral material activity where public land status is reasonably confirmed, the activity requires use authorization, and the use authorization has not been confirmed.

- T -

timely manner: prompt efficient resolution of a trespass without unnecessary delaying actions on the part of the trespasser.

title transfer: change in land status accomplished by sale, exchange, color of title, etc.

trespass decision: initiation of formal action to administratively resolve a trespass. Trespass decisions are accompanied by a Bill for Collection of total trespass liability and constitutes a written demand. Trespass decisions may be appealed to the Interior Board of Land Appeals. Administrative actions following a trespass decision may include appropriate demand letters and referral to the BLM's Debt Collection Coordinator.

trespass detection: includes public land inventory utilizing available information, field examination, aerial photography, orthophotoquads, etc., to locate and identify trespass on the public lands.

trespass liability: includes value of the mineral material, administrative costs incurred as a consequence of trespass and responsibility for rehabilitation/stabilization of public land altered as a consequence of trespass activities (also liability).

trespass liability claim: a monetary debt (i.e., liability claim) incurred as a consequence of mineral material trespass on the public lands. Trespass liability claims are collected under the authority of the Federal Claims Collection Act and its implementing Standards.

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trespass notice: a notice that the BLM has initiated trespass proceedings against a trespasser. Trespass notices provide a compliance period and are not appealable to the Interior Board of Land Appeals (see trespass decision).

trespass prevention: those actions designed to inform the public of the requirements for legal use, occupancy, or development of the public lands. Trespass prevention seeks to eliminate potential trespass prior to its establishment.

trespass recordation: the documentation of a suspected mineral material trespass in the BLM's automated case record system, LR-2000.

trespass resolution: includes termination or legalization of the trespass activity and settlement of trespass liability incurred by a trespasser.

trespass settlement: an agreed upon payment of trespass liability or termination of a trespass liability claim. Settlement may include payment in full, compromise, or write -off.

trespass termination: may include termination of the unauthorized activity or legalizing the activity under an appropriate land use authorization or title transfer.

- U -

unauthorized activities: use, occupancy, or development of the public lands without authorization under the BLM's authorization regulations (includes mineral material trespass).

unauthorized occupancy: those unauthorized activities which result in full or part time human occupancy of the public lands. Unauthorized occupancy may include occupancy of natural shelters, placement or construction of dwellings, cabins, and other structures or vehicles on the public lands for trade, commercial, manufacture, residential, or recreational purposes (includes mining claim occupancy when the occupancy is not reasonably incident to mining).

unauthorized development: those unauthorized activities that physically alter the character of the public lands. Unauthorized development includes cultivation, resource development (wells, catchments, dams, etc.), irrigation, and other land alteration for development purposes.

unnecessary or undue degradation: surface disturbance greater than that which would normally result when the same or a similar activity is being

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accomplished by a prudent person in a usual, customary, and proficient manner. It takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity.

- W -

written demand: a request in writing for payment and/or rehabilitation/stabilization in the form of a billing delivered by certified mail, return receipt requested, or personally served (also see trespass decision).

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Illustration 1, Page 1  
Illustration of an Escrow Agreement

**ESCROW AGREEMENT  
BETWEEN HIGH Z MINING COMPANY, INC.  
and the BUREAU OF LAND MANAGEMENT**

In Reply Refer to  
N-633333/N-633344  
3809/3600/9235  
(NV-053)

RECITALS:

A. The following described lands (Subject Lands), public lands of the United States, were claimed pursuant to the mining laws by the High Z Mining Company, Inc., (hereafter referred to as "claimant") and have been in good standing since September 15, 1995:

Section 33, T. 25 S., R. 6 E., Mount Diablo Meridian, Clark County, Nevada and as depicted in the attached map which was plotted utilizing global positioning system.

B. The Claimant has maintained the High Z placer mining claims by keeping up the necessary filings with the Bureau of Land Management, U.S. Department of the Interior (BLM) with the intention to produce minerals (sand and gravel) from the natural deposits.

C. The claimant states that the minerals (sand and gravel) claimed are of an "uncommon variety." Claimant also states that the deposit has a property giving it a distinct and special value.

D. BLM believes in good faith that the minerals claimed by claimant, High Z Mining Company, Inc., are of a "common variety" and are not subject to location under mining Laws. BLM believes that claimant is in trespass by removing Non-Locatable minerals from the Subject Lands.

E. The claimant and the BLM agree that the price of the minerals on the Subject Lands is xx dollars and xx cents (\$xx.xx) per ton.

F. Claimant and BLM have agreed to enter into this stipulation agreement to protect their interests, while operations continue and pending the outcome of a validity examination, administrative proceedings, and judicial review.

Now, Therefore, Claimant and the BLM, by and through their respective authorized representatives, hereby stipulate as follows:

(1) The claimant and the BLM shall establish an escrow (the Escrow) with a responsible, neutral escrow holder in Las Vegas, Nevada.

## H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

### Illustration 1, Page 2 Illustration of an Escrow Agreement

(2) The claimant shall, within 30 days of signing this stipulation, pay into escrow a sum of money equal to xx dollars and xx cents (\$xx.xx) multiplied by the number of tons of material the claimant and its agents excavated and removed from the Subject Lands beginning as of September 1, 1998.

