

Mineral Resources and Mining

The Wilderness Act states:

Prospecting – “Nothing in this Act shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, ... such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation ... to determine the mineral values, if any, that may be present; ...”

Mining operations - Section 4 (d) (3) contains the following key guidance as well as other provisions for management of mineral resources in wilderness.

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- “Until midnight Dec. 31, 1983 all mining laws applied to wilderness as they would to other non-wilderness public lands “...subject, however, to such reasonable regulations governing ingress and egress...”
- “Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto...”
- “...no use of the surface of the claim or the resources there from not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this Act ...”
- “Mineral leases, permits, and licenses covering lands within national forest wilderness areas designated by this Act shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed.”

Forest Service Policy

2323.7 - Management of Minerals and Mineral Materials

2323.72 - Objectives

1. To preserve the wilderness environment while allowing activities for the purpose of gathering information about mineral resources.
2. To ensure that mineral exploration and development operations conducted in accordance with valid existing rights for federally owned, locatable, and leasable minerals (FSM 2810 and FSM 2820) and for nonfederally owned minerals (FSM 2830) preserving the wilderness resource to the extent possible.

3. To ensure the restoration of lands disturbed during exploration and development activities as nearly as practicable promptly upon abandonment of operations.

2323.73 - Policy

1. Allow the gathering of information on mineral resources if the activity is conducted in a manner compatible with the preservation of the wilderness environment. Do not authorize significant surface disturbance in search of indirect evidence or indications of mineral resources, and do not allow motorized or mechanical equipment use unless it meets the conditions of section 4(c) of the Wilderness Act.
2. Verify valid mineral rights before approving exploration and development activities.
3. Approve exploration and development activities on valid mineral rights only after ensuring that mineral operations plans contain stipulations to protect the wilderness character of the land consistent with the rights of the mineral owner or operator.

Additional, more specific guidance on mineral exploration and mining operations in wilderness is found in FSM 2323.74 – 76.

Policy for management of Minerals on the National Forests is found in FSM 2800.

Management Practices

The General Mining Laws of 1872 of the United States, and a number of subsequent laws, established a process designed to facilitate development of the national locatable mineral resources and privatize these resources. On national forest lands – most western national forests reserved from the public domain – the process encourages prospecting, staking a claim when a valuable mineral discovery has been made, and for doing annual assessment work. “Proving up” on a claim allowed the claimholder to file for a patent on the claim—a procedure wherein the government transferred the fee title (both the surface and the mineral estate below the surface) of the claim to the claimant. This process applied to “locatable minerals” usually found in lode or placer deposits, including gold, silver, and copper.

Access to “leasable minerals” (coal, phosphate, sodium, potassium, oil, gas, oil shale, and others) is provided under authority of the Mineral Leasing Act of 1920. Here leases are issued by the BLM with recommendations for lease stipulations from the Forest Service.

Sec. 4(d) of the Wilderness Act addresses national forest lands only since in 1964 lands managed by the U.S. Department of the Interior (national parks and national wildlife refuges) are withdrawn from mineral entry or are handled through specific provisions. With the passage of FLPMA in 1976 the provision in Section 4(d) applies to lands managed by the BLM also.

Sec. 4(d)(3) of the Wilderness Act, in what many have seen as the major contradiction of the Wilderness Act, provision was made for continued application of all mining laws and laws pertaining to mineral leasing of national forest lands designated by the Wilderness Act as “wilderness areas” subject to reasonable regulation. Where a claim was taken to patent, however, the act specified that title in or to the surface was reserved to the United States. The act also provided that “unless hereafter specifically authorized, no patent within wilderness areas designated by this act shall issue after December 31, 1983 except for valid existing claims on or before December 31, 1983.”

The last paragraph of this section is the most significant for mineral management in wilderness areas. “Subject to valid rights then existing, effective January 1, 1984, the lands designated by this Act as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.”

Determination of existing rights can be a challenge for managers. Rights to a valid existing claim can be maintained by the claimant by doing and reporting annual assessment work. Prior to actual mining, a plan of operation is required as a validity determination, a detailed and multiyear examination to determine the validity of the mineral claimed. Generally a formal Surface Rights Determination is required.

Normally mineral leases contain an expiration date of 10 years after date of issue. If the leased area is producing in “paying quantities,” lease extension is routine.

Mechanical transport, motorized equipment, and access and utility corridors may be used after a determination that they are the minimum necessary. These activities and the reclamation of all disturbed lands, however, must minimize the impact on the surrounding wilderness character.

(TWA Section 4 (d) (2) (3), FSM 2323.7)