CHAPTER 19
Public Lands

ARTICLE 1
Commissioner of Public Lands; Disposition of Revenue

19-1-1. [Creation of state land office; commissioner of public lands designated executive officer; powers.]

A state land office is hereby created, the executive officer of which shall be the commissioner of public lands, hereinafter called the commissioner, who shall have jurisdiction over all lands owned in this chapter by the state, except as may be otherwise specifically provided by law, and shall have the management, care, custody, control and disposition thereof in accordance with the provisions of this chapter and the law or laws under which such lands have been or may be acquired.

History: Laws 1912, ch. 82, § 1; Code 1915, § 5178; C.S. 1929, § 132-101; 1941 Comp., § 8-101; 1953 Comp., § 7-1-1.

ANNOTATIONS

Cross references. — For duty to obtain data and information on state lands, and classify same, *see* 19-5-1 NMSA 1978.

For constitutional duties of commissioner of public lands, *see* N.M. Const., art. XIII, § 2.

Compiler's notes. — The words "who shall have jurisdiction over all lands owned in this chapter by the state" appear in the 1915 Code but not in the 1912 statute, which read: "who shall have jurisdiction over all lands now owned or hereafter acquired by the state." The words "this chapter" evidently refers to chapter 102 of the 1915 Code, §§ 5178 to 5290, compiled herein as 19-1-1 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50, 19-7-51, 19-7-52, 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8 and 19-11-10 NMSA 1978.

Rulemaking authority of commissioner limited. — The commissioner has no authority to promulgate rules or regulations inconsistent with legislative enactments governing mineral leases on public lands. Harvey E. Yates Co. v. Powell, 98 F.3d 1222 (10th Cir. 1996).

The commissioner exceeded his authority and usurped a legislative function in promulgating the definition of "proceeds" in a rule so that it would require state lessees to pay royalties even when gas was not extracted from the leased premises. Harvey E. Yates Co. v. Powell, 98 F.3d 1222 (10th Cir. 1996).

Extent of commissioner's jurisdiction. — The New Mexico legislature intended the jurisdiction of the commissioner of public lands to extend only so far as those lands acquired by the state pursuant to acts of congress. 1980 Op. Att'y Gen. No. 80-10.

Law reviews. — For article, "The West and Its Public Lands; Aid or Obstacle to Progress?" see 4 Nat. Resources J. 1 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands §§ 1 to 3, 12 to 38.

73A C.J.S. Public Lands § 180.

19-1-1.1. State land trusts advisory board; members; appointment; terms.

A. The "state land trusts advisory board" is created. The state land trusts advisory board shall consist of seven members appointed by the commissioner of public lands with the advice and consent of the senate. Terms of the initial board shall be structured so that three terms shall expire on December 31, 1990, three terms shall expire on December 31, 1992 and one term shall expire on December 31, 1994; thereafter, commissioners shall be appointed for terms of six years.

B. Members of the board shall, as reasonably as possible, represent a geographical balance from across the state and shall be selected as follows:

(1) two members shall represent the beneficiaries of the state land trusts;

(2) one member shall represent the extractive industries;

(3) one member shall represent the agricultural industries;

(4) one member shall represent conservation interests; and

(5) two members shall represent the public at large.

C. No more than four members of the board shall belong to the same political party.

D. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. These expenses shall be paid from the budget of the commissioner of public lands.

History: Laws 1989, ch. 186, § 1.

19-1-1.2. State land trusts advisory board; removal of members; vacancies.

A. Members of the state land trusts advisory board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given to the member. The supreme court is given exclusive jurisdiction over proceedings to remove members of the state land trusts advisory board under rules it may promulgate, and its decision in connection with these matters shall be final.

B. Any vacancy occurring on the state land trusts advisory board shall be filled by appointment of the commissioner of public lands with the advice and consent of the senate for the remainder of the unexpired term.

History: Laws 1989, ch. 186, § 2.

19-1-1.3. State land trusts advisory board; organization; meetings.

At its initial meeting and biannually thereafter, the board shall elect a chairman, vice chairman and other officers as it deems necessary. The board shall meet at the call of the chairman or a majority of the members. All meetings of the state land trusts advisory board shall be in compliance with the Open Meetings Act [10-15-1 to 10-15-4 NMSA 1978].

History: Laws 1989, ch. 186, § 3.

19-1-1.4. State land trusts advisory board; duties.

A. The consensus and advice of the state land trusts advisory board are intended to provide a continuity for resource management and to help the commissioner of public lands with understanding and maintaining the highest standards for maximizing the income from the trust assets, and to protect and maintain the assets and resources of the trust as required by the constitution of New Mexico, the Enabling Act for New Mexico and state statute. To that end, the board shall review the policies and practices of the commissioner of public lands and shall advise the commissioner on how such policies and practices affect and achieve those goals.

B. No action of the state land trusts advisory board shall be binding on the commissioner of public lands, who alone has the constitutional and fiduciary responsibility as trustee for the trusts.

C. The commissioner of public lands shall hold at least one meeting per year jointly with the state land trusts advisory board and the administrative head or designee of the

beneficiary institutions. At annual beneficiary meetings the commissioner shall inform and discuss with the representatives of the beneficiaries and the board the plans, goals, objectives, budget, revenue projections, asset management issues and all other pertinent information regarding the state land trusts.

History: Laws 1989, ch. 186, § 4.

19-1-2. Duties of land commissioner.

The commissioner shall have a seal with an appropriate device thereon; and such seal affixed to any contract, deed, lease or other instrument executed by the commissioner shall be prima facie evidence of the due execution thereof. Said commissioner shall receive and pass upon all applications for leasing or purchasing state lands and timber; and shall execute and authenticate for the state all deeds, leases, contracts or other instruments affecting such lands. All such leases, deeds, contracts and grants heretofore or hereafter executed shall be entitled to record without acknowledgment, and record thereof in the county in which the land described therein is situated shall be constructive notice to all persons of the contents thereof. Said commissioner shall have power to provide all necessary books, blanks, records, property, equipment and appurtenances of every kind whatsoever for the proper management of said state land office and the lands under his control; to deed by quitclaim or otherwise to the United States any or all claims that the state may have in and to lands within any private land grant or reservation made or confirmed in pursuance of authority of congress, or to such of its lands as may be needed by the United States or for reclamation of water power sites for the purpose of selecting indemnity lands therefor; also to such of its lands as may be desired by the United States for agricultural experiment purposes; to collect all moneys due to the state for the lease, purchase or use of state lands; to receive all moneys due to the state derived from any state lands and credit said moneys so received to the separate funds created for the respective purposes named in grants by congress, or otherwise, and he shall pay over to the state treasurer, on or before the tenth day of the next succeeding month, all such moneys received during each month to be credited to the several funds respectively entitled thereto. He shall keep a full and complete record of all his official acts and shall submit to the governor each year a report bearing date the first day of December, and at any other time on request, which shall contain a statement of the business and expenses of said state land office and the amount of moneys received and turned over by him to the state treasurer for each fund, together with such recommendations as he may deem proper for the better management and control of state lands. He shall cause to be printed biennially, for the use and information of the legislature, the annual reports thus made to the governor for the two (2) years preceding each regular session thereof, and he shall charge the cost of such printing to the state lands maintenance fund hereinafter in this chapter created. He shall employ a person qualified and experienced as a geologist or petroleum engineer who in turn is hereby authorized to appoint, with the approval of the commissioner, such inspectors, clerks and additional assistants as he may deem necessary to collect and compile information, under the direction and supervision of the commissioner, relative to oil and gas leasing

development and production within the state which may affect state lands and prepare maps and reports necessary and expedient for the proper supervision and leasing of lands belonging to the state for oil and gas purposes. The salary of said geologist or petroleum engineer and inspectors, clerks and additional assistants as provided shall be fixed by the commissioner and said salaries and expenses to be paid out of the state land office maintenance fund. He shall make rules and regulations for the control, management, disposition, lease and sale of state lands and perform such other duties as may be prescribed by law.

History: Laws 1912, ch. 82, § 2; Code 1915, § 5179; C.S. 1929, § 132-102; 1941 Comp., § 8-102; Laws 1953, ch. 75, § 1; 1953 Comp., § 7-1-2.

ANNOTATIONS

Cross references. — For classification of state lands, *see* 19-5-1 NMSA 1978.

For fire protection for state lands, *see* 19-5-3 NMSA 1978.

For care and protection of timberlands, *see* 19-11-1 NMSA 1978.

Meaning of "this chapter". — The words "this chapter" evidently refers to chapter 102 of the 1915 Code, §§ 5178 to 5290, compiled herein as 19-1-1 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50, 19-7-51, 19-7-52, 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8 and 19-11-10 NMSA 1978.

Reservation of minerals. — The commissioner of public lands had power to reserve the minerals in the land to the fund or institution to which the land belongs, when making sale thereof. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Mandamus will not lie to compel commissioner to issue deed conveying public lands free from reservation of the minerals therein, which reservation was contained in the contract of sale, because it is, in effect, an action against the state. State ex rel. Evans v. Field, 27 N.M. 384, 201 P. 1059 (1921), explained in Gamble v. Velarde, 36 N.M. 262, 13 P.2d 559 (1932), distinguished in Swayze v. Bartlett, 58 N.M. 504, 273 P.2d 367 (1954).

Effect of reservation. — The right to remove sand and gravel did not pass under a grant issued by the commissioner of public lands authorizing the highway commission to use certain lands as a source of surfacing materials which contained a general clause reserving minerals. 1961-62 Op. Att'y Gen. No. 61-12.

No power to sell highway commission lands. — Neither by the constitution nor by statute has the commissioner of public lands been given power to sell lands held by the

highway commission and acquired for its purposes. 1953-54 Op. Att'y Gen. No. 53-5831.

Effect of timberlands lease. — A lease of timberlands made by the territorial commissioner, with the right to cut certain timber, passed title to the timber subject to defeasance as to timber remaining at the end of the term, and a renewal of such lease was properly made before its expiration, but after the territory had become a state, without advertisement for bids. The timber remaining uncut at the expiration of the lease reverts to the grantor, but where the land itself was sold to the lessee, no title remained in the grantor. 1923-24 Op. Att'y Gen. 23-3728.

No authority over departments' buildings. — There is no statute specifically giving the commissioner of lands authority to lease surface rights and buildings owned by state departments. 1953-54 Op. Att'y Gen. No. 53-5831.

Without commissioner's consent, use of school section for cemetery is unauthorized. 1919-20 Op. Att'y Gen. No. 20-2603.

Transfer to United States. — Statute authorizes state land commissioner to make conveyance to United States of lands within the exterior boundaries of Alamo National Forest. 1915-16 Op. Att'y Gen. No. 15-1641.

Administration of funds. — The commissioner of public lands is the sole person entrusted with the administration of the funds of which he is trustee, as provided in the Enabling Act, the New Mexico constitution and the laws of the state of New Mexico, subject to the expenditure being a reasonable one, and the legislature is not empowered, nor is the governor authorized, to restrict the commissioner in the expenditure of these funds. 1953-54 Op. Att'y Gen. No. 5781, overruled by Op. Att'y Gen. Nos. 59-195 and 59-151.

Commissioner of public lands may employ forest guards in order to protect and care for public lands. 1915-16 Op. Att'y Gen. No. 15-1414.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 180.

19-1-2.1. Confidential information; penalty.

The provisions of any confidential contract, reserve data or other confidential information required to be submitted under any lease or rule or regulation of the commissioner of public lands, and which is clearly marked as confidential by the person from whom submission is required, shall be held confidential by the commissioner, his employees and his agents. Any person who willfully violates the provisions of this section shall be guilty of a misdemeanor. Nothing in this section shall be construed to prevent statistical information from being derived from the information available to the commissioner or its use in public hearings before the commissioner or in appeals from decisions of the commissioner for which such information is essential. This section shall

not be construed to protect any information, even if otherwise considered confidential under this section, if such information is also available from public, non-confidential sources. Notwithstanding the provisions of any act requiring meetings of public bodies to be open, the commissioner may close that part of any meeting where confidential information covered by this section is discussed.

History: Laws 1985, ch. 240, § 1.

ANNOTATIONS

Cross references. — For sentencing for misdemeanors, *see* 31-19-1 NMSA 1978.

19-1-3. Delinquent payments; interest.

When entering into contracts for the sale, lease or other disposition of public lands under his jurisdiction, the commissioner of public lands is authorized to contract for payment of interest on any payment of rental, royalty, principal interest or other indebtedness which becomes delinquent. Interest on delinquent payments shall not exceed the rate of one percent a month nor be less than one-half percent a month, for any fraction of a month. Interest shall accrue from the date the payment becomes due.

History: 1953 Comp., § 7-1-2.1, enacted by Laws 1971, ch. 96, § 1.

ANNOTATIONS

Cross references. — For forfeiture of coal land leases for noncompliance with terms, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas land leases for nonpayment of rentals, *see* 19-10-20 NMSA 1978.

For cancellation of geothermal resources leases for nonpayment of rentals or royalties, *see* 19-13-23 NMSA 1978.

19-1-4. [Oath and bond.]

Before entering upon the duties of his office the commissioner shall qualify by taking and subscribing an oath as prescribed by the constitution and by executing a bond to the state in the penal sum of fifty thousand dollars ($50,000), conditioned for the faithful performance of the duties of his office, and which bond, together with said oath, shall be filed in the office of the secretary of state. If such bond be executed by a surety company, the expense thereof shall be paid out of the state lands maintenance fund.

History: Laws 1912, ch. 82, § 3; Code 1915, § 5180; C.S. 1929, § 132-103; 1941 Comp., § 8-103; 1953 Comp., § 7-1-3.

ANNOTATIONS

Cross references. — For the state lands maintenance fund, *see* 19-1-11 NMSA 1978.

For the oath to support constitution and laws and carry out duties of office, *see* N.M. Const., art. XX, § 1.

For the bonds required for public officers and employees, and filing of same, *see* 10-2-1 NMSA 1978 et seq.

For the Surety Bond Act, *see* 10-2-13 NMSA 1978 et seq.

19-1-5. [Land commission under Enabling Act; members; officers; locating agents.]

The commissioner of public lands shall be the third member along with the governor and attorney general of the commission created by Section 11 of the act of congress designated as the Enabling Act, approved June 20, 1910. The governor shall be chairman and said commissioner shall be secretary of said commission. The commission is authorized to employ one or more locating agents who shall be paid out of the maintenance fund provided by this chapter.

History: Laws 1912, ch. 82, § 77; Code 1915, § 5255; C.S. 1929, § 132-189; 1941 Comp., § 8-105; 1953 Comp., § 7-1-4.

ANNOTATIONS

Cross references. — For the state lands maintenance fund, *see* 19-1-11 NMSA 1978.

Compiler's notes. — The words "this chapter" evidently refers to chapter 102 of the 1915 Code, §§ 5178 to 5290, compiled herein as 19-1-1 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50, 19-7-51, 19-7-52, 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8 and 19-11-10 NMSA 1978.

19-1-6. [Assistant commissioner; chief clerk; clerical force.]

The commissioner of public lands is hereby authorized to appoint an assistant commissioner of public lands at a salary of not to exceed two thousand five hundred ($2,500) dollars per annum. Such assistant commissioner, after filing his oath of office and such bond as the commissioner may require, shall, in the absence of the commissioner of public lands from the state capital, or in the event of a vacancy in the office of commissioner of public lands, have authority to exercise all of the duties and powers by law incumbent upon or vested in the commissioner of public lands.

The commissioner of public lands is hereby authorized to employ a chief clerk, and such additional clerical force as may be required for the proper administration of the affairs of his office. The salaries of the assistant commissioner and of the chief clerk and general clerical force shall be payable monthly, by warrant drown [drawn] on the state land maintenance fund, but the annual salary expense of the employees herein provided for shall not exceed five per centum of the income derived from state lands, exclusive of Santa Fe and Grant county bond fund lands; provided, that this act [this section] shall not be held to repeal or affect the provisions of Section 5260 [19-1-9 NMSA 1978] of the Codification of 1915.

History: Laws 1912, ch. 82, § 4; Code 1915, § 5181; Laws 1915, ch. 73, § 1; 1919, ch. 48, § 1; C.S. 1929, § 132-104; 1941 Comp., § 8-106; 1953 Comp., § 7-1-5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler for purposes of clarity and is not part of the law.

Assistant commissioner may not lawfully exercise any discretionary powers vested in the commissioner by the constitution, and to that extent the act is unconstitutional. 1919-20 Op. Att'y Gen. No. 19-2433.

19-1-7. Appointment of employees as clerks to sign documents for commissioner; filing with the secretary of state.

The commissioner of public lands is authorized from time to time to appoint one or more employees of the state land office as clerks to sign the commissioner's name, under his direction and for him, to any and all patents to state lands, and any and all leases, assignments, division orders, letters, contracts, certification of copies and any other documents or instruments respecting state lands as the commissioner of public lands may enumerate in the appointing orders, and any such instruments or documents so signed shall have the same legal effect as those signed by the commissioner of public lands in person.

History: 1941 Comp., § 8-106a, enacted by Laws 1945, ch. 55, § 1; 1953 Comp., § 7-1-6; 1981, ch. 98, § 1.

19-1-8. Filing of official appointment; revocation; bond.

Such designated clerk or clerks shall be officially appointed by a written appointing order signed by the commissioner of public lands, bearing his official seal, which appointing order shall contain a specimen of the signature to be used by each clerk, in addition to the usual personal signature of each clerk. Any appointment may be revoked at any time by a similar order signed and filed as provided in this section. Each appointment and any revocation of appointment shall be filed in the state land office and in the office of the secretary of state and thereupon shall become effective without the

necessity of being filed in any other place. Each clerk shall be under properly conditioned fidelity bond pursuant to the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978].

History: 1941 Comp., § 8-106b, enacted by Laws 1945, ch. 55, § 2; 1953 Comp., § 7-1-7; 1981, ch. 98, § 2.

ANNOTATIONS

Cross references. — For bonds for public officers and employees, *see* 10-2-1 NMSA 1978 et seq.

19-1-9. [Additional assistance to defend contest suits.]

The commissioner of public lands is authorized to employ such additional persons, including surveyors and attorneys, as he may deem necessary to defend contest suits brought by the United States government to determine title to school or other state lands, and to subpoena such witnesses as are deemed necessary in behalf of the state in defense of such suits, the per diem and mileage of such witnesses to be paid in accordance with the statutes made and provided therefor. The salaries and actual expenses of such additional persons, and mileage and per diem of such witnesses as are provided for in this section shall be paid from the state lands maintenance fund.

History: Laws 1913, ch. 26, § 1; Code 1915, § 5260; C.S. 1929, § 132-201; 1941 Comp., § 8-107; 1953 Comp., § 7-1-8.

ANNOTATIONS

Cross references. — For state lands maintenance fund, *see* 19-1-11 NMSA 1978.

For per diem and mileage payments to witnesses, *see* 38-6-4 NMSA 1978.

19-1-10. [Duties and bonds of subordinates; expenses payable from maintenance fund.]

The commissioner shall prescribe the duties of his subordinates. Any subordinate may be required to give bond in such sum as the commissioner may prescribe, conditioned for the faithful performance of his duties. If any such bond be executed by a surety company, the expense thereof shall be paid out of the state lands maintenance fund.

All expenses incurred by the commissioner or his subordinates in inspecting, appraising or investigating state lands shall be paid out of said funds. All expenses incurred by the commission composed of the governor, surveyor general or other officers exercising the function of the surveyor general and attorney general in directing,

locating, inspecting, appraising and investigating state lands shall be paid out of said fund.

History: Laws 1912, ch. 82, § 5; Code 1915, § 5182; C.S. 1929, § 132-105; 1941 Comp., § 8-108; 1953 Comp., § 7-1-9.

ANNOTATIONS

Cross references. — For state lands maintenance fund, *see* 19-1-11 NMSA 1978.

For bonds for public officers and employees, *see* 10-2-1 NMSA 1978 et seq.

For Surety Bond Act, *see* 10-2-13 NMSA 1978 et seq.

Purchase of automobile is legitimate expense of the state land department and may be paid for out of the state lands maintenance fund. 1912-13 Op. Att'y Gen. No. 12-907.

Inspection expenditures. — Both this section and Sections 19-5-1, 19-5-2 NMSA 1978 may be considered as being in effect and under the authority of the latter, in the procurement of detailed information and data $10,000 may be expended; however, under this section whatever is necessary "for the purpose of inspecting, appraising or investigating state lands" in dealing therewith shall also be paid out of the maintenance fund provided by Section 19-1-11 NMSA 1978 over and above the $10,000 provided by 19-5-1 NMSA 1978. 1939-40 Op. Att'y Gen. No. 39-3202.

19-1-11. State lands maintenance fund; created; state lands income; disposition.

The income derived from any state lands granted or confirmed by the Enabling Act or otherwise under the management, care, custody and control of the commissioner of public lands, shall constitute a fund to be known as the "state lands maintenance fund"; provided that the state lands maintenance fund shall not include any money required to be transferred to any permanent fund created in Chapter 19 NMSA 1978.

History: Laws 1912, ch. 82, § 6; Code 1915, § 5183; C.S. 1929, § 132-106; 1941 Comp., § 8-109; 1953 Comp., § 7-1-10; Laws 1989, ch. 15, § 1.

ANNOTATIONS

The 1989 amendment, effective March 9, 1989, rewrote this section to the extent that a detailed comparison is impracticable.

Enabling Act not violated. — In state statute creating state land office, provisions constituting 20 percent of income from state lands as a trust fund, known as the state lands maintenance fund, and authorizing payment of salaries and expenses of state

land office from such fund, was not violative of trust created by Enabling Act. United States v. Swope, 16 F.2d 215 (8th Cir. 1926) (decided prior to 1989 amendment).

Publicity expenses. — The expenses limited or authorized by Laws 1915, ch. 60, § 1 (now repealed), for giving publicity to resources and advantages of the state, should be paid out of the state lands maintenance fund created by this section. 1915-16 Op. Att'y Gen. 58 (rendered under prior law).

Law reviews. — For article, "Sustainable Resources Management and State School Lands: The Quest For Guiding Principles," see 34 Nat. Resources J. 271 (1994).

19-1-12. State land office; expenses; how paid.

All salaries and expenses of the state land office as authorized by annual appropriation of the legislature shall be paid from the state lands maintenance fund upon vouchers in duplicate, approved by the commissioner, numbered consecutively, setting forth the accounts covered and duly itemized. One copy of the voucher shall be retained in the state land office and the other copy shall be filed with the department of finance and administration. Warrants for the payment of the voucher shall be drawn by the secretary of finance and administration upon the state lands maintenance fund.

History: Laws 1912, ch. 82, § 7; Code 1915, § 5184; C.S. 1929, § 132-107; 1941 Comp., § 8-110; 1953 Comp., § 7-1-11; Laws 1977, ch. 247, § 84; 1989, ch. 15, § 2.

ANNOTATIONS

The 1989 amendment, effective March 9, 1989, inserted "as authorized by annual appropriation of the legislature" in the first sentence, and made minor stylistic changes throughout the section.

Abandoned wells. — The commissioner of public lands should plug abandoned oil and gas wells to protect lands under his control and pay costs out of state lands maintenance fund if they cannot be recovered from owner or operator. 1931-32 Op. Att'y Gen. No. 31-20.

19-1-13. Maintenance fund balance; apportionment.

Any balance remaining in the state lands maintenance fund on June 30 of each year shall be apportioned by the state treasurer among the several funds from which derived. In addition, the state treasurer shall make distributions in such amounts as the commissioner may determine to be surplus.

History: Laws 1912, ch. 82, § 8; Code 1915, § 5185; Laws 1929, ch. 64, § 1; C.S. 1929, § 132-108; 1941 Comp., § 8-111; 1953 Comp., § 7-1-12; Laws 1971, ch. 91, § 1; 1989, ch. 15, § 3.

ANNOTATIONS

The 1989 amendment, effective March 9, 1989, substituted "shall" for "may" in the second sentence, and made minor stylistic changes throughout the section.

19-1-14. [Separate accounts; payment of deficiencies; exception.]

The commissioner shall keep separate accounts of filing fees which Section 11 of the Enabling Act requires to be paid to the register and receiver for each final location or selection of one hundred and sixty acres; also of the costs of all advertisements required by law or departmental regulations to be made in connection therewith; also, wherever practicable, of all necessary costs and expenses which may be incurred in the management, protection and sale or lease of all state lands; and shall charge all such expenditures and costs to the particular fund for the benefit of which the respective selections or locations are made.

Whenever there is not sufficient money in any such fund for the purposes above mentioned, the deficiency shall be paid out of any funds of the state, except interest on the public debt, and shall be repaid out of the proceeds subsequently derived from such lands; provided, this section shall not apply to lands granted for the payment of the bonds of Santa Fe and Grant counties, and the interest thereon, the expenses incident to the selection or location, management, protection and sale of which shall be defrayed in the manner prescribed by law; and provided further, that no portion of the expenses last mentioned shall be paid out of any moneys derived from any other lands granted or belonging to the state.

History: Laws 1912, ch. 82, § 9; Code 1915, § 5186; C.S. 1929, § 132-109; 1941 Comp., § 8-112; 1953 Comp., § 7-1-13.

19-1-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 11, § 2 repeals 19-1-15 NMSA 1978, as amended by Laws 1977, ch. 247, § 85, relating to erroneous payments on account of leases or sales, effective June 16, 1989. For provisions of former section, see 1985 Replacement Pamphlet.

19-1-16. [Deposit of money derived from state lands.]

All moneys derived from state lands, including permanent funds pending investment, shall be deposited by the state treasurer in accordance with law regulating deposits of state funds.

History: Laws 1912, ch. 82, § 11; Code 1915, § 5188; C.S. 1929, § 132-111; 1941 Comp., § 8-114; 1953 Comp., § 7-1-15.

19-1-17. Permanent, income and current funds; creating deposits.

A. The following funds are created.

B. To the credit of these funds, in the respective proportions to which they are by law entitled, all money derived from state lands shall be deposited by the commissioner with the state treasurer, as nearly as possible, on the first day of each calendar month. The commissioner shall keep an accurate record of all such deposits. The funds are:

(1) common school current fund;

(2) common school permanent fund;

(3) university income fund;

(4) university permanent fund;

(5) university saline income fund;

(6) New Mexico state university income fund;

(7) New Mexico state university permanent fund;

(8) western New Mexico university income fund;

(9) western New Mexico university permanent fund;

(10) New Mexico highlands university income fund;

(11) New Mexico highlands university permanent fund;

(12) northern New Mexico state school income fund;

(13) northern New Mexico state school permanent fund;

(14) eastern New Mexico university income fund;

(15) eastern New Mexico university permanent fund;

(16) New Mexico institute of mining and technology income fund;

(17) New Mexico institute of mining and technology permanent fund;

(18) New Mexico military institute income fund;

(19) New Mexico military institute permanent fund;

(20) New Mexico boys' school income fund;

(21) New Mexico boys' school permanent fund;

(22) miners' hospital income fund;

(23) miners' hospital permanent fund;

(24) New Mexico behavioral health institute at Las Vegas income fund;

(25) New Mexico behavioral health institute at Las Vegas permanent fund;

(26) penitentiary income fund;

(27) penitentiary permanent fund;

(28) state charitable, penal and reformatory institutions income fund;

(29) state charitable, penal and reformatory institutions permanent fund; to be equally distributed among the institutions as defined in Article 14, Section 1 of the constitution of New Mexico;

(30) New Mexico school for the blind and visually impaired income fund;

(31) New Mexico school for the blind and visually impaired permanent fund;

(32) New Mexico school for the deaf income fund;

(33) New Mexico school for the deaf permanent fund;

(34) permanent reservoirs for irrigation purposes income fund;

(35) permanent reservoirs for irrigation purposes permanent fund;

(36) improvement of Rio Grande income fund;

(37) improvement of Rio Grande permanent fund;

(38) public buildings at capital income fund;

(39) public buildings at capital permanent fund;

(40) Santa Fe and Grant county railroad bond fund, to be applied as provided by Article 9, Section 4 of the constitution of New Mexico; and

(41) state lands maintenance fund.

History: Laws 1917, ch. 115, § 1; C.S. 1929, § 132-190; 1941 Comp., § 8-115; 1953 Comp., § 7-1-16; 2005, ch. 313, § 2.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, renamed the permanent income and current funds listed in Subsections B(1) through (40).

Funds permanent. — Proceeds of sale of lands granted to the state of New Mexico by the Enabling Act, for certain specified purposes, and the natural products of such lands, with certain named exceptions, were intended by congress to constitute permanent funds, the interest only being available for current use. State v. Llewellyn, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917), distinguished in Regents of Univ. of N.M. v. Graham, 33 N.M. 214, 264 P. 953 (1928).

Grant for reservoirs for irrigation. — The Ferguson Act of June 21, 1898, 30 Stat. 484, which granted to the territory of New Mexico 500,000 acres of land "for the establishment of permanent water reservoirs for irrigating purposes," provides that the moneys derived from the trust lands are to be placed to the credit of separate funds created for the respective purposes named in the act and used only as the legislative assembly of the territory may direct, and only for the use of the institutions or purposes for which the respective grants of land are made. State ex rel. Interstate Stream Comm'n v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

Establishment of irrigation funds. — This section and Section 19-1-18 NMSA 1978 established the permanent reservoirs for irrigation purposes, permanent fund, and permanent reservoirs for irrigation purposes, income fund; subsequently, by Section 72-14-23 NMSA 1978, there was established the New Mexico irrigation works construction fund, to consist of the income creditable to the income fund above noted and such other moneys as may be appropriated thereto by the state legislature. State ex rel. Interstate Stream Comm'n v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

And use thereof. — Appropriations for constructing, improving, repairing and protecting from floods the dams, reservoirs, ditches, flumes and appurtenances of certain irrigation systems made to the New Mexico state engineer from the New Mexico irrigation works construction fund, which fund consisted solely of moneys from the permanent reservoirs for irrigation purposes income fund accruing from the trust lands set aside by congress under the Ferguson Act of June 21, 1898, 30 Stat. 484, are within the fundamental purpose and reasonable meaning of the trust grant "for the establishment of permanent water reservoirs for irrigation purposes." State ex rel. Interstate Stream Comm'n v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

Reimbursement of losses. — The state treasurer may reimburse from their income accounts, common school permanent fund's losses from uncollectible investments by issuing regular state vouchers for such purpose. 1937-38 Op. Att'y Gen. No. 38-1975.

Investment of funds. — Under former 7-1-18, 1953 Comp., requiring investment of certain permanent funds in safe, interest-bearing securities, with the written approval of the governor, secretary of state and attorney general, the state treasurer could invest permanent funds of the state penitentiary in purchasing certificates of indebtedness issued under Laws 1925, ch. 13, § 75, for expense of calling troops at general election. 1935-36 Op. Att'y Gen. No. 36-1474.

Bonds of the state. — Under former 7-1-18 and 7-1-19, 1953 Comp., requiring investment of certain permanent funds in safe, interest-bearing securities (to be bonds of New Mexico or its localities) revenue bonds of educational institutions were not bonds of the state under court decisions and the state treasurer could not for that reason legally invest permanent funds derived from public lands in such securities. 1945-46 Op. Att'y Gen. No. 46-4949.

Legislature may appropriate revenues from miners' hospital trust. — The state legislature may appropriate revenues from the trust established for the miners' hospital. 1989 Op. Att'y Gen. No. 89-30.

Budget increases from trust may not exceed amount appropriated. — The department of finance and administration may not approve budget increases from miners' hospital trust fund revenues in excess of the amount appropriated in the General Appropriation Act of 1988. 1989 Op. Att'y Gen. No. 89-30.

Budget increases. — The state budget division may deny a budget increase approved by the miners' hospital board of trustees, when the budget increase is intended to provide for the care of resident miners with occupation-related illnesses, if the increase would exceed the amount appropriated by the legislature and is not otherwise authorized by statute. 1989 Op. Att'y Gen. No. 89-30.

Restrictions on trust appropriations were limited to bill's fiscal period. — Restrictions on the appropriation of the miner's hospital trust fund revenues contained in the 1988 appropriations bill were consistent with the rule that legislative conditions on appropriations be limited to the fiscal period covered by the bill. 1989 Op. Att'y Gen. No. 89-30.

19-1-18. Sources of special funds.

The permanent funds created by Sections 19-1-17 through 19-1-20 NMSA 1978 shall consist of the proceeds of sales of lands belonging to and that may have been or may hereafter be granted to the state, not otherwise appropriated by the terms and conditions of the grant, interest on the permanent funds, income from investment of the permanent funds and such other money as may be specifically provided by law. The income and current funds created by Sections 19-1-17 through 19-1-20 NMSA 1978 shall consist of rentals, sale of products from lands and anything else other than money directly derived from sale of all state lands so granted, such other money as may be

specifically provided by law and miscellaneous income not provided for by Sections 19-1-17 through 19-1-20 NMSA 1978.

History: Laws 1917, ch. 115, § 2; C.S. 1929, § 132-191; 1941 Comp., § 8-116; 1953 Comp., § 7-1-17; Laws 1996, ch. 4, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1994, ch. 137, § 1 proposed to amend this section by adding a section heading, substituting "Sections 19-1-17 through 19-1-20 NMSA 1978" for "this act" and "money" for "moneys" throughout the section, substituting "lands belonging to and that" for "lands belonging thereto that" near the beginning of the section, inserting "interest on the permanent funds, income from investment of the permanent funds" near the middle of the section, and deleting "interest on permanent funds" following "from lands" and "the income derived from the investment of the permanent funds herein created" following "so granted" near the end of the section. Laws 1994, ch. 137, § 3 provided that the amendment to this section is effective on the later of the date the secretary of state certifies that Article 12 of the New Mexico Constitution has been amended as proposed by Laws 1994, H.J.R. No. 8, or the date the congress of the United States enacts amendments to the Enabling Act for New Mexico permitting the changes to the constitution. The constitutional amendment was submitted to the people at the general election held on November 8, 1994, but was defeated by a vote of 187,216 for and 192,492 against.

The 1996 amendment, effective upon certification by the secretary of state that the proposed amendments to art. 8, § 10 and art. 12, §§ 2, 4, and 7 of the New Mexico Constitution have passed and been ratified by the United States congress, rewrote the section. Those constitutional amendments, proposed by S.J.R. No. 2 (Laws 1996), were adopted at the general election held November 5, 1996, by a vote of 307,442 for and 153,021 against.

Establishment of irrigation funds. — By Section 19-1-17 NMSA 1978 and this section, there were established the permanent reservoirs for irrigation purposes, permanent fund, and permanent reservoirs for irrigation purposes, income fund; subsequently, by Section 72-14-23 NMSA 1978, there was established the New Mexico irrigation works construction fund, to consist of the income creditable to the income fund above noted and such other moneys as may be appropriated thereto by the state legislature. State ex rel. Interstate Stream Comm'n v. Reynolds, 71 N.M. 389, 378 P.2d 622 (1963).

Oil royalties as source of funds. — Oil royalties from lands granted to New Mexico by act of congress, June 21, 1898, 30 Stat. 484, known as the Ferguson Act and confirmed by the Enabling Act, form a part of the permanent funds of the university of New Mexico, and income derived therefrom can be used only for current income for that institution. Regents of Univ. of N.M. v. Graham, 33 N.M. 214, 264 P. 953 (1928).

19-1-19. Public buildings at capital, permanent fund; investment.

The state investment officer shall, in the same manner provided under Section 6-8-6 NMSA 1978 for other permanent funds, assume the investment responsibility for the "public buildings at capital, permanent fund" created by Section 19-1-17 NMSA 1978.

History: 1953 Comp., § 7-1-18.1, enacted by Laws 1966, ch. 4, § 1; Laws 1977, ch. 247, § 86.

ANNOTATIONS

Compiler's notes. — Laws 1977, ch. 247, § 97, compiled as 6-8-4 NMSA 1978, makes the director of the investment division of the department of finance and administration the state investment officer.

19-1-20. Transfers and distributions of funds for schools and institutions.

A. All income and current funds created by Section 19-1-17 NMSA 1978 for the common schools and various state institutions shall be transferred by the secretary of finance and administration, from time to time, to the credit of the schools and institutions to be used as provided by law for the support and maintenance of the schools and institutions.

B. The secretary of finance and administration shall make distributions from the land grant permanent funds enumerated in Section 19-1-17 NMSA 1978 in the amount authorized by and calculated pursuant to the provisions of Article 12, Section 7 of the constitution of New Mexico.

C. One-twelfth of the total amount authorized to be distributed in a fiscal year pursuant to Article 12, Section 7 of the constitution of New Mexico shall be distributed each month to the beneficiaries enumerated in Section 19-1-17 NMSA 1978. Each beneficiary shall receive that portion of the monthly distribution to which it is entitled pursuant to law.

History: Laws 1917, ch. 115, § 8; C.S. 1929, § 132-197; 1941 Comp., § 8-122; 1953 Comp., § 7-1-23; Laws 1977, ch. 247, § 87; 1996, ch. 4, § 2.

ANNOTATIONS

Compiler's notes. — Former § 7-1-18, 1953 Comp., relating to the investment of certain permanent funds, and former 7-1-21, 1953 Comp., authorizing the purchase of bonds at a premium but providing that the amount of the premium and all permanent losses be reimbursed from the respective income funds to the permanent funds involved, were repealed by Laws 1977, ch. 52, § 1. The schools and institutions enumerated in former 7-1-18, 1953 Comp., are the agricultural college (New Mexico

state university), normal school, Silver City (western New Mexico university), normal school, Las Vegas (New Mexico highlands university), Spanish-American school, El Rito (northern New Mexico state school), normal school, eastern (eastern New Mexico university), school of mines (New Mexico institute of mining and technology), military institute (New Mexico military institute), reform school (New Mexico boys school), miners' hospital, insane asylum (New Mexico state hospital), penitentiary, state charitable, penal and reformatory institutions, blind asylum (New Mexico school for the visually handicapped) and deaf and dumb asylum (New Mexico school for the deaf).

Laws 1994, ch. 137, § 2 proposed to amend this section by substituting "Transfers and distributions" for "Transfer" in the section heading, designating the existing provisions as Subsection A and rewriting Subsection A, and adding Subsections B and C relating to distributions from the fund. Laws 1994, ch. 137, § 3 provided that the amendment to this section is effective on the later of the date the secretary of state certifies that Article 12 of the New Mexico Constitution is amended as proposed by Laws 1994, H.J.R. No. 8, or the date the congress of the United States enacts amendments to the Enabling Act for New Mexico permitting the changes to the constitution. The constitutional amendment was submitted to the people at the general election held on November 8, 1994, but was defeated by a vote of 187,216 for and 192,492 against.

The 1996 amendment, effective upon certification by the secretary of state that the proposed amendments to art. 8, § 10 and art. 12, §§ 2, 4, and 7 of the New Mexico Constitution have passed and been ratified by the United States congress, designated the existing section as Subsection A and rewrote that subsection, and added Subsections B and C. Those constitutional amendments, proposed by S.J.R. No. 2 (Laws 1996), were adopted at the general election held November 5, 1996, by a vote of 307,442 for and 153,021 against.

Income funds appropriated. — The income funds from lands granted for the use of the institution are sufficiently appropriated under this section and may be used for current expenses of the institution in an amount and according to a budget approved by the state board of finance, within the available funds from rentals from the state lands of the institution. 1955-56 Op. Att'y Gen. No. 55-6093.

19-1-21. Copies of records; fees; use as evidence.

When requested to do so, the commissioner shall furnish copies of any records, plats, including but not limited to maps, tracings, graphs, recordings, tapes, machine printouts and other documents or instruments constituting records of the state land office, upon payment at a rate, not less than the actual cost, to be set by the commissioner by regulation. The commissioner shall charge one dollar fifty cents ($1.50) for certificate and seal which certifies any copy. Moneys so collected shall be credited to the state land maintenance fund. Any such certified copy shall be admitted as evidence in any court in the state with the same force and effect as the original.

History: Laws 1912, ch. 82, § 76; Code 1915, § 5254; C.S. 1929, § 132-188; 1941 Comp., § 8-123; 1953 Comp., § 7-1-24; Laws 1957, ch. 145, § 1; 1971, ch. 104, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Evidence: what are official records within purview of 28 USC § 1733, making such records admissible in evidence, 50 A.L.R.2d 1197.

Proof: Federal Civil Procedure Rule 44 and Federal Criminal Procedure Rule 27, relating to proof of official records, 70 A.L.R.2d 1227, 41 A.L.R. Fed. 871.

19-1-22. [Contracts for potash land exploration.]

The state land commissioner is hereby expressly authorized and directed to enter into such formal agreement and contract with the secretary of the interior and the secretary of the commerce jointly as such officers are authorized to enter into with said land commissioner under the terms and provisions of the act of the Sixty-ninth Congress, No. 759, H.R. 15827, entitled: "an act to amend Section 2 of an act entitled 'an act authorizing investigations by the secretary of the interior and the secretary of commerce jointly to determine the location, extent and mode of occurrence of potash deposits in the United States, and to conduct laboratory tests.' "

History: Laws 1931, ch. 3, § 2; 1941 Comp., § 8-124; 1953 Comp., § 7-1-25.

ANNOTATIONS

Compiler's notes. — The act of the sixty-ninth congress, referred to in this section, appeared as 30 U.S.C. § 4b.

19-1-23. [Rules and regulations for land office; posting changes.]

It shall be the duty of the commissioner of public lands to prescribe reasonable rules and regulations governing the conduct of all business of the office, and to post or publish the same for the information of the public, which rules and regulations shall not be in conflict with this or any other law now in force. Such rules and regulations shall not be changed by the commissioner except such change be posted in a conspicuous place in his office for a period of at least ten days.

History: Laws 1921, ch. 174, § 4; C.S. 1929, § 111-304; 1941 Comp., § 8-125; 1953 Comp., § 7-1-26.

ANNOTATIONS

Cross references. — For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

Application. — This section has general application and is to be followed in all cases unless a statute covers the particular situation, as with respect to rules and regulations pertaining to oil and gas leases in which case Laws 1929, ch. 125, § 13 (19-10-21 NMSA 1978) governs. 1945-46 Op. Att'y Gen. No. 45-4655.

19-1-24. [Publication of rules and regulations; distribution of copies.]

Within sixty (60) days after the effective date of this act, it shall be the duty of the commissioner of public lands to print all rules and regulations made by him and his predecessors in office in pursuance of law, which are in full force and effect at the time, and thereafter shall print each additional such rule or regulation when made, all in such form that the same may be conveniently preserved, and shall at all times keep on hand an adequate supply of copies thereof, and shall distribute the same to such persons as may apply therefor. The expense of such printing and distribution shall be paid as an expense of the state land office. No such rule or regulation shall be of any force or effect after the expiration of sixty (60) days from the effective date of this act, unless the same be so printed.

History: Laws 1937, ch. 42, § 3; 1941 Comp., § 8-126; 1953 Comp., § 7-1-27.

ANNOTATIONS

Cross references. — For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

ARTICLE 1A
Natural Resource Revenue Recovery

19-1A-1. Repealed.

ANNOTATIONS

Repeals. — Laws 2006, ch. 21, § 2 repealed 19-1A-1 NMSA 1978, as enacted by Laws 2003, ch. 42, § 1, relating to legislative findings, effective July 1, 2010. For provisions of former section, *see* the 2009 NMSA 1978 on *NMONESOURCE.COM.*

19-1A-2. Repealed.

ANNOTATIONS

Repeals. — Laws 2006, ch. 21, § 2 repealed 19-1A-2 NMSA 1978, as enacted by Laws 2003, ch. 42, § 2, relating to the natural resource revenue recovery task force, effective July 1, 2010. For provisions of former section, *see* the 2009 NMSA 1978 on *NMONESOURCE.COM.*

19-1A-3. Repealed.

ANNOTATIONS

Repeals. — Laws 2006, ch. 21, § 2 repealed 19-1A-3 NMSA 1978, as enacted by Laws 2003, ch. 42, § 3, relating to the termination date of the natural resource revenue recovery task force, effective July 1, 2010. For provisions of former section, *see* the 2009 NMSA 1978 on *NMONESOURCE.COM.*

ARTICLE 2
United States Lands

19-2-1. [Lands erroneously set apart to state; quitclaim to United States; selection of lands in lieu thereof.]

The commissioner of public lands is authorized to quitclaim to the United States the title to any lands set apart to the state, under grants from the United States through error of the department of the interior or local land office, and which have been patented to other persons or corporations or on which, because of erroneous descriptions, filings have been made, and to select other lands of the United States in lieu thereof.

History: Laws 1913, ch. 37, § 1; Code 1915, § 5261; C.S. 1929, § 132-202; 1941 Comp., § 8-201; 1953 Comp., § 7-2-1.

ANNOTATIONS

Authority to quitclaim. — The land commissioner has no authority to quitclaim to the United States unpatented land occupied by a settler. 1912-13 Op. Att'y Gen. No. 13-1078.

19-2-2. Jurisdiction; transfer procedure.

A. In order to acquire all, or any measure of, legislative jurisdiction of the kind involved in Article I, Section 8, Clause 17 of the constitution of the United States over any land or other area, or in order to relinquish such legislative jurisdiction, or any measure thereof, which may be vested in the United States, the United States, acting through a duly authorized department, agency or officer, shall file a notice of intention to acquire or relinquish such legislative jurisdiction, together with a sufficient number of duly authenticated copies thereof to meet the recording requirements of Subsection C of this section, with the governor. The notice shall contain a description adequate to permit accurate identification of the boundaries of the land or other area for which the change in jurisdictional status is sought and a precise statement of the measure of legislative jurisdiction sought to be transferred. Immediately upon receipt of the notice, the

governor shall furnish the attorney general with a copy of it and shall request his comments and recommendations.

B. The governor shall transmit the notice together with his comments and recommendations, if any, and the comments and recommendations of the attorney general, if any, to the next session of the legislature. Unless prior to the expiration of the legislative session to which the notice is transmitted the legislature has adopted a resolution approving the transfer of legislative jurisdiction as proposed in the notice, the transfer shall not be effective.

C. The governor shall cause a duly authenticated copy of the notice and resolution to be recorded in the office of the county clerk of the county where the land or other area affected by the transfer of jurisdiction is situated, and upon such recordation the transfer of jurisdiction shall take effect. If the land or other area is situated in more than one county, a duly authenticated copy of the notice and resolution shall be recorded in the county clerk's office of each such county.

D. The governor shall cause copies of all documents recorded pursuant to this act [19-2-2 to 19-2-4 NMSA 1978] to be filed with the state law library.

History: 1953 Comp., § 7-2-1.1, enacted by Laws 1963, ch. 262, § 1.

ANNOTATIONS

Compiler's notes. — Section 14-4-9 NMSA 1978 provides that whenever any law requires any agency to file a document with the law library, such shall be accomplished by filing as provided in the State Rules Act (Chapter 14, Article 4 NMSA 1978). Section 14-4-2 NMSA 1978 defines "agency" to include officers of state government, except those in the legislative or judicial branches.

Pursuant to Senate Joint Resolution 16 of the First Session of the 35th Legislature (1981), the state of New Mexico and the United States department of the interior have signed a concurrent resolution establishing concurrent legislative jurisdiction, between the United States and the state of New Mexico, over the following: Aztec ruins national monument, Bandelier national monument, Capulin mountain national monument, Carlsbad caverns national park, Chaco culture national historical park, El Morro national monument, Fort Union national monument, Gila cliff dwellings national monument, Salinas national monument, Pecos national monument, White Sands national monument, and the regional headquarters, southwest region.

Cession of concurrent legislative jurisdiction. — Senate Joint Resolution No. 21 of the First Session of the 41st Legislature (Laws 1993) grants approval to the cession of concurrent legislative jurisdiction to the United States in accordance with a like cession of concurrent legislative jurisdiction by the United States to the state of New Mexico for land now owned, controlled, leased or administered by the United States within the boundaries of El Malpais national monument and Pecos national historic park. Upon

modifications to the boundary of El Malpais national monument due to land exchanges with the pueblo of Acoma as authorized in public law 100-255, a letter to that effect with adequate legal desriptions will be provided to the governor to assure that concurrent jurisdiction is acquired by the United States.

Application of Children's Code to residents of federal enclave. — The state can exercise its jurisdiction and apply the provisions of the Children's Code (Chapter 32A NMSA 1978) to those who reside on a federal military enclave because, in those areas where the federal government has no laws or regulations, there is no interference by the state when it asserts jurisdiction; in such cases, there would be no need for the federal government to relinquish its jurisdiction as provided in this section. State ex rel. Children, Youth & Families Dep't v. Debbie F., 120 N.M. 665, 905 P.2d 205 (Ct. App.), cert. denied, 120 N.M. 533, 903 P.2d 844 (1995).

Definitions under former law. — "Sites" and "lands" as used in Laws 1912, ch. 47, § 1 (former 7-2-2, 1953 Comp.), providing for acquisition of land for federal purposes, had a synonymous meaning and embraced all lands acquired for the purposes enumerated. Arledge v. Mabry, 52 N.M. 303, 197 P.2d 884 (1948), distinguished in Smith v. State, 79 N.M. 450, 444 P.2d 961 (1968).

Consent statute. — Lands acquired by the United States with knowledge that they were being used for experimentation with fissionable materials constituted an arsenal within meaning of consent statute giving state's consent to federal acquisition of land for various purposes, including that of arsenal. Arledge v. Mabry, 52 N.M. 303, 197 P.2d 884 (1948), distinguished in Smith v. State, 79 N.M. 450, 444 P.2d 961 (1968).

And extent of consent thereunder. — In giving its consent to usage of lands for "custom-houses, courthouses, post offices, arsenals or other public buildings whatever, or for any other purposes of the government," the consent was not, under doctrine of ejusdem generis, limited to buildings of a nature similar to those specifically enumerated. Arledge v. Mabry, 52 N.M. 303, 197 P.2d 884 (1948), distinguished in Smith v. State, 79 N.M. 450, 444 P.2d 961 (1968).

Land not affected. — Former 7-2-3, 1953 Comp. (ceding exclusive jurisdiction over land acquired by the United States to the United States, except for service of process) did not affect the property ceded to the United States for Elephant Butte Dam. 1914 Op. Att'y Gen. Nos. 14-1309, 14-1325, 14-1330.

Apportioning funds to school district. — Under former 7-2-3, 1953 Comp., it was not illegal to apportion funds to the school district in which the Elephant Butte Dam is located, since the statute had no relation to such land. 1914 Op. Att'y Gen. No. 14-1306.

Residency. — Those residing on former public domain land may exercise the elective franchise in both state and federal elections, since the state retained jurisdiction over the area not inconsistent with federal use (opinion rendered under former election laws). 1964 Op. Att'y Gen. No. 64-123.

Those people residing on land obtained by the United States through the constitutional method may not establish their residency so as to become electors; those residing on lands obtained by purchase without obtaining the consent of the state are in a similar position (opinion rendered under former election laws). 1964 Op. Att'y Gen. No. 64-123.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 9.

19-2-3. Taxation; civil process; concurrent jurisdiction.

In no event shall any transfer of legislative jurisdiction between the United States and this state take effect, nor shall the governor transmit any notice proposing such a transfer under the applicable laws of the United States, unless:

A. this state shall have jurisdiction to tax private persons, private transactions and private property, real and personal, resident, occurring or situated within such land or other area to the same extent that this state has jurisdiction to tax such persons, transactions and property resident, occurring or situated generally within this state;

B. any civil or criminal process lawfully issued by competent authority of this state or any of its subdivisions, may be served and executed within such land or other area to the same extent and with the same effect as such process may be served and executed generally within this state; provided only that the service and execution of such process within land or other areas over which the federal government exercises jurisdiction shall be subject to such rules and regulations issued by authorized officers of the federal government, or of any department, independent establishment or agency thereof, as may be reasonably necessary to prevent interference with the carrying out of federal functions; and

C. this state shall exercise over such land or other area the same legislative jurisdiction which it exercises over land or other areas generally within this state, except that the United States shall not be required to forego such measure of exclusive legislative jurisdiction as may be vested in or retained by it over such land or other area pursuant to this act [19-2-2 to 19-2-4 NMSA 1978], and without prejudice to the right of the United States to assert and exercise such concurrent legislative jurisdiction as may be vested in or retained by it over such land or other area.

History: 1953 Comp., § 7-2-1.2, enacted by Laws 1963, ch. 262, § 2.

ANNOTATIONS

Cross references. — For state taxation, *see* Chapter 7 NMSA 1978.

For service of civil and criminal process, *see* Rules 1-004 and 5-103 NMRA, respectively.

Regulation of liquor traffic. — State of New Mexico never ceded its right to regulate or tax the liquor traffic within the state of New Mexico upon lands acquired by federal government for reclamation purposes. State v. Mimms, 43 N.M. 318, 92 P.2d 993 (1939), cert. denied, 308 U.S. 626, 60 S. Ct. 382, 84 L. Ed. 522, reh'g denied, 309 U.S. 694, 60 S. Ct. 512, 84 L. Ed. 1035 (1940), distinguished in Arledge v. Mabry, 52 N.M. 303, 197 P.2d 884 (1948) and Crownover v. Crownover, 58 N.M. 597, 274 P.2d 127 (1954) (decision under former law).

Liquor license tax. — Party under exclusive contract with federal bureau of reclamation authorizing him to sell beer and wine on land acquired for reclamation purposes by the federal government with consent of state had to pay state liquor license tax. State v. Mimms, 43 N.M. 318, 92 P.2d 993 (1939), cert. denied, 308 U.S. 626, 60 S. Ct. 382, 84 L. Ed. 522, rehearing denied, 309 U.S. 694, 60 S. Ct. 512, 84 L. Ed. 1035 (1940), distinguished in Arledge v. Mabry, 52 N.M. 303, 197 P.2d 884 (1948) and Crownover v. Crownover, 58 N.M. 597, 274 P.2d 127 (1954) (decision under former law).

Former taxation exemption. — Under 7-2-4, 1953 Comp., exempting lands ceded to the United States from state and local taxes, where land was ceded by the state to the United States without reservation, except for the service of process, none of the property of private corporations which invested funds in a construction thereon was subject to ad valorem taxation by state, county or municipal authorities. 1951-52 Op. Att'y Gen. No. 51-5463.

Tax on contractors. — The state may tax contractors who have entered into a cost-plus contract, which tax is eventually assumed by the United States government, so long as no federal area in which the United States government has exclusive jurisdiction is involved. 1951-52 Op. Att'y Gen. No. 51-5347.

Licensing exemptions. — Neither the Contractors' Licensing Act nor the State Plumbing Act could be enforced over any person or any matter over territory which is under the exclusive jurisdiction and control of the federal government. 1951-52 Op. Att'y Gen. Nos. 51-5348, 51-5340.

19-2-4. Application of act.

Nothing in this act [19-2-2 to 19-2-4 NMSA 1978] shall be construed to prevent or impair any transfer of legislative jurisdiction to this state occurring by operation of law.

Provided that the provisions of the preceding two sections [19-2-2, 19-2-3 NMSA 1978] shall be applicable to any change in the jurisdiction ceded under the provisions contained in Section 19-2-6 through 19-2-11 NMSA 1978.

History: 1953 Comp., § 7-2-1.3, enacted by Laws 1963, ch. 262, § 3.

19-2-5. New Mexico taxes apply in federal areas.

No person shall be relieved from liability for any tax levied by this state or by any duly constituted taxing authority of the state having jurisdiction to levy such a tax by reason of his residing within a federal area, having property within a federal area, engaging in business within a federal area or receiving income from transactions occurring or services performed in such area, with such taxes being applicable to all persons on federal areas to the extent permitted by acts of congress.

History: 1953 Comp., § 7-2-4.1, enacted by Laws 1957, ch. 224, § 1; 1983, ch. 35, § 1.

19-2-6. [Fort Bayard military reservation; jurisdiction ceded; limitation.]

Exclusive jurisdiction is ceded to the United States over all the territory now owned by the United States and comprised within the limits of the military reservation of Fort Bayard, in Grant county, as declared from time to time by the president of the United States, and over such lands as have been or may hereafter be acquired for the enlargement of said reservation; provided, however, that the state of New Mexico reserves the right to serve civil or criminal process within said reservation in suits or prosecutions for or on account of rights acquired, obligations incurred or crime committed in said state, but outside of such cession and reservation; and provided further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said reservation for military purposes.

History: Laws 1913, ch. 35, § 1; Code 1915, § 5565; C.S. 1929, § 146-104; 1941 Comp., § 8-205; 1953 Comp., § 7-2-5.

ANNOTATIONS

Cross references. — For taxation provisions, *see* Chapter 7 NMSA 1978.

For service of civil and criminal process, *see* Rules 1-004 and 5-103 NMRA, respectively.

Compiler's notes. — Fort Bayard military reservation was transferred to treasury department for uses of the public health service by secretary of war under date of June 11, 1920, by order of the president, pursuant to § 3 of act of congress approved March 23, 1919, 40 Stat. 1303, but subject to reoccupation by the war department in case of emergency.

Laws 1921, ch. 54, § 1, recalls and withdraws the exclusive jurisdiction ceded to the United States over all of the territory occupied by the Fort Bayard military reservation and reestablishes jurisdiction of New Mexico over the same until such period as the reservation shall again be used by the United States exclusively for military purposes.

Laws 1921, ch. 54, § 2 made the act effective immediately. Approved March 8, 1921.

State citizenship. — Men residing on Fort Bayard military reservation are not citizens of the state, nor entitled to vote at any elections in the state. 1915-16 Op. Att'y Gen. 40 (rendered under prior law).

Marriage licenses. — Although the military reservation of Fort Bayard was by this act ceded to the United States, the county would still have authority to issue marriage licenses to residents therein in the absence of congressional legislation. 1912-13 Op. Att'y Gen. No. 13-1094.

19-2-7. [Santa Fe national cemetery; jurisdiction ceded; limitation.]

That exclusive jurisdiction be, and the same is hereby ceded to the United States over the tract of land comprised within the cemetery known as the Santa Fe national cemetery, area about nine and one-half acres, in Santa Fe county; provided, however, that the state of New Mexico reserves the right to serve civil or criminal process within said cemetery reservation in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state but outside of said cemetery reservation.

History: Laws 1913, ch. 36, § 1; Code 1915, § 5566; C.S. 1929, § 146-105; 1941 Comp., § 8-206; 1953 Comp., § 7-2-6.

ANNOTATIONS

Cross references. — For service of civil and criminal process, *see* Rule 1-004 NMRA, and Rule 5-103 NMRA, respectively.

19-2-8. [Fort Wingate military reservation and Fort Bliss target range; jurisdiction ceded; limitation.]

That exclusive jurisdiction is hereby ceded to the United States over all the territory set apart from the public domain and comprised within the limits of the Fort Wingate military reservation, in McKinley county, and Fort Bliss target range, in Dona Ana county, and over such land as may hereafter be reserved from the public domain for the enlargement of said reservations; provided, however, that the state of New Mexico reserves the right to serve civil or criminal process within said reservations in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of such cession and reservations; and provided further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said reservations for military purposes.

History: Laws 1941, ch. 8, § 1; 1941 Comp., § 8-207; 1953 Comp., § 7-2-7.

ANNOTATIONS

Compiler's notes. — Under Laws 1966, ch. 38, the state of New Mexico accepted legislative jurisdiction of an easement for right-of-way for a portion of United States highway 54 in Otero county, held by the United States within the Fort Bliss antiaircraft range military reservation.

Cross references. — For service of civil and criminal process, *see* Rules 1-004 and 5-103 NMRA, respectively.

Licensing law exemptions. — Under former law, neither the Contractors' Licensing Act nor the State Plumbing Act could be enforced over any person or any matter over territory which was under the exclusive jurisdiction and control of the federal government. 1951-52 Op. Att'y Gen. No. 51-5340.

19-2-9. [Veterans' administration facility at Fort Bayard; jurisdiction ceded; limitation.]

Exclusive jurisdiction be, and the same is hereby ceded to the United States over all those lands now comprising the reservation of the veterans' administration facility at Fort Bayard, Grant county, New Mexico, described as follows:

southwest quarter (SW1/4) of section 25; southeast quarter (SE1/4) of section 26; northeast quarter (NE1/4) of section 35; northwest quarter (NW1/4) of section 36, all in township 17 south, range 13 west, New Mexico principal meridian;

provided, however, that the state of New Mexico reserves the right to serve civil or criminal process within said reservation in suits or prosecutions for or on account of rights acquired, obligations incurred or crime committed outside the said reservation; and, provided further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said lands.

History: 1941 Comp., § 8-208, enacted by Laws 1945, ch. 23, § 1; 1953 Comp., § 7-2-8.

ANNOTATIONS

Cross references. — For service of civil and criminal process, see Rules 1-004 and 5-103 NMRA, respectively.

19-2-10. Quarai and Abo state monuments; jurisdiction ceded; approval; limitations.

A. Upon receipt by the governor of a notice of intention to acquire legislative jurisdiction by the United States for the creation of a national monument, submission of the notice to the attorney general for his comments and recommendations, in accordance with Section 19-2-2 NMSA 1978, and approval of the plan for the national

monument by the director of the museum division, the cultural properties review committee and the state historic preservation officer, legislative jurisdiction is ceded to the United States over lands in Torrance county comprising the Quarai and the Abo state monuments. Jurisdiction is ceded subject to the limitations stipulated in Section 19-2-3 NMSA 1978. Jurisdiction is ceded only for the purpose of incorporating land within a national monument and shall revert to the state whenever all or part of such lands are not used for this purpose.

B. All transfers hereunder shall conform to the legal descriptions of the sites as established by the museum division of the office of cultural affairs.

History: 1953 Comp., § 7-2-8.1, enacted by Laws 1974, ch. 6, § 1; 1977, ch. 246, § 43; 1980, ch. 151, § 43.

19-2-11. [Holloman air force base; jurisdiction ceded; limitations.]

Exclusive jurisdiction is hereby ceded to the United States over the following described territory situated within the Holloman air force base and within Otero county, state of New Mexico, to wit:

sections 1, 3, 10, 11, 11 [sic], 12, 14, 15, the west half of the northwest quarter of section 23, and the east half of the northeast quarter of section 22 in township 17 south, range 8 east, New Mexico prime meridian.

Provided, however, that the state of New Mexico reserve [reserves] the right to serve civil or criminal process within the territory herein ceded in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of such ceded territory, and provided further that the jurisdiction ceded shall continue no longer than the United States shall own and hold said reservation for military purposes.

History: Laws 1953, ch. 63, § 1; 1953 Comp., § 7-2-9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For service of civil and criminal process, *see* Rules 1-004 and 5-103 NMRA, respectively.