(3) Once the Escrow has been established, and the claimant has paid into the Escrow the sum prescribed by paragraph (2) above, the claimant shall prepare and deliver to the BLM a report describing the amount removed and the moneys escrowed.

(4) Thereafter, on a monthly basis, the claimant shall prepare and deliver a report as to the quantity of sand and gravel excavated from the Subject Lands during the preceding month. The report shall be in a format prescribed by the BLM, and shall be submitted no later than the 15th day following the end of the month for which the claimant is reporting. The claimant shall maintain and preserve records, maps, and surveys related to production verification and valuation as directed by the BLM (be specific to what is needed).

(5) No later than the 15th day following the end of the month, the claimant shall pay into the Escrow a sum of money equal to xx dollars and xx cents (\$xx.xx) multiplied by the number of tons the claimant excavated and removed from the Subject Lands the preceding calendar month.

(6) The Escrow holder shall be instructed to invest the escrowed moneys in one or more appropriate interest-bearing accounts or investments, to the end that these moneys will earn interest pending completion of the validity examination and any administrative or judicial appeals.

(7) When the validity of the mining claims on the Subject Lands has been finally adjudicated, the Escrow holder shall disburse the escrowed moneys, together with accrued interest thereon, to the party in whom such favor is finally adjudicated.

(8) With respect to the deposit in the Subject Lands, the parties shall otherwise be bound and governed by the results of such final adjudication.

So stipulated this \_\_\_\_ of \_\_\_\_\_, 2002

Hi Z Mining Company, Inc.,  
2131 East Main  
Anywhere, California 90023

By: /S/

Bud Glitter, President

United States Department of the Interior  
Bureau of Land Management  
Las Vegas Field Office  
4765 W. Vegas Drive  
Las Vegas, Nevada 89126

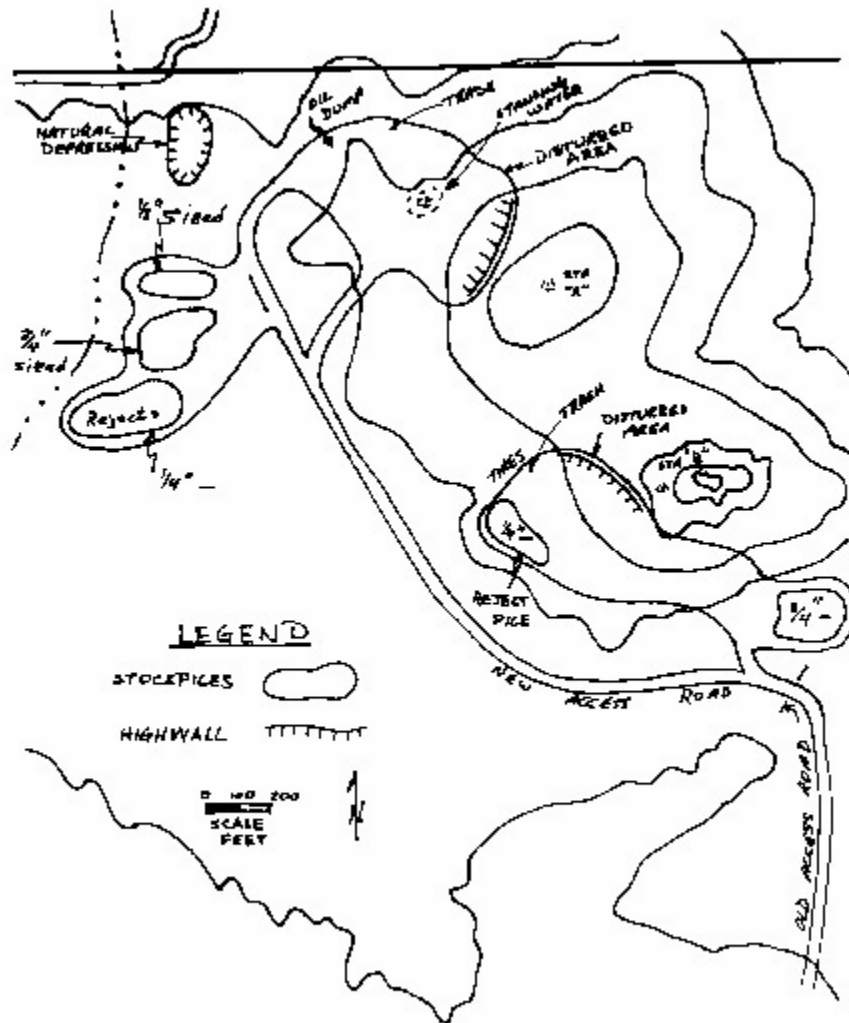
By: /S/

Charley Goodwill, Field Office Manager



H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration No. 2  
Sketch Map Showing an Area of Unauthorized  
Mineral Material Removal



H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 3  
Sample Letter - Statement of Diligent Search and Inquiry

3603/9235  
(Case #)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

STATEMENT OF DILIGENT SEARCH AND INQUIRY

I, (Name), an employee of the Bureau of Land Management, (Field, District, or State Office), do certify that I began a diligent search and inquiry on (date) to locate the trespasser and/or the location of the following mineral material(s):

[Mineral Material(s)]

Removed from public land described as follows:

[Legal Description]

I was unable to locate the trespasser and/or mineral material(s) after a diligent search and inquiry which I completed on (date).

