

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 2     STATE TRUST LANDS**  
**PART 5         RELATING TO LEASES AND PERMITS FOR CALICHE, GYPSUM, CLAY, SAND,**  
**GRAVEL, STONE, SHALE, PERLITE, VOLCANIC DEPOSITS AND BORROW DIRT**

**19.2.5.1        ISSUING AGENCY:** Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, Santa Fe, New Mexico 87501  
[5/14/1999; 19.2.5.1 NMAC - Rn, 19 NMAC 3. SLO 5.1, 9/30/2002]

**19.2.5.2        SCOPE:** Current and future lessees of state trust lands.  
[5/14/1999; 19.2.5.2 NMAC - Rn, 19 NMAC 3. SLO 5.2, 9/30/2002]

**19.2.5.3        STATUTORY AUTHORITY:** NMSA sections 1978 19-1-23 and 19-8-12.  
[5/14/1999; 19.2.5.3 NMAC - Rn, 19 NMAC 3. SLO 5.3, 9/30/2002]

**19.2.5.4        DURATION:** Permanent.  
[5/14/1999; 19.2.5.4 NMAC - Rn, 19 NMAC 3. SLO 5.4, 9/30/2002]

**19.2.5.5        EFFECTIVE DATE:** May 14, 1999, unless a later date is cited at the end of a section.  
[5/14/1999; 19.2.5.5 NMAC - Rn, 19 NMAC 3. SLO 5.5, 9/30/2002; A, 6/30/2016]

**19.2.5.6        OBJECTIVE:** To provide the general terms and conditions for the mining of caliche, gypsum, clay, sand, gravel, stone, shale, perlite, volcanic deposits and borrow dirt on trust lands. Mining for caliche may be by short-term permit or long-term lease.  
[5/14/1999; 19.2.5.6 NMAC - Rn, 19 NMAC 3. SLO 5.6, 9/30/2002]

**19.2.5.7        DEFINITIONS: “Schedule of fees”** means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.  
[5/14/1999; 19.2.5.7 NMAC - Rn, 19 NMAC 3. SLO 5.7, 9/30/2002; A, 6/30/2016]

**19.2.5.8        LANDS AND MINERALS SUBJECT TO LEASE OR PERMIT:**

**A.** Leases may be issued for the extraction of caliche, gypsum, clay, sand, gravel, stone, shale, perlite, volcanic deposits, and borrow dirt only for those lands shown to be open for leasing of that mineral by the tract books of the state land office.

**B.** The commissioner may issue permits, which are expected to last no more than fifteen (15) days, for removal of caliche on lands with existing pit sites ("community pit") and for the removal of other minerals listed in this rule.

**C.** An oil and gas lessee may use caliche necessarily disturbed from acreage under the oil and gas lease only pursuant to 19.2.5.11 NMAC or may obtain a lease for caliche.

[5/14/1999; 19.2.5.8 NMAC - Rn, 19 NMAC 3. SLO 5.8, 9/30/2002]

**19.2.5.9        LEASES:**

- A.** Application to lease.
- (1)** Applications for lease shall be submitted in duplicate upon forms prescribed by the commissioner and shall contain the following:
- (a)** a nonrefundable application fee in the amount set forth in the schedule of fees;
  - (b)** a legal description of the location of the lands to be leased;
  - (c)** an approximation of the amount of material to be removed during the term of the lease;
  - (d)** the necessary surety;
  - (e)** the required rental payment as set forth in the rent schedule;
  - (f)** a signed and completed environmental questionnaire; and
  - (g)** a plat (prepared by the applicant or designated agents) which is drawn to scale showing the location of the area of the pit site or the area to be mined, if requested by the commissioner.

(2) When the estimated amount of material to be removed is in excess of 40,000 cubic yards, or upon the discretion of the commissioner, such lease may be issued by competitive bid upon the following procedure:

(a) Advertisement. The commissioner shall advertise the sale through publication in a newspaper of general circulation in the area where the material is located, on the same day, once a week, for two consecutive weeks.

(b) Notice. The notice of the sale by competitive bid shall also be posted in a conspicuous place at the state land office.