Applicability of Children's Code. — The state can exercise its jurisdiction and apply the provisions of the Children's Code (Chapter 32A NMSA 1978) to those who reside on a federal military enclave because, in those areas where the federal government has no laws or regulations, there is no interference by the state when it asserts jurisdiction; in such cases, there would be no need for the federal government to relinquish its

jurisdiction as provided in Section 19-2-2 NMSA 1978. State ex rel. Children, Youth & Families Dep't v. Debbie F., 120 N.M. 665, 905 P.2d 205 (Ct. App.), cert denied, 120 N.M. 533, 903 P.2d 844 (1995).

19-2-12. [Exchange of lands with United States.]

That the commissioner of public lands of the state of New Mexico is hereby authorized to enter into agreements with the secretary of the interior of the United States for the exchange of any lands of the state of New Mexico over which the commissioner of public lands is given the control, care and disposition for lands of the United States of equal value and in making such exchange, the commissioner of public lands is authorized to convey to the United States such lands to be given in exchange and to accept on behalf of the state of New Mexico title to lands given by the United States in such exchange; provided, however, the commissioner of public lands in his discretion may reserve title, to all oil, gas and other minerals or as to any specific minerals, in and under and that may be produced from any lands conveyed to the United States in exchange for lands of the United States of equal value, and provided further, that if such state lands lie within 25 miles from the exterior boundaries of any existing military reservation or, if they are being acquired by the secretary of interior for the purpose of permitting them to be withdrawn for military purposes, then no such exchange shall be effected without the consent of owner or owners of any leases issued by the state of New Mexico covering said lands until the rights of all such lessees have been acquired by the United States through purchase or condemnation proceedings.

History: 1953 Comp., § 7-2-11, enacted by Laws 1957, ch. 74, § 1.

ARTICLE 3
Occupation of Public Lands

19-3-1. [Possessory rights of occupant; notice and record; abandonment.]

Any person who has taken or may hereafter take possession of any lands being a part of the public domain of the United States, either for agriculture or stock-raising, may make out a notice setting forth that he has taken possession of such land, giving a description of the same according to legal subdivisions, if known, if not, then the best description possible, which said land shall not exceed three hundred and twenty acres, which said notice shall be dated and acknowledged as conveyances of real estate, and may then be recorded in the record of conveyances in the county where the property is situate, after which it shall be a notice to all persons of the contents thereof. And the person so making and recording the same shall have the right to the possession of said lands described therein, as against every other person except the United States, and those holding or deriving title from the United States, and may maintain an action of ejectment or forcible entry and detainer for the same: provided, that if such person shall not occupy said lands for the period of six months at any one time, he shall be deemed

in law to have abandoned the same: and provided, further, that if such person shall fail to occupy said lands for one-half of the time in each year, counting from the date of recording said notice, he shall be deemed in law to have abandoned the same, but if he shall reenter upon the same before anyone else may take possession thereof, then he shall not be held to have abandoned the same.

History: Laws 1878, ch. 6, § 1; C.L. 1884, § 2579; C.L. 1897, § 3753; Code 1915, § 4642; C.S. 1929, § 111-115; 1941 Comp., § 8-301; 1953 Comp., § 7-3-1.

ANNOTATIONS

Cross references. — For location of mining claims, *see* 69-3-1 NMSA 1978 et seq.

Elements of adverse possession. — A person claiming ownership of a piece of land on the Albuquerque town grant, by means of the running of the statute of limitations, must have been in the actual, visible, exclusive, hostile and continued possession thereof for a period of 10 years. Johnston v. City of Albuquerque, 12 N.M. 20, 72 P. 9 (1903).

Recovery of possession. — Individual who had filed the possessory notice called for under this section, and was in the quiet and peaceable possession of the land in question at the time he was ousted, would be entitled to recover possession thereof, even though such land was unsurveyed government land which he had no right to retain or possess. Murrah v. Acrey, 19 N.M. 228, 142 P. 143 (1914).

Grazing cattle on federal public lands. — While this section and 19-3-13 NMSA 1978 purport to grant "possessory" interests in public domain lands that may be enforceable against non-federal claimants, no New Mexico statute grants (nor could it grant) a property interest in federal lands that may be enforced against the United States. Diamond Bar Cattle Co. v. U.S., 168 F.3d 1209 (10th Cir. 1999).

Contracts for disposal of territorial lands are valid after statehood. 1912-13 Op. Att'y Gen. No. 13-1124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands §§ 5, 7.

Constitutionality and construction of statutes relating to grazing and pasturing sheep or goats on public land, 70 A.L.R. 410.

73A C.J.S. Public Lands § 41.

19-3-2. [Copy of record as evidence.]

The original notice when recorded, the record thereof provided for in the previous section [19-3-1 NMSA 1978], and a duly certified copy of said record shall be received in evidence with the same effect as deeds of conveyances, their records and copies

thereof are now received under the laws of this state, in the trial of any action with reference to said lands contained in said notice or any part thereof.

History: Laws 1878, ch. 6, § 2; C.L. 1884, § 2580; C.L. 1897, § 3754; Code 1915, § 4643; C.S. 1929, § 111-116; 1941 Comp., § 8-302; 1953 Comp., § 7-3-2.

ANNOTATIONS

Cross references. — For evidential effect of photographed or microfilmed documents or records, *see* 14-1-6, 14-3-15 NMSA 1978.

For rules regarding introduction into evidence of writings, recordings and photographs, *see* Rules 11-1001 to 11-1008.

19-3-3. [Transfer of rights; consent of wife; exemption from sale under execution.]

The owner of what is known as a valid claim or improvement under the laws of this state, on public lands of the United States, shall be deemed in possession of a transferable interest therein, and any sale of such improvement shall be considered a sufficient consideration to support a promise: provided, that no such sale shall be valid to convey such improvement when made by the head of a family, unless the wife of the vendor, if any there be, shall give her consent thereto: and provided, also, that such land and the claim thereto shall be exempt from forced sale under execution.

History: Laws 1851-1852, p. 274; C.L. 1865, ch. 86 (2d), § 1; C.L. 1884, § 2571; C.L. 1897, § 3745; Code 1915, § 4634; C.S. 1929, § 111-107; 1941 Comp., § 8-303; 1953 Comp., § 7-3-3.

ANNOTATIONS

Cross references. — For joinder of spouses required for transfers of real property, *see* 40-3-13 to 40-3-16 NMSA 1978.

For provisions on homestead exemption, *see* 42-10-9 to 42-10-11 NMSA 1978.

For rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, *see* Rules 1-065.1, 2-801, and 3-801 NMRA, respectively.

For form for claim of exemptions on executions, *see* Rule 4-803 NMRA.

For form for order on claim of exemption and order to pay in execution proceedings, *see* Rule 4-804 NMRA.

For form for application for writ of garnishment and affidavit, *see* Rule 4-805 NMRA.

For form for notice of right to claim exemptions from execution, *see* Rule 4-808A NMRA.

For form for claim of exemption from garnishment, *see* Rule 4-809 NMRA.

Water right is not improvement on land. First State Bank v. McNew, 33 N.M. 414, 269 P. 56 (1928), overruled by Walker v. U.S., 2007-NMSC-038, 142. N.M. 45, 162 P.3d 882.

Removal of improvements. — This section does not attempt to give the owner of improvements upon public lands the right to remove the same, after such lands have passed into the possession of a bona fide entryman or purchaser from the government. Patterson v. Chaney, 24 N.M. 156, 173 P. 859 (1918), distinguished in McCool v. Ward, 53 N.M. 467, 211 P.2d 131 (1949).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Rights as between adverse claimants to improvements placed on public lands, 6 A.L.R. 95.

Betterment or Occupying Claimant Acts as available to plaintiff seeking affirmative relief, 137 A.L.R. 1078.

73A C.J.S. Public Lands § 41.

19-3-4. [Timber and articles reduced to possession; property right.]

Timber or other articles of value on the lands of the United States, reduced to possession by any person, shall be deemed the property of such person against all persons except the United States, or some person claiming under them.

History: Laws 1851-1852, p. 274; C.L. 1865, ch. 86 (2d), § 2; C.L. 1884, § 2572; C.L. 1897, § 3746; Code 1915, § 4635; C.S. 1929, § 111-108; 1941 Comp., § 8-304; 1953 Comp., § 7-3-4.

19-3-5. [Common pastures.]

All public lands, proper for pasturing horned cattle, sheep and horses, of any class whatever, are reserved for such purpose, and declared common pastures.

History: Laws 1861-1862, p. 274; C.L. 1865, ch. 86 (2d), § 4; C.L. 1884, § 2573; C.L. 1897, § 3747; Code 1915, § 4636; C.S. 1929, § 111-109; 1941 Comp., § 8-305; 1953 Comp., § 7-3-5.

ANNOTATIONS

Application. — This section does not apply to lands covered by indemnity on selections by the state. Makemson v. Dillon, 24 N.M. 302, 171 P. 673 (1918).

"Sheeping off" of lands. — Compiled Laws 1897, § 102 was a valid exercise of the police power to prevent "sheeping off" of lands near settlements, and sheep for breeding were within the statute which, however, was repealed by the general repealing clause of the 1915 Code after this action was brought. Although this section and Section 19-3-6 NMSA 1978 were enacted prior thereto, they did not affect C.L. 1897, § 102, even if in conflict with it. State v. Coppinger, 21 N.M. 435, 155 P. 732 (1916).

Law reviews. — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands §§ 22 to 30.

Constitutionality and construction of statutes relating to grazing and pasturing sheep or goats on public land, 70 A.L.R. 410.

73A C.J.S. Public Lands §§ 19 to 23.

19-3-6. [Use of common pasturage.]

Said lands shall not be used by any person as private property, but shall be held as public property for the use of any person, and common to all.

History: Laws 1861-1862, p. 274; C.L. 1865, ch. 86 (2d), § 5; C.L. 1884, § 2574; C.L. 1897, § 3748; Code 1915, § 4637; C.S. 1929, § 111-110; 1941 Comp., § 8-306; 1953 Comp., § 7-3-6.

ANNOTATIONS

Law reviews. — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

19-3-7. [Meadows in common pastures; enclosure for hay.]

All persons are prohibited from occupying any meadow situated upon the public lands, and known as public pasture ground, for the purpose of speculating with the hay thereon, to the great detriment of the entire community: provided, however, one hundred and sixty acres may be so occupied by enclosing the same with a secure fence, and not otherwise.

History: Laws 1865, ch. 16, § 1; C.L. 1884, § 2575; C.L. 1897, § 3749; Code 1915, § 4638; C.S. 1929, § 111-111; 1941 Comp., § 8-307; 1953 Comp., § 7-3-7.

19-3-8. [Exclusive occupation of meadow; penalty; civil damages.]

Should any person, contrary to the provisions of the preceding section [19-3-7 NMSA 1978], take possession of and appropriate to himself any such meadow with the object of selling the hay thereof, or to impede or prevent animals from grazing thereupon, or kill or otherwise injure such animals, the same shall be liable to punishment upon conviction in the district court, by fine of not more than one hundred and fifty [($150)] or not less than fifty dollars [($50.00)], provided, the party so offending shall be responsible in civil action to the party interested for all damages the latter may have suffered.

History: Laws 1865, ch. 16, § 2; C.L. 1884, § 2576; C.L. 1897, § 3750; Code 1915, § 4639; C.S. 1929, § 111-112; 1941 Comp., § 8-308; 1953 Comp., § 7-3-8.

19-3-9. [Proceedings before magistrate.]

The justice of the peace [magistrate] before whom complaint shall have been made for a violation of the two foregoing sections [19-3-7, 19-3-8 NMSA 1978], shall immediately enter upon the due investigation of the same, as by law required in the case of other offenses, and shall transmit his proceedings to the proper court.

History: Laws 1865, ch. 16, § 3; C.L. 1884, § 2577; C.L. 1897, § 3751; Code 1915, § 4640; C.S. 1929, § 111-113; 1941 Comp., § 8-309; 1953 Comp., § 7-3-9.

ANNOTATIONS

Compiler's notes. — The office of justice of the peace was abolished by 35-1-38 NMSA 1978, and all jurisdiction, powers and duties conferred by law on justices of the peace have been transferred to the magistrate court.

19-3-10. [Jurisdiction of magistrate and of district court.]

When the damages claimed shall not exceed one hundred dollars [($100)], judgment shall be rendered against the party as in a civil action the same as in other civil actions, but should they exceed one hundred dollars [($100)], then and in this case the party aggrieved shall apply in the district court for his justification and his rights.

History: Laws 1865, ch. 16, § 4; C.L. 1884, § 870; C.L. 1897, § 1295; Code 1915, § 4641; C.S. 1929, § 111-114; 1941 Comp., § 8-310; 1953 Comp., § 7-3-10.

ANNOTATIONS

Cross references. — For limits of magistrate's jurisdiction in civil matters, *see* 35-3-3 NMSA 1978.

Compiler's notes. — The office of justice of the peace was abolished by 35-1-38 NMSA 1978, and all jurisdiction, powers and duties conferred by law on justices of the peace have been transferred to the magistrate court.

19-3-11. [Unlawful enclosure of public lands.]

It shall not be legal for any person or persons, company or corporation, to construct and maintain inclosures [enclosures] upon land considered and held as public land in this state, nor to apply the same to private use, which may result in prejudice to the citizens thereto, unless the same be made and sustained in conformity with the provisions of the United States laws relative to government lands or the laws of this state.

History: Laws 1882, ch. 42, § 1; C.L. 1884, § 870; C.L. 1897, § 1295; Code 1915, § 4632; C.S. 1929, § 111-105; 1941 Comp., § 8-311; 1953 Comp., § 7-3-11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands § 36.

73A C.J.S. Public Lands § 7.

19-3-12. [Occupying or denying others use of public land; penalty.]

Any person who shall, contrary to the provisions of the preceding section [19-3-11 NMSA 1978], be found occupying, or trying to deprive others of the free use and pasturing upon the public land, under the pretext of a deed, upon conviction thereof before any court having jurisdiction in the matter, shall be fined in a sum of not less than ten dollars [($10.00)], and shall besides, be liable for the damages caused thereto.

History: Laws 1882, ch. 42, § 4; C.L. 1884, § 873; C.L. 1897, § 1298; Code 1915, § 4633; C.S. 1929, § 111-106; 1941 Comp., § 8-312; 1953 Comp., § 7-3-12.

ANNOTATIONS

Cross references. — For disposition of fines and forfeitures collected under general law, *see* N.M. Const., art. XII, § 4.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 18.

19-3-13. [Right to appropriate and stock range on public domain; conditions.]

Any person, company or corporation that may appropriate and stock a range upon the public domain of the United States, or otherwise, with cattle shall be deemed to be in possession thereof: provided, that such person, company or corporation shall lawfully possess or occupy, or be the lawful owner or possessor of sufficient living, permanent water upon such range for the proper maintenance of such cattle.

History: Laws 1889, ch. 61, § 1; C.L. 1897, § 127; Code 1915, § 4628; C.S. 1929, § 111-101; 1941 Comp., § 8-313; 1953 Comp., § 7-3-13.

ANNOTATIONS

Effect of water rights. — New Mexico does not recognize a limited livestock forage right implicit in a vested water right or a limited livestock forage right implicit in a right-of-way for the maintenance and enjoyment of a vested water right. Walker v. United States, 2007-NMSC-038, 142 N.M. 45, 162 P.3d 882.

Implied license to graze. — There is an implied license on the part of the government to all of the people to graze their animals upon the public domain without compensation. Yates v. White, 30 N.M. 420, 235 P. 437 (1925); Hill v. Winkler, 21 N.M. 5, 151 P. 1014 (1915), explained in Vanderford v. Wagner, 24 N.M. 467, 174 P. 426 (1918), distinguished in Johnson v. Hickel, 28 N.M. 349, 212 P. 338 (1923).

Grazing on unenclosed land not enjoinable. — Since attempt on the part of the legislature to grant the exclusive right or occupancy upon part of a public domain would be clearly within the prohibition of the act of congress of February 25, 1885, and invalid, defendant cannot be restrained by injunction from permitting his animals to graze on unenclosed lands of plaintiff. Yates v. White, 30 N.M. 420, 235 P. 437 (1925); Hill v. Winkler, 21 N.M. 5, 151 P. 1014 (1915), explained in Vanderford v. Wagner, 24 N.M. 467, 174 P. 426 (1918), distinguished in Johnson v. Hickel, 28 N.M. 349, 212 P. 338 (1923).

Removal contract void. — Contract to remove one's animals from an illegal enclosure upon the public domain, and to keep them out, is void. Yates v. White, 30 N.M. 420, 235 P. 437 (1925).

Grazing cattle on federal public lands. — While 19-3-1 NMSA 1978 and this section purport to grant "possessory" interests in public domain lands that may be enforceable against non-federal claimants, no New Mexico statute grants (nor could it grant) a property interest in federal lands that may be enforced against the United States. Diamond Bar Cattle Co. v. United States, 168 F.3d 1209 (10th Cir. 1999).

Possessory rights. — One having appropriated and stocked range with cattle, and being the owner of permanent water for use upon said range for maintenance of cattle thereon, has possessory rights in said public lands, which he has the right to protect. First State Bank v. McNew, 33 N.M. 414, 269 P. 56 (1928), overruled by Walker v. U.S., 2007-NMSC-038, 142. N.M. 45, 162 P.3d 882..

Effect of water rights. — One who owns all of the waters on his range has the right to the exclusive enjoyment of the license to graze these lands as against all others who did not develop other waters upon the same. Yates v. White, 30 N.M. 420, 235 P. 437 (1925); Hill v. Winkler, 21 N.M. 5, 151 P. 1014 (1915), explained in Vanderford v.

Wagner, 24 N.M. 467, 174 P. 426 (1918), distinguished in Johnson v. Hickel, 28 N.M. 349, 212 P. 338 (1923).

Law reviews. — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands §§ 22 to 36.

Trespassing or intruding livestock, liability for personal injury or death caused by, 49 A.L.R.4th 710.

73A C.J.S. Public Lands §§ 19 to 23.

19-3-14. [Second or subsequent use of range; conditions.]

Whenever any person, company or corporation turns loose on any range in this state, already occupied or in the possession of another or others by virtue of their having complied with the provisions of the preceding section [19-3-13 NMSA 1978], he or they must be the owner or owners of, or must be lawfully entitled to the possession of some other living, permanent water upon such range, sufficient for the proper maintenance of all such additional cattle so turned loose, other than that owned by or lawfully possessed, or lawfully in the possession of any other person, company or corporation that may have previously appropriated, stocked or taken possession of such range in accordance with the provisions of this and the preceding section; and such person, company or corporation so turning loose cattle upon such range must at all times, furnish, supply and maintain upon such range such other permanent living water free and unfenced and upon the surface of the ground.

History: Laws 1889, ch. 61, § 2; C.L. 1897, § 128; Code 1915, § 4629; C.S. 1929, § 111-102; 1941 Comp., § 8-314; 1953 Comp., § 7-3-14.

ANNOTATIONS

Law reviews. — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

19-3-15. [Use of public land for range without owning water right; penalty.]

Any person, company or corporation violating the provisions of the preceding section [19-3-14 NMSA 1978] shall be guilty of a misdemeanor and punishable by imprisonment in the county jail of the county wherein the offense was committed, for a period not to exceed six months, or by a fine of not less than one hundred dollars [($100)] nor more than one thousand dollars [($1,000)], and such person, company or corporation violating such provisions as aforesaid shall further be liable to any party or parties

injured for all damages which such party or parties may sustain; the same to be recoverable by a civil suit. All fines and costs so assessed and all damages which may at any time be awarded shall be and constitute a lien upon such herd of cattle.

History: Laws 1889, ch. 61, § 3; C.L. 1897, § 129; Code 1915, § 4630; C.S. 1929, § 111-103; 1941 Comp., § 8-315; 1953 Comp., § 7-3-15.

ANNOTATIONS

Grant of exclusive right invalid. — Any attempt on the part of the legislature to grant the exclusive right or occupancy upon part of a public domain would be clearly within the prohibition of the act of congress of February 25, 1885, and invalid, for defendant cannot be restrained by injunction from permitting his animals to graze on unenclosed lands of plaintiff. Yates v. White, 30 N.M. 420, 235 P. 437 (1925); Hill v. Winkler, 21 N.M. 5, 151 P. 1014 (1915), explained in Vanderford v. Wagner, 24 N.M. 467, 174 P. 426 (1918), distinguished in Johnson v. Hickel, 28 N.M. 349, 212 P. 338 (1923).

19-3-16. [Each day's violation a separate offense.]

Each day's violation of the provisions of the first two sections [19-3-13, 19-3-14 NMSA 1978] of this chapter shall be and constitute a separate cause of action against any person, company or corporation violating the same.

History: Laws 1889, ch. 61, § 4; C.L. 1897, § 130; Code 1915, § 4631; C.S. 1929, § 111-104; 1941 Comp., § 8-316; 1953 Comp., § 7-3-16.

ARTICLE 4
Townsites

19-4-1. [Patents of townsites to be recorded.]

It shall be the duty of any person who receives a patent from the government of the United States for a townsite in the state of New Mexico, to at once file such patent for record with the county clerk of the county wherein such townsite is situated.

History: Laws 1909, ch. 50, § 1; Code 1915, § 5513; C.S. 1929, § 144-101; 1941 Comp., § 8-501; 1953 Comp., § 7-5-1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 52.

19-4-2. [Failure to record townsite patent; penalty.]

Any person or persons failing to file for record the patent they have received for a townsite in the state of New Mexico, shall, upon conviction, before any court of competent jurisdiction, be imprisoned in the county jail for a period of not less than one year, and be fined in a sum of not less than five hundred dollars [($500)], together with the costs of the prosecution.

History: Laws 1909, ch. 50, § 2; Code 1915, § 5514; C.S. 1929, § 144-102; 1941 Comp., § 8-502; 1953 Comp., § 7-5-2.

19-4-3. [Prosecutions for failure to record; duty of district attorneys.]

It is hereby made the duty of the several district attorneys in the state of New Mexico to prosecute all violators of the preceding section [19-4-2 NMSA 1978].

History: Laws 1909, ch. 50, § 3; Code 1915, § 5515; C.S. 1929, § 144-103; 1941 Comp., § 8-503; 1953 Comp., § 7-5-3.

ANNOTATIONS

Cross references. — For provision on duties of district attorney, *see* 36-1-18 NMSA 1978.

19-4-4. [Title to townsite vested in probate judge in trust; suit to determine rights; execution of deeds.]

Any land embraced in any townsite which has been entered as provided by the laws of the United States and the title of which is vested in the probate judge, in trust for the use and benefit of the several occupants of the land embraced within the said townsite, which has not been conveyed to the occupants, their heirs, executors, successors or assigns, who were entitled to the same at the time the entry of such land was made, or at the time patent was received from the United States, by reason of the failure of said probate judge to give notice of such entry, or the receiving of said patent, or by reason of such occupants, their heirs, executors, successors and assigns failing to make the statement and filing the same as required by law, then in such case any such occupant, or the heirs, executors, successors or assigns of any such occupant, may file a suit in the district court in the county wherein such land is situated, to have his or its interest in the said land, at the time of such entry, or the receiving of such patent, or the successor in title to the right of such occupant, declared and ascertained. The probate judge shall be made a party defendant and the said district court, upon a hearing, shall adjudicate and determine the interest of such occupant at the time of such entry, or the receiving of such patent, or the interest of the heirs, executors, successors and assigns of such occupant, and entering a decree declaring the interest of such occupant. Upon the entering by the said district court of the decree declaring the interest of such occupant, or his or its successors in title, the probate judge of the county shall immediately

thereafter make, execute and deliver to the parties so declared to be entitled to any part of the land embraced within the said townsite, a deed for his or its respective interest.

History: Laws 1912, ch. 12, § 1; Code 1915, § 5516; C.S. 1929, § 144-104; 1941 Comp., § 8-504; 1953 Comp., § 7-5-4.

ANNOTATIONS

Entry pursuant to law essential. — Probate judge takes no title to townsite land until entry is made pursuant to law. Dugan v. Montoya, 24 N.M. 102, 173 P. 118 (1918).

Requisites of complaint. — In action under this section and Section 19-4-10 NMSA 1978, the complaint must show that plaintiff complied with the law as to filing and notice; and when the complaint shows legal title in one of the defendants, the plaintiff is barred from maintaining the suit. Kemp Lumber Co. v. Whitlatch, 21 N.M. 88, 153 P. 1050 (1915), criticized in Alvarez v. Board of Trustees, 62 N.M. 319, 309 P.2d 989 (1957).

Section cannot be circumvented by improper conveyances by probate judge. Alvarez v. Board of Trustees, 62 N.M. 319, 309 P.2d 989 (1957).

Remedy not foreclosed. — Action of Catholic bishop on behalf of church, occupant of land granted to probate judge in 1925 to be held in trust for the occupant, in seeking to have the land conveyed to him by townsite's board of trustees, operated neither as an election of remedies nor an estoppel in pais, nor did his act in defending the action brought to have the deed set aside have such an effect; the only remedy available to him was that provided in this section, which he pursued in his first affirmative judicial act of seeking a conveyance from the probate judge. Alvarez v. Bd. of Trustees, 62 N.M. 319, 309 P.2d 989 (1957).

Repeal of conflicting provisions. — Two provisions of Section 19-4-10 NMSA 1978 are repugnant to and irreconcilable with this section and were therefore repealed thereby, namely, the absolute bar in Section 19-4-10 NMSA 1978 to an occupant who failed to file a claim within the specified time limit and the provision of Section 19-4-10 NMSA 1978 that upon failure to file a claim the property reverted to the town, since if failure to file resulted in property reverting to the town, title would no longer be in the probate judge and this section could never be utilized. Alvarez v. Bd. of Trustees, 62 N.M. 319, 309 P.2d 989 (1957).

19-4-5. [Notice of suit; intervention.]

Such suit may be brought by any one or more of such occupants, or their heirs, executors, successors or assigns. Notice of such suit shall be by publication in the same manner that notice of the pendency of other civil suits by publication is made. Any party interested in the land embraced within the said townsite shall have the right to enter his appearance in said suit and to have his interest in the said land embraced in the said townsite adjudicated and determined.

History: Laws 1912, ch. 12, § 2; Code 1915, § 5517; C.S. 1929, § 144-105; 1941 Comp., § 8-505; 1953 Comp., § 7-5-5.

ANNOTATIONS

Cross references. — For publication of notice, *see* 14-11-1 to 14-11-13 NMSA 1978.

For rule on service of process by publication, *see* Rule 1-004 NMRA.

For rule on intervention in civil suit, *see* Rule 1-024 NMRA.

19-4-6. [Vacating all or part of townsite.]

When any tract of land may be filed upon, platted and recorded as a townsite in accordance with the provisions of an act of congress or law of New Mexico, and no town or organization under the laws of New Mexico shall have been perfected by the inhabitants residing thereon, or the owners thereof, the same may be vacated by consent of all such inhabitants or owners and disposed of as the said inhabitants or owners shall agree: provided, that a statement, signed and certified to by a majority of said inhabitants or owners, setting forth the fact of the vacation of such townsite, be filed with the clerk of the county in which the same shall be situated. When any tract of land has been recorded as a townsite, or has been annexed as an addition to a townsite, any part or portion thereof may be vacated upon the written consent of all the owners of that part or portion which it is proposed to vacate: provided, that no expenditures of money have been theretofore made or incurred by said town for the improvement or benefit of said part or portion, and that the same is bounded in same [whole] or in part by exterior town lines, and that when so vacated a statement, subscribed by such owners, setting forth the facts of such vacation, together with an accurate description, map and plat of such part vacated shall be filed in the office of the county clerk of the county in which such town is situated.

History: Laws 1884, ch. 39, § 98; C.L. 1884, § 1706; C.L. 1897, § 3977; Code 1915, § 5518; C.S. 1929, § 144-106; 1941 Comp., § 8-506; 1953 Comp., § 7-5-6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands §§ 52 to 55.

19-4-7. [Disposal of lots after entry.]

When the corporate authorities of any town, or the probate judge of the county for any county in this state, in which any town may be situated, shall have entered, at the proper land office, the land, or any part of the land, settled and occupied as the site of

such town, pursuant to and by virtue of the provisions of the act of congress entitled, "An act for the relief of citizens of towns upon lands of the United States under certain circumstances," passed May 23, 1844, and any amendments that may be made thereto, it shall be the duty of the corporate authorities or probate judge, as the case may be, and they are hereby directed and required to dispose of and convey the title to such land, or to the several blocks, lots, parcels or shares thereof, to the persons hereinafter in this chapter described, and in the manner hereinafter specified, and apply the proceeds of the sale thereof under the following regulations.

History: Laws 1882, ch. 70, § 1; C.L. 1884, § 2775; C.L. 1897, § 3978; Code 1915, § 5519; C.S. 1929, § 144-107; 1941 Comp., § 8-507; 1953 Comp., § 7-5-7.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

The Townsite Act of May 23, 1844 (5 Stat. 657), referred to in this section, is not compiled in the United States Code.

Cross references. — For sale of common lands within community land grants, *see* 49-1-11 NMSA 1978.

Nature of railroad right-of-way. — A railroad company, by complying with the act of congress, giving it a right to lands for right-of-way and station purposes, takes a limited fee therein, to which no other person can acquire any right or title, either by adverse possession or by grant from the company itself; hence, a claimant of lots in a townsite which embraces a part of such right-of-way and station grounds is not entitled to a deed from the probate judge including any portion thereof. Dugan v. Montoya, 24 N.M. 102, 173 P. 118 (1918).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 54.

19-4-8. [Conveyances to persons entitled to possession or occupancy.]

Such corporate authorities or probate judge, holding the title of such lands in trust, as declared in the said act of congress, his or their successors shall, by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share or parcel of the same to the person or persons who shall have possession, or be entitled to the possession or occupancy thereof, according to his, her or their several and respective rights or interest in the same, as they existed in law or equity at the time of the entry of such lands, or to his, her or their heirs and assigns. Every such deed to be made by such corporate authorities, or by such probate judge, shall be so executed and acknowledged as to admit the same to be recorded.

History: Laws 1882, ch. 70, § 2; C.L. 1884, § 2776; C.L. 1897, § 3979; Code 1915, § 5520; C.S. 1929, § 144-108; 1941 Comp., § 8-508; 1953 Comp., § 7-5-8.

ANNOTATIONS

Compiler's notes. — The act of congress referred to in this section is the Townsite Act of 1844 (5 Stat. 657), which act is not compiled in the United States Code.

Disposition of lands. — Under this section, 19-4-9 and 19-4-10 NMSA 1978, the townsite lands must be disposed of for the use and benefit of the occupants who are in actual, bona fide possession, and they are entitled to their deeds on payment of their proportion of the expenses. City of Socorro v. Cook, 24 N.M. 202, 173 P. 682 (1918); Gill v. Wallis, 11 N.M. 481, 70 P. 575 (1902).

19-4-9. [Notice of entry; posting and publication.]

Within thirty days after the entry of such lands, the corporate authorities or probate judge entering the same, shall give public notice of such entry, by posting notice thereof in at least three public places within such town and by publishing such notice in a newspaper published in the county in which such town shall be situated. In case there shall not be any newspaper published in such county, then in some newspaper published nearest to such town in this state. Such notice shall be published once in each week for at least three successive weeks, and shall contain an accurate description of the lands so entered, as the same is stated in the certificate of entry, or duplicate receipt for the purchase money thereof, given by the land officers at the time of such entry. In case of entry of such lands by corporate authorities, the mayor or president shall give such notice in behalf of the town, in his official capacity.

History: Laws 1882, ch. 70, § 3; C.L. 1884, § 2777; C.L. 1897, § 3980; Code 1915, § 5521; C.S. 1929, § 144-109; 1941 Comp., § 8-509; 1953 Comp., § 7-5-9.

19-4-10. [Claim for lots; time limit; unclaimed lots revert to town.]

Each and every person or association or company of persons claiming to be an occupant or occupants, or to have possession, or to be entitled to the occupancy or possession of such lands, or to any lot, block, share or parcel thereof, shall, within sixty days after the first publication of such notice, in person, or by his, her or their, duly authorized agent or attorney, sign a statement in writing, containing an accurate description of the particular parcel or parts of lands, in which he, she or they, claim to have an interest, and the specific right, interest or estate therein which he, she or they, claim to be entitled to, [and shall] receive and deliver the same to, or into, the office of such corporate authorities, or probate judge, and all persons failing to sign and deliver such statement within the time specified in this section shall be forever barred the right of claiming or recovering such lands, or any interest or estate therein, or any part, §1 parcel or share thereof, in any court of law or equity. In case any lots in such town

remain unclaimed and unconveyed at the end of said sixty days, all such lots shall revert to and become the property of such town.

History: Laws 1882, ch. 70, § 4; C.L. 1884, § 2778; C.L. 1897, § 3981; Code 1915, § 5522; C.S. 1929, § 144-110; 1941 Comp., § 8-510; 1953 Comp., § 7-5-10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Provisions repealed. — Two provisions of this section are repugnant to and irreconcilable with Section 19-4-4 NMSA 1978 and were therefore repealed by the latter section, namely, the absolute bar to an occupant who failed to file a claim within the specified time limit and the provision that upon failure to file a claim the property reverted to the town, since if failure to file resulted in the property reverting to the town, the title would no longer be in the probate judge and Section 19-4-4 NMSA 1978 could never be utilized. Alvarez v. Bd. of Trustees, 62 N.M. 319, 309 P.2d 989 (1957).

19-4-11. [Notice of meeting to elect trustees; qualifications; duties.]

Within ten days after the time, as prescribed in the preceding section [19-4-10 NMSA 1978], the corporate authorities, or, if there be no corporate authorities, the probate judge holding the land in trust, shall give ten days' notice of the time and place wherein a public meeting of the inhabitants of such town will be held, at which public meeting a board of five trustees shall be elected by a majority of the votes of the legally qualified voters residing within said town, present at said meeting. Said board of five trustees shall consist of legally qualified voters, being owners of real estate in said town: provided, further, that after said election has been duly certified to by the chairman and secretary of the public meeting so held, they are, and are hereby authorized to dispose of all said lots, blocks or parcels, of said land, as described in the preceding section, as may seem best for the use of the school funds of said inhabitants of such town, as hereinafter provided in this chapter.

History: Laws 1882, ch. 70, § 5; C.L. 1884, § 2779; C.L. 1897, § 3982; Code 1915, § 5523; C.S. 1929, § 144-111; 1941 Comp., § 8-511; 1953 Comp., § 7-5-11.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

19-4-12. [Term of office of trustees.]

The board of trustees, when elected, shall hold the office for the period of one year, and until their successors shall be duly elected and qualified under the laws of this state.

History: Laws 1882, ch. 70, § 6; C.L. 1884, § 2780; C.L. 1897, § 3983; Code 1915, § 5524; C.S. 1929, § 144-112; 1941 Comp., § 8-512; 1953 Comp., § 7-5-12.

19-4-13. [Board of appraisers; appointment; oath; refusal to act; new board.]

The board of trustees of any such town shall appoint, by order, resolution or ordinance, a board of appraisers, to consist of three freeholders of any such town, who shall have no interest in such unclaimed or unconveyed lots, or parcels of land, or the improvements thereon. Each of said appraisers shall take an oath to faithfully discharge his duties as such appraiser, and shall file such oath in the office of the clerk of said board before commencing his duties as such appraiser. In case such appraisers should fail or neglect to make the appraisement hereinafter specified in this chapter [19-4-14 NMSA 1978], and file the same with the clerk of said board, for a period of more than ten days after their appointment, then said board may appoint a new board of appraisers for the purposes herein provided. It shall be the duty of such board to appoint such appraisers within thirty days after the time has expired for persons to present claims for lots in such towns.

History: Laws 1882, ch. 70, § 7; C.L. 1884, § 2781; C.L. 1897, § 3984; Code 1915, § 5525; C.S. 1929, § 144-113; 1941 Comp., § 8-513; 1953 Comp., § 7-5-13.

19-4-14. [Appraisement; contents; valuations.]

Said appraisers shall appraise all lots or parcels of land, unclaimed or not, conveyed by virtue of any law, in such town, at their just and full cash value, and file their written appraisement, as aforesaid. Said appraisement shall contain a description of each lot or parcel of land so appraised, and a statement of the cash value of each lot and parcel of land so appraised. Said appraisers shall make a separate statement of the value of such lots and parcels of land without improvements, and the aggregate value of both; there shall be attached to such appraisement a written affidavit of said appraisers, verifying each statement of such appraisement, and alleging that each of said lots and parcels of land is appraised at its just and full value. The appraisement shall be required only in cases where the time has expired by prior laws for claimants to file their statements.

History: Laws 1882, ch. 70, § 8; C.L. 1884, § 2782; C.L. 1897, § 3985; Code 1915, § 5526; C.S. 1929, § 144-114; 1941 Comp., § 8-514; 1953 Comp., § 7-5-14.

19-4-15. [Notice of sale; publication; contents.]

The mayor, or president, or probate judge, as the case may be, shall, upon the filing of such appraisement, give notice, signed in his official capacity, of the time and place of sale of said lots and parcels of land, by advertisement, published once a week for three successive weeks in some newspaper published in the county where such town is situated, or if no newspaper is published in said county, then in the paper published nearest such town. Such sale shall be advertised to be made at some public place in said town, and to be sold at some specified time between the hours of sunrise and sunset.

History: Laws 1882, ch. 70, § 9; C.L. 1884, § 2783; C.L. 1897, § 3986; Code 1915, § 5527; C.S. 1929, § 144-115; 1941 Comp., § 8-515; 1953 Comp., § 7-5-15.

19-4-16. [Conduct of sales.]

Such lots or parcels of land shall be sold at public vendue to the highest bidder for cash and shall be offered for sale singly unless a greater price can be obtained by selling several lots or parcels of land together, in which case several lots or parcels of land can be sold together, after an attempt has been first made to sell them singly. Such sale may be continued if necessary, from day to day for a period not to exceed three days at any one sale. In case all said lands are not sold at first sale, the remaining lands shall be advertised as many times as may be necessary to sell said lands, and all sales subsequent to the first sale shall be advertised and conducted the same as the first sale. No lot or parcel of land shall be sold at less than its appraised value. A new appraisement may be had of all lands remaining unsold: provided, that such new appraisement shall not be made oftener than three months. Such new appraisement shall be made by a new board of appraisers, or the old board of appraisers, to be appointed in the manner of the first board of appraisers.

History: Laws 1882, ch. 70, § 10; C.L. 1884, § 2784; C.L. 1897, § 3987; Code 1915, § 5528; C.S. 1929, § 144-116; 1941 Comp., § 8-516; 1953 Comp., § 7-5-16.

19-4-17. [Conveyance of streets, parks and commons by probate judge.]

If the title to any such land shall be vested in any probate judge, such probate judge shall convey to any such town, the land used or laid out by the town authorities, or otherwise, as streets, lanes, avenues, parks, commons and public grounds, within such time as provided in this chapter, for making conveyances to individuals, and in the same manner, and the mayor, president or probate judge, may make such statements in behalf of the town, showing the right of such town to such lands.

History: Laws 1882, ch. 70, § 11; C.L. 1884, § 2785; C.L. 1897, § 3988; Code 1915, § 5529; C.S. 1929, § 144-117; 1941 Comp., § 8-517; 1953 Comp., § 7-5-17.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

19-4-18. [Purchase at private sale by person in possession.]

In all cases, when subsequent to the time provided by law for persons to claim lots on such townsites, and prior to the taking effect of this law, any person may have entered thereon and improved any lots belonging to such town, such person, after the report of such board of appraisers, and prior to the public sale, may purchase any such lots from the said trustees or commissioners at private sale, for cash, at the appraised value of such lots, exclusive of improvements, unless there shall be adverse claimants to any such lots, in which case the respective rights of such claimants shall be determined, as hereinafter provided in this chapter.

History: Laws 1882, ch. 70, § 12; C.L. 1884, § 2786; C.L. 1897, § 3989; Code 1915, § 5530; C.S. 1929, § 144-118; 1941 Comp., § 8-518; 1953 Comp., § 7-5-18.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

19-4-19. [Reservation for park or public purpose.]

The corporate authorities of any town or board of trustees, may set apart and reserve any of said lots or blocks, not to exceed four blocks in all, nor situated in more than eight different blocks in any one town, for the public use of said town, for a town park, or other purposes, for the benefit of the public, in lieu of offering them for sale, and shall execute to such town a deed for said lots so reserved.

History: Laws 1882, ch. 70, § 13; C.L. 1884, § 2787; C.L. 1897, § 3990; Code 1915, § 5531; C.S. 1929, § 144-119; 1941 Comp., § 8-519; 1953 Comp., § 7-5-19.

19-4-20. Disposition of proceeds.

The proceeds received from the sale shall be disposed of as follows:

A. first, to pay the expenses of the sale;

B. second, to discharge any outstanding claims incurred in entering the townsite of the town; and

C. third, the surplus, if any, shall be retained by the town trustees to be used for making improvements within the townsite for public purposes.

History: Laws 1882, ch. 70, § 14; C.L. 1884, § 2788; Laws 1891, ch. 29, § 1; C.L. 1897, § 3991; Code 1915, § 5532; C.S. 1929, § 144-120; 1941 Comp., § 8-520; 1953 Comp., § 7-5-20; Laws 1967, ch. 279, § 1.

19-4-21. [Adverse claims; litigation.]

In case there shall be adverse claimants to such lands, or to any part, parcel or share thereof, either party may bring a suit against the adverse claimant or claimants, in the district court of the judicial district, or in any court of competent jurisdiction in the county in which the lands shall be situated, or in any county to which the county in which such lands shall be situated is attached for judicial purposes: provided, always, that no judge of the district court, or county judge, who has been an adverse claimant, directly or indirectly, of any portion of the lands embraced within such towns, or who is a party to any action brought to determine a right to a conveyance of any portion of the lands within such town, shall entertain, hear or determine any such claims, by or between any parties whomsoever; but in all such cases, if the cause shall be pending in a district court, the judge thereof shall order all papers, with a transcript of the record in the cause, to be transmitted to another judicial district, as in cases of changes of venue, and if the cause shall be pending in a county court, the judge thereof shall order all papers, with a transcript of the record, to be transmitted to the district court of said county, and the cause shall proceed in the courts to which the same is removed as if originally instituted in that court: provided, also, that the laws applicable to a change of venue, shall apply to such actions: and provided, also, that nothing in this chapter shall prevent the district or probate judge of the district or county in which such lands are situated from executing any and all conveyances of such lands, pursuant to the determination of such action. Suits shall be brought against adverse claimants or defendants, and it shall not be necessary to make the judge, or corporate authorities, parties thereto. The complaint must show what interest or estate in the lands in controversy the plaintiff claims. The answer, pleadings and other proceedings shall be as in cases in chancery, except that oral testimony may be introduced upon the trial, and the evidence, if not in the form of depositions, shall be reduced to writing, certified by the judge and filed with the papers in the cause.

History: Laws 1882, ch. 70, § 15; C.L. 1884, § 2789; C.L. 1897, § 3993; Code 1915, § 5534; C.S. 1929, § 144-122; 1941 Comp., § 8-522; 1953 Comp., § 7-5-22.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

The Rules of Civil Procedure now govern all civil suits, whether cognizable as cases at law or in equity (except for special statutory or summary proceedings), and provide for one form of action, "civil action." *See* Rules 1-001 and 1-002 NMRA.

19-4-22. [Paramount right to lands.]

Upon the trial of any such action, either party may give in evidence the statement mentioned in Section 19-4-10 NMSA 1978, deposited by the other, or by the person under whom he, or she, claims, with the corporate authorities or probate judge. And the person, or persons, who shall have first acquired the right to the possession, or occupancy, of such lands, either in person, or by agent, servant or tenant, or those claiming under him, her or them, shall be deemed to have the prior and paramount right to such lands: provided, that nothing in this section shall be so construed to recognize the right of any person or persons who have virtually abandoned any land held as a townsite, to any title therein.

History: Laws 1882, ch. 70, § 16; C.L. 1884, § 2790; C.L. 1897, § 3994; Code 1915, § 5535; C.S. 1929, § 144-123; 1941 Comp., § 8-523; 1953 Comp., § 7-5-23.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 53.

19-4-23. [Notice to file suit; service; publication; relinquishment on failure to obey.]

In case suits shall not be brought for the purpose of settling or determining any controversy to any such lands by either of the adverse claimants, within sixty days after the expiration of the time for filing the statement, as provided in Section 19-4-10 NMSA 1978, it shall be the duty of the probate judge or corporate authorities to give notice to the adverse claimant filing his claim, or, if there be more than one adverse claim filed, then to the last adverse claimant, directing him to commence his action against the other claimants, as defendants, to determine their respective rights to said lands, within twenty days from service of notice on him, and in case such adverse claimant neglect or refuse to commence the action within the time specified, he shall be deemed to have relinquished all right, title, interest and estate in the lands so in controversy, and be forever barred from asserting or claiming any right, title, interest or estate, therein. Such notice shall be served by the proper officer of said courts, in the same manner as now provided for service of summons in any county in this state. If the officer return such notice, not found, notice shall be made by publication for three weeks in some newspaper published in the county where the lands are situated, and if no paper be published in said county, then by posting such notice in three public places in the town where such lands are situated. And in addition thereto a copy of said notice shall be mailed to such adverse claimant at his residence or usual place of abode. And in case there be more than one adverse claimant, and the last neglect or refuse to commence his action after service of notice, as aforesaid, said probate judge or corporate authorities shall serve like notice on the next last adverse claimants, until all have been notified, as aforesaid.

History: Laws 1882, ch. 70, § 17; C.L. 1884, § 2791; C.L. 1897, § 3995; Code 1915, § 5536; C.S. 1929, § 144-124; 1941 Comp., § 8-524; 1953 Comp., § 7-5-24.

ANNOTATIONS

Cross references. — For publication of legal notice, *see* 14-11-1 to 14-11-13 NMSA 1978.

For rule on service of process by publication, *see* Rule 1-004 NMRA.

19-4-24. [Service of process; publication.]

Whenever complaint shall be filed in any such action, summons shall be issued against the proper parties, and served upon the person or persons named therein, as in other cases provided by law, or upon the agent or attorney of such person or persons who shall have filed their statements as required by Section 19-4-10 NMSA 1978. And in case service cannot be had upon the defendants, their agents or attorney, the complainant shall file an affidavit in the office of the clerk of the court in which the action in [is] pending, to the effect and as now provided by law. It shall be lawful for the clerk of said court to cause publication to be made as provided by law, and when such publication shall have been made, the cause shall proceed, as if the parties had been personally served with summons.

History: Laws 1882, ch. 70, § 18; C.L. 1884, § 2792; C.L. 1897, § 3996; Code 1915, § 5537; C.S. 1929, § 144-125; 1941 Comp., § 8-525; 1953 Comp., § 7-5-25.

ANNOTATIONS

Cross references. — For publication of legal notice, *see* 14-11-1 to 14-11-13 NMSA 1978.

For rule on service of process by publication, *see* Rule 1-004 NMRA.

19-4-25. [Appeals.]

Appeals and writs of error shall be allowed and may be taken and prosecuted from the judgments or decrees, or any order of the courts in proceedings under this chapter, to the supreme court, as in other cases.

History: Laws 1882, ch. 70, § 19; C.L. 1884, § 2793; C.L. 1897, § 3997; Code 1915, § 5538; C.S. 1929, § 144-126; 1941 Comp., § 8-526; 1953 Comp., § 7-5-26.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

Cross references. — For appealability of civil matters from district court, *see* 39-3-2 NMSA 1978 and Rule 12-201 NMRA.

19-4-26. [Reports of expenses.]

Within ninety days from the first publication of the notice mentioned in Section 19-4-9 NMSA 1978, the corporate authorities or probate judge holding the title to the lands described in such notice, shall make a true, full and complete statement in writing, containing a true account of all moneys paid by him or them, expended in the acquisition of the title and execution of the trust to that time, including all moneys paid by him or them for the purchase of said lands, necessary traveling expenses, moneys paid for all other necessary and proper expenses incident to such trust and a true account of his or their reasonable charges for time and services employed in the business of such trust to that time, and all moneys by him or them expended, and reasonable charges for compensation, as aforesaid, which shall be and remain a first charge upon said lands in favor of the trustee, and paid by the several claimants entitled to such lands, in proportion to the several quantities thereof to which they may be respectively entitled.

History: Laws 1882, ch. 70, § 20; C.L. 1884, § 2794; C.L. 1897, § 3998; Code 1915, § 5539; C.S. 1929, § 144-127; 1941 Comp., § 8-527; 1953 Comp., § 7-5-27.

19-4-27. [Conveyances; payment of costs.]

Before said corporate authorities, through commissioners hereinafter provided in this chapter, or probate judge, shall be required to execute and deliver any deed of conveyance to any person or persons claiming to be entitled to said lands and deed, such person or persons shall pay to him or them, through said commissioners, the sum of money chargeable on the portion to be conveyed according to the statement or account mentioned in Section 19-4-26 NMSA 1978; and in case when the trust is held by corporate authorities, such additional sum as said corporate authorities may charge for the same, not exceeding five dollars [($5.00)] for each five thousand square feet of such lands, and the further sum of one dollar [($1.00)] for the execution and acknowledging of the deed, together with the sum of twenty-five cents [($.25)] for attestation, with the seal of the town, by the town clerk. When the land is entered by a probate judge of the county court, deeds shall be signed by such probate judge, or his successor in office, under his private seal or scroll, and such probate judge of the county court shall receive the sum of one dollar [($1.00)] for each and every lot, piece or parcel thereof so conveyed in addition to the several sums as prescribed in Section 19-4-26 NMSA 1978, to be paid by the person or persons claiming to be entitled to such deed or conveyance.

History: Laws 1882, ch. 70, § 21; 1884, ch. 42, § 1; C.L. 1884, § 2795; C.L. 1897, § 3999; Code 1915, § 5540; C.S. 1929, § 144-128; 1941 Comp., § 8-528; 1953 Comp., § 7-5-28.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 54.

19-4-28. [Commissioner; appointment; qualifications; powers; office hours; bond.]

Said board may, by order, resolution or ordinance, appoint a commission [commissioner] to sell and convey any such real estate, and to affix to any conveyance thereof the seal of such town, and have control of such seal for such purpose, and such conveyance, executed in accordance with such order, shall have the effect to transfer, to the grantee named a title in fee simple to any such real estate so conveyed. Said commissioner may be removed at the will of the board, as often as it may seem fit, by an order entered to that effect, and a new commissioner appointed with like powers. Said commissioner shall be a freeholder in such town, and not a member of the board, and have no personal interest in the land so to be sold. Said commissioner shall, during his term of office, keep open an office in some public and well-known place in such town, from ten o'clock a.m. until noon of each day, Sundays and holidays excepted, for the purpose of receiving payments from and executing deeds to persons who are entitled to deeds by reason of purchase, and who have made improvements upon such land, as hereinafter stated in this chapter. No claimant shall be allowed to suffer on account of the misconduct of such commissioner in the discharge of his duties. Such commissioner shall receive such reasonable fees for his services as said board may prescribe. Before entering upon his duties, such commissioner shall enter into a bond, with good and sufficient securities, to be approved by the board, executed in behalf of the town, with obligations to faithfully account to the board for all money received, and to pay the same over to the town treasury.

History: Laws 1882, ch. 70, § 22; C.L. 1884, § 2796; C.L. 1897, § 4000; Code 1915, § 5541; C.S. 1929, § 144-129; 1941 Comp., § 8-529; 1953 Comp., § 7-5-29.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

Cross references. — For provisions relating to bonds for public officers, *see* 10-2-1 NMSA 1978 et seq.

For Surety Bond Act, *see* 10-2-13 NMSA 1978 et seq.

19-4-29. [Recording of order appointing commissioner.]

The clerk or recorder of any such town shall at once make a copy of any such order, resolution or ordinance appointing any such commissioner, certified by such clerk or

recorder, under the seal of the town, and deliver the same without delay to the county clerk of any county in which such town shall be situated. Such county clerk shall file and record such copy and the certificate thereof of such order, resolution or ordinance, and shall receive fees therefor at the same rate as for deeds. The record of such copy and certificate shall have the same effect in evidence as is provided for the record of powers of attorneys.

History: Laws 1882, ch. 70, § 24; C.L. 1884, § 2798; C.L. 1897, § 4002; Code 1915, § 5542; C.S. 1929, § 144-130; 1941 Comp., § 8-530; 1953 Comp., § 7-5-30.

ANNOTATIONS

Cross references. — For recording fees, *see* 14-8-13 NMSA 1978.

For execution of power of attorney and effect thereof, *see* 47-1-7 to 47-1-11 NMSA 1978.

19-4-30. [Conveyance by probate judge; land for town benefit.]

When the land is entered by the probate judge of the county, deeds shall be signed by such judge or his successor in office, under his private seal or scroll. Such judge shall make such conveyance by deed to such town, at private sale, upon the payment by said town of the cost of the proceedings and sale to such land as is used for the benefit of such town only.

History: Laws 1882, ch. 70, § 23; C.L. 1884, § 2797; C.L. 1897, § 4001; Code 1915, § 5543; C.S. 1929, § 144-131; 1941 Comp., § 8-531; 1953 Comp., § 7-5-31.

19-4-31. [Conveyances; time for execution.]

At any time after the expiration of ninety days from the time of first publication of the notice mentioned in Section 19-4-9 NMSA 1978, the corporate authorities or probate judge shall, upon demand or request and payment as required by Section 19-4-26 NMSA 1978, execute and deliver to each and every claimant, or association, or company of claimants to such lands or any parcel thereof, a deed of conveyance therefor, according to the statement made and deposited by him or them, pursuant to Section 19-4-10 NMSA 1978: provided, however, that no such deed of conveyance shall be executed or delivered for any part, portion or share of such lands, to which there shall be adverse contesting claimants, until the controversy thereon has been settled and determined in the manner described in this chapter.

History: Laws 1882, ch. 70, § 25; C.L. 1884, § 2799; C.L. 1897, § 4003; Code 1915, § 5544; C.S. 1929, § 144-132; 1941 Comp., § 8-532; 1953 Comp., § 7-5-32.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

19-4-32. [Probate judge; claim for lands in individual right.]

In case any judge who shall have entered such land and thus have become the sole trustee thereof, shall be possessed or entitled to any part or portion of such lands in his individual right, and his claim or right shall not be claimed adversely to him, he shall be deemed to be seized and possessed of the title thereto and the estate therein to his own use, in fee simple absolute, free and discharged of such trust; and no conveyance, other than the receipt of the officers of the United States land office or patent to the lands including the same, shall be necessary to perfect his title thereto. But in case individual right shall be claimed by any person adversely to him, the conflicting claims between them shall be settled and determined by an action, as provided in this chapter and tried before some judge who shall be disinterested and possessed of complete jurisdiction for the trial therefor.

History: Laws 1882, ch. 70, § 26; C.L. 1884, § 2800; C.L. 1897, § 4004; Code 1915, § 5545; C.S. 1929, § 144-133; 1941 Comp., § 8-533; 1953 Comp., § 7-5-33.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

Cross references. — For duty of judge to transfer suit claiming townsite land in which he has an interest, *see* 19-4-21 NMSA 1978.

19-4-33. [Streets, alleys, parks and public grounds.]

Whenever the title to any such lands shall be vested in any probate judge, he shall convey to the proper or legal authorities so much of the land as is or shall be laid out by the town authorities into streets, lanes, avenues, parks, public grounds and commons, within the time prescribed in this chapter for making conveyance to individuals. But when the title to such lands shall be held by the corporate authorities of any town, all land used, laid out or designated for public use by such corporate authorities, as streets, lanes, avenues, alleys, parks, commons and public grounds, shall vest in and be held by the corporation absolutely, and shall not be claimed adversely by any person or persons whosoever [whomsoever], and it shall not be necessary to execute any conveyance for the same to the corporation or people of such town.

History: Laws 1882, ch. 70, § 27; C.L. 1884, § 2801; C.L. 1897, § 4005; Code 1915, § 5546; C.S. 1929, § 144-134; 1941 Comp., § 8-534; 1953 Comp., § 7-5-34.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

19-4-34. [Claimant failing to pay costs and fees.]

Each and every person, association and company of persons, who shall be entitled to any lots, pieces or parcels of land so held in trust by the authorities of any incorporated town, and respecting which there shall be no controversy, shall, within three months after the expiration of the time for filing statements, as provided in Section 19-4-10 NMSA 1978, pay to such corporate authorities the sum of money chargeable upon such piece or parcel of land, and the fees for executing a deed therefor. And in case of failure so to do, such person or persons shall be deemed to have relinquished all right, title, interest or estate thereto, and such corporate authorities shall thereafter be, and deemed to be, seized of the title thereto in fee simple, absolute, free and discharged of such trust, and no conveyance, other than the receipt of the United States land office or patent of the lands including the same shall be necessary to perfect their title thereto, and also all persons, company or association of persons, who, by the determination and judgment of the court, shall be adjudged to have the rightful title to such lands, shall within three months of such adjudication and judgment, pay to such corporate authorities the sum of money chargeable to such lands, together with the fees for executing a deed to the same; and in case of failure so to do, such person, company or association, shall be deemed to have relinquished all right, title, interest or estate, in said lands, and such corporate authorities shall be, and deemed to be, seized and possessed of the title thereto to their own use in fee simple, absolute and no further conveyance shall be necessary to perfect their absolute title thereto.

History: Laws 1882, ch. 70, § 28; C.L. 1884, § 2803; C.L. 1897, § 4006; Code 1915, § 5547; C.S. 1929, § 144-135; 1941 Comp., § 8-535; 1953 Comp., § 7-5-35.

19-4-35. [Trustees; organization; officers; quorum.]

It shall be the duty of the board of trustees, who are elected as provided for in Section 19-4-11 NMSA 1978, on receipt of notice of their election, duly signed and certified to by the chairman and secretary of the meeting of the legal voters of such town, to at once organize, by the election of a president and secretary who shall be members of said board of trustees, and who shall attest by their signatures all acts and orders of said board: provided, that before organizing, such members shall qualify in the same manner as justices of the peace [magistrates] under the laws of this state, and a majority of said board shall constitute a quorum for the transaction of business.

History: Laws 1882, ch. 70, § 29; C.L. 1884, § 2803; C.L. 1897, § 4007; Code 1915, § 5548; C.S. 1929, § 144-136; 1941 Comp., § 8-536; 1953 Comp., § 7-5-36.

ANNOTATIONS

Compiler's notes. — The office of justice of the peace has been abolished by 35-1-38 NMSA 1978, and all jurisdiction, powers and duties thereof transferred to the magistrate courts. Section 35-1-38 NMSA 1978 further provided that reference in the law to justices of the peace shall be construed to mean the magistrate courts.

Cross references. — For qualification of magistrates, *see* 35-2-1 to 35-2-5 NMSA 1978.

19-4-36. [Probate judges declared county judges for purpose of trust.]

The probate judges of the several counties in this state and their successors in office, are hereby declared to be county judges, for the purpose of executing the trust mentioned in the aforesaid act of congress.

History: Laws 1882, ch. 70, § 30; C.L. 1884, § 2804; C.L. 1897, § 4008; Code 1915, § 5549; C.S. 1929, § 144-137; 1941 Comp., § 8-537; 1953 Comp., § 7-5-37.

ANNOTATIONS

Compiler's notes. — The act of congress referred to in this section is the Townsite Act of May 23, 1844 (5 Stat. 657); it is not compiled in the United States Code.

19-4-37. [Taxation of costs.]

All costs of proceedings in actions under this chapter, including fees for services of all writs and notices and clerk's fees, shall be as provided by law for service of writs in other actions, and shall be taxed and collected as now provided by law in other cases.

History: Laws 1882, ch. 70, § 31; C.L. 1884, § 2805; C.L. 1897, § 4009; Code 1915, § 5550; C.S. 1929, § 144-138; 1941 Comp., § 8-538; 1953 Comp., § 7-5-38.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

19-4-38. [Unsold lots; petition; appraisers.]

Whenever it shall be made to appear to the judge of the district court of the county wherein the lands embraced within the limits of any townsite are situate, the title to which was and is vested in the probate judge of such county, by a verified petition that any lots, blocks, parts or parcels thereof have not been sold, disposed of and conveyed in the manner prescribed by law, that such lots, blocks, parts or parcels or any of them can be sold, that no board of trustees of such townsite was ever elected in the manner

prescribed by law, or, if at any time a board was elected, that such board of trustees was not elected or actually acted as such board for more than two years next preceding the date of the verification of the petition, and that the petitioner or petitioners will deposit in court such sum of money as the court may order to cover all costs of procedure hereinafter mentioned in this chapter in case the lands are not sold, then the judge of such district court shall appoint, by order and decree, a board of appraisers to consist of three residents of the county wherein such townsite is situated, who shall have no interest in such unsold, undisposed of and unconveyed lots, blocks, parts and parcels of land. Each of said appraisers shall take an oath to faithfully discharge his duties as such appraiser and shall file such oath in the office of the clerk of said district court before commencing his duties as such appraiser within ten days after his appointment. In case such appraisers or any of them should fail or neglect to file his or their oath or oaths with the said clerk within the time above limited, then the judge of such district court shall appoint another or other appraisers in place of the appraiser or appraisers so failing to file his or their oath or oaths.

History: Laws 1907, ch. 43, § 1; Code 1915, § 5551; C.S. 1929, § 144-139; 1941 Comp., § 8-539; 1953 Comp., § 7-5-39.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

19-4-39. [Appraisement; report; compensation.]

Such appraisers shall within twenty days from the time of filing their oaths appraise all lots, blocks, parts or parcels of land mentioned and described in the petition, order and decree of said court at their just and full cash value and when their appraisement has been completed, forthwith file in the office of the clerk of such district court a report of their actions and doings and appraisements verified by their respective oaths. In case of the members of said board not agreeing in their appraisement, the valuation and appraisement of the majority of said members of the board shall control and fix the valuation and appraisement of the respective lots, blocks, parts and parcels of land appraised. Each of such appraisers shall receive three dollars [($3.00)] a day for his services, but in no case shall more than five days be charged for making such valuation and appraisement.

History: Laws 1907, ch. 43, § 2; Code 1915, § 5552; C.S. 1929, § 144-140; 1941 Comp., § 8-540; 1953 Comp., § 7-5-40.

19-4-40. [Preference right of possessor to purchase.]

In all cases where such unsold, undisposed of and unconveyed lots, blocks, parts or parcels of land are in the possession of any person, persons, company, companies, corporation or corporations, such person, persons, company, companies, corporation or

corporations shall have the right to purchase the lands at private sale for the appraised value thereof and the probate judge must make and execute to such person, persons, company, companies, corporation or corporations, a proper deed therefor upon the payment to him of the purchase price.

History: Laws 1907, ch. 43, § 3; Code 1915, § 5553; C.S. 1929, § 144-141; 1941 Comp., § 8-541; 1953 Comp., § 7-5-41.

19-4-41. [Commissioner; sale; notice by publication; deeds; fees.]

