

PART 882--RECLAMATION ON PRIVATE LAND

Sec. 882.12 Appraisals.

FEDERAL REGISTER CITE: 47 FR 28573 (28599)

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(a) A notarized appraisal of private land to be reclaimed which may be subject to a lien under Section 882.13 shall be obtained from an independent appraiser. The appraisal shall state--

(1) The estimated market value of the property in its unreclaimed condition; and

(2) The estimated market value of the property as reclaimed.

(b) This appraisal shall be made prior to the start of reclamation activities. The agency shall furnish to the appraiser information of sufficient detail in the form of plans, factual data, specifications, etc., to make such appraisals. When reclamation requires more than 6 months to complete, an updated appraisal under Paragraph (a)(2) of this Section shall be made to determine if the increase in value as originally appraised has actually occurred. Such updated appraisal shall not include any increase in value of the land as unreclaimed. If the updated appraised value results in lower increase in value, such increase shall be used as a basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien. OSM shall provide appraisal standards for Federal projects, and the State or Indian tribes shall provide appraisal standards for State or Indian tribal projects consistent with generally acceptable appraisal practice.

Sec. 882.13 Liens.

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(a) OSM, the State, or the Indian tribe has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value; except that--

(1) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(2) The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by OSM, the State, or the Indian tribe pursuant to the Congressional intent expressed in Section 408 of the Act and consistent with State or Indian tribal laws governing liens.

(3) A lien may be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence; and

(4) OSM, the State, or the Indian tribe may waive the lien if the cost of filing it, including indirect costs to OSM, the State, or the Indian tribe,

exceeds the increase in fair market value as a result of reclamation activities.

(b) If a lien is to be filed, OSM, the State, or the Indian tribe shall, within 6 months after the completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments and placing liens against land. Such statement shall consist of notarized copies of the appraisals obtained under Section 882.12 and may include an account of moneys expended for the reclamation work. The amount reported to be the increase in value of the property shall constitute the lien to be recorded in compliance with existing Federal, State, or Indian tribal laws: Provided, however, That prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the lien to be filed against the property involved.

(c) Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

Sec. 882.14 Satisfaction of liens.

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(a) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

(b) OSM, the State, or the Indian tribe which files a lien on private property shall maintain or renew it from time to time as may be required under State or local law.

(c) Moneys derived from the satisfaction of liens established under this part shall be deposited in the appropriate Abandoned Mine Reclamation Fund account.