**B. Mine operation plan and mine reclamation plan for a lease.**

(1) For any lease where it is anticipated that the total surface area disturbed will exceed one acre, the lessee shall submit a mine operation plan and a mine reclamation plan to be approved by the commissioner prior to lease issuance.

(2) The operation plan shall include, but is not limited to, a plan for the orderly development of the reserves. The operation plan shall specify, if applicable, locations and methods of topsoil and overburden stockpiles, tailings disposal, dams or impoundments, slope stabilization methods, runoff diversions, solid and liquid waste disposal, spill reporting and cleanup, sediment control, security and access control, blasting, archaeological, and endangered species clearances, and other applicable information specific to the mining operation, including a list of all required federal and state permits. If the total area to be disturbed is greater than 10 acres, the mine operation plan shall be prepared by a registered professional engineer.

(3) The commissioner may require a hydrologic demonstration that groundwater will not be adversely impacted. The demonstration may include, if applicable, a plat and topographic map showing the location of the lease area in relation to governmental surveys, highways or roads giving access to the mine site, and watercourses, water wells and dwellings within one-half mile of the lease area; and geological/hydrologic evidence demonstrating that surface or subsurface activity will not degrade or otherwise impact ground or surface water. This evidence may include a geological/hydrological discussion of the area and the uppermost aquifer.

(4) The reclamation plan shall address reclamation of all areas disturbed by operations conducted on the lease. The reclamation plan shall consist of reclamation specifics and shall set out the schedule of implementation on a continuing basis during the life of the lease relative to operation, maintenance, contouring, water and sediment control, cleanup and reseeded. Reclamation shall be performed contemporaneously with mining wherever possible.

(5) Upon approval, the mine operation plan and the mine reclamation plan shall be incorporated in the lease by reference and the provisions of the approved plans shall be enforceable in the same manner as any other covenant of the lease.

**C. Lease rental.** An annual rental rate for leases shall be set according to the rent schedule for each 40 acre tract or subdivision under lease, or any portion thereof.

**D. Payment for minerals under lease.**

(1) The purchase price to be assessed on mineral leases shall be based on market value, but, except as provided in Paragraphs (2) and (3) of Subsection D of 19.2.5.9 NMAC, shall be no less than those on the following schedule:

(a) **Gypsum, clay, sand, gravel, stone, shale, perlite, volcanic deposits**

<b>Amount</b>	<b>Minimum purchase price</b>
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No Limit	\$ .55/loose cu. yd.
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(b) **Borrow dirt**

<b>Amount</b>	<b>Minimum purchase price</b>
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No Limit	\$ .40/loose cu. yd.
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(2) For all leases for which the mineral extraction is projected to exceed 5000 cubic yards per year, the commissioner may require the lessee to install and utilize a scale, which has a valid certification from the New Mexico department of agriculture, to measure the amount of minerals mined. For such leases, the purchase price, by weight, shall not be less than the purchase price, by volume, specified in Paragraph (1) of Subsection D of 19.2.5.9 NMAC converted to purchase price, by weight. Factors used to convert volume to weight shall be specified by the commissioner and based on actual density measurements, if available, or, if such measurements are not available, on generally accepted scientific formulas.

(3) Upon the approval of the commissioner, any lessee not required to calculate purchase price by weight under Paragraph (2) of Subsection D of 19.2.5.9 NMAC may use such method to calculate purchase price.

(4) Purchase payments for mineral extraction on leases are to be made by the 20th day of each month following extraction.

**E. Term of lease.**

(1) The term of each lease shall be determined by the commissioner based upon such considerations as the length of time required by the applicant, the demand for the pit site, as well as other relevant factors. However, except as provided in Paragraph (2) of Subsection E of 19.2.5.9 NMAC, no lease shall be issued for longer than five years.