The judge of said district court in all cases other than those mentioned in the preceding section [19-4-40 NMSA 1978] shall appoint a commissioner who shall be a resident of the county in which such townsite is situate to make sale of the lots, blocks, parts or parcels of such townsite not covered by the provisions of the preceding section, either at public or private sale. In case of public sale such commissioner shall give notice thereof by publication for four consecutive weeks in a newspaper published at the county seat of the county where such townsite is situate, and by posting three notices at public places within the limits of such townsite. In no case shall any of the lots, blocks, parts or parcels of land be sold for less than their appraised value. Whenever the lands for sale in the hands of the commissioner can be disposed of for more than or at their appraised value the same shall be sold by him within ninety days from the day of his appointment. Upon the payment to such commissioner of the purchase price of any lot or lots, block or blocks, parts or parcels of land such commissioner shall give a receipt to the purchaser or purchasers for the purchase price, containing a description of the lands sold to such purchaser or purchasers; and upon the presentation of such receipt to the probate judge of the county where the land so sold is situate and in whom the title thereto is vested, such probate judge shall forthwith make, deliver and execute a sufficient deed to the purchaser or purchasers for the lands described in such receipt. Such commissioner shall receive for his fees and in full payment for his services five per centum of the purchase price on all lands sold by him. The probate judge shall receive for executing a deed under the provisions of this chapter the sum of two and fifty one-hundredths dollars ($2.50). The receipt of the commissioner shall be filed in the office of the county clerk and recorded, for which filing and record the county clerk shall charge the sum of one dollar ($1.00). The judge of the probate court shall receive five per centum on all moneys received by him under the provisions of Section 19-4-40 NMSA 1978. Such commissioner shall give a bond for the faithful performance of his duties in such sum as the district court may designate.

History: Laws 1907, ch. 43, § 4; Code 1915, § 5554; C.S. 1929, § 144-142; 1941 Comp., § 8-542; 1953 Comp., § 7-5-42.

ANNOTATIONS

Compiler's notes. — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

Cross references. — For publication of legal notice, *see* 14-11-1 to 14-11-13 NMSA 1978.

19-4-42. [Disposition of proceeds.]

All expenses of sale shall first be deducted from the proceeds and the surplus, if any, shall be paid over by the said probate judge and the commissioner to the county treasurer for the benefit and to the use of the school district where such townsite is situated.

History: Laws 1907, ch. 43, § 5; Code 1915, § 5555; C.S. 1929, § 144-143; 1941 Comp., § 8-543; 1953 Comp., § 7-5-43.

ARTICLE 5
Classification, Care and Protection of State Lands

19-5-1. [Data on nature, character, quality and value of public lands; classification; duties of land commissioner.]

The commissioner of public lands is hereby authorized to expend, out of the state lands maintenance fund not to exceed $10,000 per annum, for the purpose of obtaining full and complete data as to the nature, character, quality and value of the lands of the state of New Mexico, and their adaptability for grazing, stock farming and agriculture. And the commissioner of public lands is further authorized to classify the lands of the state as mineral bearing, or otherwise, and to ascertain the possibilities of the state's mineral land for development in the production of coal, petroleum or other minerals therein contained. The commissioner of public lands is further authorized to ascertain what lands of the state contain merchantable timber and procure data with respect to the state's timberlands which will be available for the information of intending or prospective purchasers.

History: Laws 1919, ch. 78, § 2; C.S. 1929, § 111-202; 1941 Comp., § 8-601; 1953 Comp., § 7-6-1.

ANNOTATIONS

Compiler's notes. — Laws 1919, ch. 78, § 1, set out the need for detailed information on the nearly 10,000,000 acres of land owned by the state in order to secure the just and proper administration thereof.

Cross references. — For other statutory powers and duties of commissioner, *see* 19-1-1, 19-1-2 NMSA 1978, and throughout this chapter.

For establishment of state lands maintenance fund, *see* 19-1-11 NMSA 1978.

For constitutional duties of commissioner of public lands, *see* N.M. Const., art. XIII, § 2.

Declaration on land classification. — This section and Section 19-5-2 NMSA 1978 constitute a legislative declaration that no classification of public lands has been made and that the commissioner had not then had sufficient data from which to make such classification. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Constitutionality. — Although N.M. Const., art. XIII, § 2 provides that the commissioner shall select, locate, classify and have the direction, control, care and disposition of all public lands under the provisions of the acts of congress relating thereto "and such regulations as may be provided by law," the fact that this section limits the commissioner to the expenditure of $10,000 per year, which would prevent him from properly classifying and intelligently administering the trust of public lands imposed by the Enabling Act, does not make this act unconstitutional, particularly in view of the fact that the legislature may not have intended by it to restrict expenditures of the land commissioner in all things relating to appraisal, examination and classification of lands, but only had in mind additional detailed data than that then being gathered not immediately necessary at the time in administering the trust, and restricted the expenditures to be used for obtaining that data. 1939-40 Op. Att'y Gen. No. 39-3202.

Expenditures. — Both this section and Sections 19-1-10, 19-1-11 NMSA 1978 may be considered as being in effect; under this section, in the procurement of detailed information and data, $10,000 may be expended; and under the others whatever is necessary "for the purpose of inspecting, appraising and investigating state lands" in dealing therewith shall also be paid out of the 20 percent maintenance fund over and above the $10,000 provided hereby. 1939-40 Op. Att'y Gen. No. 39-3202.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands §§ 12 to 38.

Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095.

73A C.J.S. Public Lands §§ 4, 5.

19-5-2. [Maps, plats and tract books for recording data.]

For the purpose of carrying into effect the provisions of this act [19-5-1, 19-5-2 NMSA 1978], the commissioner of public lands is authorized to install in his office such a system of maps, plats and tract books as shall be necessary and convenient for properly recording, in readily accessible form, such data as he may obtain, pertaining to the character of the state's lands.

History: Laws 1919, ch. 78, § 3; C.S. 1929, § 111-203; 1941 Comp., § 8-602; 1953 Comp., § 7-6-2.

19-5-3. [Fire protection; expenses.]

The commissioner is given authority to exercise the police power of the state in preventing and extinguishing fires upon any state lands, including lands under lease or contract of sale, and for such purposes he may enter upon private lands and may employ such assistants as may be necessary. He may allow such assistants while in actual discharge of their duties, per diem, in lieu of subsistence, at a rate not exceeding two and one-half dollars [($2.50)] and actual necessary transportation expenses, which shall be paid out of the state lands maintenance fund.

History: Laws 1912, ch. 82, § 66; Code 1915, § 5244; C.S. 1929, § 132-178; 1941 Comp., § 8-603; 1953 Comp., § 7-6-3.

ANNOTATIONS

Cross references. — For state lands maintenance fund, *see* 19-1-11 NMSA 1978.

For prevention of fire on timberlands, *see* 68-1-1 to 68-1-5 NMSA 1978.

19-5-4. State engineer to investigate water supply.

The state engineer is authorized to investigate the water supply available for state lands, by drilling or digging wells or otherwise as he may deem best, in order to determine the location of permanent water reservoirs for irrigation purposes, and to employ the necessary assistance or to let contracts therefor. The sums heretofore appropriated for such purposes out of the water reservoirs for irrigation purposes income fund shall be paid out on warrants of the secretary of finance and administration, supported by vouchers signed by the state engineer.

History: Laws 1913, ch. 85, § 1; Code 1915, § 5262; C.S. 1929, § 132-203; 1941 Comp., § 8-604; 1953 Comp., § 7-6-4; Laws 1977, ch. 247, § 88.

ANNOTATIONS

Compiler's notes. — Laws 1977, ch. 254, § 92, compiled as 72-2-1 NMSA 1978 made the director of the water resources division of the natural resources department the state engineer.

Nature of funds. — Funds provided for by this section to Section 19-5-8 NMSA 1978 are not a mortgage or other encumbrance within Section 10 of the Enabling Act. 1931-32 Op. Att'y Gen. No. 31-335.

Sale of well. — On sale or disposition of well drilled by state engineer on state lands, the purchaser should refund and pay its value to state treasurer to be credited to water reservoir for irrigation purposes income fund. 1931-32 Op. Att'y Gen. No. 31-335.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Waters § 179.

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates, 4 A.L.R.2d 595.

Water well drilling contracts, 90 A.L.R.2d 1346.

19-5-5. [Wells to be equity of state.]

All such wells, so sunk or dug by the state engineer for said purpose, shall be declared an equity of the state besides the land on which such well is situated.

History: Laws 1913, ch. 85, § 2; Code 1915, § 5263; C.S. 1929, § 132-204; 1941 Comp., § 8-605; 1953 Comp., § 7-6-5.

ANNOTATIONS

Compiler's notes. — Laws 1977, ch. 254, § 92, compiled as 72-2-1 NMSA 1978 made the director of the water resources division of the natural resources department the state engineer.

19-5-6. [Purchaser of land to pay value of well.]

When the land, on which any such well is located or situated, is sold or disposed of to any person, corporation, partnership or society of persons, he or they shall refund and pay to the state treasurer for the state, to be credited to the water reservoirs for irrigation purposes income fund, the value of such well, said value to be based on the amount of money expended in the construction thereof by the state engineer as provided in the two preceding sections [19-5-4, 19-5-5 NMSA 1978]. This shall apply to wells on each particular forty acres of land, and shall be paid to the state in addition to the price of the land sold.

History: Laws 1913, ch. 85, § 3; Code 1915, § 5264; C.S. 1929, § 132-205; 1941 Comp., § 8-606; 1953 Comp., § 7-6-6.

ANNOTATIONS

Payment for well. — Upon sale or disposition of land, purchaser should refund and pay to the state treasurer the value of the well upon such property, as provided by this section. 1931-32, Op. Att'y Gen. No. 31-335.

19-5-7. [Irrigation systems; contracts for construction.]

The commissioner may contract with persons, associations of persons or corporations to construct irrigation systems for the purpose of irrigating and reclaiming state lands, and for the sale of such lands or any portion thereof, upon such terms and

conditions as he may deem for the best interests of the state, not inconsistent with the provisions of law.

History: Laws 1912, ch. 82, § 44; Code 1915, § 5222; C.S. 1929, § 132-145; 1941 Comp., § 8-607; 1953 Comp., § 7-6-7.

19-5-8. [Proposal to construct irrigation system.]

Any person, association of persons or corporation desiring to construct any such irrigation system, shall file with the commissioner a proposal in all respects in accordance with law governing irrigation projects and regulations by the commissioner not inconsistent therewith.

History: Laws 1912, ch. 82, § 45; Code 1915, § 5223; C.S. 1929, § 132-146; 1941 Comp., § 8-608; 1953 Comp., § 7-6-8.

19-5-9. [Water developed by lessee; credit.]

The commissioner may contract with lessees of state lands to develop water thereon, and in consideration of any such improvement the lessee shall be credited with not to exceed one-third of the rental value of the land leased during the term of the lease.

History: Laws 1912, ch. 82, § 46; Code 1915, § 5224; C.S. 1929, § 132-147; 1941 Comp., § 8-609; 1953 Comp., § 7-6-9.

19-5-10. [Water appropriation application.]

Before any contract as provided in Sections 19-5-7 to 19-5-9 NMSA 1978, shall issue, the applicant shall file with the commissioner a certificate of the state engineer showing a compliance with the laws, and regulations for the appropriation of water, and that applicant has the right to appropriate water for such purposes: provided, that no such contract shall operate to prevent the cancellation, according to law, of any permit to appropriate waters of the state.

History: Laws 1912, ch. 82, § 47; Code 1915, § 5225; C.S. 1929, § 132-148; 1941 Comp., § 8-610; 1953 Comp., § 7-6-10.

ANNOTATIONS

Compiler's notes. — Laws 1977, ch. 254, § 92, compiled as 72-2-1 NMSA 1978 made the director of the water resources division of the natural resources department the state engineer.

ARTICLE 6
Trespass and Violations Relating to State and United States Lands

19-6-1. [Fires on state lands; lighting or leaving; penalty.]

Any person who shall willfully and maliciously set on fire, or cause to be set on fire, any timber, underbrush or grass upon state lands, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned for not more than two years, or fined in a sum not more than one thousand dollars [($1,000)], or both.

History: Laws 1912, ch. 82, § 67; Code 1915, § 5245; C.S. 1929, § 132-179; 1941 Comp., § 8-701; 1953 Comp., § 7-7-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For fire offenses generally, including arson, *see* 30-17-1 to 30-17-6 NMSA 1978.

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Fires §§ 5, 6; 63A Am. Jur. 2d Public Lands § 129.

Liability for spread of fire intentionally set for legitimate purpose, 25 A.L.R.5th 391.

73A C.J.S. Public Lands §§ 7 to 12.

19-6-2. [Duty to extinguish fires; penalty for failure.]

Any person who shall build a fire in or near any forest, timber or other inflammable material upon state lands shall, before leaving said fire, totally extinguish the same. Any person failing to do so shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not more than one thousand dollars [($1,000)], or be imprisoned for a term of not more than one year, or both.

History: Laws 1912, ch. 82, § 68; Code 1915, § 5246; C.S. 1929, § 132-180; 1941 Comp., § 8-702; 1953 Comp., § 7-7-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For offense of improper handling of fire, *see* 30-17-1 NMSA 1978.

For negligent arson, *see* 30-17-5 NMSA 1978.

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

19-6-3. [Trespass or waste; penalty.]

Any person, association of persons or corporation, in any manner entering upon, occupying or using for any purpose whatsoever any land belonging to the state, without having leased or purchased the same, or obtained a legal right to the use or occupation of the same, or any lessee of lands who shall not vacate same within thirty days after expiration or cancellation of his lease, or any person, association of persons or corporation constructing a ditch, reservoir, railroad, tramway, public or private road, telegraph, telephone or power line upon state lands, without legal authority, or any person, association of persons or corporation, whether lessee or not, committing waste upon any state lands or any lessee who shall use the lands leased for any purpose other than that specified in the lease, or purposes incident thereto, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars [($500)], and in default of payment thereof by imprisonment not to exceed six months. Each day's violation of any of the provisions of this section shall constitute a separate offense.

History: Laws 1912, ch. 82, § 48; Code 1915, § 5226; C.S. 1929, § 132-149; 1941 Comp., § 8-703; 1953 Comp., § 7-7-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For offense of criminal trespass, *see* 30-14-1 NMSA 1978.

For offense of wrongful use of public property, *see* 30-14-4 NMSA 1978.

For exemptions of state and federal government from property posting requirements, *see* 30-14-6 NMSA 1978.

For imprisonment for failure to pay fine, *see* 33-3-11 NMSA 1978.

For use of injunction to prevent trespass on community land grants, *see* 49-1-16 NMSA 1978.

Remedies. — This section furnishes no remedy to a lessee and is not exclusive of the right to injunction for intentional trespasses upon leased lands. Makemson v. Dillon, 24 N.M. 302, 171 P. 673 (1918).

Grazing on state lands. — To constitute an offense under this section, it is not necessary that the stock be driven upon the state lands, if they are permitted to graze thereon. 1921-22 Op. Att'y Gen. No. 22-3498.

No hunting charge by lessee. — The lessee of state lands for grazing purposes may post it against hunting, but cannot charge for hunting privilege. 1933-34 Op. Att'y Gen. No. 34-818.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands § 128.

19-6-4. [Depredations; penalty.]

Any person who shall cut down, remove, destroy or injure, or who shall take, remove or carry away, any timber, trees or firewood standing, growing or lying upon any state lands, or who shall extract or remove, or attempt to extract or remove, from any state lands, any stone, minerals, oil, gas, salt or other natural products or deposit, or any lessee who shall permit the same to be done, without authority from the commissioner, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in the preceding section [19-6-3 NMSA 1978], and in addition thereto shall forfeit and pay to the state an amount double the value of material so cut, removed, destroyed, injured or extracted.

History: Laws 1912, ch. 82, § 49; Code 1915, § 5227; C.S. 1929, § 132-150; 1941 Comp., § 8-704; 1953 Comp., § 7-7-4.

ANNOTATIONS

Cross references. — For offense of wrongful use of public property, *see* 30-14-4 NMSA 1978.

For criminal damage to property generally, *see* 30-15-1 to 30-15-4 NMSA 1978.

19-6-5. [Lessee to protect land against waste or trespass.]

Every lessee of state lands shall protect the land leased by him from waste or trespass by unauthorized persons, and failure so to do shall subject his lease to forfeiture and cancellation in the manner hereinbefore prescribed in this chapter, and the attorney general may bring suit for damages caused by any such waste or trespass.

History: Laws 1912, ch. 82, § 50; Code 1915, § 5228; C.S. 1929, § 132-151; 1941 Comp., § 8-705; 1953 Comp., § 7-7-5.

ANNOTATIONS

Compiler's notes. — The words "in this chapter" were inserted by the 1915 Code compilers. The words "this chapter" evidently refers to chapter 102 of the 1915 Code, §§ 5178 to 5290, compiled herein as 19-1-1 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50, 19-7-51, 19-7-52, 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8 and 19-11-10 NMSA 1978.

Cross references. — For procedure for forfeiture and cancellation of lease of state lands for violation of provisions thereof, *see* 19-7-50 NMSA 1978.

Law obligates lessee of state land to protect it from trespass and waste by unauthorized persons. Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945).

Land commissioner's consent necessary for lessee to sublet state lands or permit others to use same. Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945).

Standing to sue. — A plaintiff who had become a joint owner of a state land lease without commissioner's knowledge or consent could not litigate the question of whether the defendant as actual lessee held lease under trust relationship entitling plaintiff to an equal undivided interest therein. Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945).

Parties in trespass complaint. — Cross-complaint of lessee of state land for trespass did not require the presence of the land commissioner as an indispensable party where no issues relating to public policy or the enforcement of a state lease were involved. Sproles v. McDonald, 70 N.M. 168, 372 P.2d 122 (1962).

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

19-6-6. [Failure of lessee or purchaser to provide gates and runways at intersection of public highway; failure to close gate; penalty.]

Every lesee [lessee] of state lands, and every purchaser of state lands holding same under contract to purchase, who shall fence the same, shall erect and maintain gates and runways at all intersections at public highways, and failure so to do shall constitute a misdemeanor, upon conviction of which the lessee or holder of contract to purchase so convicted shall be punished by a fine of not more than twenty-five dollars [($25.00)] and in default of payment thereof, shall be imprisoned for not more than thirty days. Any

person passing through such gate and failing to close the same shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by this section.

History: Laws 1912, ch. 82, § 51; Code 1915, § 5229; Laws 1915, ch. 73, § 5; C.S. 1929, § 132-152; 1941 Comp., § 8-706; 1953 Comp., § 7-7-6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For fence across public road being unlawful unless gate and cattle-guard passageway are maintained and permit secured, *see* 67-7-10 NMSA 1978.

Lessees of state lands may fence same and maintain gates at intersections of public highways. While a gate is an obstruction, yet it may be legalized by legislative enactment. 1914 Op. Att'y Gen. Nos. 14-1268, 14-1353, 14-1408.

Keeping open section line. — Fact that a line across state lands is a section line does not impose any obligation on anyone to keep it open, unless there has been a road established by the county commissioners, or by general usage before any right was acquired to the land on each side of the section line; but, even in case of such establishment of road, gates could be maintained. 1915-16 Op. Att'y Gen. No. 15-1455.

19-6-7. [Destruction or damage to fence or gate on state lands; penalty.]

Any person who shall willfully and maliciously cut, destroy or injure any gate or fence enclosing, in whole or in part, any state lands, including lands under lease or contract of sale, upon conviction thereof shall be punished by a fine of not more than five hundred dollars [($500)] or by imprisonment for not more than five years or both.

History: Laws 1912, ch. 82, § 52; Code 1915, § 5230; C.S. 1929, § 132-153; 1941 Comp., § 8-707; 1953 Comp., § 7-7-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For offense of criminal damage to property, *see* 30-15-1 NMSA 1978.

Applicant for purchase. — The cutting of a fence, and the removing of a gate erected on public land by person making application to state to purchase the land, was not a violation of statute. 1915-16 Op. Att'y Gen. No. 15-1526.

19-6-8. [Opening and failing to close gates on forest reserves and adjoining lands.]

It shall be unlawful for any person or persons to open and neglect to close, before leaving the immediate vicinity thereof, the gate or gates of any fence on, or enclosing any, lands of the different national forest reserves of this state, or to open and fail to close the gate or gates of any fence on the land of any person, firm or corporation, where the same is situate within the boundaries of, or adjoining any national forest reserve; provided, such gates are so constructed as to be easily opened and shut.

History: Laws 1919, ch. 158, § 1; C.S. 1929, § 50-119; 1941 Comp., § 8-708; 1953 Comp., § 7-7-8.

19-6-9. [Liability for resultant damage or trespass.]

Any person or persons failing to comply with the provisions of the preceding section [19-6-8 NMSA 1978] shall be subject and responsible for any damage or trespass caused from such neglect.

History: Laws 1919, ch. 158, § 2; C.S. 1929, § 50-120; 1941 Comp., § 8-709; 1953 Comp., § 7-7-9.

19-6-10. [Penalty for failing to close gates.]

Any person failing to comply with the provisions of this act [19-6-8 to 19-6-10 NMSA 1978] shall also be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten [($10.00)] nor more than twenty-five dollars [($25.00)].

History: Laws 1919, ch. 158, § 3; C.S. 1929, § 50-121; 1941 Comp., § 8-710; 1953 Comp., § 7-7-10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

ARTICLE 7
Sale and Lease of Lands

19-7-1. [Application for lease or purchase; appraisement.]

Applications to lease or purchase state lands shall be made under oath, and applicants to lease shall, at their own expense, procure appraisements thereof to be made under oath by some disinterested and creditable person or persons familiar therewith. All statements contained in such appraisements, except as to the true value of the land appraised, must be based upon personal knowledge and not upon information and belief. No such appraisement shall be conclusive upon the commissioner.

History: Laws 1912, ch. 82, § 17; Code 1915, § 5194; C.S. 1929, § 132-117; 1941 Comp., § 8-801; 1953 Comp., § 7-8-1.

ANNOTATIONS

Cross references. — For sale, mortgage or alienation of common lands within community land grants, see 49-1-11 NMSA 1978.

Law reviews. — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands §§ 113 to 121.

73A C.J.S. Public Lands §§ 182, 197.

19-7-2. Formal requirements for applications; state officers and employees prohibited from acting as, or procuring, agents or attorneys.

All applications for the purchase of state lands and all applications for leases, whether for grazing, oil and gas, mining or other purposes, shall be made with ink or with typewriter using a record ribbon, upon forms to be prescribed by the commissioner of public lands. All applications shall be signed by original applicant or his agent or attorneys authorized by written power of attorney, shall be acknowledged before an officer authorized to administer oaths and shall be accompanied by application fees for oil and gas, mining, business leases, grazing leases and other purposes, as appropriate, in amounts set by the commissioner of public lands by regulation. The fees shall be deposited in the state lands maintenance fund. No state officer or employee of the state land office shall act as agent or attorney or procure another to act as agent or attorney for any application, but this act [19-1-23, 19-7-2 to 19-7-6 NMSA 1978] shall not be construed so as to prevent the commissioner of public lands or any employee of the state land office from assisting applicants to make out their applications without pay.

History: Laws 1921, ch. 174, § 1; C.S. 1929, § 111-301; 1941 Comp., § 8-802; Laws 1947, ch. 95, § 1; 1953 Comp., § 7-8-2; Laws 1971, ch. 95, § 1.

ANNOTATIONS

Cross references. — For establishment of state lands maintenance fund, *see* 19-1-11 NMSA 1978.

Leaseholds compensable in condemnation proceedings. — In a condemnation suit brought by the United States against state grazing lease, for a five-year term as provided in the New Mexico Enabling Act, and issued under the statutory authority of this section with a preference right for renewal under Section 19-7-49 NMSA 1978, which for all practical purposes was an absolute right as against other applicants, the trial court stated that compensation is to be based on a valuation formula which includes both the state-owned lands leased by the defendants as well as the fee lands of the defendants as one ownership unit, that defendants who have grazing leases of state-owned tracts have compensable interests therein and are to receive, upon distribution of the proceedings, the condemnation award for the state lands they have leased and finally, that the leases of the state-owned tracts executed or renewed by the state after July 1, 1970, created in the lessee a property compensable in these proceedings. United States v. 41,098.98 Acres of Land, 548 F.2d 911 (10th Cir. 1977).

19-7-3. [Numbering and dating applications upon receipt.]

All applications shall be stamped immediately upon their receipt by the land office with ink or with some device indicating correctly the date, hour and minute of such receipt, and such applications shall have stamped thereon a serial number in the order of their receipt.

History: Laws 1921, ch. 174, § 2; C.S. 1929, § 111-302; 1941 Comp., § 8-803; 1953 Comp., § 7-8-3.

19-7-4. [Deposit of funds; rejection of application without deposit.]

All applications mentioned in Section One (1) [19-7-2 NMSA 1978] hereof shall be accompanied by the proper fees and moneys as required by law or by the rules and regulations of the land commissioner and the amount of money deposited shall be entered in ink upon said applications; provided, however, that checks not certified shall be deposited in or sent to a bank for collection immediately upon their receipt. All applications not accompanied by the proper deposit shall be immediately stamped "rejected, no deposit," and shall not be deemed proper applications. Minor defects in the wording of said applications shall not be deemed fatal to their validity, but the same may be corrected; provided, however, that the descriptions of lands therein set forth shall be substantially correct so that said lands can be identified. All applications rejected for any reason shall have written thereon in ink or with typewriter using a record ribbon the reason for such rejection and the date thereof, and shall be preserved in the files of the office open to public inspection.

History: Laws 1921, ch. 174, § 3; C.S. 1929, § 111-303; 1941 Comp., § 8-804; 1953 Comp., § 7-8-4.

19-7-5. [Simultaneous applications.]

All published or posted rules and regulations of the land office shall prescribe and define what shall constitute simultaneous applications and shall also set forth an equitable method of determining the rights of applicants in such contingency.

History: Laws 1921, ch. 174, § 5; C.S. 1929, § 111-305; 1941 Comp., § 8-805; 1953 Comp., § 7-8-5.

19-7-6. [Offenses by officers or employees of land office; penalty.]

It shall be unlawful for any officers or employee of the state land office to act as agent or attorney for any applicant for the purchase or leasing of public lands of this state or to willfully withhold or conceal any such application, in order to give any applicant priority or advantage over another, or to receive any money or thing of value as a gift or compensation for aiding, or conniving or conspiring to aid, in procuring priority of application or directly or indirectly to aid or conspire to aid one applicant as against another by any fraudulent means whatever, or to receive any money or thing of value as a gift, compensation or otherwise from any person applying for the lease or purchase of public lands, and upon conviction thereof the offender shall be punished by a fine of not less than one hundred ($100) dollars nor more than one thousand ($1,000) dollars or by imprisonment in the state penitentiary for a term of not less than six months nor more than three years or by both such fine and imprisonment in the discretion of the court.

History: Laws 1921, ch. 174, § 6; C.S. 1929, § 111-306; 1941 Comp., § 8-806; 1953 Comp., § 7-8-6.

ANNOTATIONS

Cross references. — For prohibition against state officers and employees of state land office acting as agent or attorney for any application, or procuring another so to act, *see* 19-7-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands § 129.

73A C.J.S. Public Lands § 180.

19-7-7. [False swearing in application or appraisement.]

Any person or persons applying to lease or purchase state lands, or acting as appraiser or appraisers thereof, who shall knowingly and willfully swear falsely as to any material matter contained in any application to lease or purchase any such lands, or in any appraisement thereof, shall be deemed guilty of perjury, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars [($500)], or by imprisonment for not more than five years, or by both such fine and imprisonment.

History: Laws 1912, ch. 82, § 18; Code 1915, § 5195; C.S. 1929, § 132-118; 1941 Comp., § 8-807; 1953 Comp., § 7-8-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For false swearing to affidavit accompanying contract of sale or deed for purchase of timberlands, *see* 19-11-3 NMSA 1978.

For perjury in general, *see* 30-25-1, 30-25-2 NMSA 1978.

Law reviews. — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

19-7-8. [Cancellation of lease or contract obtained by fraud or mistake; notice to show cause; appeal.]

The commissioner shall have power to cancel any lease, contract or other instrument executed by him which shall have been obtained by fraud or executed through mistake or without authority of law. In such case he shall serve upon the party or parties in interest notice, as prescribed by Section 19-7-50 NMSA 1978 to show cause before him, upon a date to be fixed in such notice, why such instrument shall not be canceled in accordance with the rules and regulations of the state land office.

From the decision rendered by the commissioner upon such hearing an appeal shall lie as provided by this chapter in cases of contest.

History: Laws 1912, ch. 82, § 75; Code 1915, § 5253; C.S. 1929, § 132-187; 1941 Comp., § 8-808; 1953 Comp., § 7-8-8.

ANNOTATIONS

Compiler's notes. — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

Cross references. — For limitation of actions brought on ground of fraud, *see* 37-1-4 NMSA 1978.

For accrual of cause of action based on fraud or mistake, *see* 37-1-7 NMSA 1978.

Contract not cancelable. — Under the constitution and statutes, the state land commissioner has the power to alienate certain public lands which are held in trust for public schools within the limits and under the terms so prescribed. However, after having sold public lands on which a railroad as a trespasser had built a diversion dam and water pipe, such commissioner could not cancel the contract of sale of those lands covered by such improvements, despite the fact that the contract resulted from mutual mistake by him and the purchasers, who were not aware of such improvements, that the improvements were of no value to purchaser, who was repaid no part of the consideration, and the contract was not divisible. In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Standing to sue. — In a contest proceeding involving the right to lease certain state lands, lessee's heirs had no right to put in issue defendant's fraud in acquiring lease, where land was leased to defendant on refusal of administrator of lessee to renew lease. Hart v. Walker, 40 N.M. 1, 52 P.2d 123 (1935).

Standing in contest proceeding. — A railroad, which was not a party to a case of the state before its state land commissioner, which was initiated by an order to show cause why a contract to purchase realty on which such railroad as a trespasser had made improvements should not be canceled, was not in position to urge a judgment in the supreme court directing cancellation of the contract under this section or Section 19-7-67 NMSA 1978. In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941), explained in Ellison v. Ellison, 48 N.M. 80, 146 P.2d 173 (1944).

19-7-9. Sale and lease of state lands; conveyance for term of years; terms and conditions.

Any state lands offered for sale by the commissioner may be sold at the commissioner's discretion for cash or upon payment of not less than one-tenth of the purchase price in cash and payment of the balance in amortized installments for any period up to thirty years with interest on the principal balance at a rate to be set by the commissioner in the notice of auction pertaining to the particular sale in advance. Additional payments on the principal may be made at any time, but such payments shall not be effective for credit until the date the next installment is due. The purchase contract shall be upon a form prescribed by the commissioner prior to publication of the notice of auction and shall contain the terms and conditions the commissioner may deem to be in the best interest of the state and consistent with law. Should a purchaser die before completing the contract, the due date of the next installment payment shall, upon written application, be deferred by the commissioner for one year. In addition, the commissioner is authorized to convey for any period of time state lands under the commissioner's jurisdiction having value for commercial development or public use purposes, provided that:

A. all of the requirements for the disposition of lands set forth in the constitution of New Mexico and the New Mexico Enabling Act are complied with, including but not limited to those pertaining to appraisal at true value, advertising and public auction;

B. the term and nature of the estate to be conveyed is set forth in the public notice of auction pertaining to the particular conveyance; and

C. if the conveyance is a business lease for real estate planning or development purposes, then, notwithstanding the term of the lease, it shall only be issued after notice and competitive bid.

History: 1953 Comp., § 7-8-9, enacted by Laws 1971, ch. 93, § 1; 1981, ch. 278, § 1; 1989, ch. 179, § 1; 2009, ch. 219, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1971, ch. 93, § 1, repealed 7-8-9, 1953 Comp., relating to sale of state lands for cash or in deferred payments, and enacted a new 7-8-9, 1953 Comp.

Cross references. — For issuance of limited patent with reservation of minerals on lands sold on deferred payment plan with reservation of minerals or classified as mineral lands prior to full payment or issuance of patent, *see* 19-10-27 NMSA 1978.

For the New Mexico Enabling Act, *see* Pamphlet 3 in Volume 1 NMSA 1978.

For obligation of lessee or purchaser to destroy rodent pests, *see* 77-15-4 NMSA 1978.

The 2009 amendment, effective June 19, 2009, added Subsection C.

The 1989 amendment, effective June 16, 1989, in the first sentence substituted "commissioner may" for "commissioner of public lands shall", inserted "not less than", and substituted "amortize installments for any period up to thirty years" for "thirty equal annual installments"; in the next-to-last sentence deleted "annual" preceding "installment"; and in the last sentence deleted "of public lands" following "commissioner" and "in excess of five years" following "time".

Rock was a reserved mineral. — Where in 1919, the state land office classified all land owned by the state as mineral land and required the state to reserve all minerals when selling state lands; in 1930, the original purchaser, plaintiff's predecessors in title, applied to purchase state land for grazing purposes; the purchaser and the appraiser stated that the land was non-mineral grazing land; in the sales contract, the purchaser agreed that the land was being purchased for purposes of grazing and agriculture, and that if minerals were discovered on the land, minerals would be reserved to the state; the patent for the land reserved to the state "all minerals of whatsoever kind"; and rock on the land had commercial value for use as railroad ballast and other construction aggregates, substantial evidence supported the finding that the intent of the parties to the original sale of the state land was that rock on the land constituted a mineral reserved to the state under the reservation of "all minerals of whatsoever kind". Prather v. Lyons, 2011-NMCA-108, 267 P.3d 78, cert. granted, 2011-NMCERT-010.

Taxation. — Under former 72-1-3, 1953 Comp., deferred payment purchasers' legal and equitable interests in state lands were taxable at full cash value, and the state could enforce collection of the tax against said interests. Bd. of Equalization v. Heights Real Estate Co., 74 N.M. 101, 391 P.2d 328 (1964).

Issuance of patent prior to completion of payment. — No specific authority is given the commissioner to issue a patent to a portion of a tract of land sold under contract when only that part covered by the patent has been paid for and the balance due under said contract has not been paid at the time the patent is issued. Zinn v. Hampson, 61 N.M. 407, 301 P.2d 518 (1956).

Sale of school lands. — Under N.M. Const., art. XIII, § 2, and former C.S. 1929, § 132-162, the state land commissioner could alienate public lands held in trust for the public schools within the limits and under the terms of the Enabling Act. In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Exchange of state trust lands. — The commissioner of public lands may exchange state trust lands for other public or private lands of equal or greater value provided that the exchange transaction is in substantial conformity with the requirements of the Enabling Act. 1991 Op. Att'y Gen. No. 91-15.

The commissioner may not exchange state trust lands for lands of equal value whether held in private ownership or by other state agencies, local governing bodies, trust land beneficiary institutions and federal agencies, other than the Department of the Interior. 1988 Op. Att'y Gen. No. 88-35, overruled by Op. Att'y Gen. No. 91-10.

Partial assignment. — Under this section a partial assignment of land under contract can be made, but any assignment, whether it be to the whole or to a portion of the land, is subject to final payment of the whole; if an assignment is made to a part, the commissioner, before issuing a patent to that portion, must await full and final payment of all of the contract. 1955-56 Op. Att'y Gen. No. 55-6130.

Extensions under former law. — Under former 7-8-13, 1953 Comp., which provided for extensions of purchase contracts, the commissioner could extend present form of purchase contracts up to 30 years or the term of the original contract when doing so appeared in the interest of the state and of the purchaser. 1943-44 Op. Att'y Gen. No. 43-4282.

Lease by purchaser. — Purchaser of state lands under this plan is not authorized to lease the lands. 1919-20 Op. Att'y Gen. No. 19-2191.

Terms of sale. — The terms of sale of state lands must conform to this section, and no further sales can be made under the terms formerly in force. The holder of a contract under the old statute may surrender the same and take advantage of the new terms. 1917-18 Op. Att'y Gen. No. 17-1972.

Law reviews. — For annual survey of New Mexico law relating to property, see 12 N.M.L. Rev. 459 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 184.

19-7-10. [Restrictions on deferred payments.]

At any time after sale and prior to the expiration of thirty years from the date of the contract, the purchaser or his successor in interest may pay all or any part of the purchase price due on any contract for purchase of state lands, but no payment shall be accepted, other than the first payment, for less than one-thirtieth of ninety-five per centum of the purchase price, nor be effective for credit on any date other than the anniversary of the date of the contract next following the date of tender.

History: Laws 1917, ch. 52, § 2; C.S. 1929, § 132-159; 1941 Comp., § 8-810; 1953 Comp., § 7-8-10.

ANNOTATIONS

Issuance of patent prior to completion of payment. — No specific authority is given the commissioner of public lands to issue a patent to a portion of a tract of land sold under contract when only that part covered by the patent has been paid for and the balance due under said contract has not been paid at the time the patent is issued. Zinn v. Hampson, 61 N.M. 407, 301 P.2d 518 (1956).

Authority of commissioner. — Land commissioner does not have authority to accept payments of principal less interest paid and funded, nor to accept for credit full amount of principal and cause interest paid in advance to be funded, nor to accept for credit only payments of delinquent interest where the purchaser tenders the principal amount due on contract. 1947-48 Op. Att'y Gen. No. 47-5034.

19-7-11. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 49, § 1, repealed 19-7-11 NMSA 1978, relating to the authorization of payment for the purchase of state lands with state or county bonds, effective March 30, 1981.

19-7-12. [Outstanding contracts may be canceled and new contracts granted; conditions.]

That contracts for the purchase of state lands now outstanding shall, upon application of the holders thereof and payment of a fee of four dollars [($4.00)] for each contract of one section or less, and ten cents [($.10)] for each additional section or

fraction thereof, be canceled, and new contracts issued under the provisions of this act [19-7-10, 19-7-12 NMSA 1978], in lieu of such outstanding contracts. Provided, that the provisions of this act shall not be applicable to lands selected for the benefit of the Santa Fe and Grant county railroad bond fund, but such lands shall be sold as provided by Section 19-7-13 NMSA 1978, and outstanding contracts for such lands shall not be subject to the provisions of this section.

History: Laws 1917, ch. 52, § 4; C.S. 1929, § 132-161; 1941 Comp., § 8-812; 1953 Comp., § 7-8-12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Section 19-7-13 NMSA 1978, referred to in the second sentence, was repealed in 1989.

Constitutionality. — There is nothing in the constitution which prevents the state from canceling contracts of purchase of state land, where the purchaser is unable to make his payments, and then leasing them to him on terms which he can meet. Vesely v. Ranch Realty Co., 38 N.M. 480, 35 P.2d 297 (1934).

Replacement of contract with lease. — Commissioner of public lands may agree with purchaser to cancel contracts of purchase of state lands held by purchaser, where purchaser alleges his inability to carry such contract, and at the same time issue to such purchaser a lease for the same land at a rental lower than the amount necessary to carry contracts of purchase. Vesely v. Ranch Realty Co., 38 N.M. 480, 35 P.2d 297 (1934).

19-7-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 179, § 2 repealed 19-7-13 NMSA 1978, as enacted by Laws 1912, ch. 82, § 58, relating to sales of lands for Santa Fe and Grant county railroad bond funds, effective June 16, 1989.

19-7-14. Owner of improvements compensated by purchaser or by subsequent lessee.

Whenever any state lands are sold or leased to a person other than the holder of an existing surface lease and upon which lands there are improvements belonging to such lessee or to another person, the purchaser or subsequent lessee, as the case may be, shall pay to the commissioner of public lands for the benefit of the owner of the improvements the value thereof as determined by an appraisal made by the

commissioner of public lands. In lieu of such payment, a subsequent purchaser or lessee may file with the commissioner a bill of sale or waiver of payment signed by the owner of the improvements.

History: 1953 Comp., § 7-8-19.1, enacted by Laws 1963, ch. 237, § 1.

ANNOTATIONS

Cross references. — For restrictions on improvements on grazing or agricultural leases and effect of exceeding same, *see* 19-7-51, 19-7-52 NMSA 1978.

For removal by certain holders of mineral leases of all removable improvements and forfeiture of rest without compensation, *see* 19-8-29 NMSA 1978.

For payment for value of improvements by purchaser or subsequent oil and gas lessee to owner thereof, *see* 19-10-28 NMSA 1978.

For oil and gas lessee's right to remove certain improvements upon cancellation or forfeiture of lease, *see* 19-10-29 NMSA 1978.

For removal by lessee under Geothermal Resources Act of removable improvements and forfeiture of others without compensation, *see* 19-13-24 NMSA 1978.

Ownership of improvements. — Under 8-832, 1941 Comp., with reference to existing water rights, lessee owned only such improvements as it placed upon the lands or purchased from one authorized by law to dispose of them. Frank A. Hubbell Co. v. Curtis, 40 N.M. 234, 58 P.2d 1163 (1936).

Improvements by trespasser. — In absence of some contract or agreement with the state land commissioner, a railroad company was a trespasser, where it constructed, on public lands, water pipeline improvements in form of a diversion dam, for it should have secured the right-of-way for such dam, pipeline and other facilities for the project, although no provision was made for payment for use of such right of way. In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Same not compensable. — A railroad was not entitled to compensation under C.S. 1929, § 132-162, for improvements where it constructed a diversion dam and water pipeline on public lands without any agreement with the state land commissioner. In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Lease contains provisions not authorized by law. — Business Planning Lease No. BL-1775 between the commissioner of public lands and Solo Investments, LLC under which the commissioner leased state trust land to Solo to complete a land development project, contains provisions that are not authorized by New Mexico law, including provisions which entitle Solo to be paid by a subsequent purchaser of the land the amount of Solo’s reasonable project costs plus 40% of the change in value of the land

as determined by before and after appraisals of the total consideration received by the commissioner of public lands. 2008 Op. Att'y Gen. No. 08-02.

Law reviews. — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

19-7-15. Definition of improvements.

The word "improvements" herein shall include appurtenant water rights and all improvements placed upon the land in compliance with Section 19-7-51 NMSA 1978, and shall include those appurtenant water rights and improvements placed upon the land prior to March 1, 1955, whether or not the value be in excess of the amount prescribed by Section 19-7-51 NMSA 1978. Appurtenant water rights and improvements placed upon the land after March 1, 1955 but prior to March 1, 1975 may be included by the commissioner in accordance with rules and regulations adopted by the commissioner.

History: 1953 Comp., § 7-8-19.2, enacted by Laws 1963, ch. 237, § 2; 1975, ch. 111, § 1.

19-7-16. Cost of appraisal.

Reasonable costs and expenses of appraising improvements on state lands and other costs of sale shall be paid by the purchaser or subsequent lessee.

History: 1953 Comp., § 7-8-19.3, enacted by Laws 1963, ch. 237, § 3.

ANNOTATIONS

Cross references. — For appraisement of state lands themselves, *see* 19-7-1 NMSA 1978.

For false swearing in purchase or lease application or appraisement, *see* 19-7-7 NMSA 1978.

Law reviews. — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

19-7-17. Appeal.

A person in interest aggrieved by the decision of the commissioner in fixing the value of improvements or in collecting costs may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 7-8-19.4, enacted by Laws 1963, ch. 237, § 4; 1998, ch. 55, § 27; 1999, ch. 265, § 28.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see* Zamora v. Village of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

19-7-18. Bond required.

No contract, patent or lease shall be issued until the value of improvements shall be paid unless a good and sufficient corporate or cash bond is filed with the commissioner to ensure payment upon final determination of value.

History: 1953 Comp., § 7-8-19.5, enacted by Laws 1963, ch. 237, § 5.

19-7-19. [Failure to comply with contract; forfeiture at option of commissioner.]

Failure by a purchaser of state lands to comply with the terms and conditions of his contract of purchase shall, at the option of the commissioner, work a forfeiture of such contract after notice as prescribed by Section 19-7-50 NMSA 1978.

In case of forfeiture all moneys theretofore paid on any such contract shall remain the property of the state.

History: Laws 1912, ch. 82, § 60; Code 1915, § 5238; C.S. 1929, § 132-163; 1941 Comp., § 8-820; 1953 Comp., § 7-8-20.

ANNOTATIONS

Cross references. — For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of grazing or agricultural lands, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture of timberland purchase contract for failure to observe protective regulations, *see* 19-11-4 NMSA 1978.

For obligation of lessee or purchaser to destroy rodent pests, *see* 77-15-4 NMSA 1978.

Issuance of patent prior to completion of payments. — No specific authority is given the commissioner of public lands to issue a patent to a portion of a tract of land sold under contract when only that part covered by the patent has been paid for and the balance due under said contract has not been paid at the time the patent is issued. Zinn v. Hampson, 61 N.M. 407, 301 P.2d 518 (1956).

Exclusive remedy. — The only remedy the state has where a contract purchaser defaults is cancellation of the contract and retention on moneys paid in as liquidated damages. 1955-56 Op. Att'y Gen. No. 55-6130.

Contract not personal obligation. — The state upon default cannot proceed against the purchaser for no personal obligation is created in this type of transaction. 1955-56 Op. Att'y Gen. No. 55-6130.

Nature of state's security. — The only security for the payment of the purchase price that the state has is the land itself, and thus the legal title which remains in the state until final payment is made is the only inducement to purchaser to complete and fully execute the contract. 1955-56 Op. Att'y Gen. No. 55-6130.

Complete performance of contract required. — Where pursuant to Enabling Act, § 10, a tract of public land was sold by purchase contract of 30-year term, and various assignments and parceling thereof occurred, until payment in full for the tract was tendered, the state could honor the assignment of the purchase contract and the assignee of the vendee's interest in 10 parcels could have equitable title thereto, but even though said assignee had paid for its 10 parcels, it could not receive patents thereto until the contract was fully and completely performed as to the entire original acreage. 1957-58 Op. Att'y Gen. No. 58-206.

Effect of partial assignee's default. — Where contract purchaser of state lands had made assignments of his interest to various parties, default of any assignee could gravely prejudice the others' ultimate acquisition of legal title because of this section. 1957-58 Op. Att'y Gen. No. 58-206.

19-7-20. [Assignment of contracts not in default; certified copy to be filed with commissioner.]

Any purchaser of state lands under deferred payment contract, not in default as to any payment, may assign all right, title and interest under any such contract; provided, certified copy of the assignment shall be filed with the commissioner before same shall become effective.

History: Laws 1912, ch. 82, § 61; Code 1915, § 5239; C.S. 1929, § 132-164; 1941 Comp., § 8-821; 1953 Comp., § 7-8-21.

ANNOTATIONS

Parties to assignment dispute. — Commissioner of public lands was not an indispensable party in dispute between private parties concerning assignment of an interest in land purchased from the state under deferred payment contract. Ballard v. Echols, 81 N.M. 564, 469 P.2d 713 (1970).

Partial assignments. — The commissioner of public lands may approve assignments of a portion of a purchase contract, providing he safeguards the right of the state in the transaction. 1924 Op. Att'y Gen. Nos. 24-3762, 24-3762-0A.

19-7-21. [Townsite lands; subdivision.]

Whenever any of the state lands shall be valuable or desirable for townsite purposes, the commissioner may cause or permit the same to be subdivided into suitable tracts, or surveyed into lots and blocks, with the usual reservations for streets, alleys and public purposes, and shall cause appraisement of such lands to be made and prescribe rules and regulations for the use and occupancy thereof, and may lease or sell such lots, blocks and subdivisions in accordance with law.

History: Laws 1912, ch. 82, § 62; Code 1915, § 5240; C.S. 1929, § 132-174; 1941 Comp., § 8-822; 1953 Comp., § 7-8-22.

ANNOTATIONS

Cross references. — For appraisement of state lands, *see* 19-7-1 NMSA 1978.

For false swearing in purchase or lease application or appraisement, *see* 19-7-7 NMSA 1978.

Procedure for leasing or selling state lands for townsite purposes is mandatory. 1931-32 Op. Att'y Gen. No. 31-52.

19-7-22. [Cemetery or school site lands; subdivision and sale.]

Should any state lands be valuable or desirable for cemetery or school site purposes, the commissioner may subdivide and sell such lands for such purposes in accordance with law.

History: Laws 1912, ch. 82, § 63; Code 1915, § 5241; C.S. 1929, § 132-175; 1941 Comp., § 8-823; 1953 Comp., § 7-8-23.

19-7-23. [School section used for cemeteries; not to be sold.]

Where a school section of the state or any part thereof has been used for cemeteries or cemetery purposes prior to January 6, 1912, that part of said section, not exceeding one hundred and sixty (160) acres may be set aside by the commissioner of public lands and forever reserved for such cemetery purposes and no sale thereof shall be made by the commissioner of public lands.

History: Laws 1913, ch. 30, § 1; Code 1915, § 561; C.S. 1929, § 20-102; 1941 Comp., § 8-824; 1953 Comp., § 7-8-24.

19-7-24. [Management of cemeteries on school sections; sale of lots; cemetery association.]

Where a school section or any part thereof is used for cemetery purposes under the provisions of the preceding section [19-7-23 NMSA 1978], the management and control thereof is hereby given to the governing body of the city, town or village now using the same for such purpose, but said governing body shall not be authorized to sell any portion of such lands, except for cemetery lots or other purposes directly connected with cemetery purposes.

That sales of said lands for cemetery purposes shall be made by such governing body and the money received from the sale thereof shall be converted into a fund which shall be used only for the care and maintenance of said cemetery. Said cemetery may be managed and controlled by a cemetery association created or authorized by the governing body of such city, town or village.

History: Laws 1913, ch. 30, § 2; Code 1915, § 562; C.S. 1929, § 20-103; 1941 Comp., § 8-825; 1953 Comp., § 7-8-25.

ANNOTATIONS

Cross references. — For municipal cemeteries, *see* 3-40-1 to 3-40-9 NMSA 1978.

19-7-25. [Reservation from sale of saline, mineral and oil and gas lands; leasing authorized.]

State saline lands and the state lands known to contain valuable minerals, petroleum or natural gas in paying quantities, and sections of state lands adjoining lands upon which there are producing mines, oil wells or gas wells, or which are known to contain valuable minerals, petroleum or natural gas in paying quantities, shall not be sold, but may be leased as provided in this chapter.

History: Laws 1912, ch. 82, § 40a; Code 1915, § 5218; C.S. 1929, § 132-141; 1941 Comp., § 8-826; 1953 Comp., § 7-8-26.

ANNOTATIONS

Cross references. — For leases of potassium lands, *see* 19-8-4 NMSA 1978 et seq.

For leases of saline lands, *see* 19-8-10, 19-8-11 NMSA 1978.

For leases of coal lands, *see* 19-9-9 NMSA 1978 et seq.

For leases of oil and gas lands, *see* 19-10-1 NMSA 1978 et seq.

For issuance of limited patent with reservation of minerals on lands sold on deferred payments with reservation of minerals or classified as mineral lands prior to full payment or issuance of patent, *see* 19-10-27 NMSA 1978.

For reservation of geothermal resources in leases, deeds or sales contracts of state lands, *see* 19-13-16 NMSA 1978.

For reservation of mineral purchase rights on state lands leased or conveyed, *see* 19-14-1 to 19-14-3 NMSA 1978.

Meaning of "this chapter". — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

"Lands known to contain valuable minerals". — Lands upon which metals or minerals have been discovered in rock, in place, are "lands known to contain valuable minerals" within the meaning of this section. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Construction of section. — The prohibition against sale of mineral lands is a prohibition against sale of the mineral content, not the surface, and in this construction § 10 of the Enabling Act is not offended. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Mineral rights to be leased. — Mineral content of state lands is to be disposed of only on lease, from which state is to derive royalties. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Severance of surface rights. — Commissioner of public lands may sever surface rights from mineral rights and reserve the one and sell the other. Terry v. Midwest Ref. Co., 64 F.2d 428 (10th Cir.), cert. denied, 290 U.S. 660, 54 S. Ct. 74, 78 L. Ed. 571 (1933); State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Reservation of minerals to fund or institution. — The commissioner of public lands has the power to reserve the minerals in the land to the fund or institution to which the land belongs, when making sale thereof. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Sale of lands preserving mineral content. — The commissioner of public lands, in his discretion, may under federal Enabling Act sell lands upon which are producing oil wells, provided their mineral content is not included. 1931-32 Op. Att'y Gen. No. 31-31.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 197.

19-7-26. State irrigable lands; sale; conveyance to United States.

No lands belonging to the state, within the areas to be irrigated from works constructed or controlled by the United States, or its duly authorized agencies, shall hereafter be sold except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except upon the conditions prescribed in this section. Any state lands needed by the United States for irrigation works shall be conveyed to the United States in consideration of the conveying by the United States, from its public lands or domain, lands of equal quality or value.

History: Laws 1907, ch. 49, § 55; Code 1915, § 5713; C.S. 1929, § 151-166; Laws 1941, ch. 126, § 22; 1941 Comp., § 8-827; 1953 Comp., § 7-8-27.

ANNOTATIONS

Cross references. — For relinquishment to United States of lands needed for irrigation works and selection of other lands in lieu thereof, *see* §§ 10, 11 of the Enabling Act, Pamphlet 3, Volume 1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 181.

19-7-27. [Lands subject to lease.]

All lands owned by the state of New Mexico shall be subject to lease as provided by law; provided, however, that the commissioner of public lands must give first preference in all cases to any department of the state which has been authorized by the legislature to acquire lands for the purpose of erecting thereon buildings for state use.

History: Laws 1912, ch. 82, § 12; Code 1915, § 5189; C.S. 1929, § 132-112; 1941 Comp., § 8-828; Laws 1951, ch. 108, § 1; 1953 Comp., § 7-8-28.

ANNOTATIONS

Cross references. — For right of existing grazing lessee to meet higher rental offer of new applicant for lease, *see* 19-7-49 NMSA 1978.

For preference to occupants of lands acquired by state, and to persons domiciled or paying taxes therein, *see* 19-7-53 NMSA 1978.

For lease preference rights of municipality, county or school district, *see* 19-7-56 NMSA 1978.

Meaning of "owned". — The word "owned" applies to any lands in which the state has any right or interest, whether or not full title has been acquired. Makemson v. Dillon, 24 N.M. 302, 171 P. 673 (1918).

Townsite procedure mandatory. — Procedure for leasing or selling state lands for townsite purposes is mandatory. 1931-32 Op. Att'y Gen. No. 31-52.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 197.

19-7-28. [Grazing and agricultural leases; reservation of mineral deposits, products and easements.]

In all leases of state lands for grazing or agricultural purposes there shall be inserted a clause reserving the right to execute leases for mining purposes thereon, or for the extraction of petroleum, natural gas, salt or other deposit therefrom, and the right to sell or dispose of any other natural surface products of such lands other than grazing, agricultural or horticultural products; also a clause reserving the right to grant rights-of-way and easements for any of the purposes mentioned in Section 19-7-57 NMSA 1978.

History: Laws 1912, ch. 82, § 55; Code 1915, § 5233; C.S. 1929, § 132-156; 1941 Comp., § 8-829; 1953 Comp., § 7-8-29.

ANNOTATIONS

Cross references. — For issuance of limited patent with reservation of minerals on lands sold on deferred payments with reservation of minerals or classified as mineral lands prior to full payment or issuance of patent, *see* 19-10-27 NMSA 1978.

For reservation of geothermal resources in leases, deeds or sales contracts of state lands, *see* 19-13-16 NMSA 1978.

For reservation of mineral purchase rights on state lands leased or conveyed, *see* 19-14-1 to 19-14-3 NMSA 1978.

Reservations of minerals. — Commissioner of public lands could make a reservation of minerals in contract for sale of agricultural or grazing lands sought to be purchased, and in which it was not then known that any mineral products existed. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Reservations of rights-of-way. — Grazing leases are held subject to the reservation or exception of the state to grant rights-of-way for purposes and upon terms set forth in statutes. Lea Cnty. Water Co. v. Reeves, 43 N.M. 221, 89 P.2d 607 (1939), explained in In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Reservations of rights-of-way for pipeline. — Reservation of right-of-way for pipeline over state lands was held part of lease of grazing lands at time of its execution. Lea Cnty. Water Co. v. Reeves, 43 N.M. 221, 89 P.2d 607 (1939), explained in In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Liability for damages to grazing lessees. — Persons performing seismographic work upon state land with consent of mineral lease holders and commissioner of public land are liable for damages caused to holders of grazing leases on the land, since under § 11 of form lease found at 19-10-4.1 NMSA 1978, mineral lease holder would be liable for such damages. Tidewater Associated Oil Co. v. Shipp, 59 N.M. 37, 278 P.2d 571 (1954).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Oil and gas as "minerals" within deed, lease or license, 37 A.L.R.2d 1440.

Easement: effect, as between lessor and lessee, of provision in mineral lease purporting to except or reserve a previously granted right-of-way or other easement through, over or upon the premises, 49 A.L.R.2d 1191.

"Mine" as used in written instrument, 92 A.L.R.2d 868.

Clay, sand or gravel as "minerals" within deed, lease or license, 95 A.L.R.2d 843.

19-7-29. [Grazing leases; rental rates; annual rental; appraisal of land.]

The commissioner of public lands of the state of New Mexico shall determine the annual rental to be charged for grazing lands belonging to the state, and such rentals shall be based upon the classification and valuation herein provided for and upon the appraisal required by the act of congress granting the lands to the state. The commissioner shall, as soon as practicable, classify and determine the value of all grazing lands belonging to the state, and in such determination, shall take into consideration the carrying capacity of such lands; that is, the number of livestock such lands will reasonably carry per annum without injury to such lands. In determining such carrying capacity, the commissioner may take into consideration the determination by the grazing service of the bureau of land management, by the soil conservation service,

by the forest service or by any other federal agency, of the carrying capacity of similar lands, and may also take into consideration the carrying capacity of similar patented lands as determined by the New Mexico state tax commission [property tax division of the taxation and revenue department] or other taxing authorities. In determining such capacity, five sheep shall be considered the equivalent of one cow, and the commissioner may determine such carrying capacity by counties or some natural division instead of by individual sections or leases. All appraisals of state grazing land hereafter made shall set out the opinion of the appraiser as to the average carrying capacity of the land appraised. The commissioner shall at all times take into consideration economic conditions in arriving at the value of grazing lands for leasing purposes, and shall have the power, in renewing any lease, to reduce the minimum rentals hereinafter set out by not more than thirty-three and one-third percent, if severe drouth or economic conditions, in his judgment, require such reduction. All leases for grazing purposes entered into for any period beginning after the effective date of this act [section] shall carry a minimum annual rental per acre as follows:

Number of cows the land
will carry per section Annual rental
5 head and less 3 cents per acre
6 head 4 cents per acre
7 head 5 cents per acre
8 head 6 cents per acre
9 head 7 cents per acre
10 head 8 cents per acre
11 head 9 cents per acre
12 head 10 cents per acre
13 head 11 cents per acre
14 head 12 cents per acre
15 head 13 cents per acre
16 head 14 cents per acre
17 head 15 cents per acre
18 head 16 cents per acre
19 head 17 cents per acre
20 head 18 cents per acre
21 head 19 cents per acre
22 head 20 cents per acre
23 head 21 cents per acre
24 head and over 22 cents per acre

Any state grazing leases which, at the time of the passage and approval of this act [section], are subject to any civil action by the government of the United States or are subject to any supplemental agreement with the United States government in any land acquisition program by the United States in the establishment of military reservations within this state, shall not be subject to the minimum rates established by this act

[section], but shall be at the rate established and ordered by the commissioner of public lands.

History: Laws 1912, ch. 82, § 13; Code 1915, § 5190; Laws 1915, ch. 73, § 2; 1921, ch. 14, § 1; C.S. 1929, § 132-113; 1941 Comp., § 8-830; Laws 1951, ch. 123, § [1]; 1953 Comp., § 7-8-30; Laws 1961, ch. 38, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Section 72-6-1, 1953 Comp., providing for a state tax commission, was repealed by Laws 1970, ch. 31, § 22. Laws 1970, ch. 31, §§ 21 and 22, compiled as 72-25-20, 72-25-21, 1953 Comp., establishing the property appraisal department, were repealed by Laws 1974, ch. 92, § 34 (amending Laws 1973, ch. 258, § 156), effective January 1, 1975. Laws 1973, ch. 258 and Laws 1974, ch. 92, dealt with the property tax department, which department was given authority for valuation of property for tax purposes. Laws 1977, ch. 249, § 45, compiled as 7-2-2 NMSA 1978, abolishes the property tax department. The taxation and revenue department, consisting of several divisions, including a property tax division, is established by Laws 1977, ch. 249, § 4, compiled as 9-11-4 NMSA 1978.

Cross references. — For appraisement of state land by lease applicants, *see* 19-7-1 NMSA 1978.

For false swearing in purchase or lease application or appraisement, *see* 19-7-7 NMSA 1978.

For requirement of appraisal of all grant lands prior to disposal thereof, *see* § 10 of the Enabling Act, Pamphlet 3, Volume 1 NMSA 1978.

Rental rate. — Under this section prior to the 1915 amendment, the appraised value of lands could be less than the $5.00 per acre fixed by the Enabling Act, and leasing by the commissioner at five cents an acre was not error. Makemson v. Dillon, 24 N.M. 302, 171 P. 673 (1918) (decided under prior law).

Classification to establish rental. — Under this section, prior to its 1951 amendment, the grazing lands of the state could all be put in one classification by the land commissioner and the minimum rental charged. 1923-24 Op. Att'y Gen. No. 23-3730 (rendered under prior law).

19-7-30. Grazing or agricultural leases; maximum term; method of payment.

All leases for grazing or agricultural purposes shall be for a term of not exceeding five years except as provided in this chapter. All rents are payable cash in advance or, if the lessee so elects, may be divided into five equal annual payments as follows: one-fifth in advance, the remainder to be evidenced by four equal joint and several promissory notes of even date with the lease, signed by the lessee and by two other persons satisfactory to the commissioner, due in one, two, three and four years respectively, but the commissioner may by regulation provide for waiving the promissory note requirement and may also by regulation provide for acceptance of a surety bond in lieu of promissory notes. All leases shall terminate on the thirtieth of September.

History: Laws 1912, ch. 82, § 14; Code 1915, § 5191; C.S. 1929, § 132-114; 1941 Comp., § 8-831; 1953 Comp., § 7-8-31; Laws 1971, ch. 90, § 1.

ANNOTATIONS

Cross references. — For bidding requirements for leases of greater than five years' duration, *see* § 10 of the Enabling Act, Pamphlet 3, Volume 1 NMSA 1978.

Renewal of lease. — C.S. 1929, § 132-120, which gave to good-faith lessee of state lands preferred right to renew lease, applied to leases under this section. State ex rel. McElroy v. Vesely, 40 N.M. 19, 52 P.2d 1090 (1935), explained in Ellison v. Ellison, 48 N.M. 80, 146 P.2d 173 (1944).

