

FSM 2800 - MINERALS AND GEOLOGY

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CHAPTER 2830 - MINERAL RESERVATIONS AND OUTSTANDING MINERAL RIGHTS

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2833 DORMANT MINERAL RIGHTS (Reserved)

This chapter provides Forest Service personnel with applicable direction in those situations where the United States does not own the minerals and/or rights to minerals underlying lands in the National Forest System.

2830.1 - Authority. The authority for the administration of mineral reservations is 36 CFR 251.15 or previously issued Secretary of Agriculture's rules and regulations that govern the exercise of mineral rights reserved in conveyances to the United States. Prior to issuance of the rules at 36 CFR 251.15, the Secretary issued rules

governing administration of mineral reservations on National Forest lands in 1911, 1937, and 1947. The Secretary issued companion rules governing the National Grasslands in 1938, 1939, and 1950. The appropriate rules and regulations in effect at the time of the mineral reservation were incorporated as part of the deed by which the United States acquired the surface.

The Secretary's rules and regulations do not apply to the administration of outstanding mineral rights. However, the exercise of all reserved and outstanding mineral rights is subject to applicable Federal and State laws and regulations pertaining to mining, real property, and environmental protection, including the Surface Mining Control and Reclamation Act with regard to coal.

The specific terms of the deeds by which the surface and subsurface owners acquired their interests also provide the basis for the Forest Service authority to administer mineral reservations and outstanding mineral rights. If the terms of the deeds are unclear, the rights under deeds can generally be defined by reference to State law.

As a general rule, the Forest Service does not have authority to deny the exercise of mineral reservation or outstanding mineral right.

2830.2 - Objective. To administer mineral reservations and outstanding mineral rights consistent with the rights reserved or outstanding and the acquired rights of the United States in a manner that minimizes damage to National Forest System resources.

2830.3 - Policy

1. Promptly evaluate and respond to applications for reserved mineral permits and notices of surface occupancy for the exercise of outstanding rights. Normally, the authorized officer must respond within 60 days after the applicant submits a complete operating plan.
2. Consult with the Office of the General Counsel when mineral rights are not clear in the deed that defines the reservation or outstanding right.
3. Consider acquisition of mineral rights only when there are irresolvable conflicts between the rights of the United States and the mineral owner and when the public benefits derived from surface values are deemed to justify the cost of acquisition. See FSM 5440.3 for additional policy on acquisition.

2830.4 - Responsibility. Forest Supervisors are responsible for issuing, administering, and terminating Forest Service permits and authorizations for the exercise of mineral reservations and outstanding mineral rights. When the mineral reservation language of a deed refers to "Forest Officer in charge" or "duly authorized representative of the Secretary of Agriculture," this is the Forest Supervisor.

When mineral reservations and outstanding mineral rights involve coal, Forest Supervisors are responsible for agency recommendations on incompatibility with significant recreational, timber, economic or other values, pursuant to section 522 (e)(2) of the Surface Mining Control and Reclamation Act of 1977.

2830.5 - Definitions

1. Dormant Mineral Rights. Dormant mineral rights are those rights to a mineral estate that vest to the surface owner or some other party if the mineral owner of record fails to maintain title to the mineral estate according to State law. In certain States, surface owners must initiate and complete a filing procedure to obtain these rights; in other States the vesting of the mineral estate to the surface owner is automatic. Some States refer to dormant mineral rights as "ancient" mineral rights.

2. Mineral Reservations. Mineral reservations are mineral rights retained by a grantor in a deed conveying land to the United States.

3. Mineral Rights. Generally, mineral rights include title to the mineral and the necessary authority to enter upon and use as much of the surface overlying the mineral estate as is reasonably necessary to explore for, develop, extract, and process the reserved minerals. Interpretation of mineral rights must be consistent with the terms of the deed and applicable law.

4. Outstanding Mineral Rights. Outstanding mineral rights are those rights owned by a party other than the surface owner at the time the surface was conveyed to the United States. There is usually no contractual or other legal relationship between the United States and the owner of outstanding mineral rights.

5. Reserved Mineral Permit. A reserved mineral permit is the document issued by the Forest Service authorizing the exercise of mineral reservations on the National Forest System in accordance with the applicable Secretary's regulations.