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 4, Page 1  
Sample Form 9230-1 - Trespass Notice

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

**TRESPASS NOTICE**

|          |
|----------|
| Number   |
| State    |
| District |
| Date     |

CHATT'S STONE, INC.  
P.O. BOX 26569  
LAS VEGAS, NV 89126

YOU ARE HEREBY NOTIFIED That the Bureau of Land Management has made an investigation and evidence tends to show that you are in trespass. We allege that you  are violating  may have violated  have violated the law(s) specified below and the regulation(s) approved by the Secretary of the Interior pursuant to the authority vested in him by said law. Therefore, it is our opinion that you:

Have committed the following act(s):

REMOVAL AND SALE OF MINERAL MATERIALS (STONE) FROM PUBLIC LANDS WITHOUT A CONTRACT.

Are in violation of the following law(s):

R.S. 2478; 43 U.S.C. 1201

And are in violation of the following regulations:

43 CFR 9239.0-7 which states "THE EXTRACTION, SEVERANCE, INJURY, OR REMOVAL OF TIMBER OR OTHER VEGETATIVE RESOURCES OR MINERAL MATERIALS FROM PUBLIC LANDS UNDER THE JURISDICTION OF THE DEPARTMENT OF THE INTERIOR, EXCEPT WHEN AUTHORIZED BY LAW AND REGULATIONS OF THE DEPARTMENT, IS AN ACT OF TRESPASS. TRESPASSERS WILL BE LIABLE IN DAMAGES TO THE UNITED STATES, AND WILL BE SUBJECT TO PROSECUTION FOR SUCH UNLAWFUL ACTS."

On the following-described land (*describe the area by legal subdivision if surveyed, or if unsurveyed, by concise reference to such natural landmarks as will clearly identify the area*):

TOWNSHIP 19 SOUTH, RANGE 59 EAST, MOUNT DIABLO MERIDIAN, SECTION 26 SOUTH HALF (WITHIN)

Form 9230-1 (July 1988)

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 4, Page 2

Sample Form 9230-1 - Trespass Notice

1.  Violations, if continuing, must stop immediately.

2.  You are allowed \_\_\_\_\_ days from receipt of this notice to cease the alleged trespass operation.

3.  If you have evidence or information which tend to show you are not a trespasser as we have alleged, you are allowed \_\_\_\_\_ days from receipt of this notice to present such evidence or information at the Bureau of Land Management office shown on the front of this form.

You are allowed \_\_\_\_\_ days from receipt of this notice to appear at the Bureau of Land Management office shown

on the front of this form to affect a settlement for trespass damages.

Failure to comply with this notice will result in further action to protect the interests of the United States. You are further advised that the authorized officer may refuse to issue a permit, lease, or license to a trespasser who has failed to make satisfactory arrangements to satisfy his liability to the United States, as provided in 43 CFR 4150.3e and 4170.1-1. The officer may also refuse to sell timber or materials as provided in 43 CFR 9239-0-9.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

CERTIFICATE OF SERVICE

I,

CERTIFY That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served written notice

on

of

the party's address of record, by a true copy of the within notice by  personal service  certified mail. If by certified mail, the envelope containing said notice bears registry stamp number \_\_\_\_\_ and return receipt marked "for addressee only" has been requested.

\_\_\_\_\_  
(Signature of Server)

\_\_\_\_\_  
(Title)

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 5, Page 1  
Sample Form 9230-1 - Trespass Notice

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

**TRESPASS NOTICE**

|          |
|----------|
| Number   |
| State    |
| District |
| Date     |

BEAUER ROCK  
1496 N. DECATUR BLVD.  
LAS VEGAS, NV 89108

YOU ARE HEREBY NOTIFIED That the Bureau of Land Management has made an investigation and evidence tends to show that you are in trespass. We allege that you  are violating  may have violated  have violated the law(s) specified below and the regulation(s) approved by the Secretary of the Interior pursuant to the authority vested in him by said law. Therefore, it is our opinion that you:

Have committed the following act(s):

1. REMOVAL AND SALE OF MINERAL MATERIALS (SAND AND GRAVEL) FROM PUBLIC LANDS WITHOUT A VALID CONTRACT.  
SALE OF MINERAL MATERIALS (SAND AND GRAVEL) FROM PUBLIC LANDS WITHOUT A VALID CONTRACT.

And are in violation of the following law(s):

## H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

R.S. 2478; 43 U.S.C. 1201 SECTIONS 302 AND 310 OF FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976, AS AMENDED; 43 U.S.C. 1732, 1740.

And are in violation of the following regulations:

43 CFR 9239.0-7 which states "THE EXTRACTION, SEVERANCE, INJURY, OR REMOVAL OF TIMBER OR OTHER VEGETATIVE RESOURCES OR MINERAL MATERIALS FROM PUBLIC LANDS UNDER THE JURISDICTION OF THE DEPARTMENT OF THE INTERIOR, EXCEPT WHEN AUTHORIZED BY LAW AND REGULATIONS OF THE DEPARTMENT, IS AN ACT OF TRESPASS. TRESPASSERS WILL BE LIABLE IN DAMAGES TO THE UNITED STATES, AND WILL BE SUBJECT TO PROSECUTION FOR SUCH UNLAWFUL ACTS."