Lease relinquishment and consolidation. — Allowing relinquishment of a lessee's several existing leases on grazing or agricultural lands subject to the Enabling Act and permitting application for a new consolidated lease, with the net result being a lease of more than five years' duration without the opportunity for competitive bidding or adverse applications as provided by law is beyond the discretion of the commissioner of public lands. 1969 Op. Att'y Gen. No. 69-67.

Law reviews. — For comment, "Grazing Rights: Time for a New Outlook," see 32 Nat. Resources J. 623 (1992).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Agricultural leases, construction and effect of statutes limiting duration of, 17 A.L.R.2d 566.

19-7-31. [Power of commissioner to reject grazing lease application by a previous lessee when land is located within Taylor grazing allotment of another.]

At the expiration of any lease issued for grazing purposes only, the commissioner of public lands in his discretion and after investigation of facts may withhold approval of application to lease any land filed by a previous lessee, which land is located within the duly permitted individual Taylor grazing allotment of another where the land is not being used by prior lessee; provided, however, the holder of such grazing allotment has made timely and proper application to lease such land.

History: 1941 Comp., § 8-831a, enacted by Laws 1947, ch. 177, § 1; 1953 Comp., § 7-8-32.

ANNOTATIONS

Compiler's notes. — The "Taylor grazing allotment" apparently refers to permits under the Taylor Grazing Act, 43 U.S.C. § 315 et seq.

19-7-32. [Open and unleased land within Taylor grazing allotment of another.]

The commissioner of public lands in his discretion and after investigation of the facts may withhold approval of application to lease any land which at any time is open and unleased for grazing purposes, whether now owned, or hereafter acquired, by the state of New Mexico, which land is located within the duly permitted individual Taylor grazing allotment of another; provided, however, that the holder of such allotment permit, after reasonable notice, shall make application therefor.

History: 1941 Comp., § 8-831b, enacted by Laws 1947, ch. 177, § 2; 1953 Comp., § 7-8-33.

ANNOTATIONS

Compiler's notes. — The "Taylor grazing allotment" apparently refers to permits under the Taylor Grazing Act, 43 U.S.C. § 315 et seq.

19-7-33. [Right of relinquishment not restricted.]

Nothing herein [19-7-31 to 19-7-33 NMSA 1978] shall be construed as restricting the right of relinquishment.

History: 1941 Comp., § 8-831c, enacted by Laws 1947, ch. 177, § 3; 1953 Comp., § 7-8-34.

19-7-34. [Rent lien; attachment; forfeiture.]

Rentals shall constitute a first lien on any and all improvements and crops upon the land leased, prior and superior to any other lien or encumbrance whatsoever whether created with or without notice of the lien for rental due or to become due. When any rental is due and unpaid the commissioner may forthwith attach, without attachment bond, all improvements and crops upon the land leased, or so much thereof as may be sufficient to pay such rental together with all costs necessarily incurred in the enforcement of such lien, and the enforcement of such lien shall work a forfeiture of such lease. The failure of any lessee of state land to pay the rental therefor when due or

to furnish additional security for any deferred payment, when required by the commissioner, shall be sufficient cause for declaring any such lease forfeited.

History: Laws 1912, ch. 82, § 16; Code 1915, § 5193; C.S. 1929, § 132-116; 1941 Comp., § 8-833; 1953 Comp., § 7-8-36.

ANNOTATIONS

Cross references. — For forfeiture on failure to comply with contract of purchase, *see* 19-7-19 NMSA 1978.

For forfeiture of agricultural or grazing leases, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture for defrauding state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, *see* 19-8-27 NMSA 1978.

For forfeiture on failure to comply with coal lease, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

For forfeiture of timberlands purchase contract for failure to observe protective regulations, *see* 19-11-4 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, *see* 19-13-23 NMSA 1978.

Options on default. — Where the lessee of a grazing lease of public lands had defaulted on payments of notes, the commissioner had the option to look to lessee and endorsers for payment, and to the security of the lien on improvements, or cancel the lease. An acceleration clause in the lease is within the power of the commissioner to insert. Raynolds v. Hinkle, 37 N.M. 493, 24 P.2d 738 (1933).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Subrogation of lessee in respect of liens superior to his lease, 1 A.L.R.2d 286.

Tenant's right to lien, in absence of agreement therefor, for improvements made on leased premises, 25 A.L.R.2d 885.

Compensation for improvements made or placed on premises of another by mistake, 57 A.L.R.2d 263.

19-7-35. [Cancellation or forfeiture of agricultural or grazing leases restricted; sale of leased land.]

That no lease of state lands for agricultural or grazing purposes shall be canceled or forfeited by the commissioner of public lands, before the expiration of the full term thereof, without the written consent of the lessee, except for fraud, collusion, mutual mistake or default of the lessee, and the right to cancel or forfeit such lease without cause, based on any agreement or consent contained in such lease is hereby waived. All sales of state lands embraced within such lease shall be made subject to all the terms and provisions thereof, except the right of the lessee to a renewal at the end of the term. Provided that nothing in this act [section] shall prevent the commissioner from granting right-of-way [rights-of-way] and easements over, across or upon the land embraced in the lease for public highways, railroads, tramways, telegraph, telephone and power lines, irrigation works, mining, logging and business leases.

History: Laws 1935, ch. 130, § 1; 1941 Comp., § 8-834; 1953 Comp., § 7-8-37.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For forfeiture of contract for failure to comply therewith, *see* 19-7-19 NMSA 1978.

For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture for defrauding state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, *see* 19-8-27 NMSA 1978.

For forfeiture on failure to comply with coal lease, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

For forfeiture of timberlands purchase contract on failure to observe protective regulations, *see* 19-11-4 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, *see* 19-13-23 NMSA 1978.

Consent to sale. — Where the lessee of state lands makes application for a sale of the land under lease, his application constitutes a consent to a sale to another party in event he is outbid at the sale held pursuant to his application therefor. 1949-50 Op. Att'y Gen. No. 49-5186.

19-7-36. [Assignment or relinquishment of lease; consent of commissioner required.]

With the consent of the commissioner any lessee may assign all his right, title and interest in his lease, or relinquish the same to the state, whereupon his lease shall be canceled. Any assignment or relinquishment without the written consent of the commissioner shall be null and void.

History: Laws 1912, ch. 82, § 19; Code 1915, § 5196; Laws 1915, ch. 73, § 3; C.S. 1929, § 132-119; 1941 Comp., § 8-835; 1953 Comp., § 7-8-38.

ANNOTATIONS

Cross references. — For assignment of purchase contracts, *see* 19-7-20 NMSA 1978.

For assignment of mineral lease, *see* 19-8-28 NMSA 1978.

For assignment of oil and gas lease, *see* 19-10-13 NMSA 1978.

For transferability of lease under Geothermal Resources Act, *see* 19-13-21 NMSA 1978.

Assignment of lease without approval of commissioner is void. Scharbauer v. Graham, 37 N.M. 449, 24 P.2d 288 (1933).

Within discretion of commissioner. — One who challenges discretion of commissioner in disapproving of assignment of lease must show a clear right. Such discretion may not be disturbed or controlled by the courts except in a plain case of abuse. Raynolds v. Hinkle, 37 N.M. 493, 24 P.2d 738 (1933).

Lease as collateral security. — The owner and holder of a state grazing lease may assign his interest therein as collateral security. Am. Mortgage Co. v. White, 34 N.M. 602, 287 P. 702 (1930), distinguished in Arrow Gas Co. v. Lewis, 71 N.M. 232, 377 P.2d 655 (1962).

Same not an encumbrance. — An assignment of a state grazing lease as collateral security is not in violation of the provision of the Enabling Act prohibiting the mortgage or encumbrance of state lands granted therein. Am. Mortgage Co. v. White, 34 N.M. 602, 287 P. 702 (1930).

Commissioner necessary party to suit. — To invoke the equitable jurisdiction of the court in a suit affecting rights of the state in school lands, the commissioner of public lands is a necessary and indispensable party. Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945), distinguished in Shelley v. Norris, 73 N.M. 148, 386 P.2d 243 (1963).

Suit to determine rights to the use of state school lands by one not a party to the lease and a stranger to the commissioner, under an agreement to which the state was not a party, where commissioner was not a party to the suit and suit did not grow out of a contest before the commissioner, cannot be maintained since such an adjudication would affect rights of the state. Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945), distinguished in Shelley v. Norris, 73 N.M. 148, 386 P.2d 243 (1963).

In absence of commissioner of public lands as a party to the suit, supreme court will not approve a decree to modify a state land lease to show that a total stranger to the original lease has a half interest therein. Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945), distinguished in Shelley v. Norris, 73 N.M. 148, 386 P.2d 243 (1963).

Relinquishment and consolidation. — Practice of allowing relinquishment of a lessee's several existing leases on grazing or agricultural lands subject to the Enabling Act and permitting application for a new consolidated lease, with the net result being a lease of more than five years' duration without the opportunity for competitive bidding or adverse applications as provided by law, is beyond the discretion of the commissioner of public lands. 1969 Op. Att'y Gen. No. 69-67.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of lessee who assigns lease for rent accruing subsequently to extension or renewal of term, 10 A.L.R.3d 818.

19-7-37. Assignment of grazing or agricultural lease or purchase contract as collateral; approval of commissioner; effect.

Any lease of state lands for grazing or agricultural purposes and any contract for the purchase of state lands may be assigned as collateral security, with the approval of the commissioner of public lands; and after such approval such assignment shall have the effect of giving the assignee a lien on any lease or purchase contract so assigned, or any renewal or renewals thereof by assignor and all rights of renewal of any such lease, together with the improvements thereon, to secure the indebtedness specified in such assignment and any further advances or expenditures authorized to be made by the assignee by the terms of such assignment; and after any such assignment shall be approved by the commissioner of public lands, and while same is in force and effect as hereinafter provided, no relinquishment or assignment of a lease or transfer of a state purchase contract, or portions thereof, embraced in such assignment shall be accepted or approved for filing respectively by the commissioner of public lands, unless the holder of such collateral assignment shall release in writing any collateral assignment held by him covering such lease or contract being transferred, assigned or relinquished or, in case of assignment only, unless the assignee agrees in writing to assume or take the lease or contract subject to the rights of any collateral assignee. The preference right of

renewal of any lease held under collateral assignment shall be vested in the holder of such assignment, subject only to the right of renewal of the lessee at the date of expiration of said lease, and to all the provisions of law now in effect or hereinafter enacted; provided, however, that any renewal lease issued to subsequent collateral assignees, under the preference right of renewal provided for herein, shall be subject to the rights of the holders of the prior assignments of record in the state land office.

History: Laws 1933, ch. 126, § 1; 1937, ch. 51, § 1; 1939, ch. 48, § 1; 1953, ch. 69, § 3; 1941 Comp., § 8-836; 1953 Comp., § 7-8-39; Laws 1971, ch. 94, § 1.

ANNOTATIONS

Cross references. — For sale of state lands under deferred payment plan, *see* 19-7-9, 19-7-10 NMSA 1978.

For exception of existing instruments from approval, requirement, *see* 19-7-45 NMSA 1978.

For provision giving existing lessee preferential opportunity to meet highest rental offered by other applicant, *see* 19-7-49 NMSA 1978.

Assignment as collateral security. — The owner and holder of a state grazing lease may assign his interest therein as collateral security. Am. Mortgage Co. v. White, 34 N.M. 602, 287 P. 702 (1930), distinguished in Arrow Gas Co. v. Lewis, 71 N.M. 232, 377 P.2d 655 (1962).

Assignment as collateral security. — It is not a violation of law to assign a grazing lease obtained from the state land commissioner, as collateral security, so as to render the lease subject to cancellation. Lusk v. First Nat'l Bank, 46 N.M. 445, 130 P.2d 1032 (1942).

Foreclosure on contract assigned as collateral. — An assignment of a contract for the purchase of state lands creates a lien on the contract itself rather than on the land covered by the contract; thus, a creditor who forecloses on a state land contract assigned as collateral for a debt obtains only the right to a new purchase contract. U.S. v. Agri Servs., Inc., 81 F.3d 1002 (10th Cir. 1996).

Irregular assignment. — Though this act prescribes the proper method and manner of making assignments of grazing and agricultural leases, it does not follow that an assignment which is not made in strict compliance with its terms is subject to cancellation. Lusk v. First Nat'l Bank, 46 N.M. 445, 130 P.2d 1032 (1942).

19-7-38. [Presenting assignment to commissioner; indexing; filing; public inspection.]

All such assignments shall be presented to the commissioner of public lands for his approval, and, after approval by the commissioner, shall be indexed in a book kept for that purpose and filed in a suitable place provided by the commissioner. The commissioner is authorized and directed to provide and install, as soon as possible after the passage of this act [19-7-37 to 19-7-45 NMSA 1978], a full and complete system for the indexing and filing in his office of such assignments, as is necessary for carrying out the provisions of this act, and such indexes and files shall be open for inspection by the public during business hours of the office of the commissioner of public lands, under such reasonable rules and regulations as may be prescribed by the commissioner.

History: Laws 1933, ch. 126, § 2; 1939, ch. 48, § 2; 1941 Comp., § 8-837; 1953 Comp., § 7-8-40.

19-7-39. [Form of assignment; contents; acknowledgment; constructive notice; recording waived.]

Such assignments shall be executed on forms to be prescribed by the commissioner of public lands, which forms shall specify the number of the lease or purchase contract assigned, the description of the land embraced in such lease or purchase contract, the date of the expiration of the lease assigned, the name of the assignee and the amount of the indebtedness which the assignment is given to secure, and may provide for further advances by the assignee up to a specific amount. Such assignments shall be acknowledged by the assignor in the manner provided by law for the acknowledgment of conveyances affecting real estate, and, when filed in the office of the commissioner of public lands and approved by him, shall be constructive notice to all persons of the contents of such assignments from the date of such approval, and it shall not be necessary to record such instruments in the county where the lands affected thereby are located. Provided, that when more than one lease or purchase contract is assigned to secure the same indebtedness, any and all such leases or purchase contracts shall be assigned by separate instrument.

History: Laws 1933, ch. 126, § 3; 1935, ch. 47, § 1; 1937, ch. 51, § 2; 1941 Comp., § 8-838; 1953 Comp., § 7-8-41.

ANNOTATIONS

Cross references. — For recording in commissioner's office of oil and gas leases, etc., *see* 19-10-31 NMSA 1978.

For recording of instruments affecting real estate, and giving of constructive notice thereby generally, *see* 14-9-1, 14-9-2 NMSA 1978.

For recording of assignment made for benefit of creditors, *see* 56-9-10 NMSA 1978.

19-7-40. [Assignments not filed and approved; effect.]

Any such assignment not filed in the office of the commissioner of public lands and approved by him shall be void as to subsequent assignees, whether for collateral security or otherwise, and as to holders of subsequent relinquishments, without notice, as to judgment or attaching creditors, from the date of the entry of such judgment or levy of such attachment, as to trustees in bankruptcy, from the date of the adjudication in bankruptcy, as to receivers, from the date of filing of the order of appointment and as to assignees for the benefit of creditors, from the date of the recording of the assignment.

History: Laws 1933, ch. 126, § 4; 1941 Comp., § 8-839; 1953 Comp., § 7-8-42.

ANNOTATIONS

Intent of legislature. — This section shows the clear intent of the legislature that the property interest in a lease of state lands be subject to the ordinary processes and remedies of which a judgment creditor may avail himself. 1955-56 Op. Att'y Gen. No. 55-6337.

Priorities. — This section establishes the respective priorities of ordinary assignees and holders of relinquishments, on the one hand, and judgment creditors, attaching creditors, trustees in bankruptcy, receivers and assignees for the benefit of creditors on the other. 1955-56 Op. Att'y Gen. No. 55-6337.

19-7-41. [Foreclosure of assignments; rights of purchaser.]

The collateral assignments of record in the state land office upon grazing leases may be foreclosed in the manner provided by law for the foreclosure of chattel mortgages, and the collateral assignments of record in the state land office upon state purchase contracts may be foreclosed in the manner provided by law for the foreclosure of mortgages on real estate, and the purchaser at any sale under such foreclosure, if otherwise qualified to lease or purchase state land, as the case may be, on the filing with the commissioner of public lands of the transfer to him of any such lease or purchase contract, pursuant to any such foreclosure sale, and the payment of all delinquent payments on the lease or purchase contract so transferred, shall be entitled to a new lease or purchase contract on his compliance with all the conditions governing the lease or purchase of state lands, now or hereafter provided by law, or by regulation of the commissioner of public lands; provided, however, that in the event the collateral assignment foreclosed was subject to or inferior to a prior assignment, a purchaser at such foreclosure sale shall take such new lease or purchase contract subject to all prior assignments filed and approved in accordance with this act [19-7-37 to 19-7-45 NMSA 1978]. Any purchaser at such foreclosure sale shall also be entitled to the improvements on the lands covered by the lease or purchase contract purchased by him and to all rights of renewal of any such lease held by the original lessee; subject, however, to the rights of the holders of any prior assignments of record in the state land office.

History: Laws 1933, ch. 126, § 6; 1937, ch. 51, § 3; 1939, ch. 48, § 4; 1941 Comp., § 8-841; 1953 Comp., § 7-8-43.

ANNOTATIONS

Cross references. — For provision giving existing lessee preferential opportunity to meet highest rental offered by other applicant, *see* 19-7-49 NMSA 1978.

For execution and foreclosure sale, *see* 39-5-1 NMSA 1978 et seq.

Foreclosure on contract assigned as collateral. — An assignment of a contract for the purchase of state lands creates a lien on the contract itself rather than on the land covered by the contract; thus, a creditor who forecloses on a state land contract assigned as collateral for a debt obtains only the right to a new purchase contract. U.S. v. Agri Servs., Inc., 81 F.3d 1002 (10th Cir. 1996).

Sale of lease. — Execution sale of the interest of a lessee in state lands may be had, subject to approval by the land commissioner of the purchaser as lessee. 1955-56 Op. Att'y Gen. No. 55-6337.

Transfer to purchaser. — The transfer to purchaser of the lease pursuant to an execution sale should be filed with the land commissioner and upon approval of purchaser as a lessee, the commissioner should issue a new lease to the purchaser at sale in the same manner as provided for a purchaser under foreclosure of assignments of state-leased lands under this section. 1955-56 Op. Att'y Gen. No. 55-6337.

19-7-42. [Release of assignments; recording.]

Such assignments may be released by the execution by the assignee of a release in form to be prescribed by the commissioner, and any such release shall likewise be recorded in the books hereinabove prescribed.

History: Laws 1933, ch. 126, § 7; 1941 Comp., § 8-842; 1953 Comp., § 7-8-44.

19-7-43. [Conditions for approval; right of cancellation reserved; preference of state liens.]

No such assignment shall be approved by the commissioner of public lands until all delinquent payments on the lease or purchase contract so assigned have been paid; and nothing herein contained shall prevent the commissioner of public lands from canceling any lease or purchase contract so assigned because of the failure to make any payments due thereon, or for any noncompliance with the provisions of said lease or purchase contract. None of the provisions of this act [19-7-37 to 19-7-45 NMSA 1978] shall be held to give any assignee or purchaser any preference or priority over the lien or claim of the state on any lease or purchase contract so assigned, or the improvements thereon, as now or hereafter provided by law; and any such assignment

and any rights acquired on any foreclosure thereof shall be subject to the lien and claim of the state on such lease or purchase contract and the improvements thereon.

History: Laws 1933, ch. 126, § 8; 1937, ch. 51, § 4; 1941 Comp., § 8-843; 1953 Comp., § 7-8-45.

ANNOTATIONS

Cross references. — For forfeiture of purchase contract for failure to comply therewith, *see* 19-7-19 NMSA 1978.

For state's first lien on improvements and crops on leased lands, *see* 19-7-34 NMSA 1978.

For forfeiture of lease upon failure to pay rent, *see* 19-7-34, 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

19-7-44. [Rules and regulations; filing and recording fee.]

The commissioner of public lands is authorized to make, publish and enforce all necessary and reasonable rules and regulations for carrying out the purposes and provisions of this act [19-7-37 to 19-7-45 NMSA 1978], and shall collect a uniform fee of one dollar [($1.00)] for the filing and recording of any instrument under the provisions hereof, which fees shall be covered into the maintenance fund of his office.

History: Laws 1933, ch. 126, § 9; 1935, ch. 47, § 2; 1941 Comp., § 8-844; 1953 Comp., § 7-8-46.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For state lands maintenance fund, *see* 19-1-11 NMSA 1978.

Discretion of commissioner limited. — While the commissioner of public lands has a great deal of discretionary authority in managing the public lands of the state, his discretion is limited by express provisions in the law. 1969 Op. Att'y Gen. No. 69-67.

No rights in public lands may be given or acquired contrary to law by circumvention, indirection or otherwise, no matter how valid or well-intentioned the underlying reason may be. 1969 Op. Att'y Gen. No. 69-67.

Practice not authorized. — Practice of allowing relinquishment of a lessee's existing leases on grazing or agricultural lands subject to the Enabling Act and application for a new consolidated lease, the net result being a lease of more than five years' duration without the opportunity for competitive bidding or adverse applications as provided by law, is beyond the discretion of the commissioner of public lands. 1969 Op. Att'y Gen. No. 69-67.

Rules have effect of law. — Rules promulgated by the commissioner under this section when authorized by law and not contrary to it have the effect of law. 1969 Op. Att'y Gen. No. 69-67.

19-7-45. [Construction of act; prior assignments and mortgages.]

This act [19-7-37 to 19-7-45 NMSA 1978] shall not be construed to affect any assignment, mortgage or other instrument covering any purchase contract or lease of state lands for grazing or agricultural purposes or improvements thereon heretofore given for the purpose of securing any indebtedness and any such instrument or a certified copy thereof may be filed in the office of the commissioner of public lands and when so filed shall be constructive notice to all persons of the contents thereof and the lien created thereby may be foreclosed in accordance with the provisions of this act. Provided, however, the provisions of this act prescribing forms or requiring the approval of assignments by the commissioner of public lands shall not apply to such instruments.

History: Laws 1933, ch. 126, § 10; 1937, ch. 51, § 5; 1941 Comp., § 8-845; 1953 Comp., § 7-8-47.

ANNOTATIONS

Cross references. — For foreclosure of assignments, *see* 19-7-41 NMSA 1978.

19-7-46. [Satisfaction of debt for which assignment of grazing or agricultural lease or purchase contracts given as security; filing of release.]

When any lease debt or evidence of debt secured by an assignment for collateral security of grazing or agricultural leases of state lands or purchase contracts shall have been fully satisfied, it shall be the duty of the mortgagee, trustee or the assignee of such debt or evidence or [of] debt as the case may be to cause the full satisfaction thereof, to be entered of record in the office of the state commissioner of public lands.

History: 1941 Comp., § 8-836b, enacted by Laws 1953, ch. 69, § 1; 1953 Comp., § 7-8-48.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands §§ 186, 197.

19-7-47. [Violation; penalty; civil liability.]

Any person who shall be guilty of violating the preceding section [19-7-46 NMSA 1978], upon conviction before any justice of the peace [magistrate court] or district court having jurisdiction of the same shall be punished by a fine of not less than ten [dollars] ($10.00) nor more than twenty-five dollars ($25.00), and shall be liable in a civil action for all costs of clearing the title to said property including a reasonable attorney's fee.

History: 1941 Comp., § 8-836c, enacted by Laws 1953, ch. 69, § 2; 1953 Comp., § 7-8-49.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The office of justice of the peace was abolished by 35-1-38 NMSA 1978, and the jurisdiction, powers and duties thereof transferred to the magistrate court.

19-7-48. [Existing collateral assignments ratified; application of act thereto.]

All existing collateral assignments heretofore filed and approved by the commissioner of public lands covering either state leases or state land purchase contracts are hereby ratified and the provisions of this act [19-7-37, 19-7-46 to 19-7-48 NMSA 1978] are hereby made applicable thereto.

History: 1941 Comp., § 8-836a, enacted by Laws 1953, ch. 69, § 4; 1953 Comp., § 7-8-50.

19-7-49. [New grazing lease; time for filing application; prior lessee preferred.]

Every grazing lessee who desires a new lease on the same lands for a term not exceeding five years shall make and file with the commissioner his application for such new lease on or before August first next preceding the expiration of his existing lease; and any and all other applicants for a like lease on such land shall make and file with the commissioner their applications on or before September first next preceding the expiration date of such existing lease. If more than one such application to lease be filed as herein provided, one of which shall be that of the holder of the existing lease, the commissioner shall lease such land to the bona fide applicant offering the highest annual rental therefor, if to anyone; except that the commissioner, before so doing, if

another bona fide applicant shall offer a higher rental than that offered by the holder of the existing lease, shall give written notice to the holder of the existing lease, immediately after September first next preceding the expiration of such lease, of the name and address of the applicant offering the highest annual rental and the amount of such offer, and if the holder of the existing lease, on or before September 30th next ensuing, shall meet such offer and has, in good faith, complied with all the requirements of his existing lease, the lease shall be awarded to him, if to anyone.

History: Laws 1937, ch. 42, § 2; 1941 Comp., § 8-846; 1953 Comp., § 7-8-51.

ANNOTATIONS

Cross references. — For preference in leasing to departments of state for purpose of erecting state buildings, *see* 19-7-27 NMSA 1978.

For preference to occupants of lands acquired by state, and to persons domiciled or paying taxes therein, *see* 19-7-53 NMSA 1978.

For lease preference rights of municipality, county or school district, *see* 19-7-56 NMSA 1978.

Condemnation of leased lands. — Defendant lessees, in a condemnation suit by the federal government, holding grazing leases of state-owned tracts, have compensable interests therein, for which they should receive, upon distribution of the proceedings, the condemnation award for the lands they have leased from the state; furthermore, the leases of the state-owned tracts executed or renewed by the state after July 1, 1970, created in the lessee a property compensable in these proceedings. U.S. v. 41,098.98 Acres of Land, 548 F.2d 911 (10th Cir. 1977).

In a condemnation suit brought by the United States against state grazing lease held by appellees for a five-year term as provided in the New Mexico Enabling Act, and issued under statutory authority, with a preference right for renewal under this section, which for all practical purposes was an absolute right as against other applicants, the court approved a compensation formula including both the state-owned lands leased by the defendants as well as the fee lands of the defendants as one ownership unit. U.S. v. 41,098.98 Acres of Land, 548 F.2d 911 (10th Cir. 1977).

Effect of renewal on mortgage. — As between mortgagor and mortgagee, a renewal of a grazing lease was to be regarded as merely a continuation of the original lease, and the operation of this principle was not defeated by the fact that the lease assigned contained no covenant of renewal. Scharbauer v. Graham, 37 N.M. 449, 24 P.2d 288 (1933) (case decided under former law).

Effect of expiration during cancellation suit. — Mere fact that lease expired prior to decision in the district court did not render moot the question presented by a contest seeking cancellation of the lease by reason of a sublease in violation of its terms,

because of the preference right of the holder of the old lease to a new lease. Lusk v. First Nat'l Bank, 46 N.M. 445, 130 P.2d 1032 (1942).

Right of renewal. — Preference right of renewal under former law referred to all leases issued by the public lands commissioner, including leases of five years and less which the commissioner could make without advertisement and sale at public auction; in case of conflicting rights, the preference was to the one holding the superior right in the judgment of the commissioner. State ex rel. McElroy v. Vesely, 40 N.M. 19, 52 P.2d 1090 (1935) (decided under prior law).

Part of lease. — Former C.S. 1929, § 132-120, giving preference right of renewal, was a part of a state land lease. State ex rel. McElroy v. Vesely, 40 N.M. 19, 52 P.2d 1090 (1935) (decided under prior law).

But not absolute. — Although former C.S. 1929, § 132-120 gave to good-faith lessee of state lands preferred right to renew lease, it was not the intent of the legislature to give an absolute right of renewal, which would run counter to the Enabling Act. State ex rel. McElroy v. Vesely, 40 N.M. 19, 52 P.2d 1090 (1935), explained in Ellison v. Ellison, 48 N.M. 80, 146 P.2d 173 (1944) (decided under prior law).

Waiver of preference. — Decedent's right to renewal of lease of state lands passed to administrator, who waived such right when he refused to accept renewal, knowing that lease assignment had been fraudulently obtained from decedent's heir; also, such refusal cut off the right of decedent's heirs to claim lease, either through preference or as beneficiaries under lease. Hart v. Walker, 40 N.M. 1, 52 P.2d 123 (1935).

Mandamus not available. — Under former law, the lessee's right of renewal did not justify mandamus against the public lands commissioner, which right had to originate in the constitution or statutes; the Enabling Act, § 10, did not give the lessee absolute right. State ex rel. McElroy v. Vesely, 40 N.M. 19, 52 P.2d 1090 (1935).

Notice. — Those who may wish to apply and bid for a lease on lands covered by an expiring lease are deprived of "notice" in the case of a consolidation of leases by relinquishment and reissuance. 1969 Op. Att'y Gen. No. 69-67.

The "notice" which is given is simply contained in the records of the land office showing that a five-year lease has been granted and, in the normal course, will expire under its terms at the end of that time. 1969 Op. Att'y Gen. No. 69-67.

Law reviews. — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 197.

19-7-50. [Violation of lease or instrument covering state lands; notice; forfeiture for noncompliance with demand.]

The violation of any of the terms, covenants or conditions of any lease or instrument in writing executed by the commissioner covering state lands, or the nonpayment by any lessee of such lands of rental when due, shall, at the option of the commissioner, work a forfeiture of any such lease or instrument in writing after thirty days' notice thereof to the lessee and the holders of any collateral assignments by registered mail, addressed to his or their last known post-office address of record in the state land office; provided, if within said thirty days the lessee or the holders of any collateral assignments shall comply with the demand made in any such notice, cancellation shall not be made.

History: Laws 1912, ch. 82, § 21; Code 1915, § 5198; Laws 1921, ch. 8, § 1; C.S. 1929, § 132-121; Laws 1939, ch. 64, § 1; 1941 Comp., § 8-847; 1953 Comp., § 7-8-52.

ANNOTATIONS

Cross references. — For forfeiture for failure to comply with purchase contract, *see* 19-7-19 NMSA 1978.

For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of agricultural or grazing lease, *see* 19-7-35 NMSA 1978.

For forfeiture for defrauding state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, *see* 19-8-27 NMSA 1978.

For forfeiture on failure to comply with coal lease, see 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

For forfeiture of timberlands purchase contract for failure to observe protective regulations, *see* 19-11-4 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, *see* 19-13-23 NMSA 1978.

Constitutionality. — This section does not violate N.M. Const., art. IV, § 32, or art. XIII, § 2, as there is no obligation or liability of the purchaser owed to the state. Although the state agrees to sell the land, the purchaser does not expressly agree to buy it, but rather, he agrees to make the payments promptly and to pay the taxes; the only remedy expressly reserved by the state for default is cancellation at option of commissioner, with retention of all payments of principal and interest, as liquidated damages. Vesely v. Ranch Realty Co., 38 N.M. 480, 35 P.2d 297 (1934).

Notice for benefit of lessee. — Inasmuch as the 30 days' notice of cancellation of contract is for the benefit of the party whose rights the commissioner proposes to terminate, the succeeding commissioner cannot object to the lack of notice. Vesely v. Ranch Realty Co., 38 N.M. 480, 35 P.2d 297 (1934).

Show cause notice inadequate. — Notice to show cause why a lease should not be canceled was a notice of contest and not notice of forfeiture required by this section. Comm'r of Pub. Lands v. Van Bruggen, 51 N.M. 108, 179 P.2d 528 (1947).

An offending lessee is entitled to a notice of a claimed violation of the terms of the lease, so he may meet the demand to cease within 30 days in which case no cause exists for cancellation, and where his only warning was an order to show cause why his lease should not be canceled, the notice was inadequate to permit cancellation. Comm'r of Pub. Lands v. Van Bruggen, 51 N.M. 108, 179 P.2d 528 (1947).

Options of commissioner upon default. — Where lessee had defaulted on payment of notes, commissioner had option to look to lessee and endorsers for payment, and to the security of the lien on improvements, or cancel the lease. Commissioner may insert acceleration clause in lease. Raynolds v. Hinkle, 37 N.M. 493, 24 P.2d 738 (1933).

Grounds for transfer to creditor. — A creditor of a lessee of state lands demanding transfer to him of the rights of such lessee in default of payment of rentals must show that lessee's default has become fixed as provided in this section. Am. Mortg. Co. v. White, 34 N.M. 602, 287 P. 702 (1930), distinguished in Arrow Gas Co. v. Lewis, 71 N.M. 232, 377 P.2d 655 (1962).

Collateral security. — It is not a violation of law to assign a grazing lease obtained from the state land commissioner, as collateral security, so as to render the lease subject to cancellation. Lusk v. First Nat'l Bank, 46 N.M. 445, 130 P.2d 1032 (1942).

Grounds for cancellation. — Where grazing lease does not have clause providing for cancellation upon notice, except for violation of the conditions, covenants and terms of the lease or nonpayment of rental when due, the commissioner is without authority to cancel. 1943-44 Op. Att'y Gen. No. 44-4539.

19-7-51. [Improvement on grazing or agricultural lease; restrictions.]

Except by the express written consent of the commissioner, improvements upon leased state lands held under one lease shall be limited as follows: upon those leased for grazing purposes, fences only, at a cost not exceeding one hundred and fifty dollars ($150) per mile, and necessary corrals, at a cost not exceeding two hundred dollars ($200); upon those leased for agricultural purposes, fences at a cost not exceeding one hundred and fifty dollars ($150) per mile for exterior boundaries and seventy-five dollars ($75) per mile for inside cross-fences; barns, dwellings and all other buildings, at a total cost not exceeding six hundred dollars ($600); wells and irrigation systems at a total

cost not exceeding one thousand dollars ($1,000); and for improvements to the land, such as orchards, plowed land, crops, etc., the amount allowed shall be only the amount added to the natural value of the land by such improvement, but in no case to exceed a total of ten dollars ($10.00) per acre for lands actually so improved. For the purposes of this chapter fences and growing crops shall be considered as movable improvements, and all other improvements as permanent improvements.

History: Laws 1912, ch. 82, § 22; Code 1915, § 5199; C.S. 1929, § 132-122; 1941 Comp., § 8-848; 1953 Comp., § 7-8-53.

ANNOTATIONS

Cross references. — For compensation of owner of improvements by purchaser or subsequent lessee, *see* 19-7-14 to 19-7-18 NMSA 1978.

Meaning of "this chapter". — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

Law reviews. — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Implied duty of lessee to remove his property, debris, buildings, improvements and the like, 23 A.L.R.2d 655.

What constitutes improvements within provisions of lease permitting or prohibiting tenant's removal thereof at termination of lease, 30 A.L.R.3d 998.

19-7-52. Excessive permanent improvements become part of realty.

Twenty-five percent of all permanent improvements in excess of the amount specified in Section 19-7-51 NMSA 1978 shall be and remain a part of the real estate so offered for sale, except as provided in this and the preceding section.

History: Laws 1913, ch. 29, § 3; Code 1915, § 5259; C.S. 1929, § 132-200; 1941 Comp., § 8-851; 1953 Comp., § 7-8-56; Laws 1975, ch. 111, § 2.

ANNOTATIONS

Compiler's notes. — As enacted, this section ended "except as provided in this act," meaning Laws 1913, ch. 29, §§ 1 to 3. This was changed in the 1915 Code to "except as provided in this and the preceding sections," apparently meaning 5257 to 5259, 1915

Code. Sections 5257 and 5258, 1915 Code, were repealed by Laws 1963, ch. 237, § 6. Laws 1975, ch. 111, § 2, amended this section, substituting "except as provided in this and the preceding section" for "except as provided in this and the preceding sections," among other changes. Section 7-8-53, 1953 Comp., was the first section preceding this section in 1975 that had not been repealed. It is compiled herein as 19-7-51 NMSA 1978.

Cross references. — For compensation of owner of improvements by purchaser or subsequent lessee, *see* 19-7-14 to 19-7-18 NMSA 1978.

Law reviews. — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. — What are improvements within lease provisions permitting or prohibiting tenant's removal thereof at termination of lease, 30 A.L.R.3d 998.

19-7-53. [Preferences in leasing; occupants of land acquired by state; persons or firms domiciled or paying taxes in state.]

Any person, association of persons or corporation authorized to transact business in the state, occupying any lands the title to which is acquired by the state by operation of law, shall have a preference right to lease same in accordance with the provisions of this chapter; provided application so to do is made within thirty days from and after the acquisition of such title. Persons, associations of persons or corporations having domicile or paying taxes in the state, applying to lease state lands, shall in all cases be given preference provided the rental or royalty offered to be paid be at least equal to that otherwise obtainable.

History: Laws 1912, ch. 82, § 23; Code 1915, § 5200; C.S. 1929, § 132-123; 1941 Comp., § 8-852; 1953 Comp., § 7-8-57.

ANNOTATIONS

Compiler's notes. — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

Cross references. — For preference in leasing to departments of state for purpose of erecting state buildings, *see* 19-7-27 NMSA 1978.

For right of existing grazing lessee to meet higher rental offer of new lease applicant, *see* 19-7-49 NMSA 1978.

For lease preference rights of municipality, county or school district, *see* 19-7-56 NMSA 1978.

Section has no reference to renewal leases. State ex rel. McElroy v. Vesely, 40 N.M. 19, 52 P.2d 1090 (1935).

19-7-54. [Municipalities leasing lands within five miles of limits; uses; term.]

Wherever any lands belonging to the state of New Mexico or under the supervision of the commissioner of public lands of the state of New Mexico are situate within five miles of any municipality, and any such municipality may have use for said state land or lands for airports, parks, swimming pools, fairgrounds, playgrounds or other municipal purposes, said municipality is authorized and empowered to lease said lands or so much thereof as may be reasonably necessary for such purpose or purposes from the commissioner of public lands of the state of New Mexico, and said commissioner of public lands is hereby authorized and empowered to enter into such a lease for a term not exceeding twenty-five years upon such reasonable terms and conditions as may be prescribed by the commissioner of public lands.

History: Laws 1929, ch. 53, § 1; C.S. 1929, § 132-601; 1941 Comp., § 8-853; 1953 Comp., § 7-8-58.

19-7-55. Counties and school districts leasing state lands; uses; term.

Any county or school district within the state which may have use for any state lands for any purpose incidental to the powers of the county or school district shall have the right and power to lease the lands or so much thereof as may be reasonably necessary for such purpose from the commissioner, and the commissioner is authorized and empowered to enter into such a lease for a term not exceeding twenty-five years upon such reasonable terms and conditions as may be prescribed by the commissioner.

In setting the terms and conditions of any lease to a school district, the commissioner shall, upon the request of the governing body of the school district, provide that the rental costs for the lease be paid from the school district's share of the current school fund established in Article 12, Section 4 of the constitution of New Mexico, or the common school current fund created in Section 19-1-17 NMSA 1978.

The necessary documentation to achieve this appropriation shall be submitted to the state treasurer by the commissioner. The appropriation made hereby is a continuing appropriation.

History: Laws 1929, ch. 53, § 2; C.S. 1929, § 132-602; 1941 Comp., § 8-854; 1953 Comp., § 7-8-59; Laws 1985 (1st S.S.), ch. 2, § 1.

ANNOTATIONS

The 1985 amendment, effective August 16, 1985, added the second and third paragraphs and, in the first paragraph, deleted "of New Mexico" following "state" and substituted "the county" for "said county" and "the lands" for "such lands" near the beginning, deleted "or purposes" following "purpose" and substituted "the commissioner, and the commissioner is authorized" for "the commissioner of public lands of the state of New Mexico, and said commissioner of public lands is hereby authorized" near the middle and deleted "of public lands" at the end.

19-7-56. [Preference right of municipality, county or school district; payment for prior improvements.]

Any such municipality, county or school district, shall at all times have a preference right to lease said state lands, and the commissioner of public lands shall prefer the application of said municipality, county or school district over any other application for lease upon the same land. Provided, nevertheless, that before any such lease is granted the lessee shall be required to pay the reasonable value of any improvements placed upon said state lands by a former lessee for the use of the owner of said improvements.

History: Laws 1929, ch. 53, § 3; C.S. 1929, § 132-603; 1941 Comp., § 8-855; 1953 Comp., § 7-8-60.

ANNOTATIONS

Cross references. — For compensation of owner of improvements by purchaser or subsequent lessee, *see* 19-7-14 to 19-7-18 NMSA 1978.

For preference in leasing to departments of state for purpose of erecting state buildings, *see* 19-7-27 NMSA 1978.

For right of existing grazing lessee to meet higher rental offer of new lease applicant, *see* 19-7-49 NMSA 1978.

For preference to occupants of lands acquired by state, and to persons domiciled or paying taxes therein, *see* 19-7-53 NMSA 1978.

19-7-57. Commissioner; powers; easements; rights of way.

The commissioner may grant rights of way and easements over, upon or across state lands for public highways, railroads, tramways, telegraph, telephone and power lines, irrigation works, mining, logging and other purposes upon payment by the grantee

of the price fixed by the commissioner, which shall not be less than the minimum price for the lands, used, as fixed by law. The commissioner may grant a right of way or easement over, upon or across state lands for oil, hazardous liquid and gas pipelines if the right-of-way grant or easement requires compliance with the Pipeline Safety Act, Section 70-3-11, et seq., NMSA 1978, and rules adopted pursuant to that act and provides for regulatory and agencies' access to records of compliance.

History: Laws 1912, ch. 82, § 53; Code 1915, § 5231; C.S. 1929, § 132-154; 1941 Comp., § 8-856; 1953 Comp., § 7-8-61; 2001, ch. 298, § 1.

ANNOTATIONS

Cross references. — For clause in grazing or agricultural lease reserving right to grant rights-of-way and easements for any of the purposes under this section, *see* 19-7-28 NMSA 1978.

For limitations on interference with roads or highways by rights-of-way through canyons, *see* 19-7-58 NMSA 1978.

For reservation of roadway over timbered and mountain lands, *see* 19-11-8 NMSA 1978.

For power of commissioner to grant an easement or right-of-way upon state lands for oil, hazardous liquid or gas pipelines, *see* 70-3-11 NMSA 1978.

The 2001 amendment, effective June 15, 2001, added the section heading and last sentence of the section.

Incorporation into lease. — This section becomes part of leases of state land for grazing, and the lease is charged with easement and servitude reserved in state. Lea Cnty. Water Co. v. Reeves, 43 N.M. 221, 89 P.2d 607 (1939), explained in In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Lessee's rights limited. — The rights of a lessee of grazing lands from state is limited by the provision for reasonable enjoyment by the lessor. Lea Cnty. Water Co. v. Reeves, 43 N.M. 221, 89 P.2d 607 (1939).

Section applies to state lands sold under deferred payment plan. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

State may sell lands subject to easements and rights-of-way. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Commissioner could charge state for highway rights-of-way or easements across lands which were granted and confirmed to New Mexico in trust for various state institutions and agencies by the Enabling Act when New Mexico was admitted to

statehood and for sand and gravel removed from such lands for use solely in constructing public highways across the trust lands. State ex rel. State Hwy. Comm'n v. Walker, 61 N.M. 374, 301 P.2d 317 (1956).

The general law that an agency of the state is not to be charged for the use of state property unless specific provision be made therefor is not applicable when dealing with lands granted in trust by the United States, under restrictions so exact they permit no license of construction or liberties of inference. State ex rel. State Hwy. Comm'n v. Walker, 61 N.M. 374, 301 P.2d 317 (1956).

Damage liability. — Persons performing seismographic work upon state land with consent of mineral lease holders and commissioner of public land are liable for damages caused to holders of grazing leases on the land, since, under § 11 of the form lease found at 19-10-4.1 NMSA 1978, mineral lease holder would be liable for such damages. Tidewater Associated Oil Co. v. Shipp, 59 N.M. 37, 278 P.2d 571 (1954).

Repair to damaged road. — Condition in a right-of-way permit for construction of flood retarding structures, which provided that "in crossing any right-of-way for a highway" the grantee would exercise due care so as not to interfere with same, speaks as of the time the crossing is made, not as of the time of grant; hence, grantee is responsible for reconstruction necessary to repair the county road, regardless of the fact that the road was constructed after the right-of-way was made specific by grant and filed for record. 1967-68 Op. Att'y Gen. No. 68-122.

Reservation through sale notice. — The authority of the commissioner of public lands to grant a right-of-way easement can be exercised through a reservation in the notice of public auction. 1967-68 Op. Att'y Gen. No. 68-122.

Right-of-way for highway. — In his discretion, the state land commissioner may give the state highway department a right-of-way over state lands for highway purposes. 1931-32 Op. Att'y Gen. No. 31-64.

Right-of-way granted without advertising. — Commissioner of public lands may grant in right-of-way of railroad company tract of land for stock pen, and execute deed without advertising and offering same at public auction. 1931-32 Op. Att'y Gen. No. 31-244.

Easement taken without compensation. — Rights-of-way across state lands for highway purposes for such lands were impressed with that easement when granted to the state in 1910, confirmed by act of congress (U.S. Rev. Stat., § 2477; U.S. Comp. Stat. 1916, § 4419). Such easement may be taken without compensation. 1921-22 Op. Att'y Gen. No. 22-3454.

Grant to railroad within commissioner's discretion. — It is within the discretion of the commissioner of public lands whether to grant a right-of-way across state lands to a railroad. 1921-22 Op. Att'y Gen. No. 21-2957.

Railroad rights-of-way. — The legislation on the subject of railroad rights-of-way over public lands having been uniform in provisions, the commissioner of public lands is authorized to grant a railroad right-of-way over public lands, under this section, although the railroad was incorporated under the 1905 act. 1914 Op. Att'y Gen. No. 14-1266.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands § 117.

Effect of provisions designating or referring to persons entitled to use right-of-way created by express grant, 20 A.L.R.2d 796.

73A C.J.S. Public Lands § 180.

19-7-58. [Rights-of-way; interference with roads or highways.]

The location of any right-of-way through any canyon, pass or defile shall not cause the disuse of any wagon [road] or other public highway now located therein, nor prevent the location through the same of any such wagon road or highway, where such road or highway may be necessary for the public accommodation; and where any change in the location of such wagon road is necessary to permit the use of such right-of-way or easement, the user of such right-of-way or easement, shall before entering upon the ground occupied by such wagon road, cause the same to be reconstructed at his own expense in the most favorable location, and in as perfect a manner as the original road.

History: Laws 1912, ch. 82, § 54; Code 1915, § 5232; C.S. 1929, § 132-155; 1941 Comp., § 8-857; 1953 Comp., § 7-8-62.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For authorization to commissioner to grant rights-of-way and easements, *see* 19-7-57 NMSA 1978.

For reservation of roadway over timbered and mountain lands, *see* 19-11-8 NMSA 1978.

19-7-59. Repayment of money erroneously paid on lease or purchase contract after distribution.

A. The duties, responsibilities and activities of the commissioner of public lands and lessees of state trust land and minerals set out in this section shall be performed in a timely manner.

B. Money erroneously paid on account of a lease or sale of state lands, which money is not carried in a suspense fund but has been distributed to the proper income or permanent fund, shall be repaid in the manner prescribed in this section.

C. If the money erroneously paid was for royalty due under a lease, then, subject to a subsequent audit by the commissioner of public lands or the commissioner's agent, the lessee may either request a refund or may recoup the money by deducting an equivalent amount from subsequent royalty payments due for the same lease and any other lease with the same trust beneficiary; provided that if the amount erroneously paid pursuant to this subsection is greater than fifty thousand dollars ($50,000) for a lease, no deduction from subsequent payments shall be made without the prior approval of the commissioner of public lands; and, provided further that, no initial claim for recoupment shall be made after six years from the date on which the initial royalty obligation became due.

D. If the amount of money erroneously paid is less than ten thousand dollars ($10,000), then, after a claim for a refund has been filed pursuant to Section 19-7-60 NMSA 1978 and approved by the commissioner of public lands, no court action shall be necessary and a refund shall be made under Section 19-7-62 or 19-7-63 NMSA 1978.

E. All other money erroneously paid shall be refunded pursuant to the provisions of Sections 19-7-60 through 19-7-63 NMSA 1978.

History: Laws 1931, ch. 99, § 1; 1941 Comp., § 8-858; 1953 Comp., § 7-8-63; Laws 1979, ch. 234, § 1; 1989, ch. 11, § 1; 1994, ch. 102, § 1; 2007, ch. 61, § 1.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, added a new Subsection A to require the commissioner and lessees to perform acts in a timely manner; in Subsection C, required commissioner approval of deductions if an erroneous royalty payment under a lease is greater than $50,000; limited actions for recoupment of erroneous royalty payments to six years; and Subsection D, eliminated the necessity of court action to recover erroneous royalty payments of less than $10,000.

The 1994 amendment, effective May 18, 1994, inserted "and any other lease with the same trust beneficiary" and substituted "erroneously paid pursuant to this subsection" for "to be recouped under this paragraph" in Subsection B.

The 1989 amendment, effective June 16, 1989, deleted "to income fund" at the end of the catchline, designated the formerly undesignated provisions as Subsection A and made minor stylistic changes therein, and added Subsections B through D.

Error of fact essential. — To authorize a refund under this section, there must be an error of fact. Staplin v. Vesely, 41 N.M. 543, 72 P.2d 7 (1937).

Allegation and proof. — "Erroneous" payment must be alleged and proved to authorize a recovery under this section. Staplin v. Vesely, 41 N.M. 543, 72 P.2d 7 (1937).

Actual payment to commissioner required. — Since the claimant had not actually paid money to the commissioner, it did not have a valid claim for refund because a payment attributed to the commissioner's benefit does not meet the requirements of this act. The act is clear in requiring that an overpayment must be erroneously made to the commissioner or to funds administered by the commissioner. In addition, the plain meaning of "refunds" from a governmental entity is "money received by the government or its officers which, for any cause, are to be refunded or restored to the parties paying them." Anadarko Petroleum Corp. v. Baca, 117 N.M. 167, 870 P.2d 129 (1994).

Money voluntarily paid with knowledge of facts cannot be recovered. Staplin v. Vesely, 41 N.M. 543, 72 P.2d 7 (1937).

Advance payments. — Laws 1945, ch. 111 (19-10-3, former 19-10-10 NMSA 1978) does not provide for refund of moneys paid in advance and land commissioner could not make such a refund in any event without a court order. 1947-48 Op. Att'y Gen. No. 47-5056.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 186.

19-7-60. Claim for refund; contents; time limit; notice of erroneous payment; limitation of action.

A person claiming a refund under the provisions of Sections 19-7-59 through 19-7-63 NMSA 1978 shall file with the commissioner of public lands a written claim for refund, stating the amount claimed to have been erroneously paid and the reasons why such payment was erroneously made. All claims for refund of money shall be filed within ninety days after notice. If an erroneous payment of any money is discovered by the commissioner of public lands, notice of the discovery shall be given by the commissioner of public lands, as soon after the discovery as possible, by registered mail to the last recorded address of the person making the erroneous payment. A claim for a refund that is not filed with the commissioner of public lands within six years from the date the erroneous payment was made shall be forever barred; provided that if notice of an erroneous payment is given less than ninety days before the end of the six-year limitation, the period of time to file a claim shall be extended beyond the six-year limitation for the number of days necessary to provide ninety days to file the claim.

History: Laws 1931, ch. 99, § 2; 1941 Comp., § 8-859; 1953 Comp., § 7-8-64; Laws 1979, ch. 234, § 2; 2007, ch. 61, § 2.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, barred claims for refund of erroneous payments after six years from the date of payment, but extends the time to file a claim after the six-year limitation period up to 90 days if a notice of erroneous payment is given less than 90 days before the end of the six-year limitation.

Limitations inapplicable. — The statute on limitation of actions has no application to proceedings under Laws 1931, ch. 99 (Sections 19-7-59 to 19-7-63 NMSA 1978), and the commissioner of public lands should consider claims filed for refund of payments erroneously made regardless of time. 1931-32 Op. Att'y Gen. No. 32-506.

19-7-61. [Endorsement of claims; filing in district court of Santa Fe county; notice to claimant; procedure; judgment; appeal; costs.]

Within sixty days after the filing of any application for refund, the commissioner of public lands shall investigate the facts and shall endorse thereon his approval or disapproval of said claim, in whole or in part, together with such other statement of facts as to him may seem advisable. The commissioner of public lands shall file each such claim, together with his endorsement as herein provided, in the district court of Santa Fe county, New Mexico. Such claim, when so filed, shall be considered as the institution of a proceeding for the determination of the validity of the claim for refund by each such claimant against the commissioner of public lands of the state of New Mexico. Upon the filing of any such claim in said district court, the commissioner of public lands shall notify the claimant, by ordinary mail, at his post-office address shown in the claim for refund, of the fact of the filing of said claim in the district court, and shall at the same time transmit to such claimant a copy of the endorsement of the commissioner on such claim. Within thirty days from the date of said notice, the claimant may file in the district court such additional statement of facts, under oath, relative to the validity of the claim for refund, as he may deem advisable, and shall serve a copy of any such statement so filed, on the commissioner of public lands. It shall be the duty of the district court of Santa Fe county to set a date for the hearing of all claims so filed and such hearing shall be governed by the Rules of Civil Procedure. The district court of Santa Fe county is hereby given jurisdiction to hear and determine all such claims for refund, and it shall make such determination as speedily as possible and without the intervention of jury. Said court shall make findings of fact and conclusions of law and shall set out in its judgment the amount, or amounts, which the claimant is entitled to have refunded to him, and the fund or funds to which the money ordered refunded was credited.

Appeal from any final determination in such cases may be taken to the supreme court of the state, as in ordinary civil action, by either the claimant or the commissioner of public lands, within twenty days from the date of the entry of the judgment from which such appeal is taken. No costs or fees shall be required for the filing of such claims in the district court, the entry of judgment thereon, or for the filing of any appeal in the supreme court of the state. In no event shall any costs of any nature be taxed against the commissioner of public lands. When any judgment entered hereunder shall become final, a certified copy thereof shall be filed with the commissioner of public lands.

History: Laws 1931, ch. 99, § 3; 1941 Comp., § 8-860; 1953 Comp., § 7-8-65.

ANNOTATIONS

Cross references. — For rules governing how and when civil appeals may be taken, *see* Rules 12-201 to 12-203 NMRA.

19-7-62. Annual appropriation for refunds; payment from state lands maintenance fund.

There is appropriated annually out of the state lands maintenance fund created by Section 19-1-11 NMSA 1978 the sum of five hundred thousand dollars ($500,000) or such part thereof as may be necessary for the purpose of making refunds of payments determined in the manner provided by Sections 19-7-59 through 19-7-63 NMSA 1978 to have been erroneously collected; provided, however, that any refund of money paid into any fund other than the state lands maintenance fund shall be made only out of that part of the state lands maintenance fund distributable to the fund into which such payment was erroneously made, under the provisions of Section 19-1-13 NMSA 1978.

History: Laws 1931, ch. 99, § 4; 1941 Comp., § 8-861; 1953 Comp., § 7-8-66; Laws 1979, ch. 234, § 3; 2007, ch. 61, § 3.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, increased the annual appropriation for refunds from $200,000 to $500,000.

19-7-63. Erroneous distribution to permanent fund.

Refunds shall be made hereunder, of any money erroneously distributed to any permanent fund, only out of that part of the state lands maintenance fund distributable to that beneficiary into whose permanent fund the erroneous distribution was made. Provided, however, in the event the fund distributable to a beneficiary for the current fiscal year is insufficient to pay an approved refund, a temporary loan may be made to that beneficiary from that part of the maintenance fund as represents receipts for fees and copies. Such loans are repayable from distributable funds allocated to the beneficiary for the following fiscal year.

History: 1978 Comp., § 19-7-63, enacted by Laws 1979, ch. 234, § 4.

ANNOTATIONS

Repeals and reenactments. — Laws 1979, ch. 234, § 4, repealed former 19-7-63 NMSA 1978, relating to the prohibition of refunds of money distributed to permanent funds and the bar of claims for refund not filed within a certain time, and enacted the above section.

Cross references. — For time for filing claim for refund, *see* 19-7-60 NMSA 1978.

19-7-64. [Contesting rights to state lands; rules and regulations.]

Any person, association of persons or corporation claiming any right, title, interest or priority of claim, in or to any state lands, covered by any lease, contract, grant or any other instrument executed by the commissioner, shall have the right to initiate a contest before the commissioner who shall have the power to hear and determine same. The commissioner shall prescribe appropriate rules and regulations to govern the practice and procedure of such contests.

History: Laws 1912, ch. 82, § 69; Code 1915, § 5247; C.S. 1929, § 132-181; 1941 Comp., § 8-863; 1953 Comp., § 7-8-68.

ANNOTATIONS

Cross references. — For contest of application for patent to mine or mining claims, *see* 42-4-21 NMSA 1978.

Application of section. — Where a controversy does not involve the legality of a state lease, the eligibility of the lessee thereunder, the matter of performance of the lease, reservations, if any, in the lease, or a matter of public policy requiring passage thereon by the commissioner of public lands, then a district court should have jurisdiction to adjudicate the issues as between private litigants, liberally allowing intervention by the commissioner if any public land question is or could be involved in the case. Swayze v. Bartlett, 58 N.M. 504, 273 P.2d 367 (1954).

Right of contest. — The legislature's provision of a right of contest provides not only an appropriate forum, but on these facts the last opportunity for review. The legislature's provision of a right of contest recognizes the commissioner's plenary authority over state lands and provides an administrative remedy for disputes. Heimann v. Adee, 1996-NMSC-053, 122 N.M. 340, 924 P.2d 1352.

Commissioner as indispensable party. — Questions of renewals or of a new lease of state lands are peculiarly within the province of the commissioner, and in a case involving such question, the commissioner is an indispensable party. Swayze v. Bartlett, 58 N.M. 504, 273 P.2d 367 (1954).

Suit to determine rights to the use of state school lands by one not a party to the lease and a stranger to the commissioner, under an agreement to which the state was not a party, where the commissioner was not a party to the suit and the suit did not grow out of a contest before the commissioner, cannot be maintained since such an adjudication would affect rights of the state. Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945), distinguished in Shelley v. Norris, 73 N.M. 148, 386 P.2d 243 (1963).

In absence of commissioner of public lands as a party to the suit, supreme court will not approve a decree to modify a state land lease to show that a total stranger to the original lease has a half interest therein. Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945), distinguished in Shelley v. Norris, 73 N.M. 148, 386 P.2d 243 (1963).

Sovereign immunity. — Commissioner of public lands is not amenable to suit involving claims by private litigants, and may plead a sovereign's immunity from litigation if he so desires. Swayze v. Bartlett, 58 N.M. 504, 273 P.2d 367 (1954).

Contest of lode location claim. — The accepting of lode mining location notices for the purpose of filing same in the land office, sought by relator, will not interfere with the right of the applicant for placer prospecting permits to bring such action as he may think proper to have all questions as to any right, title, interest or priority of claim, in the lode location claims made by relator; and the refusal by respondent to accept for filing purposes the location notices tendered him by relator, as provided by law, precludes the relator of his right to institute a contest proceeding as is provided by this section. State ex rel. Four Corners Exploration Co. v. Walker, 60 N.M. 459, 292 P.2d 329 (1956).

Withdrawal of lease assignment. — Where assignment of oil and gas lease is transmitted to commissioner of public lands for approval, and later withdrawn by assignor, assignees may contest their claim before the commissioner, under this section. Davidson v. Enfield, 35 N.M. 580, 3 P.2d 979 (1931).

Appeal of lease cancellation. — Lessee whose lease was canceled for subleasing without consent of commissioner of public lands was entitled to appeal to district court. Comm'r of Pub. Lands v. Van Bruggen, 51 N.M. 108, 179 P.2d 528 (1947).

Judicial review. — The commissioner of public lands has complete dominion or control of state lands, but the manner in which he exercises this control is subject to judicial review. Burguete v. Del Curto, 49 N.M. 292, 163 P.2d 257 (1945).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 185.

19-7-65. [Commissioner's power relative to oaths, witnesses and documents.]

In such contests, the commissioner shall have the same power as conferred by law upon referees relative to the administration of oaths, examination of witnesses and production of books, documents and other papers.

History: Laws 1912, ch. 82, § 70; Code 1915, § 5248; C.S. 1929, § 132-182; 1941 Comp., § 8-864; 1953 Comp., § 7-8-69.

ANNOTATIONS

Cross references. — For masters (including referees), *see* Rule 1-053 NMRA.

19-7-66. [Perjury in contest proceedings; penalty.]

Every person who shall knowingly and willfully swear falsely, concerning any material matter or thing, respecting which he shall be required to depose in any such contest, shall be deemed guilty of perjury, and upon conviction thereof shall be punished by imprisonment for not more than five years, nor less than two years.

History: Laws 1912, ch. 82, § 71; Code 1915, § 5249; C.S. 1929, § 132-183; 1941 Comp., § 8-865; 1953 Comp., § 7-8-70.

ANNOTATIONS

Cross references. — For false swearing in application to lease or purchase state lands, or appraisement of same, *see* 19-7-7 NMSA 1978.

For offense of perjury generally, *see* 30-25-1, 30-25-2 NMSA 1978.

19-7-67. Contest; commissioner; appeal to district court.

A person aggrieved by a decision of the commissioner may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1912, ch. 82, § 72; Code 1915, § 5250; C.S. 1929, § 132-184; 1941 Comp., § 8-866; 1953 Comp., § 7-8-71; Laws 1998, ch. 55, § 28; 1999, ch. 265, § 29.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

Section does not violate any constitutional provision. In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Approval of sureties on bond. — The commissioner's duty to approve sureties on bond does not extend to the power of rejecting individual sureties and requiring one single, paid, corporate surety; such ruling is an abuse of his discretion. State ex rel. Walker v. Hinkle, 37 N.M. 444, 24 P.2d 286 (1933).

Lease cancellation appealable. — Lessee whose lease was canceled for subleasing without consent of commissioner of public lands was entitled to appeal to district court. Comm'r of Pub. Lands v. Van Bruggen, 51 N.M. 108, 179 P.2d 528 (1947).

Appeal of contract cancellation by trespasser. — A railroad, which was not a party to a case before state land commissioner initiated by an order to show cause why a contract to purchase realty on which such railroad as a trespasser had made improvements should not be canceled, was not in position to urge a judgment in the supreme court directing cancellation of the contract, but could appeal to district court. In re Dasburg, 45 N.M. 184, 113 P.2d 569 (1941).

Mandamus unavailable. — This section provides an adequate remedy at law for anyone who is aggrieved by the action of the commissioner of public lands and, therefore, mandamus does not lie to compel the duties alleged to be due. Andrews v. Walker, 60 N.M. 69, 287 P.2d 423 (1955).

Unless right of appeal denied. — The commissioner cannot deny the right of appeal granted herein without being amendable to mandamus. State ex rel. Walker v. Hinkle, 37 N.M. 444, 24 P.2d 286 (1933).

