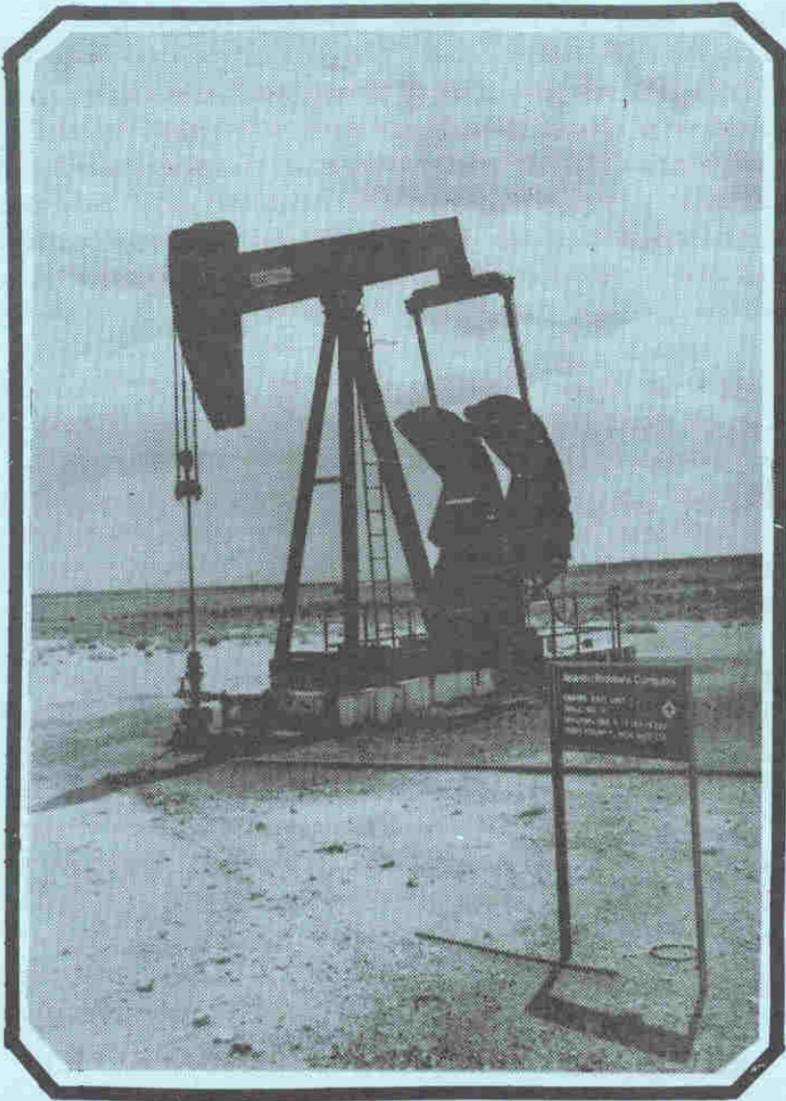


MULTIPLE USE ON PUBLIC LAND



A CLARIFICATION FOR
LESSEES, CLAIMANTS,
AND PERMITTEES . . .



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SUMMARY

This fact sheet is designed to help users of the public land better understand their rights and responsibilities. There are in New Mexico more than 2,500 ranchers, 18,000 mineral lessees, 100,000 mining claimants, and 16,000 holders of rights-of-way grants, all of whom have a need to enter upon the public land and use certain publicly owned resources.

The several laws governing these activities are complex and this sheet is only a brief summary of the major points. Those interested in a detailed study of the leasing, permitting and granting process will need to obtain copies of the laws and regulations mentioned and are invited to discuss these with Local BLM officials.

Each type of lease, permit, claim or grant authorizes the use of public land for specific purposes. Each imposes certain responsibilities and prohibits certain things such as interference with other users. All use authorizations have one thing in common. None require one public land user to make any payment to another user for the privilege of using the public land. Each user does make certain payments to the Federal Government and each is given written documentation of his authorization. Each is allowed to place certain improvements on the public land. No one may damage or destroy the property owned by another. Each user is liable for damages to improvements owned by another including improvements owned by the Federal Government.

