

# Maintenance of a Mining Claim or Site

## Annual Assessment Work

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Since October 5, 1992 (Public Laws 102- 381 and 103-66) only claimants having a legal interest in 10 or fewer mining claims and sites Nationwide and who also meet certain other requirements, may perform assessment work and file evidence of assessment as described below. All other claimants must pay an annual fee of \$100 per claim or site to the BLM. All claimants must either pay the required fees or file for a waiver from payment of the fees by each August 31 through and including August 31, 1998. Failure to file by August requires BLM to declare the claim or site null and void by operation of law. Mineral patent applicants who have been issued the first half of their mineral entry final certificate are exempt from payment of fees or performance of assessment work. See 43 CFR 3833.1-5 through 3833.1 -7 for the terms and conditions of payment of the fees or the obtainment of a waiver from such payment.

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## **Annual Assessment Work**

To keep a possessory interest in the claim or site, the claimant must perform a minimum amount of labor or make improvements worth \$100 each year. Assessment work is work or labor performed in good faith that tends to develop the claim and directly helps in the extraction of minerals. Geological, geophysical, and geochemical surveys may qualify as assessment work for a limited period. However, a requirement for use of these surveys is the filing of a detailed report, including basic findings. Most State laws require the annual filing of an affidavit of assessment work with the proper county. Also, FLPMA requires the filing of an affidavit of annual assessment work with both the local county office and the proper BLM STATE OFFICE.

Assessment work is not a requirement for owners of mill or tunnel sites. However, they must file a notice of intention to hold the site(s) with the BLM. For mill sites and tunnel sites, filing with the county is not required.

Performance of assessment work must be within a certain period referred to as the assessment year. The assessment year begins at noon, September 1. It ends at noon, September 1, of the next year (see 43 CFR 388.0-5{n}). Performance of assessment work need not occur during the first assessment year of location. However, for claims located between September 1 and December 31, the claimant must file a

notice of intention to hold the claim with the BLM by December 30 of the following calendar year. The claimant must file either:

- a notice of intention to hold *or*
- evidence of annual assessment work in the proper BLM State Office on or before December 30 of the calendar year following the calendar year of the location of the claim, mill site, or tunnel site.

There is no requirement for filing evidence of assessment work or a notice of intention to hold a claim upon issuance of the first half mineral entry final certificate for a mineral patent. However, these requirements are reinstated upon cancellation of the final certificate by the BLM or upon withdrawal of the application by the claimant.

A notice of intention to hold a claim or site is a letter or notice signed by the claimant(s) or their agent(s). It should include the BLM serial number assigned to each claim or site and any change in mailing address of the claimant(s). If used to notify the county and the BLM of an approved or pending petition for deferment of annual assessment work, it must include a reference to the decision on file with the BLM (by date granted and serial number) or the pending petition (by date of filing and serial number).

The BLM may grant a temporary deferment of assessment work under certain conditions (see 43 CFR 3852. 1). These conditions concern denial of legal access to a mining claim or other legal impediments. The claimant must, therefore, initiate actions to gain access. Such a deferment may not exceed 1 year but may be renewed for an additional year upon request. There is no particular form for a petition for deferment of assessment work. The petition can be a letter to the BLM signed by at least one of the owners of the claim. It must fully explain the actions taken to initiate access and the legal obstacles preventing access. A copy of the notice to the public recorded with the county must accompany the petition. The petition should include the BLM mining claim serial number(s) and the assessment year to be deferred.

**County:** Each State has its own deadline for filing an affidavit of assessment work. Most States require filing within 30 to 90 days after the end of the assessment year (September 1). Therefore, it is important to check the State requirements for filing periods in the State in which the claim(s) is located.

**BLM:** Claimants must file with the BLM an identical of any of the above-mentioned documents filed with the county. Even if a State does not have a filing requirement, claimants must still file with the BLM. The deadline for filing with the BLM is December 30 (not December 31 ) of each calendar year following the calendar year of location. A nonrefundable \$5 service charge for each claim and site must accompany the affidavit or notice. A nonrefundable \$25 service charge must accompany a petition for deferment of assessment work.

The BLM considers a claim or site abandoned and void if the claimant fails to file these documents within the prescribed period. A determination of abandonment by the BLM voids the claim or site.

**THE APPROPRIATE BLM STATE OFFICE IS THE ONLY OFFICIAL FILING OFFICE FOR THE FEDERAL GOVERNMENT**, except for the BLM Fairbanks Support Center in Alaska, which is an acceptable filing office (see Figure 3). See Figure 4 for filing fees.

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## Surface Management

Most Federal agencies have regulations to protect the surface resources of the Federal lands during exploration and mining activities. Reclamation of disturbed sites is a requirement after completion of exploration and mining activities. Another requirement is the submission of a notice of a plan of operations before conducting any surface-disturbing activities, except for casual use activities. Also, most State governments have mining and reclamation requirements. To avoid duplication, several States have entered into cooperative agreements with Federal agencies. Operators should check with Federal and State agencies to determine the proper lead agency before submitting a notice of plan.

**Forest Service:** Exploration and mining activities on lands administered by the Forest Service are subject to the regulations of the Secretary of Agriculture in 36 CFR 228(A). These regulations require that anyone whose proposed operation could likely cause "significant disturbance of surface resources" must submit an operation plan. The operating plan should describe the nature of the proposed disturbance and steps to protect surface resources. It must describe steps proposed to reclaim the land after mining-related activities have stopped. Any proposed structures or occupancy must also be described. The plan must be approved by an authorized Forest Service officer. Miners wishing to prospect or locate claims or sites in National Forests should contact the local District Ranger concerning questions about operating plans.