19-7-68, 19-7-69. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 265, § 96 repealed 19-7-68 and 19-7-69 NMSA 1978, as enacted by Laws 1921, ch. 82, §§ 73 and 74, relating to contest proceedings, effective July 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMONESOURCE.COM.*

ARTICLE 8
Lease of Mineral Lands

19-8-1. [Concealment of returns; defrauding state of royalty; penalty.]

Any lessee of mineral lands under this chapter who shall conceal, or attempt to conceal any of such returns, or who shall in any manner defraud, or attempt to defraud, the state out of any such royalty shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than three years, or both; and his lease shall be forfeited in the manner hereinbefore provided in this chapter.

History: Laws 1912, ch. 82, § 37; Code 1915, § 5214; C.S. 1929, § 132-137; 1941 Comp., § 8-906; 1953 Comp., § 7-9-6.

ANNOTATIONS

Compiler's notes. — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

Cross references. — For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of grazing or agricultural leases, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, *see* 19-8-27 NMSA 1978.

For lease of coal lands, *see* 19-9-9 NMSA 1978 et seq.

For forfeiture on failure to comply with terms of coal lease, *see* 19-9-13 NMSA 1978.

For lease of gas and oil lands, *see* 19-10-1 NMSA 1978 et seq.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, *see* 19-13-23 NMSA 1978.

19-8-2. [Inspection of lessee's books by commissioner.]

The commissioner, or his representative, shall have the right to inspect all records or books of account pertaining to the mining, extraction, transportation, reduction and returns of all ores taken from such leased lands.

History: Laws 1912, ch. 82, § 38; Code 1915, § 5215; C.S. 1929, § 132-138; 1941 Comp., § 8-907; 1953 Comp., § 7-9-7.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Cotenant's accountability for minerals removed from property, basis of computation, 5 A.L.R.2d 1368.

19-8-3. [Lessee's preferential right to renew or purchase; notice to vacate when another purchases.]

Any lessee of such mineral lands, or the heirs, successors or assigns of such lessee, shall have a preferential right to a renewal lease, or to purchase during the life of such lease, provided all terms and conditions of the expiring lease shall have been fully performed. In case of purchase by another, one year's notice to vacate shall be given to the lessee.

History: Laws 1912, ch. 82, § 39; Code 1915, § 5216; C.S. 1929, § 132-139; 1941 Comp., § 8-908; 1953 Comp., § 7-9-8.

ANNOTATIONS

Cross references. — For right of owner of improvements on state lands to be compensated for same by purchaser or subsequent lessee, *see* 19-7-14 NMSA 1978.

"Mineral lands". — The term "mineral lands" means lands upon which metals or minerals have been discovered in rock, in place. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Severance of surface rights. — Commissioner of public lands may sell some estate in the lands independent of the minerals. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Quiet title action against state. — Action to quiet title and remove cloud thereon, commenced by the holder of a contract of purchase of state lands, whereby it is sought to set aside and annul the reservation of minerals contained therein, is an action against the state. Am. Trust & Sav. Bank v. Scobee, 29 N.M. 436, 224 P. 788 (1924).

19-8-4. Leases for certain minerals; rentals; royalty.

The commissioner is authorized to issue leases for the development, exploration and production of potassium, sodium, phosphorus and other minerals of similar occurrence and their salts and compounds, including chlorides, sulphates, carbonates, borates, silicates, nitrates and any and all other salts and compounds of the minerals on any lands of the state upon such terms and conditions as he may deem to be for the best interests of the state and conformable to Sections 19-8-4 through 19-8-7 NMSA 1978. The minimum first year's rental for such leases shall be one hundred dollars ($100), and in all cases there shall be reserved to the state a royalty to be established by regulation issued under the provisions of Section 19-8-7 NMSA 1978. The commissioner may amend any lease in existence on the effective date of this amendment to reflect any regulation in effect at the time of the amendment to the lease.

History: Laws 1929, ch. 140, § 1; C.S. 1929, § 111-501; 1941 Comp., § 8-909; 1953 Comp., § 7-9-9; Laws 1984, ch. 13, § 1.

ANNOTATIONS

Compiler's notes. — The reference to "effective date of this amendment" in the last sentence was added by Laws 1984, ch. 13, § 1, which had no specific effective date.

The 1984 amendment, effective May 17, 1984, added the section heading, substituted "The commissioner is authorized" for "That the commissioner of public lands be and he is hereby authorized," "the minerals on any lands of the state" for "the said minerals, of any lands of the state of New Mexico" and "Sections 19-8-4 through 19-8-7 NMSA 1978" for "this act" in the first sentence, transposed "dollars" and "($100)" and substituted "to be established by regulation issued under the provisions of Section 19-8-7 NMSA 1978" for "of not less than five (5%) percent of the amount or value of minerals produced, such royalty to be computed upon the value of said minerals delivered at the nearest or most accessible railroad shipping point" in the second sentence and added the third sentence.

Royalties. — Mineral content of state lands is to be disposed of only on lease, from which state is to derive royalties. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53A Am. Jur. 2d Mines and Minerals §§ 121 et seq., 142 et seq.

19-8-5. [Term of lease.]

Leases under this act [19-8-4 to 19-8-7 NMSA 1978] may be made for a term of ten years or less and as long thereafter as said minerals, or any of them, in paying quantities shall be produced from the leased lands.

History: Laws 1929, ch. 140, § 2; C.S. 1929, § 111-502; 1941 Comp., § 8-910; 1953 Comp., § 7-9-10.

19-8-6. [Salt lease statutes excepted.]

There is expressly excepted from the provisions of this act [19-8-4 to 19-8-7 NMSA 1978], chloride of sodium, usually called and known as common salt, and this act shall not be construed as modifying, altering, repealing or in any wise changing the existing statutes relating to the leasing of state lands for the production of chloride of sodium, or common salt.

History: Laws 1929, ch. 140, § 3; C.S. 1929, § 111-503; 1941 Comp., § 8-911; 1953 Comp., § 7-9-11.

ANNOTATIONS

Cross references. — For saline leases, *see* 19-8-10, 19-8-11 NMSA 1978.

19-8-7. [Rules and regulations authorized.]

The commissioner of public lands shall prescribe and promulgate from time to time all necessary rules and regulations for carrying out the provisions hereof.

History: Laws 1929, ch. 140, § 4; C.S. 1929, § 111-504; 1941 Comp., § 8-912; 1953 Comp., § 7-9-12.

ANNOTATIONS

Cross references. — For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

19-8-8. [Suspension of production; authorization by commissioner of public lands; causes; duration.]

In all cases where production of potassium, sodium, phosphorus and other minerals of similar occurrence, and their salts and compounds has been obtained by the lessee in paying quantities upon lands covered by any valid lease heretofore or hereafter issued by the commissioner of public lands under the provisions of Sections 19-8-4 to 19-8-7 NMSA 1978, the commissioner of public lands may authorize a suspension of production on such lease during either the primary, or fixed term, or during the secondary, or indeterminable term, of such lease for such period as may be fixed by him, from time to time, where:

A. temporary conditions exist, with regard to the leased land then being mined, which would operate to prevent the mining of the maximum minable ore in keeping with safe mining practices;

B. separate parts of the lands covered by the lease are so situated with respect to other lands owned or leased by the lessee that lessee should be allowed a reasonable time to reach and mine the various parts of the lands covered by the lease in keeping with an orderly mining program and with a view to the proper development and mining of the entire area of which the various parts of the lands covered by the lease and other lands are an integral part; or

C. marketing conditions are such that the lease cannot be mined and operated except at a loss.

No suspension authorized by the terms of this act [19-8-8, 19-8-9 NMSA 1978] shall be for a period of more than five years and in no event shall any suspension of production under any lease be for a period longer than ten years from the date on which the term of the lease would have expired in the absence of suspension of production.

History: 1953 Comp., § 7-9-12.1, enacted by Laws 1959, ch. 178, § 1.

19-8-9. [Suspension of production; authorization by commissioner of public lands; extension of primary term of lease; secondary term of lease not determined by.]

Provided the lessee complies with all other terms and conditions of the lease, a suspension of production authorized by the commissioner of public lands shall:

A. if it occurs during the fixed or primary term of such lease, extend the term of such lease for a period of time equal to the period of such suspension; or

B. if it occurs during the indeterminable or secondary term of such lease, prevent the lease from determining in accordance with the limitation of such lease.

History: 1953 Comp., § 7-9-12.2, enacted by Laws 1959, ch. 178, § 2.

19-8-10. [Saline leases; royalties; record of sales; conditions.]

The commissioner may execute leases for the extraction of salt from the saline lands and lakes belonging to the state. Such leases shall provide for a royalty on all salt extracted therefrom of not less than ten percent of the actual sale price at the place of extraction. Said royalties shall be paid quarterly and accurate record shall be kept of all sales made. All leases made hereunder shall contain such conditions and shall provide for the cancellation of the lease by the commissioners for the breach thereof.

History: Laws 1912, ch. 82, § 41; Code 1915, § 5219; Laws 1923, ch. 99, § 1; C.S. 1929, § 132-142; Laws 1939, ch. 81, § 1; 1941, ch. 16, § 1; 1941 Comp., § 8-913; 1953 Comp., § 7-9-13.

ANNOTATIONS

Cross references. — For exception of statutes relating to leasing of state lands for the production of common salt from the provisions of 19-8-4 to 19-8-7 NMSA 1978, *see* 19-8-6 NMSA 1978.

19-8-11. [Term of saline lease; extension.]

Leases under this act [19-8-10, 19-8-11 NMSA 1978] may be made for a term of ten years or less and as long thereafter as said salt in paying quantities shall be produced from the leased lands; provided that as to any saline leases existing at the effective date of this act the commissioner of public lands may in his discretion extend the term of any such leases for an additional term of five years and as long thereafter as salt is being produced in paying quantities from the leased lands.

History: Laws 1941, ch. 16, § 2; 1941 Comp., § 8-914; 1953 Comp., § 7-9-14.

19-8-12. [Shale, clay, natural deposit or product lease; conditions; improvement mortgages void.]

The commissioner may also execute leases for the mining, extraction or disposition of shale, clay or other natural deposits in or upon, or products of, state lands, not otherwise provided for in this chapter, upon such terms and conditions as he may deem for the best interests of the state, not repugnant to law. Any mortgage upon improvements on any such lands so leased shall be void.

History: Laws 1912, ch. 82, § 42; Code 1915, § 5220; C.S. 1929, § 132-143; 1941 Comp., § 8-915; 1953 Comp., § 7-9-15.

ANNOTATIONS

Compiler's notes. — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

Program for removal of certain firewood from state trust lands authorized. — The commissioner is authorized under this section to implement a fee lease program for the removal of dead and down firewood from state trust lands. 1980 Op. Att'y Gen. No. 80-13.

Removal of dead and down firewood would benefit land and would be in the best interest of the state. 1980 Op. Att'y Gen. No. 80-13.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Clay, sand or gravel as "minerals" within lease, 95 A.L.R.2d 843.

19-8-13. [Mineral lands; development.]

All lands under lease for extraction of coal or other deposits, shall be developed and operated in a workmanlike manner and with a view to development of the whole area tributary to the shafts, drifts, tunnels or other openings made, and failure of the lessee or his assigns to observe this provision shall be cause for cancellation and forfeiture of the lease thereon in the manner hereinbefore provided in this chapter.

History: Laws 1912, ch. 82, § 43; Code 1915, § 5221; C.S. 1929, § 132-144; 1941 Comp., § 8-916; 1953 Comp., § 7-9-16.

ANNOTATIONS

Compiler's notes. — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

Cross references. — For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of grazing or agricultural lease, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture for defrauding the state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture of coal lease on failure to comply with terms thereof, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

For forfeiture of lease under the Geothermal Resources Act, *see* 19-13-23 NMSA 1978.

19-8-14. Issuance of mineral leases authorized; minerals not included.

The commissioner of public lands, hereinafter referred to as the "commissioner," is hereby authorized to execute and issue in the name of the state of New Mexico, as lessor, leases for the sole and exclusive purpose of prospecting, exploration and mining of all minerals other than common salt, oil and gas, coal, shale, clay, gravel, building stone and building materials, potassium, sodium, phosphorus and other minerals of similar occurrence, and their salts and compounds upon or from any public lands over which the commissioner has jurisdiction, direction, control, care and disposition under the constitution and laws of the state of New Mexico, such leases to be issued upon such terms and conditions as the commissioner may deem to be to the best interests of the state of New Mexico and not inconsistent with the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978].

History: 1953 Comp., § 7-9-17, enacted by Laws 1955, ch. 53, § 1.

ANNOTATIONS

Cross references. — For reservation of mineral lands of state from sale, *see* 19-7-25 NMSA 1978.

Prospecting of state lands. — Section 5209, 1915 Code, which authorized leasing of state lands for prospecting or development of lodes or deposits of metals or minerals, assumed that the lands to be so prospected were not known to be mineral lands. State ex rel. Otto v. Field, 31 N.M. 120, 241 P. 1027 (1925).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Mistake as to existence, practicability of removal or amount of minerals as ground for relief from lease, 163 A.L.R. 878.

Rights of tenants for years and remaindermen inter se in royalties or rents under coal or other mineral lease, 18 A.L.R.2d 98.

Right of mineral lessee to deposit top soil, waste minerals and like upon lessor's additional land not being mined, 26 A.L.R.2d 1453.

Construction and effect of provision in mineral lease excusing payment of minimum rent or royalty, 28 A.L.R.2d 1013.

Oil and gas as "minerals" within lease, 37 A.L.R.2d 1440.

Clay, sand or gravel as "minerals" within deed, lease or license, 95 A.L.R.2d 843.

58 C.J.S. Mines and Minerals § 129.

19-8-15. Minerals, lessees, legal subdivision defined.

The term "minerals" as used in this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] shall be construed to include all mineral deposits, whether the same be lode, placer or otherwise, and unless otherwise specifically indicated the term "lessee" as used in this act shall be construed to include an assignee under an assignment approved pursuant to Section 13 [19-8-28 NMSA 1978] of this act. The term "legal subdivision" as used in this act shall be construed in its ordinary sense, as used and recognized by the general land office of the United States and the state land office of the state of New Mexico.

History: 1953 Comp., § 7-9-18, enacted by Laws 1955, ch. 53, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Oil and gas as "minerals" within deed, lease or license, 37 A.L.R.2d 1440.

Clay, sand or gravel as "minerals" within lease, 95 A.L.R.2d 843.

19-8-16. Validation of existing leases and permits; renewals of permits prohibited.

All prospecting permits and leases issued prior to the effective date of this act which have not expired, or which have not been canceled legally for nonperformance, are hereby declared to be valid and existing contracts with the state of New Mexico according to their terms and provisions, and the commissioner is hereby directed to accept and recognize all such permits and leases according to their terms and provisions. Provided, further, that no such existing prospecting permits shall be extended, renewed or otherwise prolonged or enlarged as to length of term.

History: 1953 Comp., § 7-9-19, enacted by Laws 1955, ch. 53, § 3.

19-8-17. Relinquishment of permits for conversion.

Any legal owner and holder of any placer prospecting permit issued by the commissioner prior to the effective date of this act, if not in default of any of the provisions thereof, may relinquish the same to the state and, upon application filed at the time of filing such relinquishment, the commissioner shall issue a lease in accordance with the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978].

History: 1953 Comp., § 7-9-20, enacted by Laws 1955, ch. 53, § 4.

19-8-18. Term of leases.

All leases issued under the provisions of Sections 19-8-14 through 19-8-33 NMSA 1978 shall be for a primary term of three years and as long thereafter as any mineral or minerals in paying quantities be produced or mined from the lands, subject to the continued payment of annual rentals.

If lessee shall fail to discover and produce minerals in paying quantities during the primary term of the lease, the lessee may continue the lease in full force and effect for an additional or secondary term of two years and as long thereafter as any mineral or minerals in paying quantities be produced or mined from the leased land, by paying each year in advance ten times the rental provided in the primary term.

Provided, however, if the lessee shall fail to discover and produce minerals in paying quantities during the secondary term of the lease, the lessee of record or the record owner of an approved assignment may continue the lease, as to the portion held by him, in full force and effect for an additional or tertiary term of five years and so long thereafter as any mineral or minerals in paying quantities by [be] produced or mined from the leased land, by paying each year in advance three dollars ($3.00) per acre per year as rental.

If the lessee shall fail to discover and produce minerals in paying quantities during the tertiary term of the lease, the lessee of record or the record owner of an approved assignment may continue the lease, as to the portion held by him, in full force and effect for an additional or quarternary [quaternary] term of five years and so long thereafter as

any mineral or minerals in paying quantities be produced or mined from the leased land, by paying each year in advance of the lease anniversary date ten dollars ($10.00) per acre per year as rental, plus a sum as advance royalty computed as follows:

for the 11th year, ten dollars ($10.00) per acre per year;

for the 12th year, twenty dollars ($20.00) per acre per year;

for the 13th year, thirty dollars ($30.00) per acre per year;

for the 14th year, forty dollars ($40.00) per acre per year; and

for the 15th year, fifty dollars ($50.00) per acre per year. Provided, however, upon the commencing of the production of minerals in paying quantities, the principal sum so paid as advance royalty for the lease year in which the mineral is produced and the advance royalty paid for the two previous years shall be credited against the royalty payable hereunder to the lessor.

History: 1953 Comp., § 7-9-21, enacted by Laws 1955, ch. 53, § 5; 1959, ch. 42, § 1; 1977, ch. 147, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Relief against forfeiture of lease for nonpayment of rent, 31 A.L.R.2d 321.

Termination: rights of lessee to minerals extracted during the lease but remaining on the premises after its termination, 51 A.L.R.2d 1121.

19-8-19. [Terms of leases; stipulation of conditions under statute; filing and recording.]

The record owners or owner of any mineral lease or approved assignment thereof heretofore issued by the commissioner and maintained in good standing may enter into a stipulation with the commissioner of public lands making the terms and conditions of this act [19-8-18, 19-8-19 NMSA 1978] a part of any such existing lease, the same as if said provisions had been a part of said lease when issued. The commissioner may charge a fee not to exceed ten dollars ($10.00) for the filing and recording of such stipulation.

Provided, further, that if for any reason beyond the control of the lessee production of minerals in paying quantities shall cease after the secondary term has expired, the producing lessee may, with the written permission of the commissioner, continue said

lease in operation and effect from year to year for an additional period not to exceed three (3) years by continued payment in advance of annual rentals at the rate provided in the secondary term of the lease.

History: 1953 Comp., § 7-9-21.1, enacted by Laws 1959, ch. 42, § 2.

ANNOTATIONS

Cross references. — For subsequent provisions dealing with terms of leases, stipulation of conditions under statute and filing and recording, *see* 19-8-20 NMSA 1978.

19-8-19.1. Suspension of lease requirement; authorization by commissioner; causes; duration.

A. In all cases where the lessee of a valid lease issued under the provisions of Sections 19-8-14 through 19-8-33 NMSA 1978, or the record owner of an approved assignment of such lease, provides to the commissioner of public lands proof of discovery on such lease of an ore body containing valuable mineral deposits deemed to be of merchantable quality and quantity, the commissioner of public lands upon proper application by the lessee or the record owner and after notice and hearing shall authorize a suspension of the lease during either the primary, secondary, tertiary, quaternary or indeterminable terms of such lease for such period as may be fixed by him if the commissioner is satisfied that:

(1) marketing conditions beyond the control of the lessee are such that the lease cannot be mined and the ore marketed except at a loss; or

(2) temporary conditions exist beyond the control of the lessee, with regard to the leased land then being mined, which would operate to prevent the mining of the maximum minable ore in keeping with safe mining practices.

B. A suspension authorized by the commissioner pursuant to the provisions of Subsection A of this section shall take effect as of the date of the commissioner's decision and shall suspend the lease for the period of such suspension, but in no event shall any single suspension be for a period longer than five years.

C. All obligations of the lessee under a lease suspended pursuant to the provisions of this section shall be suspended, including the payment of rentals and advance royalties; provided, however, that the lessee shall pay an annual rental of sixty dollars ($60.00) per acre per year for each year of suspension.

D. A suspension authorized by the commissioner pursuant to this section shall not subject the suspended lease to the provisions of Section 19-8-20 NMSA 1978.

History: 1978 Comp., § 19-8-19.1, enacted by Laws 1983, ch. 3, § 1.

19-8-20. Leases; stipulation; rental.

The record owners or owner of any mineral lease or approved assignment thereof heretofore issued by the commissioner, which lease has not expired by its own terms, which has not been canceled by the commissioner and which has otherwise been maintained in good standing, may enter into a stipulation with the commissioner of public lands making the terms and conditions of Sections 19-8-14 through 19-8-33 NMSA 1978 a part of any such existing lease, the same as if said provisions had been a part of said lease when issued. In such case, the basic royalty payable to the lessor on production thereafter obtained from the stipulated lease or portion thereof shall be at the rate set in new leases then being issued by the lessor. The commissioner may charge a fee not to exceed ten dollars ($10.00) for the filing and recording of such stipulation. If production in paying quantities be had during any of the aforesaid set terms and thereafter ceases before all of the set terms would have expired, the lease shall be deemed to be a nonproducing lease from that date and lessee shall have the unexpired portion of said set term and any subsequent terms within which to resume production in paying quantities. When such production is resumed, the term of the lease shall continue for so long thereafter as minerals in paying quantities be produced or mined from the leased land. In such cases, the rental rate for the lease or the portion thereof, shall be the rental provided in the term in which such production is resumed; the new rental shall be payable on the anniversary date next following the date production is resumed.

Provided, further, that if for any reason beyond the control of the lessee production of minerals in paying quantities shall cease after all of the set terms have expired, the producing lessee may, with the written permission of the commissioner, continue said lease in operation and effect from year to year for an additional period not to exceed three years by continued payment in advance of annual rentals at the rate provided in the final term of the lease.

History: 1953 Comp., § 7-9-21.2, enacted by Laws 1977, ch. 147, § 2.

ANNOTATIONS

Cross references. — For antecedent provisions dealing with terms of leases, stipulation of conditions under statute and filing and recording, *see* 19-8-19 NMSA 1978.

19-8-21. Rentals.

All leases issued by the commissioner shall provide for an annual rental to be paid by the lessee in advance, the amount thereof to be fixed by the commissioner, but in no case shall the same be less than five cents (5¢) per acre for the primary term nor less than fifty cents (50¢) per acre for the secondary term; provided that the annual rental for any one lease shall not be less than ten dollars ($10.00).

History: 1953 Comp., § 7-9-22, enacted by Laws 1955, ch. 53, § 6.

ANNOTATIONS

Cross references. — For interest on delinquent payments of rental, *see* 19-1-3 NMSA 1978.

Law reviews. — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

19-8-22. Royalty.

In addition to the annual rental, lessee shall be required to pay to the commissioner a royalty of not less than two percent (2%) of the gross returns from the smelter, mill, reduction process or other sale, less reasonable transportation and smelting or reduction charges, if any, of all ores or materials mined and extracted from the land. In addition, lessee shall pay to the commissioner as royalty not less than two percent (2%) of any and all premiums and bonuses received in connection with the discovery, production or marketing. Provided that on deposits of rare earths, precious stones or semi-precious stones, and on uranium, thorium, plutonium or any other materials which have been or may hereafter be determined by the atomic energy commission to be peculiarly essential to the production of fissionable materials, lessee shall pay a royalty to be agreed upon by the lessee and the commissioner, but not less than five percent (5%) of the gross returns from the smelter, mill, reduction process or other sale, less reasonable transportation and smelting or reduction charges, if any, of all ores or materials mined and extracted from the land. In addition, lessee shall pay to the commissioner as royalty not less than five percent (5%) of any and all premiums and bonuses received in connection with the discovery, production or marketing of such ores or materials.

Accounting for all royalties shall be made on the twentieth (20th) day of the month following the month of sale or receipt of premium or bonus.

History: 1953 Comp., § 7-9-23, enacted by Laws 1955, ch. 53, § 7.

ANNOTATIONS

Compiler's notes. — Under former 72-6-7, 1953 Comp., relating to valuation of mineral interests for tax purposes, where a sub-lessee was the producing operator and paid royalties to the state, he and not the original lessee should be allowed royalty-payment deductions.

Law reviews. — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Real or personal property, solid mineral royalty as, 68 A.L.R.2d 728.

Payment of stipulated minimum royalties or annual rental under solid mineral lease as precluding lessor's claim of forfeiture or abandonment, 87 A.L.R.2d 1076.

19-8-23. Covenants to market and develop.

All leases issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] shall contain provisions requiring the lessees to market the mineral or minerals within a reasonable time after production is had. In addition, said leases shall contain provisions requiring the lessees to use reasonable diligence, after production is had, in prospecting for and developing all commercial deposits of mineral or minerals.

The commissioner may cancel leases for violation of such marketing and developing provisions only after notice and in the manner as provided in Section 12 [19-8-27 NMSA 1978] of this act, and in all cases of controversy arising out of such cancellation the lessee shall have the burden of proof by a preponderance of the evidence that further development is not warranted, or is unreasonable, or that a market is not available, as the case may be.

History: 1953 Comp., § 7-9-24, enacted by Laws 1955, ch. 53, § 8.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Marketing: duty of lessee or assignee of solid mineral lease as regards marketing of mineral products, 77 A.L.R.2d 1058.

19-8-24. Bonds.

Before any lessee of minerals shall commence development or operations upon the lands, such lessee shall execute and file with the commissioner a good and sufficient bond or undertaking in an amount to be fixed by the said commissioner, but not less than five thousand dollars ($5,000), in favor of the state of New Mexico, for the benefit of any surface lessee, patentee or contract purchaser, to secure the payment for such damage to the livestock, water, crops or other tangible improvements on such lands as may be suffered by reason of development, use and occupation of such lands by the said mining lessee. Provided in lieu thereof any lessee owning one or more mining leases may file a blanket bond in an amount to be fixed by the commissioner, but not less than ten thousand dollars ($10,000), covering all leases then owned or thereafter acquired by him.

Provided, further, that if any such surface lessee, patentee or contract purchaser shall file with the commissioner a waiver duly executed and acknowledged by him of his right to require such bond, such development, occupation and use of the lands by a mineral lessee may be permitted without the bond herein required.

In addition, lessee may be required to furnish a bond in a reasonable amount to be set by the commissioner to guarantee payment of royalties to become due under the lease.

History: 1953 Comp., § 7-9-25, enacted by Laws 1955, ch. 53, § 9; 1957, ch. 42, § 1.

ANNOTATIONS

Cross references. — For bond required of mineral lessee of lands sold on deferred payment plan with reservation of minerals, *see* 19-10-26 NMSA 1978.

For bond filed by person leasing state lands for geothermal resource development, *see* 19-13-18 NMSA 1978.

19-8-25. Inspection of records; reports.

The commissioner or his representative shall have the right to inspect all records, books or accounts pertaining to the mining, extraction, transportation and returns of ores taken from such leased lands, and at the request of the commissioner the lessee shall furnish such reports, samples, logs, assays or cores within reasonable bounds as he may deem to be necessary to the proper administration of the lands under lease.

History: 1953 Comp., § 7-9-26, enacted by Laws 1955, ch. 53, § 10.

19-8-26. Relinquishment of leases.

With the consent of the commissioner, any lease issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] may be relinquished in whole or in part to the state of New Mexico; provided, however, the commissioner shall not approve any relinquishment of an undivided interest therein nor less than a legal subdivision.

History: 1953 Comp., § 7-9-27, enacted by Laws 1955, ch. 53, § 11.

ANNOTATIONS

Cross references. — For relinquishment of lease of state lands with written consent of commissioner, *see* 19-7-36 NMSA 1978.

For relinquishment of lease issued under Geothermal Resources Act, *see* 19-13-8 NMSA 1978.

19-8-27. Violation of lease; notice; forfeiture for noncompliance with demand.

The commissioner is authorized to cancel any lease issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] for nonpayment of rentals, for nonpayment of royalties or for violation of any of the terms, covenants or conditions thereof, but before any such cancellation shall be made, the commissioner must mail to the lessee or assignee, by registered or certified mail, addressed to the post-office address of the lessee or assignee as shown by the records of the office of the commissioner, a notice of intention to cancel the lease, specifying the default for which the lease is subject to cancellation. No proof of receipt of notice shall be necessary, and thirty days after the mailing the commissioner may enter cancellation unless the lessee shall have sooner remedied the default.

History: 1953 Comp., § 7-9-28, enacted by Laws 1955, ch. 53, § 12; 1971, ch. 97, § 1.

ANNOTATIONS

Cross references. — For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of agricultural or grazing lease, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture for defrauding state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in a workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of coal lease for failure to comply with terms thereof, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, *see* 19-13-23 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Mistake, accident, inadvertence, etc., as ground for relief from termination or forfeiture of oil or gas lease for failure to complete well, start drilling or pay rent on time, 5 A.L.R.2d 993.

Relief against forfeiture of lease for nonpayment of rent, 31 A.L.R.2d 321.

Payment of stipulated minimum royalties or annual rental under solid mineral lease as precluding lessor's claim of forfeiture or abandonment, 87 A.L.R.2d 1076.

19-8-28. Assignment of leases; form; approval; effect; lands in production.

All leases issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] shall be assignable in whole or in part; provided, however, that no assignment of an undivided interest in the lease or any part thereof, or any assignment of less than a legal subdivision, shall be recognized or approved by the commissioner. The assignments provided for herein shall be executed and acknowledged in the manner prescribed for conveyance of real estate in this state and shall be filed in triplicate in the office of the commissioner, who shall retain two (2) copies of the said assignment in his office as a public record and shall record one (1) of same in permanent form in his office as a public record and shall return one (1) of the duplicate copies to the person entitled thereto. The approval of the commissioner shall be noted upon all copies of the said assignment. The commissioner shall prescribe the form to be used for such assignments and shall fix a reasonable fee for the filing, recording and approval of same. The commissioner shall have the right to refuse approval of any assignment not executed in proper form or by the proper person or persons, or when the lease is not in good standing as to the assigned tracts, or when litigation is pending affecting the lease or the interest of any person therein. Upon approval by the commissioner of an assignment the assignor shall stand relieved from all obligations to the state with respect to the lands embraced in the assignment and the state shall likewise be relieved from all obligations to the assignor as to such tract or tracts, and thereupon the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts. Provided, however, the record owner of any mineral lease may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner of public lands; but nothing herein contained shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith, and in any controversy respecting any such contracts, agreements or other instruments entered into by such lessee with other persons the state of New Mexico or the commissioner of public lands shall not be a necessary party. All such contracts and other instruments may be filed either in the office of the commissioner of public lands or recorded in the office of the county clerk of the county where the lands are situated, and the filing or recording thereof shall constitute notice to all the world of the existence and contents of the instruments so filed or recorded. The commissioner may prescribe a reasonable fee for the filing of such instruments in the office of the commissioner of public lands. The production of minerals upon any lands embraced in any mineral lease shall continue such lease as to all of the lands embraced therein for as long thereafter as any mineral or minerals in paying quantities are being produced in accordance with the provisions thereof, regardless of any assignment of all or a portion of the lease which may have been made prior or subsequent to the production.

History: 1953 Comp., § 7-9-29, enacted by Laws 1955, ch. 53, § 13.

ANNOTATIONS

Cross references. — For assignment or relinquishment of lease of state lands, *see* 19-7-36 NMSA 1978.

For assignment of oil and gas leases, *see* 19-10-13 NMSA 1978.

For transferability of lease under Geothermal Resources Act, *see* 19-13-21 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of lessee who assigns lease for rent accruing subsequently to extension or renewal of term, 10 A.L.R.3d 818.

19-8-29. Improvements removable upon termination of lease.

Upon termination of any lease issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] by reason of forfeiture, surrender, expiration of term or for any other reason, lessee may remove all improvements and equipment as can be removed without material injury to the premises; provided, however, that all rents and royalties have been paid and that such removal is accomplished within two years from the termination date or before such earlier date as the commissioner may set upon thirty (30) days' written notice to the lessee. All improvements and equipment remaining upon the premises after the removal date as set in accordance with this section shall be forfeited to the state of New Mexico without compensation.

History: 1953 Comp., § 7-9-30, enacted by Laws 1955, ch. 53, § 14.

ANNOTATIONS

Cross references. — For right, in general, of owner of improvements on state lands to be compensated for same by purchaser or subsequent lessee, *see* 19-7-14 NMSA 1978.

For payment for value of improvements by purchaser or subsequent oil and gas lessee to owner thereof, *see* 19-10-28 NMSA 1978.

For oil and gas lessee's right to remove certain improvements upon cancellation or forfeiture of lease, *see* 19-10-29 NMSA 1978.

For removal by lessee under Geothermal Resources Act of removable improvements, and forfeiture of others without compensation, *see* 19-13-24 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes improvements, alterations or additions within lease provisions permitting or prohibiting tenant's removal thereof at termination of lease, 30 A.L.R.3d 998.

19-8-30. Area of lease.

Leases issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] shall cover a specified area conforming to a legal subdivision or subdivisions and shall not exceed sixteen (16) subdivisions, being six hundred and forty acres more or less, all of which shall be contiguous; provided, however, that leases issued in exchange for existing permits as provided by Section Four [19-8-17 NMSA 1978] of this act need not be contiguous if all legal subdivisions be situate and lie within the same township and range.

History: 1953 Comp., § 7-9-31, enacted by Laws 1955, ch. 53, § 15.

19-8-31. Posting of open acreage; simultaneous applications.

When newly acquired acreage is posted to the tract books, or when other acreage is designated upon the tract books to be open acreage after having been previously leased or after having been withdrawn from leasing by the commissioner, all applications for mineral lease filed thereon within three (3) land office workdays after such posting or designation shall be considered as simultaneous applications.

History: 1953 Comp., § 7-9-32, enacted by Laws 1955, ch. 53, § 16.

19-8-32. Rules and regulations authorized.

The commissioner shall be, and he is hereby, authorized and empowered to adopt such uniform and reasonable rules and regulations as he may deem necessary to carry out the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] and not inconsistent therewith, said rules to be posted in a conspicuous place in the state land office for a period of a least ten consecutive days.

History: 1953 Comp., § 7-9-33, enacted by Laws 1955, ch. 53, § 17.

ANNOTATIONS

Cross references. — For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

19-8-33. Withholding of lands from lease authorized; lease by competitive bidding authorized.

Nothing contained in this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] shall be construed as requiring the commissioner to offer any tract or tracts of land for lease, but the commissioner shall have power to withhold any tract or tracts from leasing for said mineral purposes, if, in his opinion, the best interests of the state would be served by so doing, and nothing contained in this act shall be construed as prohibiting the commissioner from rejecting any application at any time prior to approval

and offering acreage embraced therein for lease upon competitive bidding by sealed bids or at public auction to the bidder offering the highest bonus in addition to the annual rentals as set by the commissioner. Provided, however, that notice of such public sale shall be given by posting in a conspicuous place in the state land office, not less than ten (10) days before the date of sale, a notice of same, specifying the day and hour when, and the place where, the sale will be held, giving a description of the lands in each tract to be offered for lease. The notice shall also state whether the sale shall be conducted through sealed bids or at public auction and any other such information as the commissioner may deem necessary.

Where two or more sealed bids are received making the same offer on the same tract, the commissioner shall award the lease thereon in accordance with such regulations as he may prescribe.

History: 1953 Comp., § 7-9-34, enacted by Laws 1955, ch. 53, § 18.

ANNOTATIONS

Cross references. — For publication of legal notice, *see* 14-11-1 NMSA 1978 et seq.

Severability. — Laws 1955, ch. 53, § 19, provides for the severability of the act if any provision thereof is held invalid.

ARTICLE 9
Lease of Coal Lands

19-9-1 to 19-9-8. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 200, § 9 repealed 19-9-1 to 19-9-8 NMSA 1978, as enacted by Laws 1912, ch. 82, §§ 24 to 31, relating to lease of coal lands, effective July 1, 1989. For comparable provisions, *see* 19-9-9 to 19-9-16 NMSA 1978.

19-9-9. Coal leases; authorization; competitive bids.

The commissioner of public lands may execute and issue leases for the exploration, development and production of coal from state trust lands. Leases shall be issued only to the highest bidder either by sealed bid or at public auction; provided, however, the commissioner may in his discretion withhold any tract from leasing and may reject all bids offered for any tract if he determines that withholding or rejection is in the best interest of the trust beneficiaries.

History: Laws 1989, ch. 200, § 1.

ANNOTATIONS

Cross references. — For lease of mineral lands, *see* 19-8-1 NMSA 1978.

For lease of oil and gas lands, *see* 19-10-1 NMSA 1978.

For reservation by state in mineral lease of purchase rights, *see* 19-14-1 NMSA 1978.

For sale and lease of lands generally, *see* 19-7-1 NMSA 1978 et seq.

For reservation of mineral deposits in agricultural and grazing leases, *see* 19-7-28 NMSA 1978.

19-9-10. Coal leases; provisions.

Any coal lease issued by the commissioner of public lands shall:

A. provide for a primary term of five years;

B. provide that, if, at the end of the primary term, the lessee has submitted a mine plan to the commissioner of public lands for approval delineating how and when the leased land will be developed and has either incorporated the leased land with adjacent land into a logical mining unit which can be developed and operated as a single operation or has shown to the satisfaction of the commissioner that the adjacent land is federal land which has not been available for coal leasing but that the lessee has incurred substantial costs in developing the leased land, then the coal lease shall not expire at the end of the primary term but shall continue for a secondary term of an additional five years;

C. provide that, if, at the end of the secondary term, the lessee is producing coal at an average annual rate of either one percent of the estimated recoverable reserves from the leased lands or one percent of the estimated recoverable reserves from the logical mining unit, then the lease shall not expire but shall continue as long as the one percent average production is maintained over any consecutive three year period;

D. provide that, in lieu of any actual production requirement, expiration of the lease may be prevented by payment of an advance royalty equal to an estimated royalty obligation as contemplated by the approved mine plan and commercial production criteria. Any credit later taken for advance royalties against actual production royalties due shall not exceed fifty percent of the total royalty due and the lease shall not be extended for more than ten years by payment of advance royalties;

E. provide for a royalty of twelve and one-half percent of the proceeds received from the sale of all surface-mined coal or, at the option of the commissioner, the market value of the surface-mined coal and eight percent of the proceeds received from the sale of all underground-mined coal or, at the option of the commissioner, the market

value of the underground-mined coal. The royalty rate may be reduced by the commissioner upon a showing that the leases for the nonstate lands in the same logical mining unit provide for a lower rate or that the leased lands will be bypassed and not mined without a rate reduction;

F. provide for an annual rental rate of five dollars ($5.00) per acre of the leased lands, to be paid throughout the effective period of the lease;

G. provide that, except for small incidental quantities which may be vented or flared to achieve access to the coal, any coalbed methane gas is excluded and reserved from the coal lease. A coal lessee may engage in in situ coal gasification provided that such gasification does not disturb or diminish commercial quantities of coalbed methane gas; and

H. contain other provisions prescribed by regulation of the commissioner.

History: Laws 1989, ch. 200, § 2.

19-9-11. Authority to enter; inspect books; prior lien.

The commissioner of public lands or his authorized representative shall have the right to enter any leased lands for the purpose of measuring the cubical contents of every opening from which coal has been extracted and to otherwise inspect the leased lands to ensure that proper royalties have been paid. The commissioner or his representative shall have the right to inspect all records, books or accounts pertaining to the mining, extraction, transportation and returns of coal produced from the leased lands and, at the request of the commissioner, the lessee shall furnish reports, samples, logs, assays or cores within reasonable bounds as the commissioner may determine to be necessary to the proper administration of the lands under lease. The value of any unpaid royalty shall become a prior lien upon the production from the leased lands and the improvements situated thereon.

History: Laws 1989, ch. 200, § 3.

19-9-12. Performance bond.

Before commencing operations or development upon leased lands, a lessee shall execute and file with the commissioner of public lands a good and sufficient bond or other appropriate surety in an amount to be fixed by the commissioner to:

A. guarantee the performance of all covenants and obligations under the coal lease, including the obligation to pay royalties;

B. ensure that all aspects of mining operations and reclamation operations are conducted in conformity with the approved mining plan; and

C. ensure compensation for damage to the surface or surface improvements in the absence of an agreement between the coal lessee and any surface owner.

The commissioner, in his discretion, may allow a bond filed with the mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining Act [Chapter 69, Article 25A NMSA 1978] to satisfy the requirements of this section.

History: Laws 1989, ch. 200, § 4.

19-9-13. Forfeiture for noncompliance.

The commissioner of public lands may cancel any coal lease for nonpayment of rentals, for nonpayment of royalties or for noncompliance with any of the terms or covenants of the lease, but before the cancellation is made, the commissioner shall mail to the lessee by registered or certified mail a notice of intention to cancel the lease, specifying the default for which the lease is subject to cancellation. If the lessee does not pay the rentals or royalties or begin to substantially remedy the other default within thirty days after mailing the notice of intention to cancel the commissioner may cancel the lease.

History: Laws 1989, ch. 200, § 5.

19-9-14. Relinquishment.

With the consent of the commissioner of public lands any coal lease may be relinquished in whole or in part provided that the commissioner shall not approve any relinquishment of an undivided interest in any coal lease nor less than a legal subdivision.

History: Laws 1989, ch. 200, § 6.

19-9-15. Rules and regulations authorized.

After notice to all existing coal lessees and other interested parties the commissioner may adopt rules and regulations as he deems necessary to carry out the provisions of this act [19-9-9 to 19-9-16 NMSA 1978]. The inadvertent failure to notify any coal lessee or other interested party shall not invalidate a rule or regulation.

History: Laws 1989, ch. 200, § 7.

19-9-16. Existing lessees; right to a new lease.

Notwithstanding any provision of this act [19-9-9 to 19-9-16 NMSA 1978] requiring competitive bidding, the owner of any coal lease that is issued by the commissioner of

public lands before the effective date of this section and maintained in good standing according to the terms and conditions of the coal lease and all applicable statutes and regulations shall, upon the expiration of the coal lease and in accordance with regulations prescribed by the commissioner, be entitled to a new lease for the leased lands. The terms and provisions of the new lease shall be consistent with the requirements of this act and any regulations of the commissioner.

History: Laws 1989, ch. 200, § 8.

ARTICLE 10
Lease of Oil and Gas Lands

19-10-1. [Issuance of leases authorized; lands subject; carbon dioxide leases exempted.]

The commissioner of public lands hereinafter referred to as the "commissioner" is hereby authorized to execute and issue in the name of the state of New Mexico, as lessor, leases for the exploration, development and production of oil and natural gas, from any lands belonging to the state of New Mexico, or held in trust by the state under grants from the United States of America, and including lands which have been or may hereafter be sold by the state with reservations of minerals in the land, such leases to be issued upon such terms and conditions as the commissioner may deem to be for the best interests of the state, and not inconsistent with the provisions of Chapter 125, of the Session Laws of 1929 [19-10-1, 19-10-12 to 19-10-25 NMSA 1978], and amendments thereto, provided that this act [19-10-1, 19-10-2 NMSA 1978] shall be effective only as to such leases issued subsequent to the effective date of this act; and, provided further, that nothing in this act shall affect or disturb valid existing rights as to any carbon dioxide lease heretofore issued under the provisions of Chapter 177, of the New Mexico Session Laws of 1937.

History: Laws 1929, ch. 125, § 1; C.S. 1929, § 132-401; Laws 1931, ch. 18, § 1; 1941, ch. 137, § 2; 1941 Comp., § 8-1101; 1953 Comp., § 7-11-1.

ANNOTATIONS

Cross references. — For reservation from sale of saline, mineral and oil and gas lands known to contain such, and authorization of lease of same, *see* 19-7-25 NMSA 1978.

For reservation of mineral deposits in grazing and agricultural leases, *see* 19-7-28 NMSA 1978.

For lease of mineral lands, *see* 19-8-1 NMSA 1978 et seq.

For lease of coal lands, *see* 19-9-9 NMSA 1978 et seq.

For reservation by state in mineral lease of purchase rights, *see* 19-14-1 NMSA 1978.

Compiler's notes. — Laws 1937, ch. 177, referred to in this section, was repealed by Laws 1941, ch. 137, § 3.

Form of lease. — Commissioner of public lands under Laws 1929, ch. 125, § 1, could adopt such form as he desired for oil and gas leases. Atlantic Oil Producing Co. v. Crile, 34 N.M. 650, 287 P. 696 (1930).

Commissioner of public lands could insert in oil and gas leases matters of substance not inconsistent with the provisions of the act. Atlantic Oil Producing Co. v. Crile, 34 N.M. 650, 287 P. 696 (1930).

Public policy to promote production. — It is the public policy as shown by the oil and gas leasing laws to promote development and production of oil and gas and it was not contemplated by the legislature that a lessee be deprived of his right to develop fully a well begun in good faith merely because he was attempting to determine the extent of the production possible at a depth less than he contemplated drilling in order to test the productivity of the area. 1953-54 Op. Att'y Gen. No. 53-5650.

Commissioner's leasing authority not exclusive. — This section does not grant the commissioner of public lands the exclusive authority to issue all oil and gas leases on any lands owned by the state. 1980 Op. Att'y Gen. No. 80-10.

Royalty provision. — Commissioner may advertise, offer and lease oil and gas lands upon a basis of the state receiving more than one-eighth royalty from the highest and best bidder as he may deem for the best interests of the state. 1945-46 Op. Att'y Gen. No. 45-4750.

Law reviews. — For student article, "Preventing the Extinction of Candidate Species: The Lesser Prairie-Chicken in New Mexico", see 49 Nat. Resources J. 525 (2009).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 283.

Right of co-lessor in community oil or gas lease to lessen production and royalties under such lease by operations on land not covered thereby or released therefrom, 167 A.L.R. 1225.

Rights and remedies of owner or lessee of oil or gas land or mineral or royalty interests therein, in respect of waste of oil or gas through operations on other lands, 4 A.L.R.2d 198.

What constitutes oil or gas "royalty" or "royalties" within language of conveyance, exception, reservation, devise or assignment, 4 A.L.R.2d 492.

Mistake, accident, inadvertence, etc., as ground for relief from termination or forfeiture of oil and gas lease for failure to complete well, commence drilling, or pay rental, strictly on time, 5 A.L.R.2d 993.

Abandonment of oil or gas lease by parol declaration, 13 A.L.R.2d 951.

Rights of tenants for years and remaindermen inter se in royalties or rent, under oil or gas lease, 18 A.L.R.2d 98.

Liability for injury to property occasioned by oil, water, or the like flowing from well, 19 A.L.R.2d 1025.

Surface owners' right of access to solid mineral seam or vein conveyed to another, or through the space left by its removal to reach underlying oil or gas, 25 A.L.R.2d 1250.

Right of mineral lessee to deposit top soil, waste materials and the like upon lessor's additional land not being mined, 26 A.L.R.2d 1453.

Construction and effect of provision in mineral lease excusing payment of minimum rent or royalty, 28 A.L.R.2d 1013.

Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil or other natural products within municipal limits, 10 A.L.R.3d 1226.

Gas and oil lease force majeure provisions: construction and effect, 46 A.L.R.4th 976.

Duty of oil or gas lessee to restore surface of leased premises upon termination of operations, 62 A.L.R.4th 1153.

58 C.J.S. Mines and Minerals § 129.

19-10-2. Definitions.

The words "natural gas," as used in Sections 19-10-1 through 19-10-52 NMSA 1978 shall be construed to cover and include carbon dioxide gas and helium gas as well as gas of the hydrocarbon kind.

History: Laws 1941, ch. 137, § 1; 1941 Comp., § 8-1102; 1953 Comp., § 7-11-2; Laws 1963, ch. 151, § 1.

ANNOTATIONS

Meaning of "gas". — "Gas" as used in the oil and gas lease form signifies "natural gas" as defined in this section and includes carbon dioxide, but not hydrogen or nitrogen. 1945-46 Op. Att'y Gen. No. 4681.

19-10-3. Classification of state lands for oil and gas leasing.

A. For the purpose of issuing oil and gas leases thereon, all state lands under the jurisdiction of the commissioner shall be classified as either nonrestricted or restricted. Those lands placed within a restricted district pursuant to Section 19-10-16 NMSA 1978 shall be classified as restricted lands. All other lands owned by the state under the jurisdiction of the commissioner shall be classified as nonrestricted lands. Before leasing any tract of restricted land, it shall be further categorized as either regular or premium based upon the following factors relating to the tract:

(1) oil and gas trends;

(2) oil and gas traps;

(3) reservoir volume and recovery rating;

(4) lease bonus rating; and

(5) exploration and activity.

A percentage of zero percent to twenty percent shall be allocated to each factor. If the total percentages of all factors for a tract of land to be leased is less than seventy-five percent, the tract shall be categorized as regular. If the total percentage of all factors for a tract of land to be leased is seventy-five percent or more, the tract shall be categorized as premium.

B. After notice and hearing, the commissioner shall promulgate regulations specifying criteria to be used in categorizing tracts pursuant to Subsection A of this section.

History: 1978 Comp., § 19-10-3, enacted by Laws 1985, ch. 195, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1985, ch. 195, § 1, repeals former 19-10-3 NMSA 1978, as amended by Laws 1972, ch. 70, § 1, relating to the term and form of an oil and gas lease, and enacts the above section. For provisions of former section, see 1978 original pamphlet. For present comparable provisions, see 19-10-4.1, 19-10-4.2 and 19-10-4.3 NMSA 1978.

19-10-4. Authorization to lease; lease provisions.

In issuing oil and gas leases, the commissioner shall:

A. use the exploratory lease form as set forth in Section 19-10-4.1 NMSA 1978 for oil and gas leases of tracts classified as nonrestricted lands under Section 19-10-3 NMSA 1978;

B. use the discovery lease form as set forth in Section 19-10-4.2 NMSA 1978 or the exploratory lease form for oil and gas leases of tracts classified as restricted lands and categorized as regular under Section 19-10-3 NMSA 1978; and

C. use the development lease form as set forth in Section 19-10-4.3 NMSA 1978, the discovery lease form or the exploratory lease form for oil and gas leases of tracts classified as restricted lands and categorized as premium under Section 19-10-3 NMSA 1978; provided that in using the development lease form for a tract receiving less than ninety total percentage points under Section 19-10-3 NMSA 1978, the royalty rate shall not exceed three-sixteenths.

History: 1978 Comp., § 19-10-4, enacted by Laws 1985, ch. 195, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1985, ch. 195, § 2, repealed former 19-10-4 NMSA 1978, as enacted by Laws 1977, ch. 298, § 1, relating to the term and form of an oil and gas lease notwithstanding the provisions of 19-10-3 NMSA 1978, and enacted the above section. For present comparable provisions, *see* 19-10-4.1, 19-10-4.2, and 19-10-4.3 NMSA 1978.

19-10-4.1. Exploratory form of lease; nonrestricted; regular restricted or premium restricted lands.

The following form is designated as the "Exploratory Form". It shall be used for all oil and gas leases on lands classified as nonrestricted lands. At the discretion of the commissioner, it may be used for lands classified as restricted, whether categorized as regular or premium:

"Lease No. ..... Application No. .....

OIL AND GAS LEASE

(Exploratory Form)

This agreement, dated ....., 19 ..., between the state of New Mexico, acting by and through its commissioner of public lands, hereinafter called the "lessor", and ....., whose address is ....., hereinafter called the "lessee",

Witnesseth:

Whereas, the lessee has filed in the office of the commissioner of public lands an application for an oil and gas lease covering the lands hereinafter described and has tendered therewith the required first payment; and

Whereas, all of the requirements of law relative to the application and tender have been duly complied with;

Therefore, in consideration of the premises as well as the sum of .... dollars ($ .....), the same being the amount of the tender above mentioned, and the further sum of $ ..... filing fee, and of the covenants and agreements hereinafter contained, the lessor does hereby grant, demise, lease and let unto the said lessee, exclusively, for the sole and only purpose of exploration, development and production of oil or gas (including carbon dioxide and helium), or both thereon and therefrom with the right to own all oil and gas so produced and saved therefrom and not reserved as royalty by the lessor under the terms of this lease, together with rights-of-way, easements and servitudes for pipelines, telephone lines, tanks, power houses, stations, gasoline plants and fixtures for producing, treating and caring for such products, and housing and boarding employees, and any and all rights and privileges necessary, incident to or convenient for the economical operation of said land, for oil and gas, with right for such purposes to the free use of oil, gas, casing-head gas or water from said lands, but not from lessor's water wells, and with the rights of removing either during or after the term hereof, all and any improvements placed or erected on the premises by the lessee, including the right to pull all casing, subject, however, to the covenants and conditions hereinafter set out, the following described land situated in the county of ....., state of New Mexico, and more particularly described as follows:

	Line	SUBDIVISION	Sec.	Twp.	Rge.	Acres	Institution
1	/>						
2	/>						
3	/>						
4	/>						
5	/>						
6	/>						
7	/>						

Said lands having been awarded to lessee and designated as Tract No. ... at a public sale held by the commissioner of public lands on ....., 19 ... (To be filled in only where lands are offered at public sale.)

To have and to hold said land, and all the rights and privileges granted hereunder, to and unto the lessee for a primary term of five years from the date hereof, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from said land by lessee, subject to all of the terms and conditions as hereinafter set forth.

In consideration of the premises the parties covenant and agree as follows:

1. Subject to the free use without royalty, as hereinbefore provided, the lessee shall pay the lessor as royalty one-eighth part of the oil produced and saved from the leased premises or the cash value thereof, at the option of the lessor, such value to be the price prevailing the day oil is run into a pipeline, if the oil be run into a pipeline, or into storage tanks, if the oil is stored.

2. Subject to the free use without royalty, as hereinbefore provided, at the option of the lessor at any time and from time to time, the lessee shall pay the lessor as royalty one-eighth part of the gas produced and saved from the leased premises, including casing-head gas. Unless said option is exercised by lessor, the lessee shall pay the lessor as royalty one-eighth of the cash value of the gas, including casing-head gas, produced and saved from the leased premises and marketed or utilized, such value to be equal to the net proceeds derived from the sale of such gas in the field; provided, however, the cash value for royalty purposes of carbon dioxide gas and of hydrocarbon gas delivered to a gasoline plant for extraction of liquid hydrocarbons shall be equal to the net proceeds derived from the sale of such gas, including any liquid hydrocarbons recovered therefrom.

Notwithstanding the foregoing provisions, the lessor may require the payment of royalty for all or any part of the gas produced and saved under this lease and marketed or utilized at a price per m.c.f. equal to the maximum price being paid for gas of like kind and quality and under like conditions in the same field or area or may reduce the royalty value of any such gas (to any amount not less than the net proceeds of sale thereof, in the field) if the commissioner of public lands shall determine such action to be necessary to the successful operation of the lands for oil or gas purposes or to encouragement of the greatest ultimate recovery of oil or gas or to the promotion of conservation of oil or gas or in the public interest.

This lease shall not expire at the end of either the primary or secondary term hereof if there is a well capable of producing gas in paying quantities located upon some part of the lands embraced herein, or upon lands pooled or communitized herewith, where such well is shut-in due to the inability of the lessee to obtain a pipeline connection or to market the gas therefrom and if the lessee timely pays an annual royalty on or before the annual rental paying date next ensuing after the expiration of ninety days from the date said well was shut-in and on or before said rental date thereafter. The payment of said annual royalty shall be considered for all purposes the same as if gas were being produced in paying quantities and upon the commencement of marketing of gas from said well or wells the royalty paid for the lease year in which the gas is first marketed shall be credited upon the royalty payable hereunder to the lessor for such year. The provisions of this section shall also apply where gas is being marketed from said leasehold premises and through no fault of the lessee, the pipeline connection or market is lost or ceases, in which case this lease shall not expire so long as said annual royalty is paid as herein provided. The amount of any annual royalty payable under this section shall equal twice the annual rental due by the lessee under the terms of this lease but not less than three hundred twenty dollars ($320) per well per year; provided, however, that any such annual royalty for any year beginning on or after fifteen years

from the date hereof shall equal four times the annual rental due by the lessee under the terms of this lease but not less than two thousand dollars ($2,000) per well per year; and provided further that no annual royalty shall be payable under this section if equivalent amounts are timely paid pursuant to another lease issued by lessor and if such other lease includes lands communitized with lands granted hereunder for the purpose of prorationally sharing in the shut-in well. Notwithstanding the provisions of this section to the contrary, this lease shall not be continued after ten years from the date hereof for any period of more than ten years by the payment of said annual royalty unless, for good cause shown, the commissioner of public lands, in his discretion, grants such a continuance.

3. Lessee agrees to make full settlement on the twentieth day of each month for all royalties due the lessor for the preceding month, under this lease, and to permit the lessor or its agents, at all reasonable hours, to examine lessee's books relating to the production and disposition of oil and gas produced. Lessee further agrees to submit to lessor annually upon forms furnished by lessor, verified reports showing lessee's operations for the preceding year.

4. An annual rental at the rate of $ ..... per acre shall become due and payable to the lessor by the lessee upon each acre of the land above described and then claimed by such lessee, and the same shall be due and payable in advance to the lessor on the successive anniversary dates of this lease, but the annual rental on any assignment shall in no event be less than forty dollars ($40.00).

In the event the lessee shall elect to surrender any or all of said acreage, he shall deliver to the lessor a duly executed release thereof and in event said lease has been recorded then he shall upon request furnish and deliver to the lessor a certified copy of a duly recorded release.

5. The lessee may at any time by paying to the lessor all amounts then due as provided herein and the further sum of forty dollars ($40.00), surrender and cancel this lease insofar as the same covers all or any portion of the lands herein leased and be relieved from further obligations or liability hereunder, in the manner as hereinbefore provided. Provided, this surrender clause and the option herein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee, lessor or any assignee, to enforce this lease, or any of its terms expressed or implied.

6. All payments due hereunder shall be made on or before the day such payment is due, at the office of the commissioner of public lands in Santa Fe, New Mexico.

7. The lessee with the consent of the lessor shall have the rights to assign this lease in whole or in part. Provided, however, that no assignment of an undivided interest in the lease or in any part thereof nor any assignment of less than a legal subdivision shall be recognized or approved by the lessor. Upon approval in writing by the lessor of an assignment, the assignor shall stand relieved from all obligations to the

lessor with respect to the lands embraced in the assignment and the lessor shall likewise be relieved from all obligations to the assignor as to such tracts, and the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the lessor as to such tracts.

8. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land which is draining the leased premises, lessee shall drill such offset well or wells as a reasonably prudent operator would drill under the same or similar circumstances, provided that no such offset well shall be required if compensatory royalties are paid pursuant to an agreement between the lessor and the lessee.

9. The lessee agrees to notify the lessor of the location of each well before commencing drilling thereon, to keep a complete and accurate log of each well drilled and to furnish a copy thereof, verified by some person having actual knowledge of the facts, to the lessor upon the completion of any well, and to furnish the log of any unfinished well at any time when requested to do so by the lessor.

If any lands embraced in this lease shall be included in any deed or contract of purchase outstanding and subsisting issued pursuant to any sale made of the surface of such lands prior to the date of this lease, it is agreed and understood that no drilling operation shall be commenced on any such lands so sold unless and until the lessee shall have filed a good and sufficient bond with the lessor as required by law, to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be suffered by the purchaser holding such deed or contract of purchase, or his successors, by reason of the developments, use and occupation of such lands by such lessee. Provided, however, that no such bond shall be required if such purchaser shall waive the right to require such bond to be given in the manner provided by law.

10. In drilling wells all water-bearing strata shall be noted in the log, and the lessor reserves the right to require that all or any part of the casing shall be left in any nonproductive well when lessor deems it to the interest of the beneficiaries of the lands granted hereunder to maintain said well or wells for water. For such casing so left in wells the lessor shall pay to the lessee the reasonable value thereof.

11. Lessee shall be liable and agree to pay for all damages to the range, livestock, growing crops or improvements caused by lessee's operations on said lands. When requested by the lessor the lessee shall bury pipelines below plow depth.

12. The lessee shall not remove any machinery or fixtures placed on said premises, nor draw the casing from any well unless and until all payments and obligations due the lessor under the terms of this agreement shall have been paid or satisfied. The lessee's right to remove the casing is subject to the provision of Paragraph 10 above.

13. Upon failure or default of the lessee to comply with any of the provisions or covenants hereof, the lessor is hereby authorized to cancel this lease and such cancellation shall extend to and include all rights hereunder as to the whole of the tract so claimed, or possessed by the lessee, but shall not extend to, nor affect the rights of any other lessee or assignee claiming any portion of the lands upon which no default has been made; provided, however, that before any such cancellation shall be made, the lessor shall mail to the lessee so defaulting, by registered or certified mail, addressed to the post-office address of such lessee as shown by the records of the state land office, a notice of intention of cancellation specifying the default for which cancellation is to be made, and if within thirty days from the date of mailing said notice the said lessee shall remedy the default specified in said notice, cancellation shall not be made.

14. If the lessee shall have failed to make discovery of oil or gas in paying quantities during the primary term hereof or if such discovery shall have been made and production shall have ceased for any reason, the lessee may continue this lease in full force and effect for an additional term of five years and as long thereafter as oil and gas in paying quantities or either of them is produced from the leased premises by paying each year in advance, as herein provided, double the rental provided herein for the primary term, or the highest rental prevailing at the commencement of the secondary term in any rental district, or districts in which the lands, or any part thereof, may be situated, if it be greater than double the rental provided for the primary term; provided, however, such rental shall be paid within the time provided by Section 13 hereof. If oil or gas in paying quantities should be discovered during the secondary term hereof but production should cease during said secondary term, this lease shall continue for the remainder of said secondary term of five years so long as said rental is paid and if oil or gas in paying quantities is being produced at the end of the secondary term of five years so long thereafter as oil and gas in paying quantities or either of them is produced from the leased premises.

15. If this lease shall have been maintained in accordance with the provisions hereof and if at the expiration of the secondary term provided for herein oil or gas is not being produced on said land but lessee is then engaged in bona fide drilling or reworking operations thereon, this lease shall remain in full force and effect so long as such operations are diligently prosecuted and, if they result in the production of oil or gas, so long thereafter as oil and gas in paying quantities, or either of them, is produced from said land; provided, however, such operations extending beyond the secondary term shall be approved by the lessor upon written application filed with the lessor on or before the expiration of said secondary term, and a report of the status of all of such operations shall be made by the lessee to the lessor every thirty days and a cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

If during the drilling or reworking of any well under this section, lessee loses or junks the hole or well and after diligent efforts in good faith is unable to complete said operations, then within twenty days after the abandonment of said operations, lessee

may commence another well within three hundred thirty feet of the lost or junked hole or well and drill the same with due diligence.