On the following-described land (*describe the area by legal subdivision if surveyed, or if unsurveyed, by concise reference to such natural landmarks as will clearly identify the area*):

LONE MOUNTAIN COMMUNITY PIT

Form 9230-1 (July 1988)

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

|  |   |
|--|---|
| Illustration 5, Page 2<br>Sample Form 9230-1 - Trespass Notice   |   |
| 1. <input checked="" type="checkbox"/> Violations, if continuing, must stop immediately.<br><br>2. <input type="checkbox"/> You are allowed _____ days from receipt of this notice to cease the alleged trespass operation.<br><br>3. <input type="checkbox"/> If you have evidence or information which tend to show you are not a trespasser as we have alleged, you are allowed _____ days from receipt of this notice to present such evidence or information at the Bureau of Land Management office shown on the front of this form.<br><br>You are allowed _____ days from receipt of this notice to appear at the Bureau of Land Management office shown | on the front of this form to affect a settlement for trespass damages.<br><br><br>Failure to comply with this notice will result in further action to protect the interests of the United States. You are further advised that the authorized officer may refuse to issue a permit, lease, or license to a trespasser who has failed to make satisfactory arrangements to satisfy his liability to the United States, as provided in 43 CFR 4150.3e and 4170.1-1. The officer may also refuse to sell timber or materials as provided in 43 CFR 9239-0-9. |
| _____<br>(Signature)   | _____<br>(Title)  |
| CERTIFICATE OF SERVICE   |   |
| I,<br>CERTIFY That on the _____ day of _____, 20____, I served written notice<br>on<br>of<br>the party's address of record, by a true copy of the within notice by <input type="checkbox"/> personal service <input type="checkbox"/> certified mail. If by certified mail, the envelope containing said notice bears registry stamp number _____ and return receipt marked "for addressee only" has been requested.   |   |
| _____<br>(Signature of Server)   |   |
| _____<br>(Title)   |   |

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 6, Page 1  
Sample Form - Trespass Decision

IN REPLY REFER TO:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

3603/9235  
(Case #)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
OR  
PERSONAL SERVICE 1

DECISION

John Doe  
123 Main Street  
Anywhere, USA 20000

: Mineral Material Trespass  
: (Case #)

NOTICE OF TRESPASS

We are in receipt of your response to our Trespass Notice (Case #) . Careful consideration has been given to the information you have submitted. We have accepted this information as complete and have analyzed it in conjunction with other data pertaining to this trespass. This decision is based on all the available information. It is our opinion that you are in violation of the Revised Statute 2478; 43 U.S.C. 1201 and Sections 302 and 310 of the Federal Land Policy Management Act of 1976, as amended; 43 U.S.C. 1732, 1740 and in violation of 43 CFR 9239.0-7 which states:

The extraction, severance, injury, or removal of timber or other vegetative resources or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution of such unlawful acts.

The above stated violation occurred in the (describe the area using local landmarks) located in (legal description) . It is our opinion that you have committed an act of innocent trespass by removing mineral material from the above site, however, any further infractions will be considered willful. By your own admission, 200 cubic yards (cy) of material was removed without a contract.



## H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 6, Page 2  
Sample Form - Trespass Decision

The following value has been calculated based on above stated volume and the appraised value:

Pit Run - 200 cy X \$0.47 per cy = \$94.00

To resolve this trespass a payment of \$94.00 must be received within 30 days of receipt of this letter. If this payment is not received within 30 days we will refer this trespass to Nevada State Office for referral to the Solicitor's Office or the Department of Justice for prosecution as a criminal trespass.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. (ADD MOST CURRENT APPEAL STATEMENT)

If you have any questions concerning this matter, please contact (name) in this office at (phone number) .

Name and Title of Authorized Officer

1 Enclosure  
1. Form 1842-1

1/ If by personal service, complete Certificate of Service.

(see Illustration 15 of this Handbook)

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 7, Page 1  
Sample Form - Trespass Decision

IN REPLY REFER TO:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

3603/9235  
(Case #)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
OR  
PERSONAL SERVICE 1/

DECISION

John Doe  
123 Main Street  
Anywhere, USA 20000

: Mineral Material Trespass  
: (Case #)

NOTICE OF TRESPASS

We are in receipt of your response to our Trespass Notice (Case #) . Careful consideration has been given to the information you have submitted. We have accepted this information as complete and have analyzed it in conjunction with other data pertaining to this trespass. This decision is based on all the available information. It is our opinion that you are in violation of the Revised Statute 2478; 43 U.S.C. 1201 and Sections 302 and 310 of the Federal Land Policy Management Act of 1976, as amended; 43 U.S.C. 1732, 1740 and in violation of 43 CFR 9239.0-7 which states:

The extraction, severance, injury, or removal of timber or other vegetative resources or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution of such unlawful acts.

The above stated violation occurred in the (describe the area using local landmarks) , located in (legal description) . By your continued operations in the community pit without the benefit of a mineral materials sales contract and your previous knowledge of the permitting process it is our opinion that you have committed an act of willful trespass.

