

## Royalties & ODOT Sources

Private material source owners and operators have occasionally expressed concern that ODOT is unfairly entering into their markets since no royalties are charged for the material being removed from the ODOT sites. The response to this concern is rather simple: ODOT is not a “for profit” business, as such ODOT does not charge royalties for material utilized on ODOT projects. In addition, the [2008 Oregon Standard Specifications for Construction](#) Sec 160.40 (b) states “*unless otherwise specified in the Special Provisions, any Prospective or Mandatory Source will be provided by the Agency for use without payment of royalty or other charge.*” Understanding the justification for this response and the differences between the ODOT material source program and that of the Private / Commercial material source operations requires more explanation and understanding.

ODOT has developed several documents that attempt to explain various other aspects of the ODOT Material Source Program. The following documents are available on the [ODOT Material Source web site](#): *ODOT’s Material Source Network, Justification for offering ODOT Material Sources* and *Prospective versus Mandatory*.

To understand the issue of royalties, it is important to be clear what a royalty is. Royalty is not a term that is defined in the **2008 Oregon Standard Specifications for Construction**, however the following definition for royalty comes from **Webster’s New College Dictionary 3<sup>rd</sup> Edition**: *7(a) the granting of a right by a sovereign to a corporation or individual to exploit specified natural resources, (b) the payment for such a right.*

Secondly, it is important to understand the significant differences between the purpose and intent of the ODOT Material Source Program and that of the Private / Commercial material source industry. Following is a bullet list of differences between Private / Commercial and ODOT material source operations:

### **Private / Commercial Sources Operations:**

- Commercial source operations are “for profit” businesses.
- Private source operations can be “for profit” businesses or accessory for profit operations on lands primarily used for other purposes (farms, ranches, timber lands)
- Commercial operators generally develop in areas where there is an adequate market demand for the material to make the site workable and profitable on a long term and continual basis.
- Private sources (not continuously operated) commonly charge a royalty for raw material removed from the site by others
- Commercial source generally incorporate the “royalty” into the cost of processed material that they remove or sell to others from their sites.
  
- Royalty cost are dependent on-
  - the type of material
  - market trends

- availability of similar material
- number of competitors
- demand for the material within the market area
- what the landowner has invested in the material source
- other personal business practices
- Commercial and private operations generally sell material, either raw or processed, to anyone interested in acquiring material for public projects, private and commercial projects and personal use.

### **ODOT Sources Operations:**

- ODOT is a “not for profit” public agency.
- ODOT manages and maintains a statewide network of material sources located along the “ODOT Market Area”, the highway system.
- Material from ODOT sources is used for public purposes only, primarily on ODOT public projects. Other users may be county and city public works departments or other state agencies.
- ODOT does not process the material needed for most ODOT projects, rather contractors are allowed to utilize ODOT sources to obtain raw materials needed to produce the needed material
- ODOT is required to meet all federal, state and local land use and permitting requirements in addition to stringent state and federal environmental requirements.

### **Why does ODOT generally not charge royalties?**

ODOT invests tax dollars to acquire and develop material source properties due to the continuous demand for material associated with highway construction and maintenance. Getting the best roadway maintenance or improvement project value for the lowest cost is the primary objective for the ODOT material source program, and is the justification for why ODOT owns or controls sources of aggregate materials. ODOT owns or controls the raw material and pays the contractor to excavate, process and place the material needed on the project. To require a contractor working for ODOT to pay a royalty for the raw material being excavated from an ODOT source, would just result in higher bid prices for material. The bid prices would likely increase by the royalty amount plus an additional cost for handling of the paperwork associated with tracking material use and royalty payments. Charging a royalty for material used on an ODOT project would lead to the taxpayers paying twice for the raw material, once during acquisition and development of the source and a second time with the royalty charges plus handling fees.

The ODOT Material Source program operates under the philosophy of long term sustainability. ODOT does not develop many project specific sources for a one time use. ODOT invests tax payer dollars into source acquisition, then development activities such as investigation, survey, environmental clearances, testing, land use permitting and state permitting for the long term with the intent of using the same source for the current and future projects. Some ODOT sites have

adequate material reserves for 50 or more years. Utilizing sources in this way allows ODOT to invest in a source with the realization that ODOT will see the benefit of material availability and lower material costs on the initial project and on future projects. As long as the material is utilized for ODOT projects, there is no requirement to recover the investment cost for a source over the course of one or two projects or in any specific business plan model.

### **When does ODOT charge royalties?**

ODOT does charge a royalty for raw material removed from an **ODOT owned** material site under two scenarios.

- When ODOT does not offer a particular source of materials for a project and a contractor, after being awarded the contract, asked to use an ODOT site. In this scenario ODOT evaluates the request and potentially allows the use of the site under a set of conditions, one of which is a nominal royalty. The reason a royalty is charged in this situation is that the ODOT source was not offered in the contract plans and as such, ODOT did not gain the benefit of competitive bidding. Generally no royalty is actually collected, rather the value of the material is simply deducted from monies owed the contractor, or included and shown as a project savings in the Contract Change Order.
- A second scenario where ODOT commonly charges a royalty is when a local public agency requests to utilize an ODOT owned source. Since ODOT sources are acquired, permitted, environmentally cleared, and developed using gas tax dollars, ODOT is legally unable to give the resource away at no charge. Royalty payment from a local agency is commonly taken in equal trade for produced material or some other service or product with comparable value.

It is critical to understand that these two scenarios when ODOT might collect royalty are only applicable to **ODOT owned** material sources.

For **ODOT controlled** sites, those sites where ODOT has the right to utilize the material through an agreement from the federal government, no true “royalty” can be charged. For these sites, the land and the material in these sites belong to the federal government, and ODOT has been given the right to utilize the land and the material for highway purposes at no cost. ODOT does not own the material; as such we can not give it away, nor sell it. For BLM sites secured by ODOT via the federal land appropriation process, collection of a royalty would be a violation of the appropriation and could lead to termination of use.

USFS sites occasionally will have a “royalty” fee associated with the use of the site, but these charges are not true royalties. Again, the material from these sites belongs to the federal government and ODOT has been given the material for free, to be used on the highway system. The “royalty” charges that are commonly associated with these sites are used to cover administrative and / or road use cost. The administrative and road use cost for a project are determined and pro rated on a per cubic yard basis, based on the anticipated volume of material to be removed for the project. These “royalty” fees are deducted from the monies owed the contractor for material produced and then given to the USFS.