

Bureau of Land Management Guide to Mineral Validity Examinations in Alaska



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Placer gold mining has been a part of Alaska's economy, culture, and identity since the Klondike Gold Rush. Although regulation of placer mining has transferred from individual mining districts to various state and federal agencies, many of the rights created by the General Mining Act of 1872 still exist. Current regulations ensure that mining claims are used according to the intent of the mining law which is to promote extraction of minerals from public lands where valuable mineral deposits exist.



Gold flakes in a gold pan (Photo by BLM)

Many of the BLM-managed lands in Alaska are withdrawn, or, in other words, reserved for uses other than mineral development. Many of these mineral withdrawals were put in place in the 1970s primarily to allow the state and Alaska Native Corporations to select lands as a part of the Alaska Native Claims Settlement Act (ANCSA).

Where an active mining claim was staked before land is withdrawn¹, BLM is required to verify that a discovery of valuable minerals exists within the claim before

¹ **Withdrawal (specifically mineral withdrawal):** Public lands withdrawn (by law) from location and entry under the United States mining laws (30 U.S.C. Ch. 2) and reserved for specific public purposes. No new mining claims may be staked or filed in areas covered by a mineral withdrawal. Claims located before a withdrawal

approving new mining activities. Regulations specify that the claim must have been valuable on the date of any existing withdrawals and valuable today. The process used to verify that a discovery exists is called a mineral validity examination (mineral examination). Valid existing rights are established when a mineral examination affirms a discovery of a valuable mineral deposit. The results of a mineral examination are documented in a Mineral Report prepared by a BLM Certified Mineral Examiner through a process guided by the *Handbook for Mineral Examiners* (H-3890-1) and BLM Manual 3060 - Mineral Reports [Preparation and Review](#).

Mineral Examination

Mineral examination combines an administrative review of a claim's location and maintenance along with a field examination. If the administrative review finds the claims are invalid due to improper location or maintenance, or if the examination does not find that a claim contains a discovery of a valuable mineral deposit, the BLM will conclude the mining claim is invalid.

The standard used for deciding whether a claim contains a valuable mineral deposit, goes back to the "Prudent Person Rule" established by the Secretary of the Interior in 1894². Essentially, a valuable deposit exists when a person of ordinary prudence, who has been presented with all facts available related to the minerals within a claim, would be objectively justified in investing their time and money towards developing a valuable mine. A basic component of this determination involves consideration of whether a mineral deposit can be mined at a profit, that is, whether the value of the deposit exceeds the costs of extracting, transporting, processing, and marketing.

A mineral validity examination must include a physical (field) examination of each claim by a Certified Mineral Examiner (CME). The purpose of the field examination is to collect evidence to verify or refute the presence of a discovery. This evidence includes samples for analysis, geologic mapping, and documentation of any previous mineral development. Pertinent legal decisions also dictate that every 10-acre parcel

may be subject to a determination of valid existing rights before mining-related activities take place.

² The Prudent Person Rule, stated in the Secretary's Decision in [Castle v. Womble](#) (19 Pub. Land Dec. 455 (1894)).

within a placer mining claim must be “mineral-in-character,” meaning that every 10- acre parcel contains some quantity of an economically viable mineral resource as evidenced by either physical exposure or reasonable geologic inference.

Regulations requiring validity examinations and recovery of processing costs

In 2001, regulations at 43 CFR §3809.100(a) went into effect, stating:

(a) Mineral examination report. After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal, and whether it remains valid. BLM may require preparation of a mineral examination report before approving a plan of operations or allowing notice-level operations to proceed on segregated lands. If the report concludes that the mining claim is invalid, BLM will not approve operations or allow notice-level operations on the mining claim. BLM will also promptly initiate contest proceedings.

In 2005, 43 CFR §3800.5 (b) provided cost recovery regulations:

(b) Fees. An applicant for any action for which a mineral examination, including a validity examination or a common variety determination, and their associated reports, is performed under §3809.100 or §3809.101 of this part must pay a processing fee on a case-by-case basis as described in section §3000.11 of this chapter for such examination and report. The regulations at 43 CFR §3000.11 require an applicant to pay for all the “reasonable costs the BLM expects to incur” and is generally referred to as the “Cost Recovery Fee.”

