

What minerals are locatable under the Mining Law of 1872?

Rather than attempting to establish what minerals are locatable, it may be more practical to discuss what minerals are not locatable.

The number of locatable minerals authorized by the 1872 Mining Law has been substantially reduced by several subsequent Federal laws.

The Mineral Leasing Act of 1920, as amended, authorized that deposits of oil, gas, coal, potassium, sodium, phosphate, oil shale, native asphalt, solid and semisolid bitumen and bituminous rock ... may be acquired only through a mineral leasing system.

The Materials Act of July 31, 1947 (61 Stat. 681) amended by the Act of July 23, 1955 (69 Stat. 367), excluded common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay. However, uncommon varieties of sand, stone, gravel, pumice, pumicite, cinders and exceptional clay are locatable. The Act of September 28, 1962 (76 Stat. 652), removed petrified wood from the locatable mineral category.

Are there minerals that were never locatable?

Even before the Materials Act of 1947, and the Act of July 23, 1955, many mineral materials were never locatable even though they could be marketed at a profit. In fact the Materials Act of 1947 was enacted to provide a means to dispose of them. Material in this category includes ordinary deposits of clay, limestone, fill material, etc. Non-locatable minerals generally have a normal quality and a value for ordinary uses.

What are uncommon variety minerals?

Section 601 of Title 30 of the United States Code authorizes the Secretary of the Interior to sell "common varieties" of "sand, stone, gravel, pumice, pumicite, cinders and clay." On July 23, 1955, Public Law 167 (69 Stat. 368; 30 USC 611) was passed to, among other things, prohibit further location of common variety minerals. The Act stated in part:

No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws.

However, the Act went on to provide for an exception for "uncommon variety" minerals at 30 USC 611:

"Common varieties" as used in sections 601, 603, and 611 to 615 of this title does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

Therefore, the statute clearly implies that "uncommon varieties" of such materials exist and are still locatable under the mining law. Uncommon varieties are "valuable because the deposit has some property giving it distinct and special value...."

What special provisions apply to minerals that may be common variety minerals if proposed to be mined under the 1872 mining law?

On mining claims located on or after July 23, 1955, a person must not initiate operations for minerals that may be "common variety" minerals, as defined, until BLM has prepared a mineral examination report, unless they obtain interim authorization. 43 CFR 3809.101

How does BLM determine if a mineral is an uncommon variety?

BLM conducts a common variety determination and prepares a mineral report. A mineral report is generally the factual basis for a management decision.

A number of legal decisions have formulated and refined the tests used to determine whether a particular deposit is an uncommon variety. These tests are as follows:

- (1) there must be a comparison of the mineral deposit in question with other deposits of such minerals generally;
- (2) the mineral deposit in question must have a unique property;
- (3) the unique property must give the deposit a distinct and special value;
- (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use;
- (5) and the distinct and special value must be reflected by the higher price which the material commands in the marketplace ... [or by] reduced costs or overhead so that the profit to the producer [is] substantially more.