Operations commenced and continued as herein provided shall extend this lease as to all lands as to which the same is in full force and effect as of the time said drilling operations are commenced; provided, however, this lease shall be subject to cancellation in accordance with Paragraph 13 hereof for failure to pay rentals or file reports which may become due while operations are being conducted hereunder.

16. Should production of oil and gas or either of them in paying quantities be obtained while this lease is in force and effect and should thereafter cease from any cause after the expiration of ten years from the date hereof this lease shall not terminate if lessee commences additional drilling or reworking operations within sixty days after the cessation of such production and shall remain in full force and effect so long as such operations are prosecuted in good faith with no cessation of more than twenty consecutive days, and if such operations result in the production of oil or gas in paying quantities, so long thereafter as oil or gas in paying quantities is produced from said land; provided, however, written notice of intention to commence such operations shall be filed with the lessor within thirty days after the cessation of such production, and a report of the status of such operations shall be made by the lessee to the lessor every thirty days, and the cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

17. Lessees, including their heirs, assigns, agents and contractors shall at their own expense fully comply with all laws, regulations, rules, ordinances and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to public health and welfare, including but not limited to conservation, sanitation, aesthetics, pollution, cultural properties, fire and ecology. Such agencies are not to be deemed third party beneficiaries hereunder, however, this clause is enforceable by the lessor in any manner provided in this lease or by law.

18. Should lessor desire to exercise its rights to take in-kind its royalty share of oil, gas or associated substances or purchase all or any part of the oil, gas or associated substances produced from the lands covered by this lease, the lessee hereby irrevocably consents to the lessor exercising its right. Such consent is a consent to the termination of any supplier/purchaser relationship between the lessor and the lessee deemed to exist under federal regulations. Lessee further agrees that it will require any purchaser of oil, gas or associated substances to likewise waive any such rights.

19. Lessor reserves a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or any part of the minerals (oil and gas) that will be produced from the lands covered by this lease.

20. Lessor reserves the right to execute leases for geothermal resource development and operation thereon; the right to sell or dispose of the geothermal resources of such lands; and the right to grant rights of way and easements for these purposes.

21. All terms of this agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof, the party of the first part has hereunto signed and caused its name to be signed by its commissioner of public lands thereunto duly authorized, with the seal of his office affixed, and the lessee has signed this agreement the day and year first above written.

STATE OF NEW MEXICO

By .....

Commissioner of Public Lands, Lessor

.....(Seal)."

Lessee

History: 1978 Comp., § 19-10-4.1, enacted by Laws 1985, ch. 195, § 3.

ANNOTATIONS

Cross references. — For commissioner of public lands, *see* 19-1-1 NMSA 1978.

Net proceeds royalty obligation. — The net proceeds royalty obligations contained in the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947, ch. 200, § 1) lease forms are unambiguous as a matter of law and lessees under such leases are entitled to recover some post-production costs associated with making gas marketable. ConocoPhillips Co. v. Lyons, 2013-NMSC-009, 299 P.3d 844.

Free use clause. — Under the free use clauses contained in the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947, ch. 200, § 1) lease forms, lessees are entitled to the free use of field and plant fuel so long as the fuel is used in the operation of the lease. Field and plant fuels are not subject to royalty payments because they are post-production costs that lessees remit to post-production service providers for the development and production of the leased premises and are neither sold nor saved by lessees. ConocoPhillips Co. v. Lyons, 2013-NMSC-009, 299 P.3d 844.

Drip condensate. — The royalty obligations contained in the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947, ch. 200, § 1) lease forms are limited by their respective free use clauses and do not require royalties to be paid on lessees' use of drip condensate to the extent that lessees do not derive proceeds from such use. Lessees are only obligated to pay royalties on the use of drip condensate to the extent that lessees

receive proceeds from such use. ConocoPhillips Co. v. Lyons, 2013-NMSC-009, 299 P.3d 844.

Deduction of costs of post-production services provided by lessees' affiliates. — Under the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947, ch. 200, § 1) lease forms, in calculating lessee's royalty obligations, the deduction of costs of post-production services that are provided by lessees' affiliates must be reasonable. ConocoPhillips Co. v. Lyons, 2013-NMSC-009, 299 P.3d 844.

Maximum price provision. — The maximum price provision contained in the 1947 (Laws 1947, ch. 200, § 1) lease form does not affect lessees' ability to deduct post-production costs. It provides the commissioner with the authority to require that lessees deduct their post-production expenses from the maximum price being paid for gas of like kind and quality in the same field or area. ConocoPhillips Co. v. Lyons, 2013-NMSC-009, 299 P.3d 844.

Rulemaking authority of commissioner limited. — The commissioner has no authority to promulgate rules or regulations inconsistent with legislative enactments governing mineral leases on public lands. Harvey E. Yates Co. v. Powell, 98 F.3d 1222 (10th Cir. 1996).

The commissioner exceeded his authority and usurped a legislative function in promulgating the definition of "proceeds" in a rule so that it would require state lessees to pay royalties even when gas was not extracted from the leased premises. Harvey E. Yates Co. v. Powell, 98 F.3d 1222 (10th Cir. 1996).

Effect of production in portion of premises on rights of partial assignee. — Where oil and gas lease from commissioner of public lands provided that if oil and gas were produced in paying quantities within 10-year period, which time had been allowed lessee to produce oil and gas, lease might be continued in force as long as oil or gas should be produced, and portion of lease was assigned, assignee succeeded to all rights of original lessee, and on producing oil in portion of lease not covered by assignment, assignee had right to continue lease in force, subject to implied covenant to perform the development work. State ex rel. Shell Petroleum Corp. v. Worden, 44 N.M. 400, 103 P.2d 124 (1940).

Liability for damages. — Persons performing seismographic work upon state land with consent of mineral lease holders and commissioner of public lands are liable for damages caused to holders of grazing leases on the land, since, under Subdivision 11 of form lease found in this section, mineral lease holder would be liable for such damages. Tidewater Associated Oil Co. v. Shipp, 59 N.M. 37, 278 P.2d 571 (1954).

Under the terms of the lease in this section the mineral lessee may be liable for damages without regard to negligence. Dean v. Paladin Exploration Co., 2003-NMCA-049, 133 N.M. 491, 64 P.3d 518.

Notice of intent to cancel lease by certified mail. — The commissioner of public lands fulfills the statutory requirement for notice to terminate a lessee's interest in an oil and gas lease when he sends a notice of intent to cancel by certified mail. Abbott v. Armijo, 100 N.M. 190, 668 P.2d 306 (1983).

Limitation on royalties on cash settlements of contract disputes between lessees and purchasers. — Under a statutory lease, the state was not entitled to royalties on cash payments made in settlement of take-or-pay disputes between lessees and gas purchasers, except for the proceeds obtained by the lessees from the sale of gas at the bought-down price and a commensurate portion of the proceeds attributable to price reductions applicable to future production under the renegotiated sales agreement as production occurs. Harvey E. Yates Co. v. Powell, 98 F.3d 1222 (10th Cir. 1996).

Public policy. — It is the public policy as shown by the oil and gas leasing laws to promote development and production of oil and gas and it was not contemplated by the legislature that a lessee be deprived of his right to develop fully a well begun in good faith merely because he was attempting to determine the extent of the production possible at a depth less than he contemplated drilling in order to test the productivity of the area. 1953-54 Op. Att'y Gen. No. 53-5650.

Use of form not required of other state agencies. — The form for leasing oil and gas lands belonging to agencies other than the office of the commissioner of public lands need not comply with the terms and conditions of this section, even where such leases are offered through the facilities of the commissioner as an accommodation to another state agency. 1980 Op. Att'y Gen. No. 80-10.

Production on part benefits whole. — If production has been obtained in a unit area the production inures to the benefit of all tracts contained in the unit area; under the form oil and gas lease all of the tracts contained in a lease are perpetuated for as long after the term of the lease as oil or gas in paying quantities is produced from said land by the lessee. 1953-54 Op. Att'y Gen. No. 53-5708.

Drilling on part benefits whole. — The commencement of drilling on any part of a unit area prior to the expiration of the secondary term would extend the secondary term on all tracts included in the unit area and would be considered the same as though a well had been commenced on each tract in such unit area. 1953-54 Op. Att'y Gen. No. 53-5708.

Expiration of lease prior to drilling. — Drilling operations may not be made upon a second well in the event the approved operation is completed without production where the drilling operations have not been begun on the second well prior to the expiration date of the second term. 1953-54 Op. Att'y Gen. No. 53-5650.

Purpose of extension. — Extension of lease beyond its secondary term is for such period of time as required to conclude bona fide drilling in which lessee was engaged at expiration of the secondary term at which time lease terminates if oil or gas are not

found, but if this drilling operation results in production, then the lease is continued for as long as oil and gas, or either of them, is produced from said land in paying quantities. 1949-50 Op. Att'y Gen. No. 49-5230.

Application for continuation. — Under Subdivision 16 (now 15) a lessee may make application in writing before expiration of the secondary term for a continuation of the term if engaged in bona fide drilling or reworking operations. 1949-50 Op. Att'y Gen. No. 49-5230.

Surrender of lease and reapplication. — Once a lessee has surrendered his lease as provided for under Subdivision 5, the commissioner may refuse to accept an application for a new lease made by the same party. 1945-46 Op. Att'y Gen. No. 45-4659.

Rental on assignment of lease. — Annual rental to be charged assignee of oil and gas lease is same as that of original lessee, and for secondary term the rental is double that of primary term. 1937-38 Op. Att'y Gen. No. 37-1597.

Commissioner may insert covenant compelling reasonable development of the leased premises for oil and gas. 1941-42 Op. Att'y Gen. No. 41-3835.

Law reviews. — For note, "State Regulation of Oil and Gas Pools on State, Federal, Indian and Fee Lands," see 2 Nat. Resources J. 355 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 283.

Implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 14.

Remedy for breach of implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 147.

Production on one tract as extending term on other tract where one mineral lease conveys oil or gas rights in separate tracts for as long as oil or gas is produced, 35 A.L.R.4th 1167.

Construction and application of "Mother Hubbard" or "cover-all" clause in gas and oil lease or deed, 80 A.L.R.4th 205.

Oil and gas: rights of royalty owners to take-or-pay settlements, 57 A.L.R.5th 753.

19-10-4.2. Discovery form of lease; regular restricted or premium restricted lands.

The following form is designated as the "Discovery Form". It may be used by the commissioner for oil and gas leases on lands classified as restricted lands, whether categorized as regular or premium:

"Lease No. ..... Application No. .....

OIL AND GAS LEASE

(Discovery Form)

This agreement, dated ..... , 19 ... , between the state of New Mexico, acting by and through its commissioner of public lands, hereinafter called the "lessor", and ....., whose address is ....., hereinafter called the "lessee",

Witnesseth:

Whereas, the lessee has filed in the office of the commissioner of public lands an application for an oil and gas lease covering the lands hereinafter described and has tendered therewith the required first payment; and

Whereas, all of the requirements of law relative to the application and tender have been duly complied with;

Therefore, in consideration of the premises as well as the sum of ..... dollars ($ .....), the same being the amount of the tender above mentioned, and the further sum of $ ..... filing fee, and of the covenants and agreements hereinafter contained, the lessor does hereby grant, demise, lease and let unto the said lessee, exclusively, for the sole and only purpose of exploration, development and production of oil or gas (including carbon dioxide and helium), or both thereon and therefrom with the right to own all oil and gas so produced and saved therefrom and not reserved as royalty by the lessor under the terms of this lease, together with rights-of-way, easements and servitudes for pipelines, telephone lines, tanks, power houses, stations, gasoline plants and fixtures for producing, treating and caring for such products, and housing and boarding employees, and any and all rights and privileges necessary, incident to or convenient for the economical operation of said land, for oil and gas, with right for such purposes to the free use of oil, gas, casing-head gas or water from said lands, but not from lessor's water wells, and with the rights of removing either during or after the term hereof, all and any improvements placed or erected on the premises by the lessee, including the right to pull all casing, subject, however, to the covenants and conditions hereinafter set out, the following described land situated in the county of ..... , state of New Mexico, and more particularly described as follows:

	Line	SUBDIVISION	Sec.	Twp.	Rge.	Acres	Institution
1	/>						
2	/>						
3	/>						
4	/>						
5	/>						

6 />
7 />

Said lands having been awarded to lessee and designated as Tract No. ... at a public sale held by the commissioner of public lands on ..... , 19 ...

To have and to hold said land, and all the rights and privileges granted hereunder, to and unto the lessee for a primary term of five years from the date hereof, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from said land by lessee, subject to all of the terms and conditions as hereinafter set forth.

In consideration of the premises the parties covenant and agree as follows:

1. Subject to the free use without royalty, as hereinbefore provided, the lessee shall pay the lessor as royalty one-sixth part of the oil produced and saved from the leased premises or the cash value thereof, at the option of the lessor, such value to be the price prevailing the day oil is run into the pipeline, if the oil be run into a pipeline, or into storage tanks, if the oil is stored.

2. Subject to the free use without royalty, as hereinbefore provided, at the option of the lessor at any time and from time to time, the lessee shall pay the lessor as royalty one-sixth, part of the gas produced and saved from the leased premises, including casing-head gas. Unless said option is exercised by lessor, the lessee shall pay the lessor as royalty one-sixth of the cash value of the gas, including casing-head gas, produced and saved from the leased premises and marketed or utilized, such value to be equal to the net proceeds derived from the sale of such gas in the field; provided, however, the cash value for royalty purposes of carbon dioxide gas and of hydrocarbon gas delivered to a gasoline plant for extraction of liquid hydrocarbons shall be equal to the net proceeds derived from the sale of such gas, including any liquid hydrocarbons recovered therefrom.

Notwithstanding the foregoing provisions, the lessor may require the payment of royalty for all or any part of the gas produced and saved under this lease and marketed or utilized at a price per m.c.f. equal to the maximum price being paid for gas of like kind and quality and under like conditions in the same field or area or may reduce the royalty value of any such gas (to any amount not less than the net proceeds of sale thereof, in the field) if the commissioner of public lands shall determine such action to be necessary to the successful operation of the lands for oil or gas purposes or to encouragement of the greatest ultimate recovery of oil or gas or to the promotion or conservation of oil or gas or in the public interest.

This lease shall not expire at the end of the primary term hereof if there is a well capable of producing gas in paying quantities located upon some part of the lands embraced herein, or upon lands pooled or communitized herewith, where such well is shut-in due to the inability of the lessee to obtain a pipeline connection or to market the gas therefrom, and if the lessee timely pays an annual royalty on or before the annual

rental paying date next ensuing after the expiration of ninety days from the date said well was shut-in and on or before said rental date thereafter. The payment of said annual royalty shall be considered for all purposes the same as if gas were being produced in paying quantities and upon the commencement of marketing of gas from said well or wells the royalty paid for the lease year in which the gas is first marketed shall be credited upon the royalty payable hereunder to the lessor for such year. The provisions of this section shall also apply where gas is being marketed from said leasehold premises and through no fault of the lessee, the pipeline connection or market is lost or ceases, in which case this lease shall not expire so long as said annual royalty is paid as herein provided. The amount of any annual royalty payable under this section shall equal twice the annual rental due by the lessee under the terms of this lease but not less than three hundred twenty dollars ($320) per well per year; provided, however, that any such annual royalty for any year beginning on or after ten years from the date hereof shall equal four times the annual rental due by the lessee under the terms of this lease but not less than two thousand dollars ($2,000) per well per year; provided further, that no annual royalty shall be payable under this section if equivalent amounts are timely paid pursuant to another lease issued by lessor and if such other lease includes lands communitized with lands granted hereunder for the purpose of prorationally sharing in the shut-in well. Notwithstanding the provisions of this section to the contrary, this lease shall not be continued after five years from the date hereof for any period of more than ten years by the payment of said annual royalty unless, for good cause shown, the commissioner of public lands, in his discretion, grants such a continuance.

3. Lessee agrees to make full settlement on the twentieth day of each month for all royalties due the lessor for the preceding month, under this lease, and to permit the lessor or its agents, at all reasonable hours, to examine lessee's books relating to the production and disposition of oil and gas produced. Lessee further agrees to submit to lessor annually upon forms furnished by lessor, verified reports showing lessee's operations for the preceding year.

4. An annual rental at the rate of $ ..... per acre shall become due and payable to the lessor by the lessee upon each acre of the land above described and then claimed by such lessee and the same shall be due and payable in advance to the lessor on the successive anniversary dates of this lease, but the annual rental on any assignment shall in no event be less than forty dollars ($40.00).

In the event the lessee shall elect to surrender any or all of said acreage, he shall deliver to the lessor a duly executed release thereof and in event said lease has been recorded then he shall upon request furnish and deliver to the lessor a certified copy of a duly recorded release.

5. The lessee may at any time by paying to the lessor all amounts then due as provided herein and the further sum of forty dollars ($40.00), surrender and cancel this lease insofar as the same covers all or any portion of the lands herein leased and be relieved from further obligations or liability hereunder, in the manner as hereinbefore

provided. Provided, this surrender clause and the option herein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee, lessor or any assignee, to enforce this lease, or any of its terms expressed or implied.

6. All payments due hereunder shall be made on or before the day such payment is due, at the office of the commissioner of public lands in Santa Fe, New Mexico.

7. The lessee with the consent of the lessor shall have the rights to assign this lease in whole or in part. Provided, however, that no assignment of an undivided interest in the lease or in any part thereof nor any assignment of less than a legal subdivision shall be recognized or approved by the lessor. Upon approval in writing by the lessor of an assignment, the assignor shall stand relieved from all obligations to the lessor with respect to the lands embraced in the assignment and the lessor shall likewise be relieved from all obligations to the assignor as to such tracts, and the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the lessor as to such tracts.

8. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land which is draining the leased premises, lessee shall drill such offset well or wells as a reasonably prudent operator would drill under the same or similar circumstances, provided that no such offset well shall be required if compensatory royalties are paid pursuant to an agreement between the lessor and the lessee.

9. The lessee agrees to notify the lessor of the location of each well before commencing drilling thereon, to keep a complete and accurate log of each well drilled and to furnish a copy thereof, verified by some person having actual knowledge of the facts, to the lessor upon the completion of any well, and to furnish the log of any unfinished well at any time when requested to do so by the lessor.

If any lands embraced in this lease shall be included in any deed or contract of purchase outstanding and subsisting issued pursuant to any sale made of the surface of such lands prior to the date of this lease, it is agreed and understood that no drilling operation shall be commenced on any such lands so sold unless and until the lessee shall have filed a good and sufficient bond with the lessor as required by law, to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be suffered by the purchaser holding such deed or contract of purchase, or his successors, by reason of the developments, use and occupation of such lands by such lessee. Provided, however, that no such bond shall be required if such purchaser shall waive the right to require such bond to be given in the manner provided by law.

10. In drilling wells all water-bearing strata shall be noted in the log, and the lessor reserves the right to require that all or any part of the casing shall be left in any

nonproductive well when lessor deems it to the interest of the beneficiaries of the lands granted hereunder to maintain said well or wells for water. For such casing so left in wells the lessor shall pay to the lessee the reasonable value thereof.

11. Lessee shall be liable and agree to pay for all damages to the range, livestock, growing crops or improvements caused by lessee's operations on said lands. When requested by the lessor the lessee shall bury pipelines below plow depth.

12. The lessee shall not remove any machinery or fixtures placed on said premises, nor draw the casing from any well unless and until all payments and obligations due the lessor under the terms of this agreement shall have been paid or satisfied. The lessee's right to remove the casing is subject to the provision of Paragraph 10 above.

13. Upon failure or default of the lessee to comply with any of the provisions or covenants hereof, the lessor is hereby authorized to cancel this lease and such cancellation shall extend to and include all rights hereunder as to the whole of the tract so claimed, or possessed by the lessee, but shall not extend to, nor affect the rights of any other lessee or assignee claiming any portion of the lands upon which no default has been made; provided, however, that before any such cancellation shall be made, the lessor shall mail to the lessee so defaulting, by registered or certified mail, addressed to the post office address of such lessee as shown by the records of the state land office, a notice of intention of cancellation specifying the default for which cancellation is to be made, and if within thirty days from the date of mailing said notice the said lessee shall remedy the default specified in said notice, cancellation shall not be made.

14. If this lease shall have been maintained in accordance with the provisions hereof and if at the expiration of the primary term provided for herein oil or gas is not being produced on said land but lessee is then engaged in bona fide drilling or reworking operations thereon, this lease shall remain in full force and effect so long as such operations are diligently prosecuted and, if they result in the production of oil or gas, so long thereafter as oil and gas in paying quantities, or either of them, is produced from said land; provided, however, such operations extending beyond the primary term shall be approved by the lessor upon written application filed with the lessor on or before the expiration of said term, and a report of the status of all of such operations shall be made by the lessee to the lessor every thirty days and a cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

If during the drilling or reworking of any well under this section, lessee loses or junks the hole or well and after diligent efforts in good faith is unable to complete said operations, then within twenty days after the abandonment of said operations, lessee may commence another well within three hundred thirty feet of the lost or junked hole or well and drill the same with due diligence.

Operations commenced and continued as herein provided shall extend this lease as to all lands as to which the same is in full force and effect as of the time said drilling operations are commenced; provided, however, this lease shall be subject to cancellation in accordance with Paragraph 13 hereof for failure to pay rentals or file reports which may become due while operations are being conducted hereunder.

15. Should production of oil and gas or either of them in paying quantities be obtained while this lease is in force and effect and should thereafter cease from any cause after the expiration of five years from the date hereof this lease shall not terminate if lessee commences additional drilling or reworking operations within sixty days after the cessation of such production and shall remain in full force and effect so long as such operations are prosecuted in good faith with no cessation of more than twenty consecutive days, and if such operations result in the production of oil or gas in paying quantities, so long thereafter as oil or gas in paying quantities is produced from said land; provided, however, written notice of intention to commence such operations shall be filed with the lessor within thirty days after the cessation of such production, and a report of the status of such operations shall be made by the lessee to the lessor every thirty days, and the cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

16. Lessees, including their heirs, assigns, agents and contractors shall at their own expense fully comply with all laws, regulations, rules, ordinances and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to public health and welfare, including but not limited to conservation, sanitation, aesthetics, pollution, cultural properties, fire and ecology. Such agencies are not to be deemed third party beneficiaries hereunder, however, this clause is enforceable by the lessor in any manner provided in this lease or by law.

17. Should lessor desire to exercise its rights to take in-kind its royalty share of oil, gas or associated substances or purchase all or any part of the oil, gas or associated substances produced from the lands covered by this lease, the lessee hereby irrevocably consents to the lessor exercising its right. Such consent is a consent to the termination of any supplier/purchaser relationship between the lessor and the lessee deemed to exist under federal regulations. Lessee further agrees that it will require any purchaser of oil, gas or associated substances to likewise waive any such rights.

18. Lessor reserves a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or any part of the minerals (oil and gas) that will be produced from the lands covered by this lease.

19. Lessor reserves the right to execute leases for geothermal resource development and operation thereon; the right to sell or dispose of the geothermal resources of such lands; and the right to grant rights of way and easements for these purposes.

20. All terms of this agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof, the party of the first part has hereunto signed and caused its name to be signed by its commissioner of public lands thereunto duly authorized, with the seal of his office affixed, and the lessee has signed this agreement the day and year first above written.

STATE OF NEW MEXICO
By
.....
Commissioner of Public Lands, Lessor
.....(Seal)."
Lessee

History: 1978 Comp., § 19-10-4.2, enacted by Laws 1985, ch. 195, § 4.

ANNOTATIONS

Cross references. — For commissioner of public lands, *see* 19-1-1 NMSA 1978.

Net proceeds royalty obligation. — The net proceeds royalty obligations contained in the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947, ch. 200, § 1) lease forms are unambiguous as a matter of law and lessees under such leases are entitled to recover some post-production costs associated with making gas marketable. ConocoPhillips Co. v. Lyons, 2013-NMSC-009, 299 P.3d 844.

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Notice of intent to cancel lease by certified mail. — The commissioner of public lands fulfills the statutory requirement for notice to terminate a lessee's interest in an oil and gas lease when he sends a notice of intent to cancel by certified mail. Abbott v. Armijo, 100 N.M. 190, 668 P.2d 306 (1983).

Effect of production in portion of premises on rights of partial assignee. — Where oil and gas lease from commissioner of public lands provided that if oil and gas were produced in paying quantities within 10-year period, which time had been allowed lessee to produce oil and gas, lease might be continued in force as long as oil or gas should be produced, and portion of lease was assigned, assignee succeeded to all rights of original lessee, and on producing oil in portion of lease not covered by assignment, assignee had right to continue lease in force, subject to implied covenant to perform the development work. State ex rel. Shell Petroleum Corp. v. Worden, 44 N.M. 400, 103 P.2d 124 (1940).

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Use of form not required of other state agencies. — The form for leasing oil and gas lands belonging to agencies other than the office of the commissioner of public lands need not comply with the terms and conditions of this section, even where such leases are offered through the facilities of the commissioner as an accommodation to another state agency. 1980 Op. Att'y Gen. No. 80-10.

Public policy. — It is the public policy as shown by the oil and gas leasing laws to promote development and production of oil and gas and it was not contemplated by the legislature that a lessee be deprived of his right to develop fully a well begun in good faith merely because he was attempting to determine the extent of the production possible at a depth less than he contemplated drilling in order to test the productivity of the area. 1953-54 Op. Att'y Gen. No. 53-5650.

Production on part benefits whole. — If production has been obtained in a unit area the production inures to the benefit of all tracts contained in the unit area; under the form oil and gas lease all of the tracts contained in a lease are perpetuated for as long after the term of the lease as oil or gas in paying quantities is produced from said land by the lessee. 1953-54 Op. Att'y Gen. No. 53-5708.

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Purpose of extension. — Extension of lease beyond its secondary term is for such period of time as required to conclude bona fide drilling in which lessee was engaged at expiration of the secondary term at which time lease terminates if oil or gas are not found, but if this drilling operation results in production, then the lease is continued for as long as oil and gas, or either of them, is produced from said land in paying quantities. 1949-50 Op. Att'y Gen. No. 49-5230.

Application for continuation. — Under Subdivision 16 (now 14) a lessee may make application in writing before expiration of the secondary term for a continuation of the term if engaged in bona fide drilling or reworking operations. 1949-50 Op. Att'y Gen. No. 49-5230.

Surrender of lease and reapplication. — Once a lessee has surrendered his lease as provided for under Subdivision 5, the commissioner may refuse to accept an application for a new lease made by the same party. 1945-46 Op. Att'y Gen. No. 45-4659.

Commissioner may insert covenant compelling reasonable development of the leased premises for oil and gas. 1941-42 Op. Att'y Gen. No. 41-3835.

Rental on assignment of lease. — Annual rental to be charged assignee of oil and gas lease is same as that of original lessee, and for secondary term the rental is double that of primary term. 1937-38 Op. Att'y Gen. No. 37-1597.

Law reviews. — For note, "State Regulation of Oil and Gas Pools on State, Federal, Indian and Fee Lands," see 2 Nat. Resources J. 355 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 283.

Implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 14.

Remedy for breach of implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 147.

Production on one tract as extending term on other tract where one mineral lease conveys oil or gas rights in separate tracts for as long as oil or gas is produced, 35 A.L.R.4th 1167.

Construction and application of "Mother Hubbard" or "cover-all" clause in gas and oil lease or deed, 80 A.L.R.4th 205.

19-10-4.3. Development form of lease; premium restricted land.

The following form is designed as the "Development Form." It may be used by the commissioner for oil and gas leases on lands classified as restricted lands and categorized as Premium:

"Lease No. ..... Application No. .....

OIL AND GAS LEASE

(Development Form)

This agreement, dated ..... , 19 ... , between the state of New Mexico, acting by and through its commissioner of public lands, hereinafter called the "lessor", and ....., whose address is ....., hereinafter called the "lessee",

Witnesseth:

Whereas, the lessee has filed in the office of the commissioner of public lands an application for an oil and gas lease covering the lands hereinafter described and has tendered therewith the required first payment; and

Whereas, all of the requirements of law relative to the application and tender have been duly complied with;

Therefore, in consideration of the premises as well as the sum of ..... dollars ($ .....), the same being the amount of the tender above mentioned, and the further sum of $ ..... filing fee, and of the covenants and agreements hereinafter contained, the lessor does hereby grant, demise, lease and let unto the said lessee, exclusively, for the sole and only purpose of exploration, development and production of oil or gas (including carbon dioxide and helium), or both thereon and therefrom with the right to own all oil and gas so produced and saved therefrom and not reserved as royalty by the lessor under the terms of this lease, together with rights-of-way, easements and servitudes for pipelines, telephone lines, tanks, power houses, stations, gasoline plants and fixtures for producing, treating and caring for such products and housing and boarding

employees and any and all rights and privileges necessary, incident to or convenient for the economical operation of said land, for oil and gas, with right for such purposes to the free use of oil, gas, casing-head gas or water from said lands, but not from lessor's water wells, and with the rights of removing either during or after the term hereof, all and any improvements placed or erected on the premises by the lessee, including the right to pull all casing, subject, however, to the covenants and conditions hereinafter set out, the following described land situated in the county of ....., state of New Mexico, and more particularly described as follows:

	Line	SUBDIVISION	Sec.	Twp.	Rge.	Acres	Institution
1	/>						
2	/>						
3	/>						
4	/>						
5	/>						
6	/>						
7	/>						

Said lands having been awarded to lessee and designated as Tract No. ..... at a public sale held by the commissioner of public lands on ....., 19 ...

To have and to hold said land, and all the rights and privileges granted hereunder, to and unto the lessee for a primary term of five years from the date hereof, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from said land by lessee, subject to all of the terms and conditions as hereinafter set forth.

In consideration of the premises, the parties covenant and agree as follows:

1. Subject to the free use without royalty, as hereinbefore provided, the lessee shall pay the lessor as royalty ..... (not less than three-sixteenths nor more than one-fifth) part of the oil produced and saved from the leased premises or the cash value thereof, at the option of the lessor, such value to be the price prevailing the day oil is run into a pipeline, if the oil be run into a pipeline, or into storage tanks, if the oil is stored.

2. Subject to the free use without royalty, as hereinbefore provided, at the option of the lessor at any time and from time to time, the lessee shall pay the lessor as royalty ..... (not less than three-sixteenths nor more than one-fifth) part of the gas produced and saved from the leased premises, including casing-head gas. Unless said option is exercised by lessor, the lessee shall pay the lessor as royalty ..... (not less than three-sixteenths nor more than one-fifth) of the cash value of the gas, including casing-head gas, produced and saved from the leased premises and marketed or utilized, such value to be equal to the net proceeds derived from the sale of such gas in the field; provided, however, the cash value for royalty purposes of carbon dioxide gas and of hydrocarbon gas delivered to a gasoline plant for extraction of liquid hydrocarbons shall

be equal to the net proceeds derived from the sale of such gas, including any liquid hydrocarbons recovered therefrom.

Notwithstanding the foregoing provisions, the lessor may require the payment of royalty for all or any part of the gas produced and saved under this lease and marketed or utilized at a price per m.c.f. equal to the maximum price being paid for gas of like kind and quality and under like conditions in the same field or area or may reduce the royalty value of any such gas (to any amount not less than the net proceeds of sale thereof, in the field) if the commissioner of public lands shall determine such action to be necessary to the successful operation of the lands for oil or gas purposes or to encouragement or [of] the greatest ultimate recovery of oil or gas or to the promotion or conservation of oil or gas or in the public interest.

This lease shall not expire at the end of the primary term hereof if there is a well capable of producing gas in paying quantities located upon some part of the lands embraced herein, or upon lands pooled or communitized herewith, where such well is shut-in due to the inability of the lessee to obtain a pipeline connection or to market the gas therefrom, and if the lessee timely pays an annual royalty on or before the annual rental paying date next ensuing after the expiration of ninety days from the date said well was shut-in and on or before said rental date thereafter. The payment of said annual royalty shall be considered for all purposes the same as if gas were being produced in paying quantities and upon the commencement of marketing of gas from said well or wells the royalty paid for the lease year in which the gas is first marketed shall be credited upon the royalty payable hereunder to the lessor for such year. The provisions of this section shall also apply where gas is being marketed from said leasehold premises and through no fault of the lessee, the pipeline connection or market is lost or ceases, in which case this lease shall not expire so long as said annual royalty is paid as herein provided. The amount of any annual royalty payable under this section shall equal twice the annual rental due by the lessee under the terms of this lease but not less than three hundred twenty dollars ($320) per well per year; provided, however, that any such annual royalty for any month beginning on or after ten years from the date hereof shall equal four times the annual rental due by the lessee under the terms of this lease but not less than two thousand dollars ($2,000) per well per year; provided further, that no annual royalty shall be payable under this section if equivalent amounts are timely paid pursuant to another lease issued by lessor and if such other lease includes lands communitized with lands granted hereunder for the purpose of prorationally sharing in the shut-in well. Notwithstanding the provisions of this section to the contrary, this lease shall not be continued after five years from the date hereof for any period of more than ten years by the payment of said annual royalty unless, for good cause shown, the commissioner of public lands, in his discretion, grants such a continuance.

3. Lessee agrees to make full settlement on the twentieth day of each month for all royalties due the lessor for the preceding month, under this lease, and to permit the lessor or its agents, at all reasonable hours, to examine lessee's books relating to the production and disposition of oil and gas produced. Lessee further agrees to submit to

lessor annually upon forms furnished by lessor, verified reports showing lessee's operations for the preceding year.

4. An annual rental at the rate of $ ..... per acre shall become due and payable to the lessor by the lessee, upon each acre of the land above described and then claimed by such lessee and the same shall be due and payable in advance to the lessor on the successive anniversary dates of this lease, but the annual rental on any assignment shall in no event be less than forty dollars ($40.00).

In the event the lessee shall elect to surrender any or all of said acreage, he shall deliver to the lessor a duly executed release thereof and in event said lease has been recorded then he shall upon request furnish and deliver to the lessor a certified copy of a duly recorded release.

5. The lessee may at any time by paying to the lessor all amounts then due as provided herein and the further sum of forty dollars ($40.00), surrender and cancel this lease insofar as the same covers all or any portion of the lands herein leased and be relieved from further obligations or liability hereunder, in the manner as hereinbefore provided. Provided, this surrender clause and the option herein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee, lessor or any assignee, to enforce this lease, or any of its terms expressed or implied.

6. All payments due hereunder shall be made on or before the day such payment is due, at the office of the commissioner of public lands in Santa Fe, New Mexico.

7. The lessee with the consent of the lessor shall have the rights to assign this lease in whole or in part. Provided, however, that no assignment of an undivided interest in the lease or in any part thereof nor any assignment of less than a legal subdivision shall be recognized or approved by the lessor. Upon approval in writing by the lessor of an assignment, the assignor shall stand relieved from all obligations to the lessor with respect to the lands embraced in the assignment and the lessor shall likewise be relieved from all obligations to the assignor as to such tracts, and the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the lessor as to such tracts.

8. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land which is draining the leased premises, lessee shall drill such offset well or wells as a reasonably prudent operator would drill under the same or similar circumstances, provided that no such offset well shall be required if compensatory royalties are paid pursuant to an agreement between the lessor and the lessee.

9. The lessee agrees to notify the lessor of the location of each well before commencing drilling thereon, to keep a complete and accurate log of each well drilled

and to furnish a copy thereof, verified by some person having actual knowledge of the facts, to the lessor upon the completion of any well, and to furnish the log of any unfinished well at any time when requested to do so by the lessor.

If any lands embraced in this lease shall be included in any deed or contract of purchase outstanding and subsisting issued pursuant to any sale made of the surface of such lands prior to the date of this lease, it is agreed and understood that no drilling operation shall be commenced on any such lands so sold unless and until the lessee shall have filed a good and sufficient bond with the lessor as required by law, to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be suffered by the purchaser holding such deed or contract of purchase, or his successors, by reason of the developments, use and occupation of such lands by such lessee. Provided, however, that no such bond shall be required if such purchaser shall waive the right to require such bond to be given in the manner provided by law.

10. In drilling wells, all water-bearing strata shall be noted in the log, and the lessor reserves the right to require that all or any part of the casing shall be left in any nonproductive well when lessor deems it to the interest of the beneficiaries of the lands granted hereunder to maintain said well or wells for water. For such casing so left in wells the lessor shall pay to the lessee the reasonable value thereof.

11. Lessee shall be liable and agree to pay for all damages to the range, livestock, growing crops or improvements caused by lessee's operations on said lands. When requested by the lessor the lessee shall bury pipelines below plow depth.

12. The lessee shall not remove any machinery or fixtures placed on said premises, nor draw the casing from any well unless and until all payments and obligations due the lessor under the terms of this agreement shall have been paid or satisfied. The lessee's right to remove the casing is subject to the provision of Paragraph 10 above.

13. Upon failure or default of the lessee to comply with any of the provisions or covenants hereof, the lessor is hereby authorized to cancel this lease and such cancellation shall extend to and include all rights hereunder as to the whole of the tract so claimed, or possessed by the lessee, but shall not extend to, nor affect the rights of any other lessee or assignee claiming any portion of the lands upon which no default has been made; provided, however, that before any such cancellation shall be made, the lessor shall mail to the lessee, so defaulting, by registered or certified mail, addressed to the post office address of such lessee as shown by the records of the state land office, a notice of intention of cancellation specifying the default for which cancellation is to be made, and if within thirty days from the date of mailing said notice the said lessee shall remedy the default specified in said notice, cancellation shall not be made.

14. If this lease shall have been maintained in accordance with the provisions hereof and if at the expiration of the primary term provided for herein oil or gas is not being

produced on said land but lessee is then engaged in bona fide drilling or reworking operations thereon, this lease shall remain in full force and effect so long as such operations are diligently prosecuted and, if they result in the production of oil or gas, so long thereafter as oil and gas in paying quantities, or either of them, is produced from said land; provided, however, such operations extending beyond the primary term shall be approved by the lessor upon written application filed with the lessor on or before the expiration of said term, and a report of the status of all of such operations shall be made by the lessee to the lessor every thirty days and a cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

If during the drilling or reworking of any well under this section, lessee loses or junks the hole or well and after diligent efforts in good faith is unable to complete said operations, then within twenty days after the abandonment of said operations, lessee may commence another well within three hundred thirty feet of the lost or junked hole or well and drill the same with due diligence.

Operations commenced and continued as herein provided shall extend this lease as to all lands as to which the same is in full force and effect as of the time said drilling operations are commenced; provided, however, this lease shall be subject to cancellation in accordance with Paragraph 13 hereof for failure to pay rentals or file reports which may become due while operations are being conducted hereunder.

15. Should production of oil and gas or either of them in paying quantities be obtained while this lease is in force and effect and should thereafter cease from any cause after the expiration of five years from the date hereof, this lease shall not terminate if lessee commences additional drilling or reworking operations within sixty days after the cessation of such production and shall remain in full force and effect so long as such operations are prosecuted in good faith with no cessation of more than twenty consecutive days, and if such operations result in the production of oil or gas in paying quantities, so long thereafter as oil or gas in paying quantities is produced from said land; provided, however, written notice of intention to commence such operations shall be filed with the lessor within thirty days after the cessation of such production, and a report of the status of such operations shall be made by the lessee to the lessor every thirty days, and the cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

16. Lessees, including their heirs, assigns, agents and contractors shall at their own expense fully comply with all laws, regulations, rules, ordinances and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to public health and welfare, including but not limited to conservation, sanitation, aesthetics, pollution, cultural properties, fire and ecology. Such agencies are not to be deemed third party beneficiaries hereunder,

however this clause is enforceable by the lessor in any manner provided in this lease or by law.

17. Should lessor desire to exercise its rights to take in-kind its royalty share of oil, gas or associated substances or purchase all or any part of the oil, gas or associated substances produced from the lands covered by this lease, the lessee hereby irrevocably consents to the lessor exercising its right. Such consent is a consent to the termination of any supplier/purchaser relationship between the lessor and the lessee deemed to exist under federal regulations. Lessee further agrees that it will require any purchaser of oil, gas or associated substances to likewise waive any such rights.

18. Lessor reserves a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or any part of the minerals (oil and gas) that will be produced from the lands covered by this lease.

19. Lessor reserves the right to execute leases for geothermal resource development and operation thereon; the right to sell or dispose of the geothermal resources of such lands; and the right to grant rights-of-way and easements for these purposes.

20. All terms of this agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof, the party of the first part has hereunto signed and caused its name to be signed by its commissioner of public lands thereunto duly authorized, with the seal of his office affixed, and the lessee has signed this agreement the day and year first above written.

STATE OF NEW MEXICO
By
.....
Commissioner of Public Lands, Lessor
.....(Seal)."
Lessee

History: 1978 Comp., § 19-10-4.3, enacted by Laws 1985, ch. 195, § 5.

ANNOTATIONS

Cross references. — For commissioner of public lands, see 19-1-1 NMSA 1978.

Net proceeds royalty obligation. — The net proceeds royalty obligations contained in the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947, ch. 200, § 1) lease forms are unambiguous as a matter of law and lessees under such leases are entitled to recover some post-production costs associated with making gas marketable. ConocoPhillips Co. v. Lyons, 2013-NMSC-009, 299 P.3d 844.

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Use of form not required of other state agencies. — The form for leasing oil and gas lands belonging to agencies other than the office of the commissioner of public lands need not comply with the terms and conditions of this section, even where such leases are offered through the facilities of the commissioner as an accommodation to another state agency. 1980 Op. Att'y Gen. No. 80-10.

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as long as oil and gas, or either of them, is produced from said land in paying quantities. 1949-50 Op. Att'y Gen. No. 49-5230.

Application for continuation. — Under Subdivision 16 (now 14) a lessee may make application in writing before expiration of the secondary term for a continuation of the term if engaged in bona fide drilling or reworking operations. 1949-50 Op. Att'y Gen. No. 49-5230.

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Production on one tract as extending term on other tract where one mineral lease conveys oil or gas rights in separate tracts for as long as oil or gas is produced, 35 A.L.R.4th 1167.

Construction and application of "Mother Hubbard" or "cover-all" clause in gas and oil lease or deed, 80 A.L.R.4th 205.

19-10-5. Existing leases; stipulation.

A. The owners of any oil and gas lease issued by the commissioner of public lands before the effective date of this section, other than a five year lease, and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations, may, in accordance with regulations prescribed by the commissioner, enter into a stipulation making the terms and conditions of the lease form prescribed by Section 19-10-4.1 NMSA 1978, a part of any such existing lease, the same as if the lease form had been the original; provided, however, that no such stipulation shall be effective or binding on any of the parties until each and every working interest owner and record owner of the original lease or approved assignment thereof has signed the stipulation.

B. The owners of any five year oil and gas lease issued by the commissioner of public lands before the effective date of this section and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations, may, in accordance with regulations prescribed by the commissioner, enter into a stipulation making the terms and conditions of the lease form prescribed by

Section 19-10-4.2 NMSA 1978 a part of any such existing lease, the same as if the lease form had been the original; provided, however, that no such stipulation shall be effective or binding on any of the parties until each and every working interest owner and record owner of the original lease or approved assignment has signed the stipulation.

History: 1978 Comp., § 19-10-5, enacted by Laws 1985, ch. 195, § 6.

ANNOTATIONS

Repeals and reenactments. — Laws 1985, ch. 195, § 6, repealed former 19-10-5 NMSA 1978, as enacted by Laws 1967, ch. 189, § 2, and enacted the above section.

Effective dates. — The effective date of Laws 1985, ch. 195, § 6 was June 14, 1985.

19-10-5.1. Amendment of lease to lower royalty rate for oil wells under certain conditions.

A. The record owner of an oil and gas lease issued by the commissioner of public lands whose lease is maintained in good standing according to the terms and conditions of the lease and all applicable statutes and regulations may apply to the commissioner for an amendment to the lease for the purpose of changing the royalty rate on oil produced from a specified oil well.

B. An application for a change in royalty rate shall be on a form prescribed by the commissioner of public lands and shall be accompanied by an application fee. The application shall:

(1) show that an oil well has produced oil attributable to the lease premises and:

(a) if the production is from formations shallower than five thousand feet, has produced less than an average of three barrels of oil per day during the preceding twelve months and has not averaged over five barrels of oil per day for any month during the preceding twelve months; or

(b) if the production is from formations five thousand feet deep or deeper, has produced less than an average of six barrels of oil per day during the preceding twelve months and has not averaged over ten barrels of oil per day for any month during the preceding twelve months; and

(2) include a statement that to the best of the applicant's knowledge and experience the well is not capable of sustained production over the production limits specified in Paragraph (1) of this subsection.

C. Upon receipt of an application, the commissioner of public lands shall review the information submitted as well as other independent information obtainable by the commissioner and shall agree to amend the lease to a lower royalty rate for oil produced from the oil well if, in his sole discretion, he finds that:

(1) the operator has taken reasonable steps to minimize his costs of operating the oil well;

(2) the oil well will likely be plugged and abandoned in the near future, with a resulting loss of reserves, if operating costs are not reduced further;

(3) the oil well will produce for a longer period, and the amount of oil produced will ultimately be larger, if the royalty rate is lowered; and

(4) a lower royalty rate will actually maximize revenue to the trust beneficiaries.

D. Any lower royalty rate agreed to under this section shall be equal to five percent and shall be valid for a period of three years, after which time the record owner of the oil and gas lease issued by the commissioner of public lands may submit a request for extension.

E. The commissioner of public lands may promulgate regulations necessary to implement the provisions of this section.

F. The commissioner of public lands shall provide a cost-benefit analysis of the provisions of this section by December 1 of each year to the legislature and the governor.

History: Laws 1994, ch. 105, § 1; 1999, ch. 65, § 1.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in Subsection B substituted "has produced oil" for "the production from which is" in Paragraph (1), added the Subparagraph (1)(a) designation, and added "if the production is from formations shallower than five thousand feet" at the beginning, deleted former Paragraph (2), which read "reserve data and production decline curves for the oil well", and added Subparagraph (1)(b) and Paragraph (2); in Subsection D, substituted "three years" for "two years" and "a request for extension" for "another application pursuant to this section"; and made minor stylistic changes.

19-10-6. Shut-in oil wells; conditions.

A. If, after notice and public hearing, the commissioner finds that because of a severe reduction in the price of oil the beneficiaries of state trust lands are ultimately

better served if oil wells are allowed to be temporarily shut in rather than produced at a low price, he may promulgate a regulation which allows such wells to be shut in.

B. Any regulation promulgated under Subsection A of this section shall automatically expire two years from its effective date unless it is either extended by the commissioner after a subsequent notice and public hearing or terminated sooner by a subsequent regulation of the commissioner after finding that the price of oil is no longer severely reduced; provided, that any such termination shall not be effective until thirty days after the commissioner has by certified mail sent notice of the prospective termination to each lessee whose lease is being extended by the operation of this section.

C. Any oil and gas lease issued by the commissioner of public lands and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations shall not expire if:

(1) there is, currently in effect, a regulation promulgated under Subsection A of this section;

(2) there is a well capable of producing oil located upon some part of the lands included in the lease and such well is shut in because of the severe reduction in the price of oil;

(3) the lessee timely notifies the commissioner in writing within thirty days of the date the well is first shut in; and

(4) the lessee timely pays an annual shut-in royalty within ninety days from the date the well was first shut in and thereafter before each anniversary of the date the well was first shut in. The amount of the shut-in royalty shall be twice the annual rental due by the lessee under the terms of the lease but not less than three hundred twenty dollars ($320) per well per year. If the other requirements of this subsection are satisfied, the timely payment of the shut-in royalty shall be considered for all purposes the same as if oil were being produced in paying quantities until the next anniversary of the date the well was first shut in.

History: 1978 Comp., § 19-10-6, enacted by Laws 1987, ch. 173, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1985, ch. 195, § 9 repealed former 19-10-6 NMSA 1978, as enacted by Laws 1972, ch. 70, § 2, relating to the applicability of the lease form in 19-10-3 NMSA 1978, effective June 14, 1985.

19-10-7. Exploratory form of lease; different term of years.

A. When issuing an oil and gas lease on the exploratory lease form, if the conditions of the tract subject to the lease are such that a different term of years for the lease is warranted, the commissioner in his discretion may issue the lease for a primary term of five years with no secondary term.

B. Any deviations from the lease form set forth in Section 19-10-4.1 NMSA 1978 pursuant to Subsection A of this section shall be specified in the notice of the lease sale as required under Section 19-10-17 NMSA 1978.

History: 1978 Comp., § 19-10-7, enacted by Laws 1987, ch. 173, § 2.

ANNOTATIONS

Repeals. — Laws 1985, ch. 195, § 9 repealed former 19-10-7 NMSA 1978, as enacted by Laws 1977, ch. 298, § 2, relating to the applicability of the lease form in 19-10-4 NMSA 1978, effective June 14, 1985.

19-10-8. [Extension of terms of leases.]

In all cases where public lands under the jurisdiction of the commissioner of public lands are under lease for oil and gas and are concurrently leased for other minerals, and exploration or development operations under the oil and gas lease are incompatible with the exploration or mining operations under the mining lease and will result in waste of either oil and gas or minerals unless operations under the oil and gas lease are temporarily suspended, the commissioner of public lands may, from time to time, as to all or part of the lands, by legal subdivisions, waive compliance with the express or implied exploratory, drilling, development or production requirements, or may extend the term of the oil and gas lease for a period of time sufficient to permit the removal of the minerals and for subsidence of the ground if necessary.

Provided, however, no waiver or extension of term of the lease shall be for more than five years at any one time and shall be effective only upon written order of the commissioner of public lands. Provided, further, the order shall specify the oil and gas and mineral lease numbers and the legal subdivision affected and shall not be effective until posted on the official land office bulletin board for a period of at least fifteen days.

History: 1953 Comp., § 7-11-3.2, enacted by Laws 1961, ch. 93, § 1.

19-10-9. [Existing leases; stipulation to bring helium gas within terms.]

Any owner of an oil and gas lease heretofore issued by the commissioner of public lands and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations may, in accordance with regulations prescribed by the commissioner of public lands, enter into a stipulation bringing helium

gas within the terms of any such existing lease, the same as if helium gas had been covered by the lease agreement from the date it was first entered into.

History: 1953 Comp., § 7-11-3.3, enacted by Laws 1963, ch. 151, § 2.

ANNOTATIONS

Cross references. — For definition of "natural gas" as used in 19-10-1 to 19-10-52 NMSA 1978, now being construed to include helium gas, *see* 19-10-2 NMSA 1978.

19-10-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 195, § 9, repealed 19-10-10 NMSA 1978, as enacted by Laws 1945, ch. 111, § 2, relating to amending existing leases, effective June 14, 1985. For stipulation of existing leases, *see* 19-10-5 NMSA 1978.

19-10-11. [Statement with royalty payment; inspection of books; state's lien for unpaid royalty; log; specimen of drill cuttings.]

The lessee shall be required to submit to the commissioner of public lands with each and every royalty payment, a correct statement showing the amount of oil or gas produced and saved since the last report and the market value thereof, except oil and gas used in developing and operating said lease. All books and accounts of the lessee pertaining to the production, transportation and marketing of the output from the leased lands shall be open to the examination and inspection at all reasonable hours by the commissioner of public lands or his representative. The value of any unpaid royalty, and any sum due the state upon any lease, shall become a prior lien upon the production from the leased premises and the improvements situated thereon. The lessee shall furnish to the commissioner of public lands, as and when called for by him, a full, accurate and complete log, and also a complete specimen of drill cuttings of any and all wells drilled by lessee on the leased lands.

History: Laws 1925, ch. 137, § 4; C.S. 1929, § 132-422; 1941 Comp., § 8-1104; 1953 Comp., § 7-11-5.

19-10-12. [New lease or extension where no discovery made; preference right; conditions.]

The legal owners of all leases issued by the commissioner of public lands prior to the effective date of this amendment, containing provision, or provisions, for preference right to a new lease, or extension of the term thereof upon the expiration of the initial five-year term, and where valuable discoveries of the oil and gas have not been made, shall have an absolute preference right to such new lease or extension, upon the terms

and conditions provided in such leases without paying a bonus therefor, and in the exercise of such preference right the provisions of Chapter 125 of the 1929 Session Laws [19-10-1, 19-10-12 to 19-10-25 NMSA 1978], and of this act [19-10-1, 19-10-12, 19-10-15 to 19-10-18, 19-10-22 NMSA 1978] relating to sales made upon competitive bidding by sealed bids, or at public auction, shall not apply in any case, but all such renewals, extensions or new leases made pursuant to such preference rights shall be only for a term of five years and as long thereafter as oil and gas in paying quantities, or either of them, is produced from the leased premises, and without further preference right to renewal or extension for successive terms.

History: Laws 1929, ch. 125, § 3; C.S. 1929, § 132-403; Laws 1931, ch. 18, § 3; 1941 Comp., § 8-1105; 1953 Comp., § 7-11-6.

ANNOTATIONS

Construction. — This section contained no provisions for shortening the term of an oil or gas lease; it provided for preference right for new leases and for extensions. Atlantic Oil Producing Co. v. Crile, 34 N.M. 650, 287 P. 696 (1930) (case decided prior to 1931 amendment of section).

Applicability. — The provisions of this section, prior to the 1931 amendment, with reference to making application for preference right lease prior to expiration of original term, were not applicable to preference right contained in lease for five years dated May 3, 1924, on form prescribed by the state land office. State ex rel. Malone v. Crile, 34 N.M. 520, 284 P. 762 (1929).

19-10-13. [Assignment of leases; procedure; effect.]

All leases issued under the provisions of this act [19-10-1, 19-10-12 to 19-10-25 NMSA 1978] shall be assignable in whole or in part; provided, however, that no assignment of an undivided interest in the lease or any part thereof, or any assignment of less than a legal subdivision shall be recognized or approved by the commissioner. The term "legal subdivision" as used in this act shall be construed in its ordinary sense as used and recognized in the general land office of the United States and in the state land office of New Mexico. The assignments provided for herein shall be executed and acknowledged in the manner prescribed for conveyance of real estate in this state and shall be filed in triplicate in the office of the commissioner who shall retain two copies of the said assignment in his office as a public record and shall record one of same in permanent form in his office as a public record and shall return one of the duplicate copies to the person entitled thereto. The approval of the commissioner shall be noted upon all copies of the said assignment. The commissioner shall prescribe the form to be used for such assignments and shall fix a reasonable fee for the filing, recording and approval of same. The commissioner shall have the right to refuse approval of any assignment not executed in proper form or by the proper person or persons, or when the lease is not in good standing as to the assigned tracts, or when litigation is pending affecting the lease or the interest of any person therein. Upon approval by the

commissioner of an assignment the assignor shall stand relieved from all obligations to the state with respect to the lands embraced in the assignment and the state shall likewise be relieved from all obligations to the assignor as to such tract or tracts, and thereupon the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts. Provided, however, the record owner of any oil and gas lease may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner of public lands; but nothing herein contained shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith, and in any controversy respecting any such contracts, agreements or other instruments entered into by such lessee with other persons the state of New Mexico or the commissioner of public lands shall not be a necessary party. All such contracts and other instruments may be filed either in the office of the commissioner of public lands or recorded in the office of the county clerk of the county where the lands are situated, and the filing or recording thereof shall constitute notice to all the world of the existence and contents of the instruments so filed or recorded. The commissioner may prescribe a reasonable fee for the filing of such instruments in the office of the commissioner of public lands.

The discovery of oil or gas upon lands embraced in any state lease shall continue such lease as to all of the lands embraced therein for as long thereafter as oil and gas in paying quantities or either of them is being produced in accordance with the provisions thereof regardless of any assignment of all or any portion of the lease which may have been made prior or subsequent to the discovery of such production.

History: Laws 1929, ch. 125, § 4; C.S. 1929, § 132-404; Laws 1939, ch. 234, § 1; 1941 Comp., § 8-1106; Laws 1951, ch. 161, § 1; 1953 Comp., § 7-11-7.

ANNOTATIONS

Cross references. — For assignment or relinquishment of lease of state lands, *see* 19-7-36 NMSA 1978.

For assignment of mineral lease, *see* 19-8-28 NMSA 1978.

For transferability of lease under Geothermal Resources Act, *see* 19-13-21 NMSA 1978.

Approval of assignment of leases. — The requirement in a purchase and sale agreement that the bureau of Indian affairs approve the assignment of seller's interests in oil and gas leases located on the Navajo Nation was not a condition precedent to

making the agreement effective. Wood v. Cunningham, 2006-NMCA-139, 140 N.M. 699, 147 P.3d 1132, cert. denied, 2006-NMCERT-011, 140 N.M. 845, 149 P.3d 942.

Effect of production in portion of premises on rights of partial assignee. — Where oil and gas lease from commissioner of public lands provided that if oil and gas were produced in paying quantities within 10-year period, which time had been allowed lessee to produce oil and gas, lease might be continued in force as long as oil or gas should be produced, and portion of lease was assigned, assignee succeeded to all rights of original lessee, and on producing oil in portion of lease not covered by assignment, assignee had right to continue lease in force, subject to implied covenant to perform the development work. State ex rel. Shell Petroleum Corp. v. Worden, 44 N.M. 400, 103 P.2d 124 (1940).

Instrument an assignment. — Instrument designed an assignment of oil and gas lease, being Form 33-A2, when properly executed on a portion of land originally leased by the lessor, constitutes in law and in fact an assignment and not a sublease. 1937-38 Op. Att'y Gen. No. 37-1642.

Certain assignments prohibited. — This section expressly prohibits the commissioner of public lands from recognizing or approving any assignment of any portion of the lease of an undivided interest. This prohibits a retention by the assignor of a reversionary interest in the portion assigned such as an overriding royalty. 1937-38 Op. Att'y Gen. No. 37-1642.

Except by operation of law. — The prohibition against assignment of an undivided interest in an oil and gas lease is not applicable where such interest passes necessarily by operation of law, as upon the death of a lessee, but the heirs in whom such interest vests may not assign their undivided interest to any third party, except in conformity with this section. 1941-42 Op. Att'y Gen. No. 42-4094.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes oil or gas "royalty" or "royalties" within language of conveyance, exception, reservation, devise or assignment, 4 A.L.R.2d 492.

Liability of lessee who assigns lease for rent accruing subsequently to extension or renewal of term, 10 A.L.R.3d 818.

19-10-14. [Application for lease; form; deposit; appraisement.]

Applications for the issuance of any lease authorized by this act [19-10-1, 19-10-12 to 19-10-25 NMSA 1978] shall be executed under oath by the applicant or by his agent or attorney duly authorized in writing, or by any officer or attorney in fact of the corporation if the application be made by a corporation. The application shall be accompanied by the amount offered by the applicant as the bonus, if any, and rental for the first year. The form of the application shall be prescribed by the commissioner and all applications shall contain a description of the lands by legal subdivisions upon which

the lease is desired, together with such data and information concerning development on and in the vicinity of the lands as may reasonably be required by the commissioner. The commissioner may also require any applicant for a lease to file in the office of the commissioner an appraisement in such form as the commissioner may require, showing the value of the lands for oil and gas purposes, such appraisement to be made under oath by one or more disinterested persons having personal knowledge of the facts set forth in the appraisement. The commissioner shall not be bound by the statements contained in any such application or appraisement. No lease shall be issued without the filing of an application therefor as prescribed herein, and no lease shall be issued for less than the amount offered by the applicant as a bonus, if any, and rental for the first year, and if an appraisement of the land for oil and gas purposes be required as provided herein, then no lease shall issue for less than the value of same as shown by such appraisement.

History: Laws 1929, ch. 125, § 5; C.S. 1929, § 132-405; 1941 Comp., § 8-1107; 1953 Comp., § 7-11-8.

ANNOTATIONS

Cross references. — For appraisement of state lands by applicant seeking to lease or purchase same, *see* 19-7-1 NMSA 1978.

For false swearing in appraisement of state lands, *see* 19-7-7 NMSA 1978.

19-10-15. [Rental; limits; first year; rental districts; alteration; maximum size of lease; rent where lease crosses district line.]

All leases issued by the commissioner of public lands shall provide for an annual rental to be paid by the lessee, the amount thereof to be fixed by the commissioner, but in no case shall the same be less than five cents [($.05)] nor more than one dollar [($1.00)] per acre, except during the secondary term of the leases provided for herein; provided the first year's rental for any lease, except leases issued pursuant to relinquishment under Section 8 [19-10-22 NMSA 1978] of this act, shall not be less than one hundred dollars ($100).

It shall be the duty of the commissioner to classify and divide all state lands subject to lease hereunder, into districts to be known as "rental" districts, and thereupon prescribe the rental per acre to be paid under leases to be made upon lands in the respective rental districts, and upon such division shall post in a conspicuous place in the state land office a description of such districts and the rental prevailing in each; provided, however, the commissioner may, from time to time, alter or change the boundaries of such districts, or redistrict all of said lands, and increase or diminish the rental prevailing in each, but any change in the boundaries of the districts, or amount of rental, shall not become effective until ten days after giving notice thereof by posting a description, or list, of such changes, in a conspicuous place in the state land office.

Not more than six thousand, four hundred (6,400) acres of land may be embraced within any one lease, and where part of the lands in any lease are situated in one rental district and part thereof in another, or other districts, the lessee shall be required to pay the rental prevailing in the district wherein part of the lands affected are situated having the highest rental.

History: Laws 1929, ch. 125, § 6; C.S. 1929, § 132-406; Laws 1931, ch. 18, § 4; 1941 Comp., § 8-1108; 1953 Comp., § 7-11-9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For accrual of interest on delinquent payments of rental, etc., *see* 19-1-3 NMSA 1978.

Withdrawal of lands from restricted districts. — By necessary implication the land commissioner has authority to rescind orders promulgated by him adding lands to restricted districts for oil and gas leasing, and the procedure to be followed in withdrawing any lands from a restricted district is substantially the same as set out in this section. 1951-52 Op. Att'y Gen. No. 52-5604.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 283.

19-10-16. [Restricted districts; method of leasing; added area; notice; rental.]

There is hereby created a restricted district comprising townships 3 to 15 south inclusive, ranges 34 to 39 east inclusive; townships 16 to 20 south inclusive, ranges 28 to 39 east inclusive; and townships 21 to 26 south inclusive, ranges 34 to 39 east inclusive, N.M.P.M. No oil and gas leases upon any state lands within said restricted district shall be made except upon competitive bidding by sealed bids or at public auction as hereafter provided. No lands within the boundaries of said restricted district shall be eliminated therefrom by the commissioner, but the commissioner may, from time to time, when in his judgment the interest of the state requires such action, extend the boundaries thereof and create other restricted districts, or areas, within which oil and gas leases may be made only upon competitive bidding by sealed bids or at public auction. Notice of the extension of the boundaries of said district, or of the creation of other districts, shall be given in the same manner as provided for giving notice of change in rental districts, as provided by Section 4 [19-10-15 NMSA 1978] of this act. Nothing contained in this act [19-10-1, 19-10-12, 19-10-15 to 19-10-18, 19-10-22 NMSA 1978] shall be construed as requiring a uniform annual rental to prevail over the entire area embraced in any restricted district. The commissioner may, when it is deemed for the best interests of the state, fix the annual rental to be paid under the terms of each lease covering lands in any restricted district at the time notice of sale thereof is given,

as hereinafter provided, without regard to the rental prevailing in the district in which the lands offered for lease are situated, and in such cases the provisions of Section 4 [19-10-15 NMSA 1978] hereof, except those relating to the maximum and minimum rental, shall not apply.

