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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D. C.

IN REPLY REFER TO:

K-61-2039.10e

NOV 17 1961

61-9077-3

Mr. Allen W. Dulles
Director
Central Intelligence Agency
Washington 25, D. C.

Dear Mr. Dulles:

This is in further reply to your letter of November 8, 1961, concerning Mr. R. C. Burkholder's proposal to mine basalt rock in the Langley-McLean area in Virginia. Apparently Mr. Burkholder proposes to run a lateral shaft into the rock strata (some 150 to 200 feet below the surface) from a point along the bluff overhanging the bank of the Potomac River. This mine would go beneath the site of your headquarters building. Consequently, the question has arisen whether Mr. Burkholder may be permitted to mine this rock in the absence of special legislation.

In our opinion there is no existing authority under which Mr. Burkholder may be granted this right.

Your agency's lands and the adjoining Federal lands are in an acquired lands status rather than public domain status. Section 2319 of the Revised Statutes (30 U.S.C., sec. 22) provides that "all valuable mineral deposits in lands belonging to the United States . . . shall be free and open to exploration and purchase . . ." While the words used in section 2319 seem to include all Federally owned lands, judicial interpretation has limited the section's applicability to the public domain. Oklahoma v. Texas, 258 U.S. 574 (1922). It is consequently impossible to make a location on acquired lands under the general terms of the mining law. Special legislation may make lands other than the public domain subject to the mining law, but we know of no legislation applicable to the lands in the Langley-McLean area.

Deposits of oil, gas, oil shale, coal, phosphate, sodium, potassium, and sulfur in acquired lands, with certain exceptions, are subject to leasing under the Mineral Leasing Act for Acquired Lands (61 Stat. 913; 30 U.S.C., secs. 351-359). The Secretary of the Interior is authorized to issue leases under that statute only with the consent

EXECUTIVE SECRETARY

D. J. [Signature]

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of the head of the agency having jurisdiction over the lands containing the deposits to be leased. Under other statutes minerals other than oil, oil shale, gas, coal, phosphate, potassium, sodium, and sulfur lying in certain specified acquired lands may be leased. See 43 CFR 200.32. None of these provisions of law appear to be applicable to the lands under your agency's jurisdiction.

Under the circumstances it appears that the enactment of special legislation would be required to enable Mr. Burkholder to mine the rock underlying the Langley-McLean area.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Thomas J. Cavanaugh".

Thomas J. Cavanaugh
Associate Solicitor
Division of Public Lands

MEMORANDUM FOR: General Cabell

For your information, I am attaching a copy of the 8 November letter to Secretary Udall and the related correspondence.

A copy of Mr. Cavanaugh's letter has already been sent to the DD/S for necessary action.

RMM
AAB (20 Nov 61)
(DATE)

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.