2831 - MINERAL RESERVATIONS. Administer mineral reservations according

to the applicable Secretary's rules and regulations as stated in the deed. In the case of a mineral right reserved prior to issuance of 36 CFR 251.15, Forest Supervisors all require the reserved mineral owners or the lessee to submit an operating plan that incorporates all of the following:

1. Requirements of the Secretary's rules and regulations incorporated in the deed.
2. Restoration or reclamation of disturbed lands.
3. Repair or replacement of any improvements damaged or destroyed by the mineral operation.

Additionally, to the extent that bonding or payments may be required under the terms of the deed or applicable law, the mineral owner or lessee shall provide bond coverage or payment to a cooperative fund in order to comply with the terms of the permit.

If the operating plan is acceptable, the Forest Supervisor shall issue a reserved mineral permit to the record owner or lessee. Do not issue a reserved mineral permit until questions concerning the mineral owner's title and rights under the deed reservation are resolved. Consult with the office of the General Counsel on all such questions. Do not include in a reserved mineral permit requirements from other types of Forest Service permits or agreements unless these requirements are appropriate for the exercise of mineral reservations.

If the operating plan is not acceptable, the Forest Supervisor shall meet with the mineral owner or lessee to negotiate modifications needed to make the plan acceptable.

In some instances, there have been modifications of the applicable Secretary's rules and regulations attached to the deed. In these cases, seek the advice of the Office of the General Counsel.

Periodically review the status of mineral reservations to ensure that status is current and in accordance with the deed. Notify the Bureau of Land Management of changes in mineral ownership and revise Forest Service status records when mineral reservations expire (FSM 5490).

Where term mineral reservations provide for periodic extensions of time under certain conditions, monitor activity in a timely manner to determine whether or not

the owner has met the conditions for extension. Consult with the Office of the General Counsel and the Bureau of Land Management when there is some question to whether or not the conditions for extension have been met. When a term mineral reservation is extended in accordance with the deed, Forest Supervisors shall document such extension by a letter to the mineral owner and shall revise Forest Service status records.

2832 - OUTSTANDING MINERAL RIGHTS. Administer the exercise of outstanding mineral rights as follows:

1. The mineral owner or lessee must provide the Forest Supervisor with proof of right to exercise mineral rights.
2. The mineral owner or lessee must provide the Forest Supervisor with 60 days advance written notice of surface occupancy by submitting a proposed operating plan.
3. The mineral owner or lessee must include the following information in an operating plan for the exercise of outstanding mineral rights:
 - a. Location of roads and facilities.
 - b. Areas to be disturbed.
 - c. Methods of mineral extraction.
 - d. Methods of disposal of mining and other wastes.
 - e. Reclamation plans.
 - f. Methods for control of erosion and prevention of water pollution.
 - g. Identification of owner's or lessee's agent.

2832.1 - Review of Operating Plans. The Forest Supervisor must review the operating plan to determine whether or not it:

1. Uses only so much of the surface as is prudently necessary for the proposed operations.
2. Is consistent with rights granted by deed.

3. Is consistent with the forest land and resource management plan.

the operating plan meets these three criteria, the Forest Supervisor shall send the owner or lessee a letter stating that:

1. The operating plan is consistent with the forest land and resource management plan.
2. The Forest Service intends to monitor operations to ensure compliance with the operating plan.
3. The owner or lessee must notify the Forest Service 60 days in advance of any major modifications in the operating plan.
4. Any unapproved deviation from the operating plan may be construed as unlawful, and the United States may take appropriate legal action.

2832.2 - Negotiation of an Acceptable Operating Plan. If an operating plan does not meet the three criteria in sec. 2832.1, the Forest Supervisor shall meet with the owner or lessee to negotiate modifications needed to make the plan acceptable. If negotiations are unsuccessful, the Forest Supervisor shall consult with the Regional Forester and the Office of the General Counsel before advising the owner or lessee, by registered letter, of the unacceptable portions of the plan and stating that implementation of these parts of the plan may require appropriate legal action. The Forest Supervisor shall forward a copy of such a letter to the Regional Forester.

2832.3 - Fees and Bonding. Charge fees only for those uses of the National Forest System that are beyond the scope of the outstanding mineral rights. Require bonding only to the extent provided under the deed of severance or applicable Federal or State law.