History: Laws 1929, ch. 125, § 7; C.S. 1929, § 132-407; Laws 1931, ch. 18, § 5; 1941 Comp., § 8-1109; 1953 Comp., § 7-11-10.

ANNOTATIONS

Purpose of competitive bidding. — Competitive bidding was introduced as a means of obtaining the greatest returns from the leases. Atlantic Oil Producing Co. v. Crile, 34 N.M. 650, 287 P. 696 (1930).

Effect of high bid on preference right holder. — This section is a "rule of the state land office" within terms of oil and gas lease executed in 1924, and the holder of a preference right under that form of lease must meet the bonus offered by the highest bidder at such auction to be entitled to exercise his right and take the lease. State ex rel. Malone v. Crile, 34 N.M. 520, 284 P. 762 (1929).

Withdrawal of lands from restricted districts. — By necessary implication the land commissioner has authority to rescind orders promulgated by him adding lands to restricted districts for oil and gas leasing, and the procedure to be followed in withdrawing any lands from a restricted district is substantially the same as set out in Section 19-10-15 NMSA 1978. 1951-52 Op. Att'y Gen. No. 52-5604.

19-10-17. Public sale of restricted district leases; time; regulations; notice; minimum bonus; sealed bids or public auction authorized; site of sale; publication of notice; rejection of bids; completion of transaction.

A. The commissioner shall hold a public sale of oil and gas leases upon lands which may be open to lease and embraced within the restricted district or districts created and which may be created under Section 19-10-16 NMSA 1978 on the third Tuesday of each month or on the next business day following, where the third Tuesday falls on a legal holiday, and shall offer for lease such lands in designated tracts to the highest and best bidder. All sales of leases upon competitive bidding or a public auction shall be governed by regulations issued by the commissioner not in conflict with the provisions of Chapter 19, Article 10 NMSA 1978. Notice of such sales shall be given by posting in a conspicuous place in the state land office, not less than ten days before the date of sale, a notice of the sale specifying the day and hour when and the place where the sale will be held and specifying the following for each tract to be offered for lease:

(1) a description of the lands;

(2) the form of lease to be used;

(3) the royalty rate; and

(4) the annual rental per acre to be paid.

B. The commissioner may, when it is deemed to be for the best interests of the beneficiaries of such lands, also specify a minimum bonus to be paid for the leases upon the respective tracts, and, when so specified, the bonus shall be paid in addition to the first year's rental. The notice shall also contain such other information as the commissioner may deem advisable or necessary. Sales may be conducted through sealed bids or at public auction or by both methods combined, but the method of conducting each sale shall be stated in the notice of sale required pursuant to this section. Sales may be held at the option of the commissioner either in the office of the commissioner or at the county seat of the county in which the lands, or the greater part thereof, are situated or such other place within the state as the commissioner may designate in the notice of public auction provided for in this section. The commissioner is authorized to give such additional notice of the sales, either by publication in newspapers or by mailing copies of the notice of sale to interested persons, firms or corporations, as he may deem necessary to give proper publicity thereto. The commissioner shall have the right to reject all bids received at any sale for the lease upon any tract but shall not reject any bids made in conformity with the regulations and provisions of Chapter 19, Article 10 NMSA 1978 without rejecting all bids applicable to the same tract of land. Leases sold at sales as provided in this section shall be awarded to the respective bidders offering the largest bonus, which shall be paid in addition to the first year's rental, or, where a minimum bonus is not specified and no offer of a bonus is received, to the bidder offering the rental specified in the notice of sale which, for the first year, shall not be less than one hundred dollars ($100) for each lease as provided in Section 19-10-15 NMSA 1978. Where two or more sealed bids making the same offer for the same tract are received, the commissioner shall award the lease in accordance with such regulations as he may prescribe. The successful bidders shall file proper applications for the leases purchased and shall complete the payment of any balance due on their bids before the closing of the office of the commissioner on the day of the sale.

History: Laws 1929, ch. 125, § 8; C.S. 1929, § 132-408; Laws 1931, ch. 18, § 6; 1941 Comp., § 8-1110; Laws 1953, ch. 45, § 1; 1953 Comp., § 7-11-11; Laws 1981, ch. 97, § 1; 1985, ch. 195, § 7.

ANNOTATIONS

Cross references. — For publication of legal notice, *see* 14-11-1 NMSA 1978 et seq.

The 1985 amendment, effective June 14, 1985, designated the formerly undesignated first three sentences as Subsection A, dividing the former third sentence into introductory language and Paragraphs (1) and (4); in the introductory paragraph of

Subsection A, deleted "therefor" at the end of the first sentence and substituted "Chapter 19, Article 10 NMSA 1978" for "Sections 19-10-1, 19-10-3, and 19-10-12 through 19-10-25 NMSA 1978" at the end of the second sentence and "a notice of the sale" for "a notice of same" and "and specifying the following for each tract to be offered for lease" for "giving" in the third sentence; deleted "in each tract to be offered for lease" at the end of Subsection A(1); inserted Subsections A(2) and A(3); deleted "by the lessee" at the end of Subsection A(4); designated the formerly undesignated last nine sentences as Subsection B; and, in Subsection B, substituted "beneficiaries of such lands" for "state" and "the bonus" for "the same" in the first sentence and "pursuant to this section" for "herein" at the end of the third sentence, inserted "the" preceding "greater part thereof" and substituted "in this section" for "herein" in the fourth sentence, substituted "Chapter 19, Article 10 NMSA 1978" for "Sections 19-10-1, 19-10-3, and 19-10-12 through 19-10-25 NMSA 1978" and deleted "or tracts" following "applicable to the same tract" in the sixth sentence, substituted "in this section" for "herein" near the beginning of the seventh sentence and deleted "thereon" following "the commissioner shall award the lease" in the eighth sentence.

Discretion of commissioner. — Commissioner may advertise, offer and lease oil and gas lands upon a basis of the state receiving more than one-eighth royalty from the highest and best bidder as he may deem for the best interests of the state. 1945-46 Op. Att'y Gen. No. 45-4750.

19-10-18. No bids made; subsequent lease.

A. If no bid is received for any lease offered by notice of sale as provided in Section 19-10-17 NMSA 1978 on a tract classified as restricted and categorized as regular, then the tract or tracts upon which no bids are received may be leased by the commissioner to the first applicant for the respective tracts any time within ten days after the sale at not less than the minimum amount of rental and bonus, if any, specified in the notice of sale.

B. If no bid is received for any lease offered by notice of sale as provided herein on a tract classified as restricted and categorized as premium, then the tract or tracts upon which no bids are received may be reoffered for lease by the commissioner at some subsequent sale or may be offered for lease at some subsequent sale, as a restricted tract or tracts, categorized as regular.

History: Laws 1929, ch. 125, § 9; C.S. 1929, § 132-409; Laws 1931, ch. 18, § 7; 1941 Comp., § 8-1111; 1953 Comp., § 7-11-12; Laws 1985, ch. 195, § 8.

ANNOTATIONS

The 1985 amendment, effective June 14, 1985, added the section heading, designated the formerly undesignated paragraph as Subsection A, substituted "If no bid is received" for "If no bid be received" and "in Section 19-10-17 NMSA 1978 on a tract classified as

restricted and categorized as regular" for "herein" near the beginning and "the sale" for "such sale" near the end of Subsection A and added Subsection B.

19-10-19. [Withholding lands from lease authorized.]

Nothing contained in this act [19-10-1, 19-10-12 to 19-10-25 NMSA 1978] shall be construed as requiring the commissioner to offer any tract or tracts of land for lease but the commissioner shall have power to withhold any tract or tracts from leasing for oil and gas purposes if in his opinion the best interests of the state will be served by so doing.

History: Laws 1929, ch. 125, § 10; C.S. 1929, § 132-410; 1941 Comp., § 8-1112; 1953 Comp., § 7-11-13.

19-10-20. [Cancellation of lease for nonpayment or nonperformance of requirements by lessee; notice.]

The commissioner is hereby authorized to cancel any lease issued as provided herein for nonpayment of rentals or nonperformance by the lessee of any provision or requirement of the lease; provided, however, that before any such cancellation shall be made the commissioner must mail to the lessee or assignee by registered letter, addressed to the post-office address of such lessee or assignee shown by the records of the office of the commissioner, a notice of intention to cancel said lease, specifying the default for which the lease is subject to cancellation, and if within thirty (30) days after the mailing of said notice to the lessee or assignee he shall remedy the default specified in such notice, then no cancellation of the said lease shall be entered by the commissioner but otherwise the said cancellation shall be made and all rights of the lessee or assignee under the lease shall thereupon terminate. The mailing of the notice as provided in this section shall constitute notice of the intention of the commissioner to cancel the lease and no proof of receipt of such notice shall be necessary or required. All notices required to be given hereunder on account of failure to pay rentals shall be mailed within ninety (90) days after said rentals shall have become delinquent, and as to all leases under the terms of which rentals are delinquent as of the effective date of this amendment said notices shall be mailed within ninety (90) days from the effective date hereof.

History: Laws 1929, ch. 125, § 11; C.S. 1929, § 132-411; 1941 Comp., § 8-1113; Laws 1945, ch. 113, § 1; 1953 Comp., § 7-11-14.

ANNOTATIONS

Cross references. — For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of agricultural or grazing lease, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture for defrauding state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, *see* 19-8-27 NMSA 1978.

For forfeiture on failure to comply with coal lease, *see* 19-9-13 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, *see* 19-10-20 NMSA 1978.

Time of payments. — Where ninetieth day fell on Sunday, lessee had all day the following Monday in which to make payment, and payments received by mail on the preceding Saturday or Sunday, when the land office was closed, were timely. Durell v. Miles, 53 N.M. 264, 206 P.2d 547 (1949).

Actual notice is not required in order to terminate lessee's interest in an oil and gas lease. Abbott v. Armijo, 100 N.M. 190, 668 P.2d 306 (1983).

Notice of intent to cancel lease by certified mail. — The commissioner of public lands fulfills the statutory requirement for notice to terminate a lessee's interest in an oil and gas lease when he sends a notice of intent to cancel by certified mail. Abbott v. Armijo, 100 N.M. 190, 668 P.2d 306 (1983).

Recall of notice permitted. — Where the 90-day statutory limit for giving notice of cancellation has not expired, commissioner of public lands may recall notice of cancellation for nonpayment of rentals. Durell v. Miles, 53 N.M. 264, 206 P.2d 547 (1949).

Effect of production in portion on partial assignee's rights. — Where oil and gas lease from commissioner of public lands provided that if oil and gas were produced in paying quantities within 10-year period, which time had been allowed lessee to produce oil and gas, lease might be continued in force as long as oil or gas should be produced, and portion of lease was assigned, assignee succeeded to all rights of original lessee, and on producing oil in portion of lease not covered by assignment, assignee had right to continue lease in force, subject to implied covenant to perform the development work. State ex rel. Shell Petroleum Corp. v. Worden, 44 N.M. 400, 103 P.2d 124 (1940).

Consent by state to suit. — In an action brought under 8-1116, 1941 Comp. (Section 19-10-23 NMSA 1978) against the commissioner of public lands to compel him to rescind his cancellation, effected under this section, of certain oil and gas leases, it was held that the state not only has waived its immunity but has consented to be sued in a

court of equity in which equitable principles must control. Durell v. Miles, 53 N.M. 264, 206 P.2d 547 (1949).

Time of notice. — The commissioner of public lands is required to mail notices respecting rentals within 90 days after they become delinquent, but in the case of nonperformance other than rentals, the time for giving notice is within his discretion. 1945-46 Op. Att'y Gen. No. 45-4767.

Grounds of cancellation. — The commissioner of public lands may cancel a lease when the lessee fails, after due notice, to do what is expected of an operator of ordinary prudence. 1941-42 Op. Att'y Gen. No. 41-3835.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 283.

Mistake, accident, inadvertence, etc., as ground for relief from termination or forfeiture of oil or gas lease for failure to complete well, commence drilling or pay rental strictly on time, 5 A.L.R.2d 993.

Relief against forfeiture of lease for nonpayment of rent, 31 A.L.R.2d 321.

Gas and oil lease force majeure provisions: construction and effect, 46 A.L.R.4th 976.

19-10-21. [Rules and regulations; amendment; rescission; effective date.]

The commissioner is hereby authorized and required to prescribe and publish for the information of the public, all rules and regulations necessary for carrying out the provisions of this act [19-10-1, 19-10-12 to 19-10-25 NMSA 1978], and he may amend or rescind any rule or regulation promulgated by him under the authority contained herein; provided, however, that no rule or regulation or amendment of same, or any order rescinding any rule or regulation shall become effective earlier than fifteen (15) days after the promulgation of same, and a copy of the proposed rule, regulation, amendment or order shall be posted in a conspicuous place in the office of the commissioner for a period of at least fifteen (15) days prior to the taking effect of same.

History: Laws 1929, ch. 125, § 13; C.S. 1929, § 132-413; 1941 Comp., § 8-1114; 1953 Comp., § 7-11-15.

ANNOTATIONS

Cross references. — For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

19-10-22. [Validation of existing leases; contest of claims; relinquishment for conversion; terms of new lease; fees.]

All oil and gas leases issued by the commissioner of public lands prior to the effective date of this amendment which have not expired, or which have not been legally canceled for nonperformance by the lessee or assignee, are hereby declared to be valid and existing contracts with the state of New Mexico according to their terms and provisions, and the obligation of the state and of the commissioner to observe and conform to the terms and provisions thereof is hereby recognized. In any case where two or more persons claim a valid lease on the same tract or tracts of land under the provisions of this section, then the rights of the conflicting claimants shall be determined by the commissioner subject to right of appeal from the decision of the commissioner as provided by law.

The legal owner and holder of any lease or leases issued by the commissioner prior to March 12, 1929, if not in default of any of the provisions thereof, may relinquish the same to the state and upon application filed at the time of filing such relinquishment, the commissioner shall issue the applicant a new lease upon the form prescribed by Section 2 of this act. The primary term of the new lease issued pursuant to such relinquishment shall be the unexpired term of the original lease and as long thereafter as oil and gas in paying quantities, or either of them, is produced from the leased premises by the lessee, and the new lease shall provide for the payment of the annual rental prevailing in the district wherein the lands affected are situated, but not less than the rental provided in the original lease. In converting such lease, as herein provided, the commissioner shall prescribe a reasonable filing fee for the filing of the relinquishment and application, and the lessee shall not be required to pay any rental in addition to the rental provided in the lease relinquished for the current year in which the lease is relinquished, except the difference, if any, between the amount of rental provided in the old lease and that to be provided in the new lease. The provisions of Chapter 125 of the 1929 Session Laws [19-10-1, 19-10-12 to 19-10-25 NMSA 1978], and of this act [19-10-1, 19-10-12, 19-10-15 to 19-10-18, 19-10-22 NMSA 1978] relating to sales of leases within a restricted district upon competitive bidding, or by sealed bids, or at public auction, shall not apply to this section.

History: Laws 1929, ch. 125, § 14; C.S. 1929, § 132-414; Laws 1931, ch. 18, § 8; 1941 Comp., § 8-1115; 1953 Comp., § 7-11-16.

ANNOTATIONS

Compiler's notes. — Section 2 of this act, referred to in the first sentence of the second paragraph, had been compiled as 19-10-3 NMSA 1978. Section 19-10-3 NMSA 1978 was repealed and reenacted by Laws 1985, ch. 195, § 1.

Time to exercise surrender privilege. — Under this statute, a lease became convertible which gave the lessee privilege to surrender at any time, although it was producing and although it would have been renewable in a few weeks at a rental higher than the statutory lease. Harry Leonard, Inc. v. Vesely, 39 N.M. 33, 38 P.2d 1112 (1934).

Construction of 1929 act. — The provision in Laws 1929, ch. 125, § 14 (this section prior to its amendment in 1931), that the new lease was to be "issued in lieu of" the lease surrendered, was not sufficient to render the statute ambiguous or to support the contention that the term of the new lease should be merely the unexpired portion of the original term. Atlantic Oil Producing Co. v. Crile, 34 N.M. 650, 287 P. 696 (1930).

And effect thereof on act of 1925. — Where Laws 1925, ch. 137, § 9, providing for surrender of old leases and issue of new leases, was amended by Laws 1927, ch. 46, § 3, with same provisions, which latter act was repealed by Laws 1929, ch. 125, § 20, which act also provided for surrender of leases issued prior to March 23, 1927, and the issue of new leases, the repeal of the amendatory act, with a substitute, did not revive the original provision. Atlantic Oil Producing Co. v. Crile, 34 N.M. 650, 287 P. 696 (1930).

19-10-23. Appeal of commissioner's decision.

A person or corporation aggrieved by a ruling or decision of the commissioner affecting his interest in any lease issued under or affected by the provisions relating to oil and gas leases of state lands may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1929, ch. 125, § 16; C.S. 1929, § 132-416; 1941 Comp., § 8-1116; 1953 Comp., § 7-11-17; Laws 1959, ch. 198, § 1; 1998, ch. 55, § 29; 1999, ch. 265, § 30.

ANNOTATIONS

Cross references. — For provision, rule governing appeals to district court, *see* 39-3-2 NMSA 1978 and Rule 12-201.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

Consent to suit. — In an action brought under this section against the commissioner of public lands to compel him to rescind his cancellation of certain oil and gas leases, it was held that the state not only has waived its immunity but has consented to be sued in a court of equity in which equitable principles must control. Durell v. Miles, 53 N.M. 264, 206 P.2d 547 (1949).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 283.

19-10-24. [Contesting claims; jurisdiction of district court; appeal and error.]

The district court of the county in which the lands or the major portion thereof may be located which are embraced in any lease issued under or affected by the provisions of this act [19-10-1, 19-10-12 to 19-10-25 NMSA 1978], shall have original exclusive jurisdiction as a court of equity for the determination of controversies between persons or corporations respecting their rights in, or claim under such lease, and no such controversies shall be considered or determined by the commissioner of public lands. Appeals to and writs of error from the supreme court shall be allowed in such cases, as provided in Section 16 [19-10-23 NMSA 1978] herein.

History: Laws 1929, ch. 125, § 17; C.S. 1929, § 132-417; 1941 Comp., § 8-1117; 1953 Comp., § 7-11-18.

19-10-25. [Proof of commissioner's records.]

In the proceedings above described in Sections 16 and 17 [19-10-23, 19-10-24 NMSA 1978] of this act, records, books and papers in the office of the commissioner of public lands shall be proven by copies thereof, duly certified by the commissioner, or by certified transcript of such records and proceedings as may be necessary, which shall be admissible in evidence in such cases; and no original book, record or paper shall be removed from the office of the commissioner of public lands except upon order of a district court after a special application therefor.

History: Laws 1929, ch. 125, § 18; C.S. 1929, § 132-418; 1941 Comp., § 8-1118; 1953 Comp., § 7-11-19.

ANNOTATIONS

Cross references. — For rules regarding introduction into evidence of contents of writings, recordings and photographs, in general, *see* Rules 11-1001 to 11-1008 NMRA.

Severability clauses. — Laws 1929, ch. 125, § 19, provided for the severability of the act if any provision thereof is held invalid.

Saving clauses. — Laws 1929, ch. 125, § 20, repealed Laws 1927, ch. 46, and all other acts and parts of acts in conflict or inconsistent with the provisions of Laws 1929, ch. 125, with a proviso, however, that applications for oil and gas leases on file in the office of the commissioner and not disposed of when the act takes effect shall be disposed of and leases issued pursuant thereto in accordance with statutes and regulations in force at the time of the filing of the respective applications.

19-10-26. [Lands sold with reservation of minerals; lease; bond to protect purchaser; waiver.]

State lands sold heretofore, or which may be sold hereafter on any deferred payment plan under contract containing a reservation to the state of the minerals therein contained, may be leased by the state for oil, gas or other mineral development or exploitation, as provided by law in the same manner as other state lands.

Provided, that before any lessee of minerals on state lands so sold shall commence development or operations thereon such lessee or the operator (being any third party conducting exploratory or development operations authorized by the lessee within the authority granted to the lessee under the provisions of Section 19-10-13 NMSA 1978) shall execute and file with the commissioner of public lands a good and sufficient bond or undertaking in an amount to be fixed by the commissioner, but not less than two thousand dollars ($2,000), in favor of the state of New Mexico for the use and benefit of the purchaser holding purchase contract or deed to such lands on which such development is about to be commenced, his grantees or successors in interest to secure the payment for such damage to the livestock range, water, crops or tangible improvements on such lands as may be suffered by such purchaser or his successors in interest by reason of such development, use and occupation of such lands by such lessee.

And provided further, that if any such purchaser shall file with the commissioner of public lands a waiver duly executed and acknowledged by him of his right to require such bond, such development, occupation and use of the lands by a mineral lessee may be permitted without the bond herein required.

History: Laws 1925, ch. 137, § 5; 1929, ch. 45, § 1; C.S. 1929, § 132-423; 1941 Comp., § 8-1119; 1953 Comp., § 7-11-20; Laws 1979, ch. 60, § 1.

ANNOTATIONS

Cross references. — For filing by mineral lessee of bond securing payment for damage to the surface, and bond guaranteeing payment of royalties, *see* 19-8-24 NMSA 1978.

For bond filed by person leasing state lands for geothermal resource development, *see* 19-13-18 NMSA 1978.

For reservation of mineral purchase rights in lease or conveyance of state lands, and waiver of same, *see* 19-14-1, 19-14-2 NMSA 1978.

Minerals defined. — Whether sand and gravel are "minerals" as that term is used in a mineral reservation or grant depends upon the specific facts in each case. Rickelton v. Universal Constructors, Inc., 91 N.M. 479, 576 P.2d 285 (1978).

19-10-27. [Lands sold on deferred payments with reservation of minerals or classified as mineral lands prior to full payment or issuance of patent; limited patent.]

Where state lands have been sold heretofore, or may be sold hereafter on any deferred payment plan under contract containing a reservation to the state of the minerals therein contained and before the payment of the total purchase price, such land shall have been leased for mineral purposes as in this act [19-10-11, 19-10-26 to 19-10-30 NMSA 1978] provided; or where before the payment of the full amount of the purchase price shall have been made or patent issued, the land shall be known, classified or reported as mineral lands, or where, by reason of proximity to known mineral lands or productive oil and gas wells, the commissioner of public lands shall deem such lands to be of probable mineral character and valuable as such, he shall make proper notation on the records of his office designating the said lands as mineral lands. The commissioner of public lands is hereby authorized to issue to the purchaser of any such mineral land or lands so classified as mineral, upon full payment of the purchase price according to the terms of the contract, a limited patent only, which shall contain reservation to the state of New Mexico to all the minerals in the said lands, together with the right to the state or its grantees, to prospect for, mine and remove the same; and such lands shall, notwithstanding the issuance of such patent, be subject to lease under the provisions of this act;

Provided, that no lease for such lands shall be issued and no person shall be authorized to prospect for, mine or remove any minerals until an indemnity bond shall be given or waiver of the same filed, as set forth in Section 5 [19-10-26 NMSA 1978] of this act.

History: Laws 1925, ch. 137, § 6; C.S. 1929, § 132-424; 1941 Comp., § 8-1120; 1953 Comp., § 7-11-21.

19-10-28. [Lessee to purchase prior improvements on lands; proof of payment.]

If mineral lands upon which improvements have been made shall be leased in conformity with law to other than the owner of such improvements thereon, then such purchaser or such new lessee shall pay to the owner thereof the value of such improvements at an agreed price with the owner thereof; and if such owner of improvements and such new lessee or purchaser are not able to agree upon a value, the value shall be determined by a board of three arbitrators, one to be selected by the owner of the improvements, one by the commissioner of public lands and the third by the two so selected. The word "improvements" shall be construed to mean surface improvements, machinery and other equipment not removed from said lands under the provisions of Section 9 used in the operation of the plant on such land, and work performed in the development of the property for operation and mining. No lease shall be issued to any applicant other than the owner of such improvements until such applicant files with the commissioner of public lands a receipt showing payment in full of the value of such improvements as agreed upon between such applicant and the owner of the improvements, or determined by the board of arbitrators; or until such applicant shall pay to the commissioner of public lands the value of such improvements so

determined. If payment is made to the commissioner of public lands it shall be at once delivered to the owner of the improvements.

History: Laws 1925, ch. 137, § 3; C.S. 1929, § 132-421; 1941 Comp., § 8-1121; 1953 Comp., § 7-11-22.

ANNOTATIONS

Compiler's notes. — Laws 1925, ch. 137, § 9, referred to in this section, was amended by Laws 1927, ch. 46, § 3, and then repealed by Laws 1929, ch. 125, § 20.

Cross references. — For right, in general, of owner of improvements on state lands to be compensated for same by purchaser or subsequent lessee, *see* 19-7-14 NMSA 1978.

For removal of removable improvements and forfeiture of others by mineral lessee, *see* 19-8-29 NMSA 1978.

For right of oil and gas lessee to remove certain improvements upon cancellation or termination of lease, *see* 19-10-29 NMSA 1978.

For removal by lessee under Geothermal Resources Act of removable improvements, and forfeiture of rest, *see* 19-13-24 NMSA 1978.

Effect of repeal. — The repeal of the amendatory act (Laws 1927, ch. 46, § 3) with a substitute, did not revive the original provision. Atlantic Oil Producing Co. v. Crile, 34 N.M. 650, 287 P. 696 (1930).

19-10-29. [Removal of certain improvements on cancellation or forfeiture of lease.]

In the event of the cancellation or forfeiture of any lease issued under the provisions of this act [19-10-11, 19-10-26 to 19-10-30 NMSA 1978] from any cause whatever, the lessee or assignee shall be permitted to remove any and all improvements from the lands which lessee can remove without injury thereto, provided, however, that the commissioner of public lands may require that all or any part of the casing shall be left in any well which is productive of water when he shall deem it to the interest of the state to maintain said well, or wells, for water, and in such case the lessee shall be paid the reasonable value of the casing therein.

History: Laws 1925, ch. 137, § 8; C.S. 1929, § 132-426; 1941 Comp., § 8-1122; 1953 Comp., § 7-11-23.

ANNOTATIONS

Cross references. — For right, in general, of owner of improvements on state lands to be compensated for same by purchaser or subsequent lessee, *see* 19-7-14 NMSA 1978.

For removal of removable improvements and forfeiture of others by mineral lessee, *see* 19-8-29 NMSA 1978.

For payment by purchaser or subsequent lessee of oil and gas lands of value of improvements, to owner thereof, *see* 19-10-28 NMSA 1978.

For removal by lessee under Geothermal Resources Act of removable improvements, and forfeiture of rest, *see* 19-13-24 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What are improvements, alterations or additions, within lease provisions permitting or prohibiting tenant's removal thereof at termination of lease, 30 A.L.R.3d 998.

19-10-30. [Rules and regulations authorized.]

The commissioner of public lands shall be, and he hereby is, authorized and empowered to adopt such uniform and reasonable rules and regulations and to prepare such uniform forms of leases as he may deem necessary to carry into effect the terms and provisions of this act [19-10-11, 19-10-26 to 19-10-30 NMSA 1978] and not inconsistent herewith.

History: Laws 1925, ch. 137, § 10; C.S. 1929, § 132-427; 1941 Comp., § 8-1123; 1953 Comp., § 7-11-24.

ANNOTATIONS

Cross references. — For statutory oil and gas lease forms, *see* 19-10-4.1 to 19-10-4.3 NMSA 1978.

For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

Law reviews. — For note, "State Regulation of Oil and Gas Pools on State, Federal, Indian and Fee Lands," see 2 Nat. Resources J. 355 (1962).

19-10-31. [Filing and recording of leases, other instruments and assignments with commissioner; constructive notice; recording in county waived.]

All leases and other instruments executed or issued by the commissioner of public lands, hereinafter referred to as the commissioner, pertaining to oil and gas rights in state lands, and including assignments of such rights when approved by the

commissioner, shall be made in duplicate and one copy thereof retained in the files of the state land office and recorded in full by the commissioner in suitable books provided by him and kept for such purpose. Such filing and recording shall be constructive notice to all persons of the contents of such instruments from the date of such filing and it shall not be necessary to record such instruments in the county where the lands affected thereby are located, and the filing and recording in the office of the commissioner as provided herein shall have the same force and effect as the filing and recording of such instruments in the county where the lands affected thereby are located would now have under existing statutes.

History: Laws 1925, ch. 68, § 1; C.S. 1929, § 132-501; 1941 Comp., § 8-1124; 1953 Comp., § 7-11-25.

ANNOTATIONS

Cross references. — For recording of certain agricultural and grazing lease or contract assignments in office of commissioner, *see* 19-7-39 NMSA 1978.

For recording of instruments effecting real estate and giving of constructive notice thereby generally, *see* 14-9-1, 14-9-2 NMSA 1978.

For recording of assignment made for benefit of creditors, *see* 56-9-10 NMSA 1978.

Assignment of partial lease filed with county, not state, offices. — Because an assignment of a partial lease is not recognized by the commissioner of public lands, pursuant to Section 19-10-13 NMSA 1978, the assignment cannot be filed in the state land office, but must be filed in the appropriate county clerk's office; there it provides constructive notice of its contents. Angle v. Slayton, 102 N.M. 521, 697 P.2d 940 (1985).

19-10-32. [Acknowledgments required; commissioner excepted.]

All such instruments shall be acknowledged by the parties thereto except that the commissioner shall not be required to acknowledge any such instrument but shall authenticate his signature to same with his seal of office.

History: Laws 1925, ch. 68, § 2; C.S. 1929, § 132-502; 1941 Comp., § 8-1125; 1953 Comp., § 7-11-26.

ANNOTATIONS

Cross references. — For necessity for acknowledgment generally, *see* 14-8-4 NMSA 1978.

19-10-33. [Contracts relating to oil and gas rights; filing for record in land office.]

Contracts between persons or corporations owning or holding oil and gas rights in state lands, when duly acknowledged by the parties thereto, may be filed for record and recorded in the state land office in the same manner and with the same force and effect as the instruments referred to in the foregoing sections.

History: Laws 1925, ch. 68, § 3; C.S. 1929, § 132-503; 1941 Comp., § 8-1126; 1953 Comp., § 7-11-27.

19-10-34. [System of records; indexing; public inspection.]

The commissioner is authorized and directed to provide and install as soon as possible after the passage of this act [19-10-31 to 19-10-38 NMSA 1978] a full and complete system of records and books in his office for carrying out the provisions of this act and shall provide for the full and complete indexing of such records, and such records and indices shall be open for inspection by the public during the business hours of the office under such reasonable rules and regulations as may be prescribed by the commissioner.

History: Laws 1925, ch. 68, § 4; C.S. 1929, § 132-504; 1941 Comp., § 8-1127; 1953 Comp., § 7-11-28.

19-10-35. [Tract book system for oil and gas lands.]

The commissioner shall also install in his office as soon as practicable a tract book system for the mineral lands of the state on which any oil and gas rights have been granted by him which tract books shall be separate from the tract books pertaining to grazing rights or purchase contracts, and all instruments on file in his office pertaining to oil and gas rights shall be noted on such tract books in connection with the tract or tracts affected thereby, and such notations shall show the nature of the instrument, its date, the parties thereto, the date of filing and the book and page where recorded.

History: Laws 1925, ch. 68, § 5; C.S. 1929, § 132-505; 1941 Comp., § 8-1128; 1953 Comp., § 7-11-29.

19-10-36. [Rules and regulations; protection of instruments and records.]

The commissioner is authorized to make, publish and enforce all necessary and reasonable rules and regulations for carrying out the purposes and provisions of this act [19-10-31 to 19-10-38 NMSA 1978] and shall take necessary precautions for the safekeeping and protection of the instruments and records referred to in this act.

History: Laws 1925, ch. 68, § 6; C.S. 1929, § 132-506; 1941 Comp., § 8-1129; 1953 Comp., § 7-11-30.

ANNOTATIONS

Cross references. — For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

19-10-37. [Filing and recording fees; disposition; expenses payable from maintenance fund.]

The commissioner shall prescribe adequate, reasonable and uniform fees to be charged for the filing and recording of instruments under the provisions hereof and all such fees shall be covered into the maintenance fund of his office; and all reasonable and necessary expenditures for carrying out the provisions of this act [19-10-31 to 19-10-38 NMSA 1978] shall be made from such maintenance fund and the same are hereby directed and authorized to be made.

History: Laws 1925, ch. 68, § 7; C.S. 1929, § 132-507; 1941 Comp., § 8-1130; 1953 Comp., § 7-11-31.

ANNOTATIONS

Cross references. — For establishment of state lands maintenance fund, *see* 19-1-11 NMSA 1978.

19-10-38. [Repeal and saving clause.]

All acts and parts of acts in conflict herewith are hereby repealed, and this act [19-10-31 to 19-10-38 NMSA 1978] shall apply to all instruments now on file in the state land office and which pertain to oil and gas rights in state lands, but nothing contained herein shall be construed to deprive any person or corporation of any valid and existing right acquired in good faith through compliance with or the operation of any law in effect prior to the passage of this act.

History: Laws 1925, ch. 68, § 8; C.S. 1929, § 132-508; 1941 Comp., § 8-1131; 1953 Comp., § 7-11-32.

19-10-39. [Litigation involving lessee's oil and gas rights on land sold with reservation of oil and gas; suspense account for royalty payments.]

In any case where litigation has been instituted in the state courts of the state of New Mexico, or in the United States district court for the district of New Mexico, involving the right or title of the lessee under any oil and gas leases issued by the state of New Mexico on lands heretofore sold or contracted to be sold by the state of New Mexico, with a reservation of oil and gas to the state of New Mexico, where such litigation calls in question the right of the state of New Mexico to make any such lease or the ownership by the state of New Mexico of such oil and gas, the commissioner of

public lands is authorized to place in a special suspense fund with the treasurer of the state of New Mexico, all moneys accruing to the state under the terms of any such lease from royalties.

History: Laws 1931, ch. 17, § 1; 1941 Comp., § 8-1132; 1953 Comp., § 7-11-33.

19-10-40. [Litigants to show right to have royalties placed in suspense fund; determination of amount.]

The commissioner of public lands shall require the lessee or any party litigant in such litigation desiring to have such royalties placed in such suspense fund, to make such showing by affidavit or otherwise as the commissioner may require, that such litigation is pending and involves the question or questions referred to in Section 1 [19-10-39 NMSA 1978] hereof; and he shall require such lessee or any party litigant to furnish such information as may be necessary to determine the amount of royalties accruing from each and every tract of land involved in such litigation.

History: Laws 1931, ch. 17, § 2; 1941 Comp., § 8-1133; 1953 Comp., § 7-11-34.

19-10-41. [Remitting moneys for oil and gas royalty suspense fund; investment of fund; disposition of investment income.]

The commissioner of public lands is directed to remit all such royalties to the state treasurer, with the proper memorandum of distribution of such funds attached thereto and such moneys shall be placed in a special suspense fund by the state treasurer, to be known as "the oil and gas royalty suspense fund," and such fund shall be segregated from all other funds in the hands of the state treasurer; all moneys of such fund shall from time to time be invested by the state treasurer in the same manner as the permanent school fund is now required to be invested or such funds may be placed on time deposit in qualified state depositories under the provisions of Chapter 92 of the Session Laws of 1929 [6-10-31, 6-10-32 NMSA 1978]. All income accruing from such investments or deposits shall likewise be held in said special suspense fund.

History: Laws 1931, ch. 17, § 3; 1941 Comp., § 8-1134; 1953 Comp., § 7-11-35.

ANNOTATIONS

Cross references. — For statutory provisions regarding investment of permanent school fund and other permanent funds, *see* 19-1-17 NMSA 1978 et seq.

For establishment of permanent school fund and investment of same, *see* N.M. Const., art. XII, §§ 2, 7.

19-10-42. [Distribution of suspense funds after litigation is completed.]

When the questions involved in the litigation referred to in Section 1 [19-10-39 NMSA 1978] hereof shall have been finally determined, the commissioner of public lands is directed to disburse said fund to the funds of the institutions or common schools lawfully entitled thereto, or, the persons, firms or corporations entitled to said royalties, as the final judgment of the court in such case or cases may require; and when making such distribution to the permanent trust funds of the state the commissioner of public lands shall treat and distribute the income from said fund in the same manner as income from other permanent funds and in all cases in distributing said income shall make an equitable distribution thereof as between the different funds or the parties who may be lawfully entitled to the same; provided, however, that in making said distribution, any permanent fund or party lawfully entitled to any part of the money so distributed may be given, in lieu of cash, any securities in which said fund may have been invested and any application made hereunder to have said royalty payments placed in said suspense fund shall be taken as indicating the consent of such applicant to all of the provisions of this act [19-10-39 to 19-10-44 NMSA 1978].

History: Laws 1931, ch. 17, § 4; 1941 Comp., § 8-1135; 1953 Comp., § 7-11-36.

19-10-43. [Suit by state to determine rights.]

If the commissioner of public lands shall not be satisfied with the conduct or determination of any litigation between the lessee under any such oil and gas lease, and the purchaser of said lands from the state, he shall request the attorney general to bring such suit or suits in the name of the state as said commissioner may deem necessary and advisable for the complete and final determination of the questions involved.

History: Laws 1931, ch. 17, § 5; 1941 Comp., § 8-1136; 1953 Comp., § 7-11-37.

19-10-44. [Intervention in pending litigation by attorney general.]

In event the attorney general of the state of New Mexico shall deem it for the best interests of the state of New Mexico to intervene in any pending litigation involving such questions, he is hereby specifically authorized to intervene therein in the name of the state of New Mexico, for the purpose of obtaining a final determination of any and all questions involved in such litigation.

History: Laws 1931, ch. 17, § 6; 1941 Comp., § 8-1137; 1953 Comp., § 7-11-38.

19-10-45. Cooperative agreements for development or operation of oil and gas pools between lessees and others.

For the purpose of more properly conserving the oil and gas resources of the state, the commissioner of public lands may consent to and approve the development or operation of state lands under agreements made by lessees of state land jointly or

severally with other lessees of state lands, with lessees of the United States or with others, including the consolidation or combination of two or more leases of state lands held by the same lessee. The agreements may provide for one or more of the following: for the cooperative or unit operation or development of part or all of any oil or gas pool, field or area; for reduction of gas-oil ratios; for repressuring or secondary recovery operations, or for the storing of gas regardless of where such gas is produced, including the use of wells on state lands as input wells; for the allocation of production and the sharing of proceeds from the whole or any specified part of the area covered by the agreement on an acreage or other basis, regardless of the particular tract from which production is obtained or proceeds are derived; for considering for all purposes the drilling or operation of a well on any part of the area included in the agreement, as being drilled or operated on each tract included in the agreement; for the payment of advance royalties in such sum or sums as shall be fixed by the commissioner; or for commingling of oil or gas from a well or wells or from one or more leases.

History: 1941 Comp., § 8-1138, enacted by Laws 1943, ch. 88, § 1; 1953 Comp., § 7-11-39; Laws 1961, ch. 176, § 1.

ANNOTATIONS

Cross references. — For state participation in pooling and communitization agreements, *see* 19-10-53 NMSA 1978.

For cooperative development or operation of geothermal resources lands, *see* 19-13-14 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Secondary recovery of oil and gas, 19 A.L.R.4th 1182.

19-10-46. [Cooperative agreements; requisites for approval.]

No such agreement shall be consented to or approved by the commissioner unless he finds that:

A. such agreement will tend to promote the conservation of oil or gas and the better utilization of reservoir energy;

B. under the operations proposed the state and each beneficiary of the lands involved will receive its fair share of the recoverable oil or gas in place under its lands in the area affected; and

C. the agreement is in other respects for the best interests of the state.

History: 1941 Comp., § 8-1139, enacted by Laws 1943, ch. 88, § 2; 1953 Comp., § 7-11-40; Laws 1961, ch. 176, § 2.

19-10-47. [Amendment of leases to conform with cooperative agreements.]

When any such agreement has been approved by the commissioner, he may, with the approval of the lessee evidenced by the lessee's execution of such agreement or otherwise, amend any oil or gas lease embracing state lands within the area included in such agreement so that the provisions of such lease so far as they apply to lands within such area will conform to the provisions of such agreement and so that the length of the secondary term as to lands within such area will be extended, insofar as necessary, to coincide with the term of such agreement, and the approval of such agreement by the commissioner and the lessee, as aforesaid, shall without further action of the commissioner or the lessee be effective to conform the provisions and extend the term of such lease as to lands within such area, to the provisions and terms of such agreement; or the commissioner may permit the holder of any such lease of state lands within such area to surrender such lease, so far as it embraces lands within such area, with the preference right to a new lease for the lands surrendered, containing such provisions and for such a term as will conform to the provisions and term of such agreement. The commissioner is authorized to issue such new lease under regulations prescribed by him. No law applicable to restricted districts and the making of oil and gas leases therein, or providing for a minimum rental within restricted districts, shall be applicable to any lease conformed or issued hereunder.

If any such agreement provides for extensions of the term thereof, any such extension pursuant to the provisions of such agreement shall, with the approval of the commissioner, be effective also to extend the term of such lease, so far as it applies to lands within such area, to coincide with the extended term of such agreement.

History: 1941 Comp., § 8-1140, enacted by Laws 1943, ch. 88, § 3; 1951, ch. 162, § 1; 1953 Comp., § 7-11-41.

ANNOTATIONS

Saving clauses. — Laws 1951, ch. 162, § 2, provided that all cooperative or unit agreements approved by the commissioner of public lands, all approved amendments of oil and gas leases covering state lands to conform to such approved agreements, and all new oil and gas leases issued on state lands by said commissioner to conform to such approved agreements, prior to the effective date of the act, which have not expired or been canceled for nonperformance with the terms thereof, are declared to be valid and existing contracts with the state of New Mexico according to their terms.

Commissioner's powers limited. — The commissioner of public lands of New Mexico is merely an agent of the state, with such powers, and only such, as have been conferred upon him by the constitution and laws of the state, as limited by the Enabling Act. Hickman v. Mylander, 68 N.M. 340, 362 P.2d 500 (1961).

Commissioner properly refused to extend terms of oil and gas leases as to lands partly within unit area except as to land included within unit area. Hickman v. Mylander, 68 N.M. 340, 362 P.2d 500 (1961).

Effect of discovery without production prior to expiration. — Where there is no evidence that gas in paying quantities was produced from a gas well from the time the gas well was completed to the expiration dates provided in the lease, the mere discovery of oil or gas cannot validate or extend a lease providing oil or gas must be produced. Hickman v. Mylander, 68 N.M. 340, 362 P.2d 500 (1961).

Rights of assignee. — Where a lessee had 10 years within which to produce oil and gas in paying quantities, upon so producing oil and gas, the lease continued in force so long as oil and gas in paying quantities were so produced, and an assignee of a portion of the lease succeeded to all of the rights of the original lessee, subject to the continued payment of the specified rentals and subject to the implied covenant to develop with reasonable diligence the undeveloped portion of the leased land. Hickman v. Mylander, 68 N.M. 340, 362 P.2d 500 (1961).

Lease terms to apply separately. — Where the unit agreement specifically provides that the portions within the unit area shall be segregated from the portions outside the unit area, the terms of the lease shall apply separately to such segregated portions. 1953-54 Op. Att'y Gen. No. 53-5806.

19-10-48. [Effect of provisions on powers of oil conservation commission and commissioner of public lands.]

Nothing herein [19-10-45 to 19-10-48 NMSA 1978] contained shall be held to modify in any manner the power of the oil conservation commission under laws now existing or hereafter enacted with respect to the proration, and conservation of oil or gas and the prevention of waste, nor as limiting in any manner the power and the authority of the commissioner of public lands now existing or hereafter vested in him.

History: 1941 Comp., § 8-1141, enacted by Laws 1943, ch. 88, § 4; 1953 Comp., § 7-11-42.

ANNOTATIONS

Compiler's notes. — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission is absorbed by the energy and minerals department. *See also* Laws 1977, ch. 255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

19-10-49. [Validating act.]

That all oil and gas leases issued by the commissioner of public lands of the state of New Mexico prior to the effective date of this act [section], in substantial conformity with the statutes of the state, the terms of which have not expired and where all rentals have been paid thereunder and accepted by the commissioner of public lands, and such leases have not been canceled by the commissioner of public lands for nonperformance by the lessee or any assignee, are hereby declared to be valid and existing contracts with the state of New Mexico according to their terms and provisions, and the obligations of the state and of the commissioner to observe and conform to the terms and provisions thereof are hereby recognized.

History: 1941 Comp., § 8-1142, enacted by Laws 1947, ch. 36, § 1; 1953 Comp., § 7-11-43.

19-10-50. Oil, gas and mineral leases on state park lands.

The state park and recreation director has the right to authorize the commissioner of public lands to lease for oil and gas and other minerals any lands acquired by the state for state park or state recreational purposes upon such terms and conditions as may be prescribed by the state park and recreation director, where, in the discretion of the state park and recreation director, the leasing of such lands for oil and gas will not materially interfere with the use of such lands for state park or state recreational purposes or where it is deemed necessary or advisable and for the best interest of the state that such lands be leased for said purpose.

History: 1941 Comp., § 8-1143, enacted by Laws 1949, ch. 82, § 1; 1953 Comp., § 7-11-44; Laws 1977, ch. 254, § 42.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil § 283.

19-10-51. Terms and conditions of leases on state park lands; disposition of rentals and royalties.

The commissioner of public lands has the right to lease for oil and gas and other minerals any lands acquired by the state for state park or state recreational purposes when authorized so to do by the state park and recreation director, the same to be leased upon such terms and conditions as may be prescribed by the state park and recreation director. All bonuses, rentals and royalties which may be collected under the terms of any such lease by the commissioner of public lands shall be placed to the credit of the state park and recreation fund.

History: 1941 Comp., § 8-1144, enacted by Laws 1949, ch. 82, § 2; 1953 Comp., § 7-11-45; Laws 1977, ch. 254, § 43.

ANNOTATIONS

Saving clauses. — Laws 1949, ch. 82, § 3, declared all oil and gas or other mineral leases heretofore issued by either the state park commission (now the state parks division) or the commissioner of public lands embracing state lands acquired for state park or state recreational purposes where the terms of such leases have not expired and the lessees are not in default are to be valid and existing contracts with the state and recognizes the obligations of the state and of the commissioner to observe and conform to the terms thereof.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Gas and oil lease force majeure provisions: construction and effect, 46 A.L.R.4th 976.

19-10-52. [Drainage of state lands by oil or gas wells required to be offset; agreement to compensate state.]

In any case where it appears to the commissioner of public lands of the state of New Mexico that lands owned by the state of New Mexico are being drained by an oil or gas well required to be offset under the terms of any oil or gas lease issued by the commissioner of public lands, he is hereby authorized and empowered to enter into agreements whereby the state of New Mexico will be reasonably compensated for such drainage, such agreements to be made with the consent of the owners of the leases affected thereby. The fixed term (primary and secondary terms) of any lease on account of which the compensatory royalty is being paid shall be extended so long as such compensatory royalty agreement is in effect and if drilling operations upon such lease during the effective period of any such agreement result in the production of oil or gas, such lease shall be extended as long thereafter as oil or gas or either of them is being produced from the leased premises.

The nature of the agreement and the method of computing the amount of the compensatory royalty to be paid thereunder shall depend upon the conditions and circumstances involved in the particular case and shall be calculated to give to the state its fair share of the oil or gas being produced from the well or wells on account of which compensatory royalty is to be paid. The owners of any lease on account of which compensatory royalty is being paid shall be relieved of the offset obligation as to the well or wells for which compensatory royalty is being paid during the life of any such agreement.

History: 1941 Comp., § 8-1145, enacted by Laws 1951, ch. 175, § 1; 1953 Comp., § 7-11-46.

19-10-53. [State participation in pooling and communitization agreements authorized.]

In the interest of conservation of oil and gas and the prevention of waste, the commissioner of public lands may consent to and approve the development or operation of state lands under agreements made by lessees of oil and gas leases thereon, jointly or severally with other oil and gas lessees of state lands or with oil and

gas lessees of the United States or oil and gas lessees or mineral owners of privately owned or fee lands or oil and gas lessees of tribal or allotted Indian lands for the purpose of pooling or communitizing such lands to form a proration unit or portion thereof or well spacing unit pursuant to any order, rule or regulation of the New Mexico oil conservation commission where such agreement provides for the allocation of the production of oil or gas from such pooled or communitized area on an acreage or other basis found by the commissioner to be fair and equitable, and when such agreement is so approved, the drilling or operation of a well on any part of the area included in such agreement shall be considered as being drilled or operated on each tract included in such agreement, and the production of oil or gas in paying quantities from any part of such pooled or communitized area shall, for all purposes, be considered the same as if such production had been obtained upon each tract or separate lease included in such agreement. Upon approval of any such agreement, the lease or leases covering state lands committed thereto shall thereupon be amended to conform to such agreement.

History: 1953 Comp., § 7-11-47, enacted by Laws 1955, ch. 259, § 1.

ANNOTATIONS

Compiler's notes. — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission is absorbed by the energy and minerals department. *See also* Laws 1977, ch. 255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

Cross references. — For cooperative agreements for development or operation of oil and gas pools between lessees and others, *see* 19-10-45 to 19-10-48 NMSA 1978.

19-10-54. [Existing pooling and communitization agreements confirmed and validated; segregation of leases in accordance with prior agreement.]

In all cases where the commissioner of public lands has heretofore approved agreements made by oil and gas lessees of state lands with other oil and gas lessees of state lands or with oil and gas lessees of the United States or with lessees or mineral owners of fee or privately owned lands or oil and gas lessees of tribal or allotted Indian lands for the purpose of forming a proration unit or portion thereof, or well spacing unit in conformity with any order, rule or regulation of the New Mexico oil conservation commission, or for the purpose of forming a cooperative or unit agreement in the interest of conservation and the prevention of waste of oil and gas, and where all rentals have been paid in accordance with the terms of such leases embracing state lands and have been accepted by the commissioner of public lands and such leases have not been canceled for nonperformance by the lessee or any assignee of the terms or conditions thereof or any of the terms or conditions of such pooling, communitization, cooperative or unit agreement, and have been recognized by the commissioner of public lands as being in good standing, such leases are hereby declared to be valid and

existing contracts with the state of New Mexico according to their terms and provisions and the obligation of the state and of the commissioner of public lands to observe and conform to the terms and provisions thereof, are hereby recognized and such leases and the approval of such pooling, communitization, cooperative or unit agreements are hereby validated and such leases shall continue in full force and effect according to their terms and conditions as modified, extended or amended by such pooling, communitization, cooperative or unit agreements as to all of the lands embraced in each such lease; provided, however, in any case where a cooperative or unit agreement heretofore approved by the commissioner of public lands contains a provision segregating any lease committed to such agreement as to lands within and without the cooperative or unit area so as to constitute separate leases as to such portions of said lands, such lease shall be segregated according to the provisions of the cooperative or unit agreement.

History: 1953 Comp., § 7-11-48, enacted by Laws 1955, ch. 259, § 2.

ANNOTATIONS

Compiler's notes. — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission is absorbed by the energy and minerals department. *See also* Laws 1977, ch. 255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

19-10-55. [Validation of oil and gas leases.]

All oil and gas leases issued by the commissioner of public lands prior to the effective date of this section are declared to be valid and existing contracts with the state according to their terms and provisions where:

A. made in substantial conformity with law;

B. the terms have not expired;

C. all rentals have been paid and accepted by the commissioner of public lands; and

D. the leases have not been canceled by the commissioner of public lands for nonperformance by the lessee or any assignee.

The obligations of the state and the commissioner to observe and conform to the terms and provisions of these leases are recognized. Any suit or action to reinstate any lease heretofore canceled or expired by order or decision of the commissioner of public lands shall be brought within sixty days from the effective date of this section or be waived.

History: 1953 Comp., § 7-11-49, enacted by Laws 1957, ch. 113, § 1; 1959, ch. 40, § 1.

19-10-56. Reports and remittance of state royalty; rules and regulations prescribed by commissioner.

Any person obligated to pay royalties pursuant to a producing oil and gas lease issued by the commissioner shall make reports and remittance of state oil and gas royalty through the oil and natural gas administration and revenue database system pursuant to rules and regulations of the commissioner.

History: 1953 Comp., § 7-11-50, enacted by Laws 1959, ch. 51, § 1; 1977, ch. 249, § 14; 1994, ch. 102, § 2.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, deleted "Of Public Lands; Amendment of State Oil and Gas Leases" following "Commissioner" in the section heading, and rewrote the section, which read "Any owner of a producing oil and gas lease heretofore or hereafter issued by the commissioner of public lands and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations may, in accordance with rules and regulations to be prescribed by the commissioner of public lands make reports and remittance of state oil and gas royalty through the oil and gas accounting division of the taxation and revenue department."

19-10-57. Rules; regulations; notice; hearing.

Before any rule or regulation concerning reporting and remittance of oil and gas royalty shall be adopted by the commissioner of public lands a public hearing shall be held. Notice of such hearing shall be mailed at least fifteen days prior to date set for the hearing to every oil and gas operator or purchaser as disclosed by the records of the commissioner of public lands. Such notice shall specify time and place of the hearing and briefly state the general nature of the rules and regulations to be considered. Such notice shall also be published once in a newspaper of general circulation in Santa Fe county at least fifteen days before such hearing.

The inadvertent failure of the commissioner of public lands to mail a notice to an operator or purchaser or the failure of an operator or purchaser to receive such notice shall not affect the validity of any rule of [or] regulation adopted.

History: 1953 Comp., § 7-11-51, enacted by Laws 1959, ch. 51, § 2.

ANNOTATIONS

Cross references. — For publication of legal notice, *see* 14-11-1 NMSA 1978 et seq.

19-10-58. Rules; regulations; record; filing with supreme court librarian.

All rules and regulations concerning reporting and remittance of oil and gas royalty adopted by the commissioner of public lands shall be entered in full in a record book to be kept for such purpose by the commissioner of public lands. Such rules and regulations shall be filed with the librarian of the New Mexico supreme court library in accordance with the provisions of Sections 4-10-13 through 4-10-19 inclusive NMSA 1953 or as they may be amended. Such rules and regulations shall also be published and made available to any interested person.

History: 1953 Comp., § 7-11-52, enacted by Laws 1959, ch. 51, § 3.

ANNOTATIONS

Compiler's notes. — The name of the supreme court library was changed to supreme court law library. *See* 18-1-1 NMSA 1978.

Sections 4-10-13 through 4-10-19, 1953 Comp., were repealed by Laws 1967, ch. 275, § 13. 14-4-9 NMSA 1978 provided that where a law requires filing of a rule, etc., with the librarian of the supreme court law library, such filing shall be accomplished by complying with the State Rules Act (Chapter 14, Article 4 NMSA 1978).

19-10-59. Reporting and rendition forms to be adopted by rule or regulation.

All reporting and royalty rendition forms required by the commissioner of public lands shall be adopted by appropriate rule or regulation.

History: 1953 Comp., § 7-11-53, enacted by Laws 1959, ch. 51, § 4.

19-10-60. Repealed.

ANNOTATIONS

Repeals. — Laws 1994, ch. 102, § 3 repealed 19-10-60 NMSA, as amended by Laws 1977, ch. 249, § 15, relating to the transfer of state royalties to the commissioner of public lands, effective May 18, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMONESOURCE.COM.*.

19-10-61. [Sale or exchange of royalty gas taken in kind.]

The commissioner of public lands shall have the authority to negotiate and enter into agreements for the sale or exchange of royalty gas taken in kind under oil and gas leases issued by the state. Provided, however, he shall not dispose of said gas for a net

consideration of less than that being received at the time of exercising the option. In selling or exchanging the gas, the commissioner of public lands shall be entitled to use the lessee's gathering, processing and compression facilities provided that reasonable compensation is made to the lessee for such use.

History: 1953 Comp., § 7-11-54.1, enacted by Laws 1972, ch. 70, § 3.

19-10-62. Repealed.

ANNOTATIONS

Repeals. — Laws 1994, ch. 102, § 3 repealed 19-10-62 NMSA 1978 as amended by Laws 1977, ch. 249, § 16, relating to the contracting by the commissioner of public lands for oil and gas royalty accounting services, effective May 18, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMONESOURCE.COM.*

19-10-63. [Validation of oil and gas leases; 1967 act.]

All oil and gas leases issued by the commissioner of public lands prior to the effective date of this act [section] are declared to be valid and existing contracts with the state according to their terms and provisions where:

A. made in substantial conformity with law;

B. the terms have not expired;

C. all rentals have been paid and accepted by the commissioner of public lands; and

D. the leases have not been canceled by the commissioner of public lands for nonperformance by the lessee or any assignee.

The obligations of the state and the commissioner to observe and conform to the terms and provisions of these leases are recognized.

History: 1953 Comp., § 7-11-56, enacted by Laws 1967, ch. 13, § 1.

19-10-64. [Royalties paid in oil; sale of;] purpose of act.

The purpose of this act [19-10-64 to 19-10-70 NMSA 1978] is to assist small business enterprise within the state by encouraging the establishment and operation of petroleum refineries not having an adequate supply of refinery charge stocks through granting a preference to such petroleum refineries in the sale of state royalty oil accruing from public land oil and gas leases.

History: 1953 Comp., § 7-11-57, enacted by Laws 1967, ch. 34, § 1.

19-10-65. Definitions.

As used in Sections 19-10-64 through 19-10-70 NMSA 1978:

A. "refinery charge stocks" means crude oils, petroleum or gas condensates and blends thereof and all other products charged or chargeable to petroleum refinery facilities;

B. "royalty oil" means crude oil, liquid petroleum products, condensates from wells or lease plants or a mixture thereof; and

C. "small business" means a concern owning a refinery located in New Mexico that obtains more than seventy percent of its New Mexico refinery input of crude oil from producers which do not control, are not controlled by and are not under common control with such concern and that does not refine more than one hundred thousand barrels per day of crude oil at owned or leased facilities located in New Mexico.

History: 1953 Comp., § 7-11-58, enacted by Laws 1967, ch. 34, § 2; 1981, ch. 105, § 1; 1991, ch. 4, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, in Subsection C, substituted "one hundred thousand barrels" for "fifty thousand barrels" and made minor stylistic changes.

Independent refinery. — A petroleum producer, refiner and marketer, which was the subsidiary of a corporation concerned chiefly with wholesaling and retailing liquid petroleum gas on the East Coast, was nevertheless an independently owned and operated refinery within the meaning of this section; the indicia of separateness considerably outweighed those of sameness of identity. 1973-74 Op. Att'y Gen. No. 73-50.

19-10-66. Payment of royalties of the state in oil on demand.

All royalties accruing to the state under any oil or gas lease or permit under Sections 19-10-1 to 19-10-62 NMSA 1978, shall be paid in royalty oil on demand of the commissioner of public lands.

History: 1953 Comp., § 7-11-59, enacted by Laws 1967, ch. 34, § 3.

ANNOTATIONS

Compiler's notes. — Section 19-10-62 NMSA 1978 was repealed in 1994.

19-10-67. Sale of state oil royalties; preference; authority of commissioner.

A. Upon granting any oil or gas lease upon public lands in the state, and during the term of any existing lease, the commissioner of public lands may offer for sale from time to time, for such period as he may determine, by competitive bidding, upon notice and advertisement on sealed bids, a portion or all of the royalty oil accruing or reserved to the state under such leases. Such advertisement and sale shall reserve to the commissioner of public lands the right to reject all bids whenever in his judgment the interest of the state demands. In cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase or where the commissioner of public lands shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the commissioner of public lands, within his discretion, may readvertise such royalty oil for sale, sell it at a private sale at not less than the market price for such period or accept the cash value thereof from the lessee.

B. The sale of state royalty oil by the commissioner of public lands in accordance with Subsection A of this section shall be subject to the following provisions:

(1) the commissioner of public lands, when a determination has been made by the oil conservation commission that sufficient supplies of refinery charge stocks are not available on the open market to refineries within the state which do not have an adequate source of supply for refinery charge stocks, shall grant preferences to such petroleum refineries in the sale of royalty oil under the provisions of this section, for processing or use in such petroleum refineries but not for resale in kind; provided, however, that agreements providing for the exchange of refinery charge stocks purchased under this act [19-10-64 to 19-10-70 NMSA 1978] for other refinery charge stocks on a volume or equivalent value basis will not be construed as constituting a resale in kind prohibited by this act. Where an exchange agreement has been entered into or is contemplated with regard to royalty oil available for sale, full information relative thereto must be furnished either at the time of filing applications to purchase royalty oil or with the submission of a bid;

(2) the commissioner of public lands may sell to petroleum refineries located in the state and not having their own source of supply of refinery charge stocks, at private sale at not less than the market price, any royalty oil accruing or reserved to the state under oil and gas leases upon public lands, provided:

(a) that in selling such royalty oil the commissioner may, at his discretion, prorate such royalty oil among refineries;

(b) that pending the making of a permanent contract for the sale of any royalty oil, as herein provided, the commissioner of public lands may sell the current product at private sale, at not less than the market price;

(c) the commissioner shall assess a fee not to exceed the actual additional cost, if any, of administering the procedures under this act, which fee shall be assessed against the purchaser of the royalty oil; and

(d) in no instance shall the additional trucking charges caused by a change in purchaser and a subsequent change in the method of oil delivery or trucking distance be allowed to decrease the value of the royalty oil or the taxes assessed against such oil.

History: 1953 Comp., § 7-11-60, enacted by Laws 1967, ch. 34, § 4.

ANNOTATIONS

Compiler's notes. — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission is absorbed by the energy and minerals department. *See also* Laws 1977, ch. 255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

19-10-68. Application for preference in sale of royalty oil; requirements.

A petroleum refinery within the state unable to purchase in the open market at prevailing prices an adequate supply of refinery charge stocks of a quality to meet the needs of its existing petroleum refinery capacity may file an application and supporting documents with the oil conservation commission. Such application shall be filed in triplicate and must be accompanied by a detailed statement containing the following information:

A. the full name and address of the applicant; the location of the petroleum refinery; a complete disclosure of applicant's affiliation or association with any other petroleum refiner of oil if such relationship exists; and reasons for believing that applicant is entitled to a preference under this act [19-10-64 to 19-10-70 NMSA 1978], including a full showing of efforts made to purchase refinery charge stocks in the open market;

B. the capacity of the refinery to be supplied and the amount, source and grade of all refinery charge stocks currently available to the applicant petroleum refiner by purchase; and

C. the minimum amount and grade of additional refinery charge stocks needed to meet existing refinery commitments or existing refinery capacity, the field or fields which the petroleum refiner believes offer a potential source of refinery charge stocks supply because of proximity to its refinery and the available transportation facilities which the refiner proposes to utilize.