If BLM has not completed a mineral examination report, 43 CFR §3809.100(b), allows BLM to approve sampling under a Notice³ or a Plan⁴ of Operations, that is “limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim” and were exposed prior to

the date of withdrawal.

The regulations also state that any mining application time limits are suspended during a validity examination. The validity exam process often takes over 24 months to complete.

To summarize, BLM regulations require a claimant to pay the costs of a validity examination on mining claims where a Notice or Plan of Operations is proposed on withdrawn lands. If the claims are found to be valid, the Plan or Notice will continue toward approval. If the claims are found to be invalid, an administrative contest will be filed by the BLM that could lead to the claims (or portions thereof) being declared “null and void” and all rights associated with the mining claim (or portions thereof) forfeit. The claim owner has the right to appeal any such contest.

The Mineral Examination Process

Evaluation and Notification

When a Plan or Notice is submitted, the proposal is reviewed for completeness. If the land involved has a special designation as specified at 43 CFR 3809.11, Notice-level activities must be authorized through a Plan. Once a Plan or Notice is determined to be complete, the field office manager determines if a validity examination is required. If required, a notification is sent to the operator. The BLM State Office will then arrange for a CME to carry out the examination.



Abandoned Alaskan bucket line dredge. (Photo by BLM)

³ **Plan of Operation (Plan):** A plan for mineral exploration, development, and/or mining that an operator must submit for BLM’s approval, when more than 5 acres will be disturbed, when commercial production of minerals is proposed, when greater than 1,000 tons of presumed ore will be extracted for testing, or when an operator plans to work in an Area of Critical Environmental Concern (ACEC) or other special status area (See 43 CFR §[3809.401](#)).

⁴ **Notice:** A document, containing all the required information in 43 CFR §[3809.301](#), notifying the BLM of mining exploration activity greater than Casual-Use level but less than those activities requiring submittal of a Plan of Operation.

Cost Estimate and Payment

If an examination is required, a CME and the claim owner may discuss the most efficient way to carry out the examination and the CME will provide an estimate of applicable costs. The claim owner will have an opportunity to request adjustments to the cost estimate, normally by agreeing to materially support the field examination or by providing information useful in preparing the mineral report.

Claimants can reduce the time and cost of the examination. For example, if they prepare access to sample sites, provide accurate claim corner location data, provide information regarding local geology, provide mine production records, and local history. Likewise providing current and past mining costs will save time on report preparation. Any information provided is at the discretion of the claim owner.

After consultation, the final estimate and bill for the examination are sent to the claim owner. The claim owner will generally be offered the option to fund the examination as it progresses by making quarterly payments. The final cost estimate may be appealed to the Department of the Interior's Board of Land Appeals but no work on the examination will take place until funds are provided, even if an appeal is filed.

It is possible that unexpected conditions cause the costs to be higher than estimated. The proponent is responsible to cover the additional costs, but BLM will provide regular updates on expenditures. If the claim owner or operator withdraws their Plan, work on the examination will stop and any remaining funds will be returned.

The Field Examination

The field examination includes detailed mapping of the mining claim and pertinent surrounding areas, identification of any potential mineral resources, and the collection of samples that define and represent exposed and potentially valuable mineral resources. During a mineral examination, it is critically important for the claimant to demonstrate their claim(s) contain a discovery of a valuable mineral deposit under the mining laws as of the date of withdrawal and the date of the mineral examination. The CME's responsibility is to confirm the claimant's discovery and will not make discovery for the claimant.

An early visit to the claims may be set up by the CME to meet with the claim owner(s) or their representative,

on site. The owner will be invited to identify mineral resources, claim corners, and other pertinent features. The CME may use this visit to verify exposures of potential valuable minerals existed before any applicable withdrawals went into effect. Exposure must be established before examiners conduct sampling.

