



STATE OF ARIZONA

DEPARTMENT OF MINES AND MINERAL RESOURCES

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SEVERED MINERAL RIGHTS

Circular 21

The enclosed letter is being reprinted with the permission of the U.S. Department of the Interior, Bureau of Land Management, Las Cruces-Lordsburg Resource Area, Las Cruces, New Mexico, in hopes that it will answer some of the questions that arise concerning mineral exploration on lands where the surface rights are privately owned and the mineral rights are owned by the Federal Government.

October 29, 1979

NEWSLETTER

Mining Claims & Stock Raising Homestead

Lately, we have received many calls regarding mineral exploration on lands that are private surface where the minerals are owned by the Federal Government. Here is a little information on the rights in locating a mining claim, the rights of the surface owner and BLM's role in the matter.

On land patented under the Stock Raising Homestead Act, any person qualified to locate a mining claim under the 1872 Mining Law has the right to enter upon the land to prospect for minerals providing he/she:

1. Does not injure, damage, or destroy the permanent improvements belonging to the surface owner.
2. Is liable to compensate the surface owner for all damages to crops on such lands by reason of prospecting or damage that may be caused to the value of the land for grazing by strip or open pit mining or other such prospecting for minerals or removal of minerals.

The prospector, then, is liable for damages or loss to crops, improvements, and grazing values. The prospector does, however, have the right at all times to enter without payment. Since little or no surface disturbance occurs during reconnaissance prospecting, the company is not obligated to post bond.

If the prospector and land owner disagree at this phase, it is up to them to settle their differences, either directly or through the courts as this is entirely a civil matter and does not involve the Federal Government.

Once prospecting by exploration drilling is begun, the prospector is liable for damages to crops, improvements and grazing value. At this point, the surface owner then has the right of compensation for damages. BLM remains an impartial party, here only to inform each person of the rights.

Once mining claims are located, it is considered that a discovery has been made. Accordingly, to exercise the right of re-entry at all times, requires that one of the following be done:

- a. Obtain written consent or waiver from the surface owner.
- b. Payment be made for damages to crops or other tangible improvements, including grazing values, to the owner under agreement.
- c. In lieu of the above, execute a bond of sufficient amount to the United States in the name of the land owner to secure payment of damages for loss incurred by the land owner resulting from the exploration, development or mining. This bond is to be of not less than \$1,000. Along with the filing of the bond, there must be evidence of a copy of the bond having been served upon the owner of the land.

I hope this helps you understand everyone's rights on lands patented under the Stock Raising Homestead Act. If you have questions regarding your land, get a copy of your patent deed and look it over with your attorney. If you want further information on regulations regarding this subject, get a copy of 43 code of Federal Regulations Subpart 3814.

under the Act of 1914 has been held to include oil shale. See 52 L.D. 329.

§ 3813.3 Provisions of the mineral patent.

(a) Each patent issued under the Act of July 20, 1956, shall specifically name the discovered mineral deposit which had been reserved to the United States under the Act of July 17, 1914, and shall recite that, in accordance with the reservation in the land patent, the mineral patentee and its successors (or his heirs and assigns, if a person) shall have the right to prospect for, mine and remove the mineral deposit for which the patent is issued.

(b) If, when it is determined that mineral deposit is subject to patenting under the mining laws pursuant to the Act of July 20, 1956, there is a subsisting mineral lease or permit covering such deposit, the mineral patent shall be issued subject to the mineral lease or permit for so long as rights under the lease or permit shall exist, the patentee being substituted for the United States as lessor or permittor and the patentee being entitled to all revenues derived subsequent to the issuance of patent from any such lease or permit.

Subpart 3814—Disposal of Reserved Minerals Under the Stockraising Homestead Act

SOURCE: The provisions of this Subpart 3814 appear at 35 F.R. 9743, June 13, 1970, unless otherwise noted.

§ 3814.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.

(a) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral laws in force at the time of such disposal.

(b) Said section 9 also provides that any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times

to enter upon the lands entered or patented under the act, for the purpose of prospecting for the coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting.

(c) It is further provided in said section 9 that any person who has acquired from the United States the coal or other mineral deposits in any such land or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal, or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; or, second, upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure payment of such damages to the crops or tangible improvements of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon. This bond on Form 3400-1 must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved, as directed in said section 9, as principal, with two competent individual sureties, or a bonding company which has complied with the requirements of the act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13), as amended by the act of March 23, 1910 (36 Stat. 241; 6 U.S.C. 8, 9), and must be in the sum of not less than \$1,000. Qualified corporate sureties are preferred and may be accepted as sole surety. Except in the case of a bond given by a qualified corporate surety there must be filed therewith affidavits of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster as to the identity, signatures, and financial competency of the sureties. Said bond, with accompanying papers, must be filed with

the authorized officer of the proper office, and there must also be filed with such bond evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

(d) If at the expiration of 30 days after the receipt of the aforesaid copy of the bond by the entryman or owner of the land, no objections are made by such entryman or owner of the land and filed with the authorized officer against the approval of the bond by them, he may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said authorized officer, the said officer will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration he shall find and conclude that the proffered bond ought not to be approved, he will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Director of the Bureau of Land Management from the action in disapproving the bond so filed and proffered. If, however, the authorized officer, after full and complete examination and consideration of all the papers filed, is of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof do not set forth sufficient reasons to justify him in refusing to approve said proffered bond, he will, in writing, duly notify the homestead entryman or owner of the land of his decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Director of the Bureau of Land Management. If appeal from the adverse decision of the authorized officer be not timely filed by the person proffering the bond, the authorized officer will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the authorized officer adverse to the contentions of said homestead entryman or owners of the lands, said authorized officer may, if all else be regular, approve the bond.

(e) The coal and other mineral deposits in the lands entered or patented under the act of December 29, 1916, will become subject to existing laws, as to purchase or lease, at any time after allowance of the homestead entry unless the lands or the coal or other mineral deposits are, at the time of said allowance, withdrawn or reserved from disposition.

§ 3814.2 Mineral reservation in patent; conditions to be noted on mineral applications.

(a) There will be incorporated in patents issued on homestead entries under this act the following:

Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the act of December 29, 1916 (39 Stat. 862).

(b) Mineral applications for the reserved deposits disposable under the act must bear on the face of the same, before being signed by the declarant or applicant and presented to the authorized officer the following notation:

Patents shall contain appropriate notations declaring same subject to the provisions of the act of December 29, 1916 (39 Stat. 862), with reference to disposition, occupancy, and use of the land as permitted to an entryman under said act.

Subpart 3815—Mineral Locations in Stock Driveway Withdrawals

SOURCE: The provisions of this Subpart 3815 appear at 35 F.R. 9744, June 13, 1970, unless otherwise noted.

§ 3815.1 Mineral locations.

Under authority of the provisions of the act of January 29, 1929 (45 Stat. 1144; 43 U.S.C. 300), the rules, regulations, and restrictions in this section are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals, in lands within stock driveway withdrawals made before or after May 4, 1929.

§ 3815.2 Prospecting and mining.

All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use