## H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Nevada State law does prescribe the measure of trespass damages for minerals or mineral materials, such as sand, gravel, and stone. The measure of damages for a willful trespass is the full value of the material at the time of sale (conversion) with a deduction for labor bestowed or expense incurred in removing and marketing the material. The cost of transporting the material from the pit to the point of sale is not considered in the trespass.

## H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 7, Page 2

### Sample Form - Trespass Decision

On January 21, 1993, a Mineral Appraisal Report (Serial Number #) was prepared by the BLM for willful trespass in this Community Pit. To assess the value of a willful trespass, twelve primary suppliers were contacted. These suppliers provided the actual sales value for the types of material appraised. The prices quoted were freight on board (f.o.b.), thus excluding transportation cost. Based on the information gathered during the appraisal process, willful trespass values were set for the various commodities examined. A copy of the appraisal Summary Table is enclosed.

The value of Type II is \$5.00 per cubic yard (cy); Type I is \$4.85 per cubic yard; Pit Run is \$3.90 per cubic yard. The records submitted by you indicate that you have removed 2,040 cy of Type II, 660 cy of Type I, and 240 cy of Pit Run material without the benefit of a contract.

The following values have been calculated based on the above stated volumes:

|  |   |
|--|---|
| Type II -- 2040 cy X \$5.00 per cy = \$10,200.00 | Type I -- 660 cy X                                  |
| \$4.85 per cy = \$3,201.00                       | Pit Run -- 240 cy X \$3.90 per cy = <u>\$936.00</u> |
| Total Value = \$14,337.00                        |   |

To resolve this trespass a payment of \$14,337.00 must be received within 30 days of receipt of this letter. If this payment is not received within 30 days we will refer this trespass to the Bureau of Land Management Nevada State Office for referral to the Solicitor's Office or the Department of Justice for prosecution as a criminal trespass.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. (ADD MOST CURRENT APPEAL STATEMENT)

If you have any questions concerning this matter, please contact (name) in this office at (phone number) .

Name and Title of Authorized Officer

- 1 Enclosure
1. Form 1842-1
  2. Summary Table

1/ If by personal service, complete Certificate of Service. (see Illustration 15 of this Handbook)

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 8  
Sample Letter - Informal Administrative Resolution

IN REPLY REFER TO:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

3603/9235  
(Case #)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
OR  
PERSONAL SERVICE 1/

John Doe  
123 Main Street  
Anywhere, USA 20000

A recent examination of the public land located near (describe the area using local landmarks) indicates that you may be using public land without authorization. The unauthorized use, appears to be removal of sand and gravel from (or a description of the unauthorized activity). This activity is unauthorized and is in violation of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) and Title 43 CFR § 9239.0-7.

I would appreciate meeting with you to discuss this situation. Please let me know within (no.) days of receipt of this letter when you can meet with me. If you have any questions concerning this letter, please contact (name) in this office at (phone number). I am confident we can work together in arriving at an agreeable solution in this matter.

Sincerely,

Name and Title of Authorized Officer

1/ If by personal service, complete Certificate of Service. (see Illustration 15 of this Handbook)

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 9, Page 1  
Sample Letter - Demand Letter No.1

IN REPLY REFER TO:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

3603/9235  
(Case #)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
OR  
PERSONAL SERVICE 1/

John Doe  
123 Main Street  
Anywhere, USA 20000

Dear Mr. Doe:

Payment has not been received on our Bill for Collection (number) , in the amount of \$ (amount) . This bill, issued for trespass liability incurred as a consequence of trespass upon the public lands of the United States, has now become delinquent.

As indicated in our original bill, additional charges have been incurred due to your failure to pay on time. The amount of your indebtedness, as of (date) , is as follows:

|  |    |   |      |
|--|----|---|------|
| Principal:   | \$ | . |      |
| Interest at (no.)% per year:                                   | \$ | . |      |
| Administrative Handling Charge<br>(At \$5 per billing notice): | \$ | . |      |
| Administrative Penalty at<br>(no.)% per year:                  | \$ | . |      |
| Total Now Due  |    |   | \$ . |

Administrative costs and interest at the above indicated rate will continue to accrue for each day until this bill is paid. For each additional billing necessitated by your failure to remit payment, a \$5 administrative handling charge will be added.

If you have any questions concerning this bill, please contact (name) in this office at (phone number) .

Name and Title of Authorized Officer

1/ If by personal service, complete Certificate of Service. (see Illustration 15 of this Handbook)  
2/ Enclose a copy of Notice of Actions in Event of Delinquency (back of Form 1371-22).

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 10  
Sample Letter - Demand Letter No. 2

IN REPLY REFER TO:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

3603/9235  
(Case #)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
OR  
PERSONAL SERVICE <sup>1/</sup>

John Doe  
123 Main Street  
Anywhere, USA 20000

Dear John Doe:

On (date) this office (personally served or sent you a letter by Certified Mail) requesting that you either pay our Bill for Collection (number) , or advise us if you had any questions regarding your liability.

Since we have not heard from you, we assume that you acknowledge this liability and have allowed it to become even further delinquent. Administrative costs and interest will continue to accrue until payment is received.