(2) Upon a showing by an applicant that a term greater than five years is necessary, the commissioner, in the commissioner's discretion, may issue a lease for a term of five years and so long thereafter as annual production purchases or annual minimum production payments paid in lieu of actual production purchases exceed a minimum amount specified in the lease (but not less than fifty dollars (\$50.00) per acre of the leased premises). The applicant must demonstrate that capital expenditures, both on and off the leased premises, needed to commence and sustain mine development, production and reclamation and/or processing plants or manufacturing facilities are so great that they cannot be recouped within five years with a reasonable and prudent mine production rate. In any lease issued under this paragraph, the commissioner shall include such rental, reclamation, and any other provisions as the commissioner deems are in the best interest of the trust, and shall specify the period of nonproduction which constitutes abandonment of the lease. Any lease issued under this paragraph shall contain a provision for redetermination of the purchase price and the amount of minimum production payments. The redetermination of the purchase price shall occur annually after the first year of the lease and the redetermination of the amount of minimum production payments shall occur annually after the 15th year of the lease. The redetermined purchase price and amount of minimum production payments shall equal the initial purchase price and amount of minimum production payments, respectively, multiplied by a fraction, the denominator of which is the published, *producer price index for commodities, commodity category 13, non-metallic mineral products*, existing on the date that the lease is issued and the numerator of which is the same index existing on the date of the redetermination.

**F. Assignment, subleasing, and relinquishment of a lease.**

(1) Except as provided in Paragraph (2) of Subsection F of 19.2.5.9 NMAC, no lease under this rule may be assigned or subleased. A lease in good standing may, with the approval of the commissioner and the payment of a fee set forth in the schedule of fees, be relinquished to the state of New Mexico. Relinquishment does not relieve the lessee of any obligations regarding reclamation, unless the commissioner determines that reclamation is not necessary or the duty to reclaim has been assigned and approved by the commissioner.

(2) Any lease issued under Paragraph (2) of Subsection E of 19.2.5.9 NMAC, and in good standing, may, with the written approval of the commissioner, upon such terms and conditions as may be required, and payment of a fee set forth in the schedule of fees, be assigned or sublet to third persons. However, no assignment of an undivided interest or any assignment or sublease of less than a legal subdivision shall be recognized or approved. Provided further, however, the record owner of any such 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. It shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner; but nothing herein shall relieve the record owner of such lease from complying with any of the terms or provisions thereof. All assignments shall be formally executed by the proper parties upon forms prescribed and furnished by the commissioner and shall recite, among other things, the consideration received for the assignment. Assignments shall be filed in triplicate in the office of the commissioner. The original copy of each assignment will be recorded and filed as a public record in the state land office and one copy will be returned to the assignee. Ordinarily, leases shall be transferred or assigned in the names of no more than two persons or legal entities.

**G. Cancellation, revocation of a lease.** Leases may be cancelled for breach or violation of any of the terms or covenants of the lease or of these rules and regulations. Before any such cancellation shall be made, the commissioner shall mail the lessee, by registered or certified mail, sent to the address of such lessee as shown by the records, a 30 - day notice of intention to cancel said lease, specifying the breach or violation for which the lease is subject to cancellation. Thirty days after such mailing, cancellation of the lease may be made unless the lessee shall have sooner remedied the breach or violation to the satisfaction of the commissioner. No cancellation shall be made if the breach or violation is such that it cannot be remedied within 30 days, if the lessee has commenced action to remedy the breach or violation within the 30 days, and if the lessee diligently proceeds with the remedial action until the breach or violation is finally remedied to the satisfaction of the commissioner.

**H.** Reservation of right to purchase production from a lease. The commissioner 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 the purchase, all or part of the minerals that may be produced from the lands embraced in all leases. The commissioner may waive this reservation by following the statutory procedure set out in Section 19-14-2 NMSA 1978, as amended.

[5/14/1999; 19.2.5.9 NMAC - Rn, 19 NMAC 3. SLO 5.9, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

**19.2.5.10 PERMITS:**

**A.** Application for community caliche pit permit.

(1) Application for community caliche pit permits may be obtained either by directly contacting the oil, gas and minerals division of the state land office in Santa Fe or by filing an application with the Hobbs field office for sites in Roosevelt, Chaves, Eddy, and Lea counties. All payments made at the Hobbs field office shall be by check or money order, including application and permit fees, purchase payment, rentals and sureties.