History: 1953 Comp., § 7-11-61, enacted by Laws 1967, ch. 34, § 5.

ANNOTATIONS

Compiler's notes. — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission is absorbed by the energy and minerals department. *See also* Laws 1977, ch. 255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

19-10-69. Grant of preference based upon application.

The oil conservation commission shall examine each application from petroleum refineries within the state requesting a preference and where it finds that the showing submitted is inadequate or unsatisfactory, it shall so notify the applicant and shall require such additional showing as it deems necessary. Upon being satisfied that the applicant is a bona fide small business enterprise operating an oil refinery in this state within the intent of this act [19-10-64 to 19-10-70 NMSA 1978], the oil conservation commission shall notify the commissioner of public lands in writing that the applicant is eligible to be granted a preference under this act, for the purchase of royalty oil.

History: 1953 Comp., § 7-11-62, enacted by Laws 1967, ch. 34, § 6.

ANNOTATIONS

Compiler's notes. — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission is absorbed by the energy and minerals department. *See also* Laws 1977, ch. 255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

19-10-70. Advertising for bids; priority of bidders; award of oil.

A. Where the commissioner of public lands elects to offer royalty oil for sale, the royalty oil will be advertised for sale in designated newspapers or periodicals of general circulation in the state in accordance with regulations to be promulgated by the commissioner. The notice will set the day and hour on which sealed bids will be received in the office of the commissioner of public lands, and will contain the terms and conditions of sale. The notice will be published at the expense of the state.

B. Bids may be submitted regardless of whether or not a preference is asserted pursuant to the preceding section [19-10-69 NMSA 1978] of this act. Where such preference is asserted, bids must be accompanied by the showing required in the application under this act [19-10-64 to 19-10-70 NMSA 1978]. Bidders asserting a preference and found properly entitled thereto will receive priority over bidders who have no preference where the bids are made for the same royalty oil.

C. The commissioner of public lands shall consider all bids submitted and shall award the oil as follows:

(1) where none of the bidders for the same royalty oil is properly entitled to a preference, the royalty oil will be awarded to the qualified bidder offering the highest price therefor in accordance with the specifications governing the sale;

(2) where two or more bidders for the same royalty oil are properly entitled to a preference, the oil will be awarded to the preferred bidder offering the highest price therefor in accordance with the specifications governing the sale; and

(3) where two or more identical bids are received for the same royalty oil from bidders properly entitled to a preference, the commissioner reserves the right to prorate the royalty oil among the bidders in such amounts as he may deem equitable, or if it is not practicable to prorate the royalty oil, to award it to one of such bidders by public drawing after notice to the bidders who submitted the identical bids.

D. In connection with the sale of royalty oil under this act, the commissioner of public lands reserves the right to reject all bids and sell the oil or any portion thereof at private sale to any petroleum refinery entitled to a preference at not less than the market price whenever in his judgment the spirit and intent of this act will be subserved thereby.

History: 1953 Comp., § 7-11-63, enacted by Laws 1967, ch. 34, § 7.

ANNOTATIONS

Cross references. — For publication of legal notice, *see* 14-11-1 NMSA 1978 et seq.

ARTICLE 10A
Carbon Dioxide Act

19-10A-1. Short title.

This act [19-10A-1 to 19-10A-7 NMSA 1978] may be cited as the "State Carbon Dioxide Act."

History: Laws 1981, ch. 108, § 1.

19-10A-2. Carbon dioxide taken in kind.

The purpose of the State Carbon Dioxide Act [19-10A-1 to 19-10A-7 NMSA 1978] is to assist New Mexico industries, specifically including but not limited to producers of crude oil in obtaining carbon dioxide for enhanced recovery of oil and to assist New

Mexico refineries in obtaining a supply of refinery charge stocks for the operation of their refineries.

History: Laws 1981, ch. 108, § 2.

19-10A-3. Definitions.

As used in the State Carbon Dioxide Act [19-10A-1 to 19-10A-7 NMSA 1978]:

A. "gas or carbon dioxide" means carbon dioxide whether in a gaseous or liquid form;

B. "producer" means a person producing crude oil in New Mexico who:

(1) is a participant in a carbon dioxide project for enhanced recovery of crude oil and related hydrocarbons from a reservoir in New Mexico; and

(2) does not own or control a source of carbon dioxide which is sufficient to supply the carbon dioxide for the enhanced recovery project;

C. "refiner" means a person who owns a petroleum refinery located in New Mexico; and

D. "state carbon dioxide" means carbon dioxide which the commissioner of public lands may take in kind as royalty under a lease issued by the state or carbon dioxide which the commissioner of public lands has the right to purchase under leases issued pursuant to Sections 19-10-3 and 19-10-4 NMSA 1978.

History: Laws 1981, ch. 108, § 3.

19-10A-4. Sale of state royalty carbon dioxide and carbon dioxide upon which commissioner has call.

The commissioner of public lands may offer from time to time, for such period as he may determine, by competitive bidding, upon notice and advertisement on sealed bids, a portion or all of the state carbon dioxide. The advertisement and sale shall reserve to the commissioner of public lands the right to reject all bids whenever in his judgment the interest of the state demands. In cases where no satisfactory bid is received or where the commissioner of public lands shall determine that it is not in the best interests of the state lands trust or of the public to accept the offer of the highest bidder, the commissioner of public lands, within his discretion, may readvertise the state carbon dioxide for sale, sell it at a private sale at not less than the market price for such period or accept the cash value thereof from the lessee. The interests of the state lands trust and its beneficiaries shall be accorded primacy in the sale or disposition of the carbon dioxide hereunder. Should any provision of the carbon dioxide royalty law conflict with this section, this section shall prevail.

History: Laws 1981, ch. 108, § 4.

ANNOTATIONS

Cross references. — For sale of state royalty oil, *see* 19-10-67 NMSA 1978.

19-10A-5. Application for preference producer or refiner.

A. A producer who wants to qualify for a preference shall submit an application to the oil conservation division. This application shall contain:

(1) the name and address of the producer;

(2) the location of the project for which the producer seeks the state carbon dioxide;

(3) a description, including ownership, of all lands which are to be included within the project for which the carbon dioxide is sought;

(4) a description of the enhanced recovery project in sufficient detail to demonstrate the feasibility of the project and the need for the carbon dioxide; and

(5) such other information as the commissioner of public lands may by regulation require.

B. A refiner who wants to qualify for a preference shall submit an application to the oil conservation division. The application shall contain:

(1) the name and address of the refiner;

(2) the location of the project for which the refiner seeks the carbon dioxide;

(3) proof that the purchase of the state carbon dioxide will enable the refiner to obtain crude oil from the enhanced recovery project for refinery charge stocks for a New Mexico refinery; and

(4) such other information as the commissioner of public lands may by regulation require.

History: Laws 1981, ch. 108, § 5.

19-10A-6. Grant of preference based upon application.

The oil conservation division shall examine each application for certification as a preference producer or refiner. If the oil conservation division finds that the applicant is a bona fide refiner or producer and has satisfied the requirements of the preceding

sections of the State Carbon Dioxide Act [19-10A-1 to 19-10A-7 NMSA 1978]; that the enhanced recovery project for which the carbon dioxide proposed to be used is feasible; and that the applicant qualifies for the purchase of state carbon dioxide, it shall notify the commissioner of public lands in writing that the applicant is eligible to be granted a preference for the purchase of state carbon dioxide.

History: Laws 1981, ch. 108, § 6.

ANNOTATIONS

Cross references. — For grant of preference in sale of royalty oil, *see* 19-10-69 NMSA 1978.

19-10A-7. Advertising for bids; priority of bidders; award of carbon dioxide.

A. Where the commissioner of public lands elects to offer state carbon dioxide for sale, the carbon dioxide will be advertised for sale in designated newspapers or periodicals of general circulation in the state in accordance with regulations to be promulgated by the commissioner. The notice will set the day and hour on which sealed bids will be received in the office of the commissioner of public lands and will contain the terms and conditions of the sale. The notice will be published at the expense of the state.

B. Bids may be submitted regardless of whether or not a preference is asserted. Where the preference is asserted, bids must be accompanied by the order of the oil conservation division which states that the person claiming the preference is a producer or a refiner.

C. The commissioner of public lands shall, in an open meeting, consider all bids submitted and shall award the carbon dioxide as follows:

(1) where none of the bidders for the same state carbon dioxide is properly entitled to a preference, the carbon dioxide will be awarded to the qualified bidder offering the highest price therefor in accordance with the specifications governing the sale;

(2) where one or more bidders for the same state carbon dioxide are properly entitled to a preference, and their bids are within a percentage of the high bid, such percentage to be set by the commissioner, the qualified preference bidders will be allowed to submit additional bids and the carbon dioxide will be awarded to the preferred bidder offering the highest price equal to or better than the highest price offered in the advertised bids therefor in accordance with the specifications governing the sale; and

(3) where two or more identical additional bids are received for the same carbon dioxide from bidders properly entitled to a preference, the commissioner reserves the right to prorate the carbon dioxide among the bidders in such amounts as he may deem equitable. The commissioner shall in prorating the carbon dioxide take into consideration the state lands affected by the enhanced recovery project and the increase in the production of crude oil from the state lands which could be caused by the enhanced recovery project.

History: Laws 1981, ch. 108, § 7.

ARTICLE 10B
Ongard System Development

19-10B-1. Short title.

Sections 1 through 8 [19-10B-1 to 19-10B-8 NMSA 1978] of this act may be cited as the "ONGARD System Development Act".

History: Laws 1990, ch. 127, § 1.

19-10B-2. Findings and purpose.

A. The legislature finds that a new oil and gas data base system will substantially increase revenues from state trust lands with resulting benefits to the trust beneficiaries and that funding the development of a new system with income from state trust lands constitutes a necessary and vital expense of the commissioner of public lands in the control and administration of the state trust lands and is a prudent and permitted use of trust income. The legislature further finds that a new oil and gas data base system will also increase severance tax revenues and that investment of the severance tax permanent fund in revenue bonds issued by the commissioner of public lands to finance the development of the new system is a prudent investment by the state.

B. The purpose of the ONGARD Systems [System] Development Act [19-10B-1 to 19-10B-8 NMSA 1978] is to provide for the development of an oil and gas data base system that will assure that the state is receiving the oil and gas tax and royalty revenue to which it is entitled, that the appropriate calculations are based on proper volumes and values and that correct amounts are remitted and accurately accounted for.

History: Laws 1990, ch. 127, § 2.

19-10B-3. Definitions.

As used in the ONGARD System Development Act [19-10B-1 to 19-10B-8 NMSA 1978]:

A. "ONGARD system" means the oil and natural gas administration and revenue data base, a computerized data base system which collects, processes, analyzes and reports all oil and gas data received by the state; and

B. "state trust lands" means those lands described in Article 13, Section 1 of the constitution of New Mexico.

History: Laws 1990, ch. 127, § 3.

19-10B-4. ONGARD system development.

The commissioner of public lands shall design, develop, acquire and implement an ONGARD system that relies on the latest capabilities of relational data base technology and that provides automated support to the constitutionally and legislatively mandated responsibilities of the commissioner of public lands, the taxation and revenue department, the energy, minerals and natural resources department and other agencies requiring such information, including but not limited to: the administration and management of the process of tax and royalty collection and distribution, allowable gas and oil production calculation and leasing activities.

History: Laws 1990, ch. 127, § 4.

ANNOTATIONS

19-10B-5. Commissioner of public lands; authorization to issue revenue bonds.

A. In order to provide funds for the design, development, acquisition and implementation of the ONGARD system, the commissioner of public lands is authorized to issue revenue bonds, in a principal amount not to exceed eighteen million dollars ($18,000,000), payable solely from that part of the income derived from state trust lands that is required by law to be deposited in the state lands maintenance fund and from certain revenues generated by the ONGARD system.

B. The bonds shall have a maturity of no more than twenty years from the date of issuance. The commissioner of public lands shall determine all other terms, covenants and conditions of the bonds subject to the approval of the state board of finance.

C. The bonds shall be executed with the manual or facsimile signature of the commissioner of public lands and countersigned by the state treasurer, with the seal of the commissioner of public lands imprinted or otherwise affixed to the bonds.

D. Proceeds from the sale of the bonds shall be placed in a special fund created within the state treasury. The fund and the earnings of the fund are appropriated to the commissioner of public lands for the design, development, acquisition and implementation of the ONGARD system and may also be used to pay expenses

incurred in the preparation, issuance and sale of the bonds. Any balance remaining in the fund after the ONGARD system has been fully implemented shall be used to retire the bonds or, if the bonds have been fully retired, shall be deposited into the state lands maintenance fund.

E. The bonds may be sold only at a private sale and only to the state investment officer or to the state treasurer.

F. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.

G. An amount of money in the state lands maintenance fund sufficient to pay the principal of and interest on the bonds as they become due in each year shall be set aside, and is hereby pledged, for the payment of the principal of and interest on the bonds.

H. The bonds shall be payable by the state treasurer who shall keep a complete record relating to the payment of the bonds.

History: Laws 1990, ch. 127, § 5.

19-10B-6. ONGARD system; sales; licenses.

Any software or other property developed pursuant to the provisions of the ONGARD System Development Act [19-10B-1 to 19-10B-8 NMSA 1978] shall be owned by the commissioner of public lands. The commissioner of public lands is authorized to enter into sales agreements, licensing arrangements and other business relationships with other state agencies within New Mexico and with other public and private entities for the purpose of marketing the property. Any sale proceeds, licensing fees, royalties or other revenue arising from such relationships shall be used to retire the bonds or, if the bonds have been fully retired, shall be deposited into the state lands maintenance fund.

History: Laws 1990, ch. 127, § 6.

19-10B-7. Joint powers agreement.

The commissioner of public lands, the taxation and revenue department, the energy, minerals and natural resources department and any other agency that utilizes the system shall enter into a joint powers agreement for the purpose of cooperating in the joint design, development, acquisition and implementation of the ONGARD system. The agreement shall provide either for the sharing of costs incurred to develop the system or for the payment to the commissioner of public lands by the taxation and revenue department, the energy, minerals and natural resources department or other agencies for the use of those portions of the ONGARD system that are utilized by those agencies.

Any such payments received by the commissioner of public lands shall be used to retire the bonds or, if the bonds have been fully retired, shall be deposited into the state lands maintenance fund.

History: Laws 1990, ch. 127, § 7.

ANNOTATIONS

Cross references. — For commissioner of public lands, *see* 19-1-1 NMSA 1978.

For energy, minerals, and natural resources department, *see* 9-5A-1 NMSA 1978 et seq.

For taxation and revenue department, *see* 9-11-1 NMSA 1978 et seq.

For Joint Powers Agreement Act, *see* 11-1-1 NMSA 1978 et seq.

19-10B-8. Oversight.

A. No less than twice each year until the ONGARD system is fully implemented, the commissioner of public lands, the secretary of taxation and revenue, the secretary of energy, minerals and natural resources and the chief administrative officer of any other user agency shall appear before the legislative finance committee for the purpose of presenting a status report on the ONGARD system. The status report shall describe the progress and expenditures to date and shall detail the progress made toward retiring the bonds. In addition, each year until the bonds are fully retired, the commissioner of public lands shall submit a written report to the legislative finance committee describing the progress made toward bond retirement.

B. Until the bonds are fully retired, at each meeting held with the state land trusts advisory board and the administrative head or designee of the beneficiary institutions, as required by Section 19-1-1.4 NMSA 1978, the commissioner of public lands shall report on the status of the ONGARD system, the effects of the system on the revenues received by the beneficiary institutions and the progress made toward retiring the bonds. In addition, prior to each appearance before the legislative finance committee pursuant to Subsection A of this section, the commissioner shall inform the administrative head of each beneficiary institution.

History: Laws 1990, ch. 127, § 8.

ARTICLE 11
Timberlands

19-11-1. [Care and protection; rules and regulations; forestry standards.]

That the commissioner of public lands shall have authority, and it shall be his duty, to care for the timber and the timber products upon the state lands, under such rules and regulations as he may prescribe, [and] said rules and regulations shall provide for the practice of forestry according to standards that will protect the timber and timber products and also protect the watersheds of the state.

History: Laws 1921, ch. 84, § 2; 1923, ch. 101, § 2; C.S. 1929, § 132-165; 1941 Comp., § 8-1201; 1953 Comp., § 7-12-1.

ANNOTATIONS

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095.

73A C.J.S. Public Lands §§ 13 to 16.

19-11-2. [Fire prevention and watershed protection; agreement with federal or private agencies.]

In order to carry out the provisions of this act [19-11-1, 19-11-2 NMSA 1978], as well as for cooperative forest fire prevention and watershed protection, the commissioner of public lands is hereby authorized to enter into agreements with federal or private agencies.

History: Laws 1921, ch. 84, § 3; C.S. 1929, § 132-173; 1941 Comp., § 8-1202; 1953 Comp., § 7-12-2.

ANNOTATIONS

Law reviews. — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095.

19-11-3. Sale of timberlands.

That on application therefor, the commissioner of public lands shall sell timberlands and the timber thereon, upon such terms and conditions as other state lands are now sold, except as hereinafter expressly provided. The minimum price for such lands exclusive of the timber products east of the range line between ranges 18 and 19 east, shall be five dollars ($5.00) per acre, and west of the range line between range 18 and 19 east, shall be three dollars ($3.00) per acre. Not more than five sections thereof shall

be sold in any one block. Before executing any contract of sale, the commissioner shall, in the event of sale on deferred payment plan or deed in the event of sale for cash, require the purchaser to subscribe and swear to an affidavit in writing that the purchase is made in good faith solely for the benefit of such purchaser and not for any other person, and false swearing to any such affidavit shall be perjury and punishable as such under the laws of the state and shall render such contract or deed void.

The timber on such lands before any such sale shall be cruised and classified as to its kind and character and appraised according to its stumpage market value, and the minimum price for such timber shall be two dollars ($2.00) per thousand feet for saw timber, provided that the minimum price for white fir (balsam) shall not be less than one [dollar] ($1.00) per thousand feet, board measure.

History: Laws 1923, ch. 101, § 3; C.S. 1929, § 132-166; Laws 1935, ch. 105, § 1; 1941 Comp., § 8-1203; 1953 Comp., § 7-12-3.

ANNOTATIONS

Cross references. — For false swearing in application for lease or purchase of state lands, or appraisement of same, *see* 19-7-7 NMSA 1978.

For perjury in general, *see* 30-25-1, 30-25-2 NMSA 1978.

Intent of section. — Laws 1935, ch. 105, § 1, effectively limits timberland sales to small tracts, thus making it possible for interested persons with small means to compete fairly with the capitalist, but there was no intention in this enactment to require that the lands embraced in one sale be contiguous. 1951-52 Op. Att'y Gen. No. 52-5614.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Statute of frauds: sale or contract for sale of standing timber as within provisions of statute of frauds respecting sale or contract of sale of real property, 7 A.L.R.2d 517.

Description: sufficiency of description in standing timber deed or contract, 35 A.L.R.2d 1422.

Size and kind of trees contemplated by contract, 72 A.L.R.2d 727.

Construction of standing timber contract providing that trees to be cut and order of cutting shall be as selected by seller, 79 A.L.R.2d 1243.

73A C.J.S. Public Lands § 50.

19-11-4. [Deferment of payment because of fire prevention assistance; failure to observe protective regulations; forfeiture; payment required before timber cut.]

The commissioner of public lands shall be authorized to defer the payment, without interest, for a period not to exceed three years for the timber upon any tracts so sold upon condition that the said purchaser shall lend his best effort, aid and assistance in the suppression of forest fires in the community of said land purchased and that he also complies with whatsoever rules and regulations the commissioner of public land [lands] may adopt with reference to the general protection of the timbered lands of the state; and that upon his failure to comply with the same the commissioner shall have power to declare his contract to purchase forfeited, and in which event all money paid thereon shall be forfeited to the state; that the title to such timber sold on said tracts shall be vested and remain in the state until the same is paid for and no timber shall be cut by such purchaser or his assigns until the money therefor has been paid to the commissioner of public lands.

History: Laws 1923, ch. 101, § 4; C.S. 1929, § 132-167; 1941 Comp., § 8-1204; 1953 Comp., § 7-12-4.

ANNOTATIONS

Cross references. — For cancellation of lease or contract to purchase state lands due to fraud or mistake, *see* 19-7-8 NMSA 1978.

For forfeiture of contract for failure to comply with terms thereof, *see* 19-7-19 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095.

73A C.J.S. Public Lands § 184.

19-11-5. [Sales prohibited; exceptions.]

No timber or timbered lands of the state shall be sold except as provided in Sections 3 and 4 [19-11-3, 19-11-4 NMSA 1978] of this act or Section 19-11-10 NMSA 1978.

History: Laws 1923, ch. 101, § 5; C.S. 1929, § 132-168; 1941 Comp., § 8-1205; 1953 Comp., § 7-12-5.

19-11-6. [Cutting certain timber for purchaser's own consumption.]

Any purchaser of timbered lands, under the provisions of this act [19-11-1 to 19-11-9 NMSA 1978], shall be permitted to cut sufficient pinon and juniper for his own consumption only.

History: Laws 1923, ch. 101, § 6; C.S. 1929, § 132-169; 1941 Comp., § 8-1206; 1953 Comp., § 7-12-6.

19-11-7. [Covenant to conserve and protect young timber and timber products; use of land for agricultural purposes.]

All land sold under the provisions of this act [19-11-1, 19-11-3 to 19-11-9 NMSA 1978] shall be so sold with the proviso and a covenant running therewith, that the purchaser or purchasers thereof shall encourage, protect and conserve the growing of young timber and timber products thereon, such as are particularly adapted to the said lands; provided, however, that any part of such lands sold that are suited for agricultural purposes may be used for that purpose.

History: Laws 1923, ch. 101, § 7; C.S. 1929, § 132-170; 1941 Comp., § 8-1207; 1953 Comp., § 7-12-7.

ANNOTATIONS

Cross references. — For restrictions and regulations concerning cutting of timber, *see* 68-1-1 NMSA 1978 et seq.

19-11-8. [Roadway reserved.]

There shall be reserved over all said timbered and other mountain lands hereinafter sold by the state, or its assigns, an adequate roadway, for all purposes, to serve as an outlet to all other lands owned by the state, or its assigns.

History: Laws 1923, ch. 101, § 8; C.S. 1929, § 132-171; 1941 Comp., § 8-1208; 1953 Comp., § 7-12-8.

ANNOTATIONS

Cross references. — For rights-of-way across state lands, see 19-7-57, 19-7-58 NMSA 1978.

19-11-9. [Purchaser of timber leasing additional grazing lands; conditions.]

Any purchaser of timbered lands under the provisions of this act [19-11-1 to 19-11-9 NMSA 1978] shall be privileged to lease additional state timbered lands for grazing purposes, but in which event the granting of said lease, by the state, shall be conditioned upon the lessee's compliance with the rules and regulations adopted by the commissioner of public lands, for the general protection of timber and timber products on said leased land, or other state timbered lands adjacent thereto.

History: Laws 1923, ch. 101, § 9; C.S. 1929, § 132-172; 1941 Comp., § 8-1209; 1953 Comp., § 7-12-9.

19-11-10. Timber; sale of [down, large growth and matured timber]

The commissioner of public lands may sell the down, large growth and matured timber on any state lands in the manner and after the notice provided by law governing sales of state lands. The sale of any such timber shall not be construed as a sale of the land on which the same is situated. No growing of matured timber less than twelve inches in diameter inside of bark, three feet from the butt, shall be sold. Provided, that timber not less than nine inches in diameter, inside of bark, three feet from the butt, may be sold for railroad ties, mine props or fence posts.

All sales of timber shall be on the stumpage basis. No down, large growth and matured timber, except such as is fit only for firewood, shall be sold at less than two dollars ($2.00) per thousand feet, board measure, provided that the minimum price for white fir (balsam) shall be not less than one dollar ($1.00) per thousand feet, board measure.

History: Laws 1912, ch. 82, § 65; Code 1915, § 5243; C.S. 1929, § 132-177; Laws 1935, ch. 106, § 1; 1941 Comp., § 8-1210; 1953 Comp., § 7-12-10.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands §§ 13 to 16.

ARTICLE 12
Land Office Building

19-12-1. Short title.

This act [19-12-1 to 19-12-13 except 19-12-7.1 NMSA 1978] may be cited as the "Land Office Building Act."

History: 1953 Comp., § 7-14-1, enacted by Laws 1959, ch. 25, § 1.

19-12-2. [Acquisition of land; construction and maintenance of buildings; use; lease to other agencies; disposition and use of rents.]

The commissioner of public lands of the state is authorized to acquire the necessary land to construct, equip and maintain a land office building or buildings thereon to be used as offices for the purpose of administering the trust created by the New Mexico Enabling Act and other similar acts of congress granting lands to the state. In acquiring land and construction of a building, the commissioner of public lands is authorized to anticipate need for expansion. Pending immediate need, he is authorized to lease office space or land to other agencies of the state on a year-to-year basis at a rental rate

comparable to that charged for office space and lands in the area. Rents received shall be covered into the state lands maintenance fund to be used in its entirety to retire and repay the indebtedness incurred under the provisions of this 1959 act [19-12-1 to 19-12-13 NMSA 1978].

History: 1953 Comp., § 7-14-2, enacted by Laws 1959, ch. 25, § 2.

ANNOTATIONS

Cross references. — For establishment of state lands maintenance fund, *see* 19-1-11 NMSA 1978.

19-12-3. [Total cost of acquisition and construction; appropriation.]

The total cost of acquiring of land and the construction of the building or buildings shall not exceed the sum of one million five hundred thousand dollars ($1,500,000), which sum is appropriated from the funds borrowed against the state lands maintenance fund, as hereinafter provided.

History: 1953 Comp., § 7-14-4, enacted by Laws 1959, ch. 25, § 4.

19-12-4. [Architect, employment by commissioner; contract for construction of building; notice of letting; rejection of bids; performance bond.]

The commissioner is empowered to employ an architect after competition among three or more architects of the state, on the basis of the best design submitted, and to contract for the construction of a building with the lowest and best bidder among three or more bidders, after notice in two consecutive issues of any Santa Fe or Albuquerque, New Mexico, newspaper not less than twenty days before the day of letting. The commissioner may either let the work in one entire contract or to different contractors, as the commissioner may deem advisable. The commissioner may reject any or all bids and call for new bids. The commissioner may require a performance bond with surety in an amount he deems necessary from bidders.

History: 1953 Comp., § 7-14-5, enacted by Laws 1959, ch. 25, § 5.

ANNOTATIONS

Cross references. — For Procurement Code, *see* 13-1-28 NMSA 1978 et seq.

19-12-5. Commissioner's power to provide for construction and maintenance; disbursements.

The commissioner has authority to perform all acts incidental to acquisition of such lands and the construction, equipping and maintaining of the land office building. The secretary of finance and administration shall draw his warrant on the state treasurer for the payment of vouchers drawn by the commissioner of public lands and the state treasurer shall pay the warrant out of the fund specified in and provided for by the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978].

History: 1953 Comp., § 7-14-6, enacted by Laws 1959, ch. 25, § 6; 1977, ch. 247, § 89.

19-12-6. [Interest in contracts by commissioner or his agents prohibited.]

Neither the commissioner nor any of his agents shall be directly or indirectly interested in any contract let under the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978].

History: 1953 Comp., § 7-14-7, enacted by Laws 1959, ch. 25, § 7.

19-12-7. [Location of building; style of architecture.]

The land office building shall be located at the city of Santa Fe and conform substantially to the architecture of existing capitol buildings.

History: 1953 Comp., § 7-14-8, enacted by Laws 1959, ch. 25, § 8.

19-12-7.1. Name of land office building.

The building located in Santa Fe currently used for offices to administer the trust created by the Enabling Act for New Mexico and other acts of congress granting lands to the state shall be known as the "Edward J. Lopez land office building".

History: 1978 Comp., § 19-12-7.1, enacted by Laws 1997, ch. 35, § 1.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 35 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 1997, 90 days after adjournment of the legislature.

Cross references. — For the Enabling Act for New Mexico, *see* Pamphlet 3 in Volume One of the NMSA 1978.

19-12-8. [Anticipation of proceeds of rentals from trust lands; issuance and sale of state land office debentures; interest rate; form; maturity.]

The commissioner of public lands is authorized to anticipate the proceeds of rentals from trust lands, to the extent that the same are required to be covered into the state lands maintenance fund created by the provisions of Section 19-1-11 NMSA 1978 by the issuance and sale of state land office debentures not exceeding in the aggregate one million five hundred thousand dollars ($1,500,000). The commissioner of public lands may issue these debentures at times and in denominations as he may deem expedient. Debentures issued shall bear the rate of interest prescribed by law, and shall be issued in serial form. Debentures in the principal amount of not more than fifty thousand dollars ($50,000) shall mature not before June 30, 1960, and a principal amount of these debentures of not more than fifty thousand dollars ($50,000) shall mature at every six-month interval thereafter, until all debentures issued under the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978] have been retired.

History: 1953 Comp., § 7-14-9, enacted by Laws 1959, ch. 25, § 9.

19-12-9. [Debentures; signed by commissioner; seal affixed.]

The debentures shall be signed by the commissioner and his seal shall be affixed thereto.

History: 1953 Comp., § 7-14-10, enacted by Laws 1959, ch. 25, § 10.

19-12-10. [Funds derived from sale of debentures; disposition.]

The funds derived from the sale of debentures shall be used by the commissioner of public lands for the purposes of carrying out the provisions of the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978].

History: 1953 Comp., § 7-14-11, enacted by Laws 1959, ch. 25, § 11.

19-12-11. [State investment officer may purchase state land office debentures; approval; private sale; interest rates.]

Any debentures authorized by the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978] may be purchased by the state investment officer as an investment for the permanent funds in his hands, with the approval of the officials whose approval is required by the constitution for the investment of permanent funds. The purchase by the state investment officer may be made at private sale without the necessity of advertising and at interest rates not to exceed the per annum rate prescribed by law.

History: 1953 Comp., § 7-14-12, enacted by Laws 1959, ch. 25, § 12.

ANNOTATIONS

Compiler's notes. — Section 6-8-4 NMSA 1978 names the director of the investment division of the department of finance and administration as the "state investment officer."

19-12-12. Contract for maintenance.

The commissioner of public lands is authorized to contract with the facilities management division of the general services department on a cost basis for the maintenance of the lands and buildings acquired under the provisions of the Land Office Building Act.

History: 1953 Comp., § 7-14-14, enacted by Laws 1959, ch. 25, § 14; 1977, ch. 247, § 90; 1983, ch. 301, § 67; 1984, ch. 64, § 23; 2013, ch. 115, § 21.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and deleted "property control" and added "facilities management" before "division".

The 1984 amendment, effective May 17, 1984, substituted "building services division" for "property control division."

Saving clauses. — Laws 1984, ch. 64, § 25, provided that no suit, action or other proceeding commenced by or against any public officer or employee of the state in his official capacity shall abate by reason of the effect of the act and provided that the district courts may allow a suit, action or other proceeding to be maintained by or against the appropriate officer and any successor agency created under the act.

Severability clauses. — Laws 1984, ch. 64, § 27, provided for the severability of the act if any part or application thereof is held invalid.

19-12-13. [Acceptance of gift, or loan, from federal government authorized.]

The commissioner of public lands is authorized to accept any services, equipment, supplies, materials or funds by way of gift, or loan, from the United States government, which could be used in carrying out the purposes of the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978].

History: 1953 Comp., § 7-14-15, enacted by Laws 1959, ch. 25, § 15.

ANNOTATIONS

Severability clauses. — Laws 1959, ch. 25, § 16, provided for the severability of the Land Office Building Act if any part or application thereof is held invalid.

ARTICLE 13
Lease of Geothermal Resources on State Lands

19-13-1. Short title.

This act [19-13-1 to 19-13-28 NMSA 1978] may be cited as the "Geothermal Resources Act."

History: 1953 Comp., § 7-15-1, enacted by Laws 1967, ch. 158, § 1.

ANNOTATIONS

Cross references. — For Geothermal Resources Conservation Act, *see* 71-5-1 NMSA 1978 et seq.

For jurisdiction of the oil conservation division of the energy and minerals department over all matters relating to conservation of geothermal resources, and concurrent jurisdiction and authority of the oil conservation commission as necessary to perform its duties, *see* 71-5-6 NMSA 1978.

Law reviews. — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

19-13-2. Definitions.

As used in the Geothermal Resources Act:

A. "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit, or the energy in whatever form below the surface of the earth present in, resulting from, created by or which may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam in whatever form found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit, as may be used for the heating and cooling of buildings through an on-site geoexchange heat pump or similar on-site system;

B. "commissioner" means the commissioner of public lands;

C. "state lands" includes all land owned by the state, all land owned by school districts, beds of navigable rivers and lakes, submerged lands and lands in which mineral rights have been reserved to the state;

D. "lease" means a lease for the extraction and removal of geothermal resources from state lands; and

E. "well" means any well for the discovery of geothermal resources or any well on lands producing geothermal resources or reasonably presumed to contain geothermal resources.

History: 1953 Comp., § 7-15-2, enacted by Laws 1967, ch. 158, § 2; 2013, ch. 125, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the definition of "geothermal resources" to establish a minimum threshold of heat; and in Subsection A, after "natural heat of the earth" added "in excess of two hundred fifty degrees Fahrenheit", after "extracted from this natural heat", added "in excess of two hundred fifty degrees Fahrenheit", and after "and other hydrocarbon substances", added the remainder of the sentence.

Law reviews. — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

19-13-3. Administration of act.

Administration of the Geothermal Resources Act shall be based on the principle of multiple use of state land and resources and shall allow coexistence of other leases on the same lands for deposits of other minerals, and the existence of leases issued pursuant to the Geothermal Resources Act shall not preclude other uses of the land covered thereby. Geothermal resources may be administered as a renewable energy resource, in which case any leases for and regulations of a geothermal resource as a renewable energy resource shall require that the geothermal resource not be diminished beneath applicable natural seasonal fluctuations in the measurable quantity, quality or temperature of any area classified as a known geothermal resources field. However, operations under other leases or for other uses shall not unreasonably interfere with or endanger operations under any lease issued pursuant to the Geothermal Resources Act, nor shall operations under leases issued pursuant to the Geothermal Resources Act unreasonably interfere with or endanger operations under any lease issued pursuant to any other law. The Geothermal Resources Act shall not be construed to supersede the authority that any state department or agency has with respect to the management, protection and utilization of the state lands and resources under its jurisdiction.

History: 1953 Comp., § 7-15-3, enacted by Laws 1967, ch. 158, § 3; 2013, ch. 125, § 2.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, provided for conditions of leases of geothermal resources to sustain the resource; and added the second sentence.

19-13-4. Geothermal resources of commercial value.

Where it is determined by the commissioner that the production or use of geothermal energy is also susceptible of economically producing other of the geothermal resources in commercially valuable quantities, and a market therefor exists, production of the other geothermal resources may be required by the commissioner.

History: 1953 Comp., § 7-15-4, enacted by Laws 1967, ch. 158, § 4.

19-13-5. Leases; applications; limitations.

A. Leases may be issued by the commissioner according to such terms and conditions not inconsistent with the provisions of the Geothermal Resources Act which the commissioner determines to be in the best interest of the state.

B. An application for a lease on state lands shall not be made for less than six hundred forty acres nor more than two thousand five hundred sixty acres and shall embrace a reasonably compact area. A lease on state lands may only be issued for a parcel less than six hundred forty acres if the parcel is isolated from or not contiguous with other parcels of land available for a lease. The commissioner may provide for compensatory agreements on those parcels of state lands which he determines should be subjected to such an agreement rather than a lease. No person, association or corporation, except as otherwise provided in the Geothermal Resources Act, shall take, hold, own or control at one time whether acquired directly from the commissioner or otherwise, any direct or indirect interests in state geothermal leases exceeding fifty-one thousand two hundred acres.

C. The commissioner shall issue a lease to the first qualified applicant under regulations adopted by the commissioner.

History: 1953 Comp., § 7-15-5, enacted by Laws 1967, ch. 158, § 5; 1979, ch. 386, § 1.

ANNOTATIONS

Law reviews. — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

19-13-6. Known geothermal resources fields.

A. The commissioner shall, after consultation with the director of the bureau of geology and mineral resources, make a classification of geothermal areas that he has determined may be capable of producing geothermal resources in commercial

quantities. These geothermal areas shall be classified as "known geothermal resources fields".

B. If any lands to be leased are within a known geothermal resources field, the lands shall be leased to the highest responsible qualified bidder under rules prescribed by the commissioner. The rules prescribed by the commissioner shall include notice to the public of the terms and conditions of the sale and procedures of conducting the sale, including the receipt of written bids on a competitive basis and the issuing of the lease.

History: 1953 Comp., § 7-15-6, enacted by Laws 1967, ch. 158, § 6; 2001, ch. 246, § 1.

ANNOTATIONS

Cross references. — For giving of legal notice, *see* 14-11-1 NMSA 1978 et seq.

For establishment of bureau of geology and mineral resources, a division of the New Mexico institute of mining and technology, and duties thereof, *see* 69-1-1 NMSA 1978 et seq.

The 2001 amendment, effective June 15, 2001, substituted "bureau of geology" for "bureau of mines" in Subsection A; and substituted "rules" for "regulations" in two places in Subsection B.

Law reviews. — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

19-13-7. Leases; terms; rentals and royalties.

A. Each lease issued pursuant to the Geothermal Resources Act shall provide for the following base rentals, royalties and percentage rentals with respect to geothermal resources produced or sold from the lands included within the lease:

(1) a base lease rent to be charged under each lease based upon fair market value at the time of leasing as determined by the commissioner;

(2) a royalty or percentage rent to be charged as a percentage of gross revenue derived from the production, sale or use of geothermal resources, or the energy produced therefrom, under the lease as determined by the commissioner, who shall not determine a value below or above a range that could be determined by the federal bureau of land management, based on fair market value of the geothermal resource or use of the geothermal resource at the time of leasing. The commissioner may require an escalation of the royalty or percentage rent over time; and

(3) a royalty of the gross revenue received from the sale of mineral products or chemical compounds recovered from geothermal fluids, if any, based on fair market value of the mineral product as determined by the commissioner, except that as to any

by-product or minerals covered by other mineral leasing statutes administered by the commissioner or rules or regulations of the commissioner, the rate of royalty for such mineral or by-product shall be the same as the then-existing rate of royalty under leases currently being issued by the commissioner.

B. The commissioner shall have the authority in leasing lands pursuant to the Geothermal Resources Act to prescribe a development program. In prescribing the program, the commissioner shall consider all applicable economic factors, including market conditions and the cost of drilling for, producing, processing and utilizing geothermal resources.

History: 1953 Comp., § 7-15-7, enacted by Laws 1967, ch. 158, § 7; 1979, ch. 386, § 2; 2013, ch. 125, § 3.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, provided for conditions of leases of geothermal resources to sustain the resource and for terms based on market value; in Subsection A, in the introductory sentence, after "following", added "base", after "royalties", added "and percentage rentals", and after "resources produced", deleted "saved and" and added "or"; in Paragraph (1) of Subsection A, at the beginning of the sentence, after "a", deleted language which provided for a ten percent royalty from the sale of steam, brine, or hot water and between ten and fifteen percent from leases of known geothermal resource fields, and added the remainder of the sentence; added Paragraph (2) of Subsection A; in Paragraph (3) of Subsection A, after "a royalty of", deleted "not less than two percent nor more than five percent of" and after "geothermal fluids", deleted "in the first marketable form as to each such mineral product or chemical compound for the primary term of the lease" and added "if any, based on fair market value of the mineral product as determined by the commissioner", deleted former Paragraph (3) of Subsection A, which provided a royalty of eight percent of revenue from an energy-producing plant; deleted former Paragraph (4) of Subsection A, which provided for a royalty of not less than two percent nor more than ten percent on revenue from geothermal resources for recreational, space heating or health purposes; deleted former Paragraph (5) of Subsection A, which provided for an annual rental of one dollar per acre; deleted former Paragraph (6) of Subsection A, which provided for a minimum rental when the royalty did not exceed two dollars per acre; deleted Paragraph (7) of Subsection A, which required the renegotiation of royalties after twenty years; deleted former Paragraph (8) of Subsection A, which provided that except for royalties on minerals, royalties and rentals could be other than the rates specified in Subsection A; and deleted former Subsection B, which provided the method for calculating royalties on resources that were used and not sold.

19-13-8. Leases; relinquishment.

A. The holder of any lease may at any time relinquish all his rights under the lease by filing a written relinquishment of all rights under the lease with the commissioner. The

relinquishment shall be effective as of the date of its filing, subject to the continued obligation of the person, in accordance with the terms of the lease and any regulations:

(1) to make payment of all accrued rentals and royalties;

(2) to place all wells on the lands to be relinquished in condition for suspension or abandonment; and

(3) to protect or restore the surface and surface resources.

B. Upon compliance with this section, the person holding the lease shall be released of all obligations thereafter accruing under the lease with respect to the lands relinquished, but no such relinquishment shall release such person from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of relinquishment.

History: 1953 Comp., § 7-15-8, enacted by Laws 1967, ch. 158, § 8.

ANNOTATIONS

Cross references. — For relinquishment of lease of state lands, *see* 19-7-36 NMSA 1978.

For relinquishment of mineral lands lease, *see* 19-8-26 NMSA 1978.

19-13-9. Rent or royalties; waiver; suspension; reduction.

The commissioner may, after a public hearing, waive, suspend or reduce the rental or minimum royalty for the lands included in a lease, or any portion thereof, and waive, suspend, alter or amend the operating requirements contained in a lease or regulation in the interest of conservation and to encourage the greatest ultimate recovery of geothermal resources if he determines that such action is necessary or beneficial to promote development or finds that the lease cannot be successfully operated under the terms of the lease or regulations.

History: 1953 Comp., § 7-15-9, enacted by Laws 1967, ch. 158, § 9.

ANNOTATIONS

Cross references. — For accrual of interest on delinquent rental payments for state lands, *see* 19-1-3 NMSA 1978.

19-13-10. Suspension of operation and production.

The commissioner may, upon application and after a public hearing, suspend operations and production on a producing lease. On his own motion and after a public

hearing, the commissioner, in the interest of conservation, may suspend operations on any lease, but in any such case he shall extend the lease term for the period of any suspension.

History: 1953 Comp., § 7-15-10, enacted by Laws 1967, ch. 158, § 10.

19-13-11. Leases; duration.

A. Any lease entered into pursuant to the Geothermal Resources Act shall be for a primary term of five years and so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities from such lands or from lands unitized therewith, subject to continued payment of rentals as provided in Section 19-13-7 NMSA 1978. If the lessee fails to produce or utilize geothermal resources or to discover geothermal resources capable of being produced or utilized in commercial quantities from the lands or from lands unitized therewith during the initial five-year term, the lessee may continue the lease in full force and effect as to the portion held by the lessee for a secondary term of five years and so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities from such lands or from lands unitized therewith by continued payment each year, in advance, of rentals at the rate set by the lease. Provided that if for any reason beyond the control of the lessee production or utilization of geothermal resources in commercial quantities ceases or if the capability to so produce is temporarily lost after the secondary term has expired, the producing lessee may, with the written permission of the commissioner, continue such lease as to the acreage held by the lessee in effect from year to year for an additional period not to exceed three years by continued payment of rentals as provided in the lease at the rate provided in the secondary term of the lease.

B. If commercial production or capability of commercial production occurs during the primary term and thereafter ceases before the primary term would have expired, the lease shall be deemed to be a "nonproducing or incapable of producing lease" from that date, and the lessee shall have the unexpired portion of the primary term and any subsequent terms within which to resume such production or capability of production. If commercial production or capability of commercial production occurs during the primary term and ceases during the secondary term, the lease shall be deemed to be a "nonproducing or incapable of producing lease" from that date and, upon payment of rentals as provided in Subsection A of this section, the lessee shall have the unexpired portion of the secondary term within which to resume such production or capability of production. When such production or capability of production is resumed, the term of the lease shall continue so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities from the leased land or from land unitized therewith. In such cases, the rental rate for the lease or the portion thereof shall be the rental rate provided in the term or portion of the term in which such production or capability of production is resumed.

History: 1953 Comp., § 7-15-11, enacted by Laws 1967, ch. 158, § 11; 1979, ch. 386, § 3; 2013, ch. 125, § 4.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, provided for the rental rate of land for geothermal resources when no resources are produced or used; and in Subsection A, in the first sentence, after "subject to continued payment of", deleted "annual"; in the second sentence, after "in advance, of", deleted "annual", and after "rentals at the rate", deleted "of five dollars ($5.00) per acre annually", and added "set by the lease", and in the third sentence, after "continued payment of", deleted "annual".

19-13-11.1. Leases; stipulation; rental; royalty.

The owner or owners of any geothermal resources lease or approved assignment thereof, heretofore issued by the commissioner, which lease has not automatically expired by its own terms or which has not been canceled after proper notice by the commissioner and which has otherwise been maintained in good standing, may enter into a stipulation with the commissioner of public lands making the terms and conditions of Sections 19-13-7 and 19-13-11 NMSA 1978 a part of such existing lease, the same as if the provisions had been a part of the lease when issued. In such case, the rentals, royalties and fees shall be computed as follows:

A. rentals shall be computed for the remainder of the primary term of the lease at one dollar ($1.00) per acre or fraction thereof per year, payable in advance, and for the secondary term of the lease at five dollars ($5.00) per acre or fraction thereof per year, payable in advance;

B. royalties shall be payable as provided in the lease being stipulated; provided, however, if at the time of entering into the stipulation the acreage has been included in a known geothermal resource field and if the commissioner has established a higher rate for such area, then the royalties shall be payable at the higher rates so established; and

C. the commissioner may charge a fee of ten dollars ($10.00) for the approval, filing and recording of such stipulation.

History: 1978 Comp., § 19-13-11.1, enacted by Laws 1979, ch. 386, § 4.

ANNOTATIONS

Cross references. — For rentals and royalties on leases issued after the enactment of this section, *see* 19-13-7 NMSA 1978.

For waiver of rents or royalties, *see* 19-13-9 NMSA 1978.

19-13-11.2. Validation of geothermal resource leases.

All geothermal resource leases issued by the commissioner of public lands prior to the effective date of this section are declared to be valid and existing contracts with the state according to their terms and provisions where:

A. such leases were made in substantial conformity with law;

B. the terms have not expired;

C. all rentals have been paid and accepted by the commissioner of public lands; and

D. the leases have not been canceled by the commissioner of public lands for nonperformance by the lessee or any assignee.

The obligations of the state and the commissioner to observe and conform to the terms and provisions of these leases are recognized.

History: 1978 Comp., § 19-13-11.2, enacted by Laws 1979, ch. 386, § 5.

ANNOTATIONS

Cross references. — For duration of leases, *see* 19-13-11 NMSA 1978.

For cancellation of leases, *see* 19-13-23 NMSA 1978.

19-13-12. Combining geothermal resources.

Any person engaged in the production of geothermal resources under a lease issued by the commissioner may commingle geothermal resources from any two or more wells without regard to whether such wells are located on the lands for which such lease was issued or elsewhere; provided, however, that the person holding the lease shall install and maintain meters or other measuring devices satisfactory to the commissioner to measure the amount of geothermal resources produced from lands for which leases were issued by the commissioner.

History: 1953 Comp., § 7-15-12, enacted by Laws 1967, ch. 158, § 12.

19-13-13. Reinjecting geothermal resources.

Any person holding a lease may, upon approval of the commissioner, drill special wells, convert producing wells or reactivate and convert abandoned wells for the sole purpose of reinjecting geothermal resources or the residue thereof.

History: 1953 Comp., § 7-15-13, enacted by Laws 1967, ch. 158, § 13.

19-13-14. Cooperative development or operation.

For the purpose of more properly conserving the natural resources of any geothermal resources lands, or any part thereof, the holders of leases may unite with each other or with others in collectively adopting and operating under a cooperative or unit plan of development or operation of such geothermal resources lands whenever determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, alter, change or revoke any drilling and production requirement of such leases, permit apportionment of production, and may make such regulations with reference to such leases, with like consent on the part of the persons holding the leases, in connection with the institution and operation of any such cooperative or unit plan, as the commissioner deems necessary or proper to secure the proper protection of the interests of the state.

History: 1953 Comp., § 7-15-14, enacted by Laws 1967, ch. 158, § 14.

ANNOTATIONS

Cross references. — For cooperative agreements for development or operation of oil and gas pools, *see* 19-10-45 to 19-10-48 NMSA 1978.

19-13-15. Posting of open acreage; simultaneous applications.

When newly acquired acreage is posted to the tract books, or when other acreage is designated upon the tract books to be open acreage after having been previously leased or after having been withdrawn from leasing by the commissioner, all applications for leases filed thereon within three regular working days after such posting or designation shall be considered as simultaneous applications.

History: 1953 Comp., § 7-15-15, enacted by Laws 1967, ch. 158, § 15.

19-13-16. State land sales and leases; reservations.

In addition to any other requirements of law, in all leases, deeds or sales contracts of state lands for any purpose, there shall be inserted a clause reserving the right to execute leases for geothermal resource development and operation thereon; the right to sell or dispose of the geothermal resources of such lands; and the right to grant rights-of-way and easements for the purpose of this section.

History: 1953 Comp., § 7-15-16, enacted by Laws 1967, ch. 158, § 16.

ANNOTATIONS

Cross references. — For sale rather than lease of known saline, mineral and oil and gas lands, *see* 19-7-25 NMSA 1978.

For reservation from sale of mineral deposits, products and easements on grazing and agricultural leases, *see* 19-7-28 NMSA 1978.

For rights-of-way and easements over state lands, *see* 19-7-56, 19-7-57 NMSA 1978.

For reservation of roadway over timbered and mountain lands sold by state, *see* 19-11-8 NMSA 1978.

For reservation of mineral purchase rights in state lands leased or conveyed, *see* 19-14-1 to 19-14-3 NMSA 1978.

19-13-17. Use of the surface.

Subject to the provisions of the Geothermal Resources Act, any person holding a lease for geothermal resources shall be entitled to use so much of the surface as is reasonably necessary as determined by the commissioner for the production and conservation of geothermal resources.

History: 1953 Comp., § 7-15-17, enacted by Laws 1967, ch. 158, § 17.

19-13-18. Bonds; surface damage; performance.

A. Before any person commences development or operations of geothermal resources under a lease, including any prospecting activity on the leased land, the person holding the lease shall execute and file with the commissioner, a bond or undertaking in an amount fixed by the commissioner which shall not be less than five thousand dollars ($5,000) in favor of the state of New Mexico for the benefit of the state's contract purchaser, patentee or surface lessee. The purpose of the bond or undertaking shall be to secure payment for damages to the tangible improvements on the leased land as may be suffered by reason of the development and operations on the land by the person holding the lease.

B. The commissioner may, at any time, require a person holding a lease to furnish a bond in a reasonable amount to guarantee payment of royalties to become due the state if, in his judgment, such is necessary to protect the interest of the state.

C. The commissioner shall, by regulations, establish the standards and the forms for any bonds or undertakings required pursuant to this section.

History: 1953 Comp., § 7-15-18, enacted by Laws 1967, ch. 158, § 18.

ANNOTATIONS

Cross references. — For filing by mineral lessee of bond securing payment for damage to the surface, and bond guaranteeing payment of royalties, *see* 19-8-24 NMSA 1978.

For bond required of mineral lessee of lands sold on deferred payment plan with reservation of minerals, *see* 19-10-26 NMSA 1978.

19-13-19. State lands; jurisdictions.

Where the surface of state lands sought for use or development of geothermal resources or the waters thereon are under the jurisdiction of a state department or agency other than the commissioner, the commissioner may issue leases under the Geothermal Resources Act only with the consent of and subject to such reasonable terms and conditions as may be prescribed by the other department or agency to ensure the adequate utilization of the surface of the lands or the waters thereon for the purposes for which they are then being administered or for which they were acquired; provided, however, that such other department or agency shall not prescribe any terms and provisions inconsistent with the Geothermal Resources Act nor any rental or royalty for the use of the lands.

History: 1953 Comp., § 7-15-19, enacted by Laws 1967, ch. 158, § 19.

19-13-20. General mining lease; lease preference.

Notwithstanding any other provision of the Geothermal Resources Act, at any time within ninety days following the effective date of the Geothermal Resources Act, any person who held prior to January 1, 1967 and who holds on the effective date of the Geothermal Resources Act, a general mining lease issued by the commissioner, upon showing to the satisfaction of the commissioner that the application or general mining lease was made or issued to develop geothermal resources, may apply for and receive a lease pursuant to the Geothermal Resources Act covering the same land having priority dating from the date of filing or issuance of the original application or general mining lease. The lease preference pursuant to this section shall be accomplished in accordance with procedures prescribed by regulations of the commissioner.

History: 1953 Comp., § 7-15-20, enacted by Laws 1967, ch. 158, § 20.

19-13-21. Transferability.

Any lease pursuant to the Geothermal Resources Act may be assigned, transferred or sublet with the approval of the commissioner.

History: 1953 Comp., § 7-15-21, enacted by Laws 1967, ch. 158, § 21.

ANNOTATIONS

Cross references. — For assignment or relinquishment of lease of state lands, *see* 19-7-36 NMSA 1978.

For assignment of mineral lease, *see* 19-8-28 NMSA 1978.

For assignment of oil and gas lease, *see* 19-10-13 NMSA 1978.

19-13-22. Inspection of records; reports.

The commissioner or his representative shall have the right to inspect all records, books or accounts pertaining to geothermal resources taken from leased state lands, and at the request of the commissioner, the holder of the lease shall furnish such reports, samples, logs, assays or cores within reasonable bounds as he may deem to be necessary for the proper administration of the state lands under lease.

History: 1953 Comp., § 7-15-22, enacted by Laws 1967, ch. 158, § 22.

19-13-23. Violation of lease; notice; forfeiture.

The commissioner may cancel any lease issued pursuant to the Geothermal Resources Act for nonpayment of rentals, nonpayment of royalties or for violation of any of the terms, covenants or conditions of the lease. Before any cancellation shall be made, the commissioner shall mail to the lessee or assignee, by registered or certified mail, addressed to the post-office address of the lessee or assignee shown by the lease or by specific written notice of change of address given by the lessee, a thirty-day notice of intention to cancel the lease, specifying the default for which the lease is subject to cancellation. No proof of receipt of notice shall be necessary and thirty days after such mailing, the commissioner may enter cancellation unless the lessee shall have remedied the default prior to this time; provided that if the violation could not be remedied within the thirty-day period and the lessee shall have commenced operations to remedy the violation within such period, the lease shall not be canceled for a period not to exceed one year as long as the lessee diligently pursues actions necessary to remedy the violation or after the violation is remedied.

History: 1953 Comp., § 7-15-23, enacted by Laws 1967, ch. 158, § 23; 1979, ch. 386, § 6.

ANNOTATIONS

Cross references. — For forfeiture for failure to comply with purchase contract, *see* 19-7-19 NMSA 1978.

For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of agricultural or grazing lease, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture for defrauding state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, *see* 19-8-27 NMSA 1978.

For forfeiture on failure to comply with coal lease, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

19-13-24. Removing improvements upon termination of lease.

Upon termination of any lease issued pursuant to the Geothermal Resources Act by reason of forfeiture, surrender, expiration of term or for any other reason, the lessee may remove all improvements and equipment as can be removed without material injury to the premises; provided, however, that all rents and royalties have been paid and that such removal is accomplished within two years from the termination date or before such earlier date as the commissioner may set, upon thirty days' written notice to the lessee. All improvements and equipment remaining upon the premises after the removal date as set in accordance with this section shall be forfeited to the state without compensation.

History: 1953 Comp., § 7-15-24, enacted by Laws 1967, ch. 158, § 24.

ANNOTATIONS

Cross references. — For compensation paid by purchaser or subsequent lessee to owner of improvements on state lands, in general, *see* 19-7-14 NMSA 1978.

For removal by certain mineral lessees of removable improvements and forfeiture of rest without compensation, *see* 19-8-29 NMSA 1978.

For payment for value of improvements by purchaser or subsequent oil and gas lessee to owner thereof, *see* 19-10-28 NMSA 1978.

For oil and gas lessee's right to remove certain improvements upon cancellation or forfeiture of lease, *see* 19-10-29 NMSA 1978.

19-13-25. Regulations.

Pursuant to the Geothermal Resources Act, the commissioner shall adopt such reasonable regulations as he may determine are necessary to carry out the provisions of the Geothermal Resources Act. The regulations shall be posted in a conspicuous place in the state land office for a period of at least ten consecutive days.

History: 1953 Comp., § 7-15-25, enacted by Laws 1967, ch. 158, § 25.

ANNOTATIONS

Cross references. — For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

19-13-26. Withholding state lands from lease; lease by competitive bids.

Nothing in the Geothermal Resources Act [19-13-1 to 19-13-28 NMSA 1978] shall be construed to require the commissioner to offer any tract or tracts of state lands for lease. The commissioner may withhold any tract or tracts from leasing for geothermal resources purposes, if, in his opinion, the best interests of the state would be served by so doing. Nothing in the Geothermal Resources Act shall be construed to prohibit the commissioner from rejecting any application at any time prior to approval, or offering the land embraced within the application for lease by competitive bidding by sealed bids or at public auction to the bidder offering the highest bonus in addition to the annual rentals or royalties as set by the commissioner. Notice of the public sale pursuant to this section shall be given by posting in a conspicuous place in the state land office not less than ten days before the date of sale, a written notice of the sale specifying the day and hour when the sale will be held, the place where the sale will be held and a description of the state land to be offered for lease. The notice shall also state that the sale will be conducted through sealed bids or at public auction and any other information the commissioner determines is necessary. Where two or more sealed bids are received making the same offer on the same land, the commissioner shall award the lease to the land in accordance with regulations prescribed by the commissioner.

History: 1953 Comp., § 7-15-26, enacted by Laws 1967, ch. 158, § 26.

ANNOTATIONS

Cross references. — For publication of legal notice, *see* 14-11-1 NMSA 1978 et seq.

19-13-27. Public hearings.

A public hearing pursuant to the Geothermal Resources Act [19-13-1 to 19-13-28 NMSA 1978] shall only be held after notice of the public hearing has been posted in a conspicuous place in the state land office for a period of at least fifteen consecutive days and after a copy of the notice of public hearing has been mailed to each holder of a lease affected. The notice of the public hearing shall be mailed not less than fifteen days prior to the date set for the public hearing and shall be addressed to the address of the lessee shown on the lease or the address of the lessee on record in the state land office. The notice shall specify the day, hour and place of the public hearing and shall also state the purpose for the public hearing.

History: 1953 Comp., § 7-15-27, enacted by Laws 1967, ch. 158, § 27.

ANNOTATIONS

Cross references. — For publication of legal notice, *see* 14-11-1 NMSA 1978 et seq.

19-13-28. Collateral assignment of leases.

Any lease for geothermal resources in good standing, together with improvements placed on the land thereunder, may be assigned as collateral security under the same procedures and in the same manner as provided by law for filing, recording, approval, release and foreclosure of state land purchase contracts issued by the commissioner. When any assignment pursuant to this section has been approved by the commissioner, it shall constitute constructive notice thereof to the world from the date of approval.

History: 1953 Comp., § 7-15-28, enacted by Laws 1967, ch. 158, § 28.

ANNOTATIONS

Compiler's notes. — Sections 19-7-37 to 19-7-47 NMSA 1978 set out the procedures surrounding assignment of state land purchase contracts as collateral.

Severability. — Laws 1967, ch. 158, § 29, provides for severability of the Geothermal Resources Act if any part or application thereof is held invalid.

ARTICLE 14
Reservation of Rights in Lease or Conveyance of State Lands

19-14-1. Commissioner of public lands to reserve certain rights to the state in leases or other conveyances of any mineral interests or rights to minerals in state lands.

In any lease or other conveyance of state lands granting any interest in or rights to minerals of whatsoever kind, including oil and gas, in those lands executed by the commissioner of public lands after the effective date of this section, the following reservation of rights to the state shall be made: "The state has a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or part of any minerals (specify the minerals) that may be produced from the lands covered by this lease (or other conveyance)."

History: 1953 Comp., § 7-16-1, enacted by Laws 1973, ch. 26, § 1.

ANNOTATIONS

Cross references. — For reservation of mineral rights on state lands leased for grazing or agricultural purposes, *see* 19-7-28 NMSA 1978.

For reservation of geothermal resources in leases, deed or sales contracts of state lands, *see* 19-13-16 NMSA 1978.

19-14-2. Waiver of requirements for reservation of rights in leases or conveyance for specific minerals; procedures for waiver.

A. The commissioner of public lands may waive by written order the reservation of rights required under Section 1 [19-14-1 NMSA 1978] of this act in respect to any specific mineral, other than fossil fuels, for which there is no significant consumptive use within the state, but such order may be made only:

(1) after written notice is mailed by certified mail at least twenty days before the hearing required by Paragraph (3) of this subsection to the governor;

(2) after notice of the hearing required by Paragraph (3) of this subsection is posted in the same manner as notice of public sale of mineral leases is required to be posted under Section 19-8-33 NMSA 1978;

(3) after a public hearing on the issue of waiver under this subsection has been held by the commissioner of public lands or his designated representative in accordance with procedures adopted by the commissioner of public lands; and

(4) if the commissioner of public lands finds after considering the evidence produced at the hearing that a waiver of the provision would be in the best interests of the trust beneficiaries considering long-range and short-range benefits.

B. A waiver granted under Subsection A of this section shall be limited to a definite period of time not to exceed five years. Waivers may be renewed by the commissioner but only after following the procedure required under Subsection A of this section.

History: 1953 Comp., § 7-16-2, enacted by Laws 1973, ch. 26, § 2.

19-14-3. Disposal of minerals by commissioner of public lands.

The commissioner of public lands shall dispose of any minerals reserved under this act [19-14-1 to 19-14-3 NMSA 1978] at the best price available in order to gain the maximum benefit for the trust beneficiaries.

History: 1953 Comp., § 7-16-3, enacted by Laws 1973, ch. 26, § 3.

ARTICLE 15
Administration of Public Lands

(Repealed by Laws 1981, ch. 241, § 13.)

19-15-1 to 19-15-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 241, § 13, repealed 19-15-1 to 19-15-10 NMSA 1978, as enacted by Laws 1980, ch. 153, §§ 1 to 10 and as amended by Laws 1981, ch. 241, § 13, relating to administration of public lands, effective July 1, 1990.