The amount of your indebtedness as of (date) is as follows:

|  |    |   |
|--|----|---|
| Principal:   | \$ | . |
| Interest at (no.)% per year:                                   | \$ | . |
| Administrative Handling Charge<br>(At \$5 per billing notice): | \$ | . |
| Administrative Penalty at<br>(no.)% per year:                  | \$ | . |
| Rehabilitation/Stabilization Costs\$                           | .  | . |
| Total Now Due  | \$ | . |

If you have any questions concerning this bill, please contact (name) in this office at (phone number) .

Name and Title of Authorized Officer

<sup>1/</sup> If by personal service, complete Certificate of Service. (see Illustration 15 of this Handbook)

<sup>2/</sup> Enclose a copy of Notice of Actions in Event of Delinquency (back of Form 1371-22).

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 11  
Sample Letter - Demand Letter No. 3

IN REPLY REFER TO:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

3600/9235  
(Case #)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
OR  
PERSONAL SERVICE 1/

John Doe  
123 Main Street  
Anywhere, USA 20000

Dear John Doe:

Our records indicate payment has not been received on our Bill for Collection (number) . This bill is now seriously past due. If payment is not received within 30 days of the date of this notice, this account will be referred to a debt collection agency and to a credit reporting agency (credit bureau).

In accordance with Department of Interior collection procedures, this account may also be referred to legal counsel for legal action and to the Internal Revenue Service for inclusion as income to you, as well as possible refund off-set. Assessment of interest and penalty charges will continue to accrue until the debt is liquidated.

The amount of your indebtedness as of (date) is as follows:

|  |    |   |
|--|----|---|
| Principal:   | \$ | . |
| Interest at (no.)% per year:                                   | \$ | . |
| Administrative Handling Charge<br>(At \$5 per billing notice): | \$ | . |
| Administrative Penalty at<br>(no.)% per year:                  | \$ | . |
| Rehabilitation/Stabilization Costs\$                           | .  | . |
| Total Now Due  | \$ | . |

If you have any questions concerning this bill, please contact (name) in this office at (phone number) .

Name and Title of Authorized Officer

1/ If by personal service, complete Certificate of Service. (see Illustration 15 of this Handbook)  
2/ Enclose a copy of Notice of Actions in Event of Delinquency (back of Form 1371-22).



H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 12  
Sample Memorandum - Request for Collection Action

IN REPLY REFER TO:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

3603/9235  
(Case #)

Memorandum

To: National Business Center Director (BC-620)  
From: State Director,  
Subject: Case File Summary of Final Bill

All delinquent account procedures have been executed for this case. The case file is being transmitted for referral to a Debt Collection agency.

CASE FILE SUMMARY OF FINAL BILL

Date: \_\_\_\_\_

Referring Office Code: \_\_\_\_\_

Contact in Office: \_\_\_\_\_

Phone No. \_\_\_\_\_

Bill Number: \_\_\_\_\_

DEBTOR:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Bill for Collection No. \_\_\_\_\_ is summarized as follows:

Principal Balance: \$ \_\_\_\_\_

Interest at \_\_\_\_% per Year \$ \_\_\_\_\_

Administrative Handling Charges: \$ \_\_\_\_\_  
(at \$5 per billing notice)

Administrative Penalty Charges \$ \_\_\_\_\_  
@ \_\_\_\_% per Year (if more than  
90 days delinquent)

Total Due: \$ \_\_\_\_\_

Attachment: Case File

cc: District/Field Office Manager

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 13, Page 1  
Sample Memorandum - Write-off of Uncollectible Claim

IN REPLY REFER TO:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

3603/9235  
(Case #)

Memorandum

To: National Business Center Director (BC-620)  
From: State Director,  
Subject: Write-off of Debt Due to Compromise Offer

The following debt balance has been written off by a Collection Data Sheet (Form 1370-35) dated (copy attached):

Amount \$ Bill for Collection No. (no.)  
(write off amount) (Form 1371-22)

The amount to be written off is the difference between the Bill for Collection and the accepted compromise offer of settlement.

The Bill for Collection amount has been negotiated, adjusted, and compromised because there is real doubt as to the Government's ability to prove its case in court for the full amount claimed. Therefore, we recommend that this write-off amount (be or not be) reported to the Internal Revenue Service. Attached for your use is a completed cover sheet for write-offs (Form 1370-45).

\*\*\*\*\*

(To be completed by Solicitor's Office for amounts to \$20,000)

This write-off action meets the Standards for compromise of claims contained in 4 CFR §103.

\_\_\_\_\_  
(Solicitor)

\_\_\_\_\_  
(Date)

Attachments

cc: District/Field Office Manager

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 14  
Sample Memorandum - Write-off of Liability  
Due to Compromise Offer

IN REPLY REFER TO:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

3603/9235  
(Case #)

Memorandum

To: National Business Center Director (BC-620)  
From: State Director,  
Subject: Write-off of Uncollectible Trespass Liability Claim

The following debt balance has been written off by a Journal Voucher (Form 1370-39).

JV No. \_\_\_\_\_ Dated \_\_\_\_\_ (copy attached):

Amount \$ \_\_\_\_\_ Bill for Collection No.

This claim has been written off for the following reason:

We recommend that this write-off amount be referred to a credit reporting agency and to the Internal Revenue Service. Attached for your use is a completed cover sheet for write-offs (Form 1370-45).