(2) Each application for a community caliche pit permit must contain the following:

(a) a nonrefundable application fee set forth in the schedule of fees;

(b) a legal description of the location of the land to be mined or the pit site number

(if known);

(c) the necessary surety required by Paragraph (2) of Subsection B of 19.2.5.12

NMAC; and

(d) either an advance payment or performance bond, as follows:

(i) advance payment of ten percent of market value, as determined by the commissioner, if the total amount due under Subsection C of 19.2.5.10 NMAC will exceed two thousand dollars (\$2,000.00) with the remaining amount due upon completion of the project; or

(ii) a performance bond in the amount of two thousand dollars (\$2,000.00);

(e) once the application is completed and the availability of the pit site is confirmed, the permit shall be issued by the Hobbs field office or by the Santa Fe office; the permit must be in the possession of the permittee at all times at the pit site location and while the extractions are taking place or the permittee may be subject to payment of double the amount due.

**B.** Application for mineral permit, other than caliche. Application for permits for extraction of minerals covered under this rule, other than caliche, shall be on forms approved by the commissioner and subject to specific terms at the discretion of the commissioner.

**C.** Payment for caliche under a community caliche pit permit.

(1) The purchase price to be assessed on the community caliche pit permits shall be negotiated and based on market value as determined by the commissioner, but, shall be no less than those on the following schedule: caliche:

(a) southern Lea county (township 16 south through 20 south, range 32 east through 39 east; and township 21 south through 26 south, range 32 east through 38 east.):

<b>Amount</b>	<b>Minimum purchase price</b>
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first 7,000 cu. yds.	\$1.45/loose cu. yd.
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next 3,000 cu. yds.	\$1.00/loose cu. yd.
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amounts over 10,000 cu. yds.	\$.55/loose cu. yd.
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(b) all other areas:

<b>Amount</b>	<b>Minimum purchase price</b>
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first 7,000 cu. yds.	\$.85/loose cu. yd.
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amounts over 7,000 cu. yds.	\$.55/loose cu. yd.
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(2) The payment due on permits shall be made within 30 days after expiration of the permit.

**D.** Term of community caliche pit permit and other mineral permits.

(1) The term of each permit shall be determined by the commissioner based upon such considerations as the length of time required by the applicant, the demand for the pit site, as well as other relevant factors; provided, however, that, except as provided in Paragraph (2) of Subsection D of 19.2.5.10 NMAC, no permit shall be issued for longer than 15 days.

(2) If delays beyond the control of the permittee are incurred in the removal of the minerals, or if the permittee can show that the permittee will diligently mine the mineral for a longer period, then the commissioner may, in the commissioner's discretion, extend a permit period beyond 15 days.

**E.** Assignment, subleasing of community caliche pit and other mineral permits. No community caliche pit permit or other mineral permit under this rule may be assigned or subleased.

**F.** Cancellation, revocation of a community caliche pit and other mineral permits. A permit may be cancelled or revoked at any time by the commissioner for breach or violation of the terms or covenants of the permit or these rules and regulations. A cancellation or revocation does not relieve the permittee of any reclamation duties. [5/14/1999; 19.2.5.10 NMAC - Rn, 19 NMAC 3. SLO 5.10, 9/30/2002; A, 6/11/2019]

**19.2.5.11 USE OF NECESSARILY DISTURBED CALICHE FROM OIL AND GAS LEASE**

**ACREAGE.** The commissioner shall make no charge for caliche necessarily moved within the roadbed or within the perimeter of a specific well pad while in the process of developing oil and natural gas under a state oil and gas lease, subject to the following conditions.

**A.** Only caliche derived from the cellar and reserve pit or cut and fill, which is necessarily disturbed in the process of building an access road and/or that oil and gas well location, may be used without charge.

**B.** Caliche necessarily disturbed during construction must remain within the boundaries of the oil and gas lease. If excess caliche exists from a necessary disturbance, that caliche may only be moved from that location to another well site within the lease once an operator or lessee of record obtains a permit and compensates the commissioner pursuant to the terms of a community caliche pit permit.

**C.** Only caliche excavated during cut and fill construction of a well pad or roads built to 19.2.20 NMAC standards will be considered necessarily disturbed. [5/14/1999; 19.2.5.11 NMAC - Rn, 19 NMAC 3. SLO 5.11, 9/30/2002]

**19.2.5.12 GENERAL TERMS FOR ALL LEASES AND PERMITS:**

**A.** Performance reports, reclamation and inspection for leases, community caliche pit and other mineral permits.

(1) Upon termination of a lease or permit, the lessee or permittee shall submit a final report, on the forms prescribed by the commissioner, which shall specify the amount produced under the lease or permit and other information on the operations required by the commissioner. These forms shall be returned to the commissioner along with the final purchase payment.