I. KINDS OF LAND

The Federal Government, thru the Bureau of Land Management, manages different kinds of land. These are subject to leasing, claiming, permitting, or granting. The kinds of land common in New Mexico follow:

A. Public Land—Federal surface/Federal mineral—this is the bulk of Federal land. The government manages the surface and the subsurface. The surface may be managed by the BLM, the Forest Service or another Federal agency. The subsurface mineral estate is Federal and is leased by the BLM, or it may be claimed by a citizen through the mining laws. In any case, certain requirements are placed upon the lessee or claimant about how the land and resources will be used.

B. Split Estate—Non-Federal surface/Federal minerals—there is a considerable amount of land in New Mexico, particularly in the east half of the State

where the surface was patented or deeded to a private party but the Federal Government retained the minerals. Most commonly, this was done under the terms of the 1916 Stockraising Homestead Act or through land exchanges or sales. In these instances, the Federal Government retained ownership and the right to utilize the minerals; oil, gas, gold, silver, etc. The right to obtain and develop these minerals is authorized under the various laws mentioned later. The surface owner does have the right to obtain compensation from a mineral user for use or damage to his privately owned improvements and crops. The surface owner cannot keep an authorized user from going on to the land for the purposes of exploring, drilling, digging or removing minerals. Likewise, the mineral user cannot damage or destroy an area of land excess to his needs, tear down fences, use water from privately owned wells or ponds or litter the landscape. If a person does this, he or she can be liable for these actions and required to pay damages to the private owner or to the Federal Government, if Federally owned improvements are involved.

C. Acquired Land—Surface ownership varies/minerals ownership varies. Acquired land was once privately owned. It was purchased by the Federal Government generally through the provisions of the 1937 Bankhead-Jones Farm Tenant Act, or through an exchange. The same rights to use the surface and/or subsurface exist on acquired land as on public or split estate land described above.

II. KINDS OF USES AUTHORIZED

A. Grazing leases or permits—these are authorized by the 1934 Taylor Grazing Act, the 1976 Federal Land Policy and Management Act and the 1978 Public Rangelands Improvement Act. These laws allow ranchers to obtain a permit or a lease to graze domestic livestock on public or acquired land. They are bound by the laws and the regulations contained in Title 43, Code of Federal Regulations, Part 4100. Generally, a rancher can hold a permit or lease indefinitely so long as he or she obeys the rules, maintains a base property and pays an annual grazing fee. The rancher can place improvements on the Federal land such as fences, wells and ponds. These improvements are protected by an improvement permit issued by the BLM. Other public land users may not destroy or damage these improvements. If they do, then they have to compensate the owner of the improvement. The rancher may not interfere with the other users. Mining claimants may enter upon the public land, mineral lessees may enter to explore or develop and sand, gravel and other mineral material may be sold by the government from the area of the grazing lease or permit. Section 6 of the Taylor Grazing Act says: "Nothing . . . shall restrict the

acquisition, granting, or use of permits or rights-of-way within grazing districts under existing law or ingress or egress over the public lands . . . for all proper and lawful purposes: and nothing . . . shall restrict prospecting, locating, developing, mining, entering, leasing or patenting the mineral resources . . . under law applicable thereto." The BLM monitors all of these users to ensure that each is operating in the prescribed manner. Violations by any of the users can mean penalties or in extreme cases, loss of the permit, lease or claim.

B. Mineral Leases—are authorized by the 1920 Mineral Leasing Act, the 1947 Leasing Act for Acquired Land, and the 1976 Federal Land Policy and Management Act. Mineral leases may be issued through competitive bidding or through application without competition. They are applicable to public land, acquired land and split estate land where the government retained the mineral estate. Generally, mineral leases are issued for 10 years or "for the duration of production." If oil, gas or other minerals are found, the lease can continue so long as the mineral is being produced. The mineral lessee pays the government an annual rental for the area leased and a percentage of the production value in the form of a royalty. Bonus bids may also be paid in competitive leases. The mineral lessee also provides a bond to protect the Federal Government from damage if any of the terms of the lease are violated. The lessee is entitled to use as much of the Federal land as is reasonable in order to extract the minerals. Oil and gas leases typically have the following clause: "Rights of Lessee—The lessee is granted the exclusive right and privilege to drill for, mine, extract, remove and dispose of all the oil and gas deposits, except helium gas, in the lands leased, together with the right to construct and maintain thereupon, all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipelines, reservoirs, tanks, pumping, stations, or other structures necessary to the full enjoyment thereof . . ."