\*\*\*\*\*  
(To be completed by Solicitor's Office for amounts \$601 to \$20,000)

This write-off action meets the Standards for suspending or terminating claims contained in 4 CFR §104.

\_\_\_\_\_  
(Solicitor)

\_\_\_\_\_  
(Date)

Attachments

cc: District/Field Office Manager

H-9235-1 MINERAL MATERIAL TRESPASS PREVENTION AND ABATEMENT

Illustration 15  
Sample Letter - Certificate of Personal Service

3603/9235  
(Case #)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

CERTIFICATE OF PERSONAL SERVICE

I, (Name) ,

CERTIFY that on the (no.) day of (month) , 20 (year) ,

I served written notice on (Name) ,

of

the party's address of record, by a true copy of the within notice by personal service.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

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Illustration 16, Page 1  
Sample Memorandum - Request for Litigation

IN REPLY REFER TO:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

3603/9235  
(Case #)

CONFIDENTIAL MEMORANDUM

To: Regional Solicitor  
From: State Director, Nevada  
Subject: Affirmative Litigation Request Regarding (Name of Company)

INTRODUCTION

We request that the United States bring an action on behalf of the Bureau of Land Management against (Name of Company) to recover damages resulting from unauthorized removal of (Name of Commodity) from (Name of Geographic Location). At this time, we do not request that the United States seek injunctive relief. This memorandum sets forth the facts underlying this request, a brief description of the mineral materials sale program within the (Name of the Office), and concludes with our recommendations.

FACTS

Historical Background and Procedural Posture

In order to understand the posture of this case, it is necessary to explain the background underlying it.

(Provide a description of the events that have occurred. Be complete and concise. Use dates, names, and locations to help set the parameters of the case. Identify contacts, with outside investigators such as the Inspector Generals Office, FBI, etc. Briefly describe the position of the trespasser and why the BLM believes that a trespass has occurred.)

Mineral Materials Sales Program

The BLM sells mineral materials under the authority of 30 USC § 601. The BLM has promulgated regulations setting forth policies and procedures for the sale of mineral materials. See 43 CFR 3600, et seq. In order to establish a workable program in the (Office Name) the BLM adopted a land use plan which established areas open to the sale of mineral materials including Commodity Name.

(Give a brief description of how the specific disposal was conducted; how the operation was monitored; and how production verification was completed.)

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Illustration 16, Page 2  
Sample Memorandum - Request for Litigation

Damages

(Describe the damages that have occurred to the United States as a result of the trespass. The following is an example:

i.e. Based on the foregoing, the United States has suffered \$48,295.50 (32,197 cubic yards x \$1.50) in single damages. Under the False Claims Act, 29 USC § 2729 et seq., the United States is entitled to recover three times the amount of its damages plus a penalty of \$5,000 to \$10,000 per false claim. Over the life of the contract Chatt's Stone, Inc. submitted 12 monthly reports with the final report showing that a total of 50,000 cubic yards was removed. Based on the initial information gathered by the Union and supported by the survey conducted by the BLM, it is our contention that all 12 of the monthly reports were false. Assuming that the United States is one hundred percent successful, the potential damages under the False Claims Act, including penalties of \$144,886.50 (\$48,295.50 x 3) and \$60,000 to \$120,000 (\$5,000 to \$10,000 x 12 false claims). This aggregates to \$204,886.50 to \$264,886.50. We feel that this case presents a willful trespass. We have not calculated the damages for willful trespass but anticipate that they would be greater than the treble damages awardable under the False Claims Act. If the defense is willing to pay the damages of \$264,886.50, the Government would be willing to settle the case without further legal action.)

Witnesses

In order to prove this case, the following witnesses will be needed:

(List all witness of this case. Give name, title, and office.)

Recommendations

(Provide a recommendation which would generally be a recommendation to pursue a civil suit against the trespasser.)

\_\_\_\_\_  
Name and Title of Authorized Officer

1 Enclosures

1. Certified Copy of Case File

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### Appendix 1

#### State and Federal Court Decisions and Decisions of the Interior Board of Land Appeals

##### STATE COURT DECISIONS

ALASKA: Alaska Placer Co. v. Lee 553 P.2d 54 (1976)

Good-faith trespasser removing materials from the land of another must pay owner damages based either on a royalty rate or on the market value of the material less cost of extraction; non-willful trespasser may receive credit for mining expenses involved in conversion.

"In case of intentional trespasser removing materials from the land of another, mineral owner may recover market value of converted materials without offset or deduction for trespasser's mining cost."

Note: Alaska Statute AS 09.45.735. Trespass Related to Geotechnical Surveys and Mining states:

"A person who trespasses upon the land of another to gather geotechnical data or take mineral resources is liable to the owner of the land for treble the amount of damages that may be assessed in a civil action. If the trespass is unintentional or involuntary or the defendant had probable cause to believe that the land on which the trespass was committed was the defendant's own or that of the person in whose service or by whose direction the act was done, only actual damages may be recovered."

ARIZONA: Spurlock v. Santa Fe Pacific R. Co., 143 Ariz. 480, 694P.2d 299 (CA 1984, review denied 1985). The court defined surface as having its value "in its use and enjoyment". It defined "all minerals whatsoever" as "all commercially valuable substances separate from the soil." Id., at 478. This court concludes that removal of surface is not inherent in "use and enjoyment" of the surface, whereas such removal not only inheres in a mineral estate, but occasionally raises problems relating to interference with surface use.