**BLM:** Exploration and mining activities on BLM administered land are subject to the regulations of the Secretary of the Interior in 43 CFR 3809 and for Wilderness Study Areas, 43 CFR 3802. These regulations require an operator to prevent unnecessary or undue degradation of the land. For activities other than casual use, they require the operator to submit either a notice or a plan of operations and a reclamation plan. A plan of operations and a reclamation plan are required where activities involve the surface disturbance of more than 5 acres. Also, Special Category Lands, as defined in 43 CFR 3809.1-4, always require a plan of operations. The plan of operations must include a description of the proposed activities, road access and construction, reclamation measures, time frames of non-operation, and a sketch or a map of the area to be disturbed, including all access routes. An environmental assessment (EA) or an environmental impact statement (EIS) must be prepared by the BLM or the claimant/operator prior to commencement of any surface-disturbing activities. A plan of operations must be approved by the BLM. Operations at the plan level may not commence until the plan is approved.

Five acres or less of surface disturbance usually requires a notice. The notice must describe the proposed activities, the location on the ground, the start-up date, road access and construction, if any, and reclamation measures. Receipt and review of a notice is not a Federal action; therefore, there is no requirement for the preparation of an EA or EIS. Approval by BLM is not required for a notice.

There is no requirement for notifying the BLM of casual use activities. Casual use activities are those that cause only negligible disturbance of the public lands and resources. For example, activities that do not involve the use of earth-moving equipment or explosives may be considered casual use.

Exploration and mining activities in BLM wilderness study areas (WSAs) are subject to regulations in 43 CFR 3802. The BLM Interim Management Policy and Guidelines for Lands Under Wilderness Review (BLM Handbook 8550-1, July 5, 1995)

also gives rules concerning mineral activities in WSAs. The rules require a plan of operations for all activities other than what could be considered casual use (see 43 CFR 3802.1-2). Reclamation is a requirement for all surface-disturbing activities in WSAs. Where required, reclamation must be completed to the point that mining activities are substantially unnoticeable by the time the Secretary of the Interior makes recommendations for wilderness designation to the President. Therefore, each BLM State Director has set a date for completion of reclamation in WSAs in that State. All recommendations of the Secretary of the Interior to the President on BLM-administered lands are to be made on or before October 20, 1991. However, not all States are involved in the wilderness study program.

Reclamation is a requirement following any surface-disturbing activity, even if the claim or site is declared abandoned and void by the BLM. It is also required if the claimant relinquishes the claim or site to the Federal Government. The BLM may require a reclamation bond or other financial security prior to approving a plan of operations.

Approval of plans of operations are usually at the local level. Therefore, the operator should contact the proper BLM District or Resource Area Office for questions concerning plans of operation (see Figure 3).

**States:** Operators should be aware that many States have their own mining and reclamation laws. Many also have their own environmental laws to regulate air and water pollution and use of hazardous materials. Some States, like California and Alaska, require a permit for use of suction dredges. Similarly, construction activities usually require meeting standards of a county code, as well as State public health and safety standards. Some States have entered into a memorandum of understanding or a cooperative agreement with the BLM and Forest Service. These agreements reduce the duplication by the operator and Federal and State agencies in enforcing rules. For these reasons, operators should inquire about State and local requirements before trying to mine on public lands and National Forest System lands.

**Areas of Special Concern:** The Federal Government maintains the right to manage the surface and surface resources on mining claims and sites located under the Mining Law after July 23, 1955, and many claims located before that date (see 30 U.S.C. 612). This includes the use of the area for public recreational purposes that do not interfere with a mining activity.

The public has the right to cross mining claims for recreational and other purposes and to access Federal lands beyond the claim boundaries. For these reasons, claimants may not maintain locked gates across public access routes, unless a full-time attendant is available, and the locked gate is approved under a plan of operations. Under a plan of operations, approvals for locked gates may be given for the protection of an operator's equipment and facilities. These approvals usually restrict the operator to a fenced compound surrounding the immediate area of operations.

Claimants should not construct permanent structures or store equipment or mobile structures without prior approval of the authorized Federal official. Intermittent or casual mineral exploration and development do not normally justify the use of such structures.

The right of access to a claim across Federal lands does not mean that the mining claimant has a right to cause unnecessary or undue degradation of the resources. Vehicles used for exploration or mining purposes are not permitted in areas that are temporarily or permanently closed to vehicle use. For example, on lands

administered by the BLM, in areas designated as closed to off-highway vehicle use, an approved plan of operations is required for new road construction and use of existing roads. The claimant is liable for damages if found responsible for unnecessary loss of or injury to property of the United States.

Issuance of a notice of trespass may occur if an unpatented claim or site is:

- used for a homesite, place of business, or for other purposes not reasonably related to mining or milling activities,
- used for the mining and sale of leasable minerals or of mineral materials, such as common varieties of sand, gravel, or building stone, *or*
- located on lands that for any reason have been withdrawn from location of mining claims after the effective date of withdrawal.

Mining claims and sites located on lands after the effective date of a withdrawal are null and void. No rights are associated with claims declared null and void by the BLM. However, a claim or site located before a withdrawal is in effect is considered a valid existing right. To have valid existing rights in this situation, a discovery (including an actual physical exposure) must have been made before the date of withdrawal. Individuals who disturb resources after the effective date of withdrawal and who do not have valid existing rights may be considered in trespass and can be held liable for trespass damages. In addition, trespassers may be fined and sentenced to a term in jail.

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The above information was taken from the BLM Website on June 28, 2002. If there have been changes to BLM policy or regulations since then, some of the information above may be outdated. You may want to visit the [BLM site](#) to see if there have been any changes.