(2) For areas disturbed by mineral operations, reclamation will be required; however, the commissioner may waive such requirements if it is determined to be in the best interest of the trust to keep the pit open.

(3) The records, books of account and operations pertaining to mining, extraction, transportation, production and sales of minerals taken from leased and permitted lands shall be open and available for inspection or field audit by the commissioner or the commissioner's authorized agents at all reasonable times.

**B.** Surety for leases, community caliche pit and other mineral permits.

(1) Leases: The following bonds are required for each lease issued under this rule

- (a) a performance bond or other surety in an amount set by the commissioner; and
- (b) a minimum damage bond or other surety of at least five thousand dollars

(\$5,000.00).

(2) Community caliche pit and other mineral permits. A permittee under this rule must submit the following bonds:

- (a) a minimum damage bond or other surety of at least five thousand dollars

(\$5,000.00); and

(b) when the estimated purchase price exceeds two thousand dollars (\$2,000.00), and the permittee did not pay ten percent of market value upon application for a permit, the permittee must provide a performance bond in the amount of two thousand dollars (\$2,000.00); the commissioner or the commissioner's authorized agent may, in the commissioner's discretion, waive the requirement for surety upon a showing by the applicant that the permit will be used for the removal of a small, incidental amount of materials.

(3) The required sureties shall be filed at the time of execution of the permit or lease unless a different filing date is allowed by the commissioner.

(4) A surety for damage on purchase contract or patented surface land shall not be less than five thousand dollars (\$5,000.00) for a single lease or not less than ten thousand dollars (\$10,000.00) for multiple leases.

(5) Sureties shall be either bonds issued by a bonding company acceptable to the commissioner or letters of credit or other surety acceptable to the commissioner.

(6) Megabond. With the approval of the commissioner, in lieu of the separate surface improvement damage and performance bonds or other surety, a twenty-five thousand dollar (\$25,000.00) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee as lessee under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources, or as holder under one or more state rights of way or easements which the lessee or its successors or assigns has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases or permits for minerals, oil and gas, coal or geothermal resources and of all state rights of way or easements executed with the commissioner, including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.

C. Surface operations and reclamation for leases, community caliche pit and other mineral permits. Surface trash and waste disposal:

(1) Lessees and permittees shall remove all surface trash and debris caused by their operations from the lease and permit area and shall keep the lease and permit premises free and clear of trash and debris. The commissioner may require the lessee or permittee to fence the lease or permit area.

(2) Hazardous or toxic wastes or petroleum products may not be disposed of on the lease or permit premises, and all such materials used in the operations must be removed from the lease area immediately upon termination of the lease or permit. Due care shall be used to prevent leaks and spills of such materials; clean up of any spills and reclamation of the area shall be performed in consultation with the commissioner.

[5/14/1999; 19.2.5.12 NMAC - Rn, 19 NMAC 3. SLO 5.12, 9/30/2002; A, 6/11/2019]

#### **HISTORY OF 19.2.5 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

Rule 5, Rules Relating To Leases For Gypsum, Clay, Sand, Gravel, Caliche, Stone, Shale, And Other Forms Of Bedded Deposits Including Pumice, Perlite And Forms Of Volcanic Deposits Used In The Manufacture Of Building Blocks, Filed 3/11/1981;

SLO Rule 5, Relating To Leases For Gypsum, Clay, Sand, Gravel, Caliche, Stone, Shale, And Other Forms Of Bedded Deposits Including Pumice, Perlite And Forms Of Volcanic Deposits Used In The Manufacture Of Building Blocks, Filed 1/20/1984;

SLO Rule 5, Relating To Leases For Gypsum, Clay, Sand, Gravel, Stone, Shale, Perlite, Volcanic Deposits, And The Granting Of Permits For Caliche, Filed 8/7/1985;

SLO Rule 5, Relating To Leases And Permits For Caliche, Gypsum, Clay, Sand, Gravel, Stone, Shale, Perlite, Volcanic Deposits, And Borrow Dirt, Filed 9/3/1992.

**History of Repealed Material:** [Reserved]