CALIFORNIA: Union Oil Co. of California v. Reconstruction Oil Co. 66 P.2d 1215, 1222 (1937). (If) the trespass was intentional and with knowledge of plaintiff's rights, defendants would be chargeable with the value of the mineral after reduction without any deduction for expenses of mining and milling.

COLORADO: Kroulik v. Knuppel 634 P.2d 1027 (1981). When a non-willful trespasser appropriates minerals, the measure of damages is the value of minerals in place. Such value may be calculated by ascertaining amount of royalties the landowner would receive or could have received from the trespassing appropriator, or by calculating value at surface of minerals, less direct cost of extracting them.

"Willful or intentional trespasser may be required to recompense land owner for value of minerals extracted at the surface without deductions for extraction cost."

MONTANA: Edington v. Creek Oil Co. 690 P. 2d 970, 977 (1984). (W)illful

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trespassers \*\*\* are not entitled to recover either proceeds from the oil produced or the cost of producing the oil.

NEVADA: Dinwiddie Const. Co. v. Campbell 406 P.2d 294 (1965). Measure of damages for minerals wrongfully taken from owner is market value less cost of extracting and marketing.

NEW MEXICO: Adams v. Heisen 423 P.2d 414, 417 (1967). (No) allowance is made to the wrongdoer for his labor expense and he must pay the market value of the gravel in its enhanced condition.

Poverty Flats Land & Cattle Co. v. United States, 84-1515, 788 F.2d 676 (1986) U.S. Court of Appeals, Tenth Circuit. The mineral caliche was ruled to be not within the mineral reservation in a Taylor Grazing Act exchange. In this decision the Court held that caliche is not a locatable mineral because it is of common occurrence generally and extensively in very large areas in New Mexico, Texas and Arizona and because records demonstrate that mining locations were not made on caliche.

OREGON: Holliday v. Dunn & Baker, Inc. 265 P.2d 1096, 1097 (1928). The true measure of damages was the rock in the quarry severed and crushed, less the expense of severing and crushing it.

UTAH: Even Odds, Inc. v. Nielson, 448 P.2d 709 (1968). Statute relating to wrongful extraction and sale of ores from mines and providing for treble damages is intended to impose a penalty upon and discourage the knowing and willful trespass upon mining claims and wrongful extracting of ore therefrom. U.C.A.1953, 40-1-12

WYOMING: See Martel v. Hall Oil Co., 255 P. 3 (1927); Rehearing Denied, 255 P. 55 (1927).

### SUPREME COURT DECISIONS

Watt v. Western Nuclear, No. 81-1686 (June 6, 1983); Supreme Court held that gravel is a mineral reserved to the United States in lands patented under the Stock Raising Homestead Act.



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### U.S. COURT OF APPEALS DECISIONS

BedRoc Limited, et al v. U.S , No.01-17080 (December 30, 2002), [F. 3d \_\_\_\_ (9<sup>th</sup> Cir., 2002) affirmed that sand and gravel are minerals reserved to the United States in lands patented under the Pittman Act.

U.S v. McPhilomy, No. 00-4141 and 00-4144 (November 9, 2001), [F.3d \_\_\_\_ 10<sup>th</sup> Cir. 2001] affirmed a jury's finding that McPhilomy Sr. and Jr. guilty of two felony counts of aiding and abetting each other in the theft of government property [stone from a community pit near Wendover, Utah] in violation of 18 U.S.C. §§ 2 and 641.

### DECISIONS OF THE INTERIOR BOARD OF LAND APPEALS

David Q. Tognoni, 138 IBLA 308 (1997)

Robert L. Mendenhall, et al., 127 IBLA 73 (1993).

Hess Construction Company, 126 IBLA 353, (1993)

Pine Grove Farms, 126 IBLA 269, (1993)

Bolling Construction Co. and Bob Bolling, 125 IBLA 303 (1993).

CM Concepts of NEVADA, 126 IBLA 134 (1993).

Richard Connie Nielson v. The Bureau of Land Management, 125 IBLA 353 (1993).

Frehner Construction co., Inc., 124 IBLA 310 (1992).

Ron Williams Construction Co., 124 IBLA 340 (1992).

So. Way Co., d.b.a. Southway Construction Co., Inc., 123 IBLA 122 (1992).

Western States Contracting, Inc., 119 IBLA 355 (1991).

John Aloe and Liberty Masonry, Inc., 117 IBLA 298 (1991).

Lazy VD Land and Livestock Co., 108 IBLA 224 (1989).

Connie Nielson, 102 IBLA 195 (1988).

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United States v. Browne-Tankersley Trust, 98 IBLA 325 (1987).

Curtis Sand & Gravel Co., 95 IBLA 144 (1987).

Harney Rock and Paving Co., 91 IBLA 178 (1986).

Sunrise Construction Co., 73 IBLA 185 (1983).

Texaco, Inc. 59 IBLA 155 (1981).

United States v. Mamie Vaughn, et al., 56 IBLA 247 (1981).

Pacific Power & Light Co. 45 IBLA 127 (1980).