In the case of split estate where the land surface is patented or deeded, the mineral lessee may still use the surface. However, he must pay the landowner for any damage to improvements and crops. The landowner cannot prohibit the mineral lessee from going onto the land and carrying out mineral lease operations. Supervision of leases during drilling, development, mining, or production is done by the Minerals Management Service with BLM concurrence.

C. Mining Claims—are allowed by the General Mining Law and the Federal Land Policy and Management Act. A person may go onto public land or split estate where there is a likelihood of finding a "hardrock" mineral, stake a claim, record the claim and begin a mining or

drilling operation. The claimant may place improvements on the land for the benefit of the claim and may deny public access to the immediate area of the claim development if safety is a factor or if such access would interfere with development. A mining claimant and a rancher may continue to hold their respective leases, permits or claims on the same area and both may utilize the land so long as there is no direct conflict. On split estate where the surface is not Federal, the BLM can require a bond of the claimant to protect the surface owner's improvements or crops. The claimant may not use improvements belonging to others, i.e., the Federal Government, the rancher or a mineral lessee without permission. The claimant may also have to pay for this use. The other users cannot deny the mining claimant access to the land and cannot demand compensation for damage to the Federal land surface.

D. Rights-of-Way Grants—are authorized by the Mineral Leasing Act of 1920 and the Federal Land Policy and Management Act. Grants may be authorized across public land leased for grazing, mineral development or other uses and access cannot be denied by the lessee, permittee or other users. Grants are issued for specific periods of time and the grantee pays the Federal Government a fee for the use of the right-of-way. The grantee cannot damage improvements owned by others. The BLM monitors the disturbance of public land to ensure that the grantee complies with any restrictions in the grant. The grantee does not have to pay the other users for the public land use. The Federal Government does not grant a right-of-way across split estate land where the surface is privately owned. This is a private matter between the landowner and the person seeking the right-of-way. However, a Federal lessee on split estate has the right to construct certain pipelines. This is a part of the lease. ▶

E. Mineral Material Sales—are authorized by the Material Sale Act of 1947. The common mineral materials are sand, gravel, caliche, rock and pumice. These are sold through competitive or negotiated sales. The sales contract contains stipulations as to how the material will be removed and how the land will be left after the sale. The contract also has a time period. A mineral lessee or a grazing lessee or permittee cannot interfere with the authorized removal of the material. The issue of whether common varieties of gravel are part of the surface estate or of the mineral estate on that split estate land patented under the Stock Raising Homestead Act, is currently before the Supreme Court.

F. Temporary Use Permits—are authorized by the Federal Land Policy and Management Act. These are issued for a variety of purposes. These may be issued on the same land as is held in a mineral lease, grazing permit, material sale or other authorized uses. The use permit spells out the rights of the permittee. Other users cannot interfere with this authorized use and cannot prohibit the permittee from exercising the rights granted. The holder of a temporary use permit pays the government for the use. Generally, temporary use permits are of a short duration. Examples of temporary use permits are an off-road vehicle race on public land, a construction site adjacent to a highway project or a temporary military facility to track satellites.

The following Federal laws are referenced in this fact sheet:

1. Mineral Leasing Act of February 25, 1920, 30 U.S.C. 181 et seq.
2. Mineral Leasing Act for Acquired Land of August 7, 1947, 61 Stat. 913: 30 U.S.C. 351-359
3. Taylor Grazing Act of June 28, 1934, 43 U.S.C. 315
4. Federal Land Policy & Management Act of October 21, 1976, 43 U.S.C. 1701 et seq.
5. Public Rangelands Improvement Act of October 25, 1978, U.S.C. 1901 et seq.
6. Bankhead-Jones Farm Tenant Act of July 22, 1937, 7 U.S.C. 1012
7. General Mining Law, May 10, 1872, 30 U.S.C. 22 et seq.
8. Materials Act of July 31, 1947, 30 U.S.C. 601