Before the field examination begins in full, with BLM concurrence, the operator may prepare sites where BLM may collect samples that represent presumable mineralized resources. BLM staff must collect the samples, and the examiner may select their own sample sites. The owner or their formal representative may assist or observe sampling in a manner and at a distance that ensures there has been no interference (such as salting) with the CME's examination. The claimant or operator is under no obligation to assist the CME in the field examination or prepare any sites for sampling.

The Mineral Report Recommendations and Conclusions

Following the field examination, the CME drafts a Mineral Report. Once a technical review is completed by a Certified Review Mineral Examiner, the report is provided to the delegated officer, usually a Field Office Manager. The report will contain a conclusion regarding the validity of the examined claims and a recommendation(s) based on those conclusions. For those claims found wholly valid, the Plan will proceed toward approval. If claims are found invalid, a contest will be filed to declare the claims null and void. If a 10-acre portion of a valid placer claim is found to be non-mineral-in-character, the report will recommend that the claim/s location be amended by the owner to exclude that 10-acre portion. If the claim is not amended to exclude these portions, a contest will be filed specifically against the non-mineral portions. For more information contact your local BLM Field Office or contact a BLM Public Information Center and request to speak to a Certified Mineral Examiner.



Alaskan gold nuggets (Photo by BLM).

Process Summary for Cost Recoverable Mineral Examinations

Step 1. Once a Notice or Plan is considered complete, a notification stating the application is complete, but a mineral examination is required, is sent to the operator, claim owner(s), and the Alaska State Office.

Step 2. Upon receipt of this notification, the operator/claim owner should contact the identified Certified Mineral Examiner (CME) assigned to the mineral examination to discuss rights, requirements, and anticipated costs of the examination.

Step 3. The CME sends an initial cost estimate to the claimant covering the entire examination and report preparation. This estimate, as described in 43 CFR §3000.11, includes "BLM's actual costs" such as overhead and other indirect costs.

Step 4. Claimant reviews the initial cost estimate and may suggest changes. Changes could include offers to provide services, equipment, or materials that may off-set the government's cost.

Step 5. The CME then considers claimant suggestions, makes necessary changes, and sends the claimant: a Final Decision Letter, Final Cost Estimate, Courtesy Statement (invoice), and Form 1842-1 *How to File an Appeal*.

Step 6. The claimant has 30-days to appeal the Final Cost Estimate decision.

Step 7. The examination may commence with BLM's receipt of payment.

- a) Initial funds required to begin the examination pay for at least the first three months of the examination, generally covering an administrative review and the start of the field investigation.
- b) The claimant must make continuing quarterly payments based on the final or any updated cost estimate, until the final report is considered complete. The claimant is billed 30 days prior to the end of each quarter for the next quarter's anticipated costs if more funds are needed. The claimant has a right to appeal any increase in the estimate (see Step 6), but the examination only continues as cost recovery

fees are available.

- c) BLM may continue an examination at its own discretion and cost

Step 8. Once the field portion of the examination is completed, a draft mineral examination report is produced. Estimated time to complete the draft report is between 12 and 24 months, depending on the complexity.

Step 9. The Draft Report is sent to a Certified Review Mineral Examiner for Technical Review. The review examiner returns the report signed or recommends corrections. Once final, the approved report is signed by the CME and reviewing examiner.

Step 10. The final approved report is forwarded to the authorized officer for their review and acknowledgment, and that manager carries out recommendations of the report, based on the determined status of the claims.

a) Valid Claims: The Plan of Operation proceeds toward approval.

b) Invalid Claims: The Field Manager requests that the State Director contest the validity of the claims. The State Director then directs the BLM staff to file an administrative contest declaring the invalid claims "Null and Void."

c) Valid in-part: The claimant is allowed to amend claims to exclude non-mineral parcels prior to the government filing a contest against the non-mineral parcels.



Sampling a creek with a suction dredge (Photo by BLM)

For more information contact the Mining Staff at your local BLM Field Office.