

# PLACER MINING CLAIM OWNER'S GUIDE FOR VALIDITY EXAMINATIONS ON BLM MANAGED LANDS IN ALASKA



2014

A guide to understanding your rights and responsibilities and the regulations for validity examinations on BLM - managed lands in Alaska.

Alaska



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## **A GUIDE TO UNDERSTANDING YOUR RIGHTS AND RESPONSIBILITIES AND THE REGULATIONS FOR VALIDITY EXAMINATIONS ON BLM - MANAGED LANDS IN ALASKA.**

A determination of valid existing rights, or 'validity examination,' must be completed when a new mining operation is proposed on claims that pre-date BLM land withdrawals in Alaska. The validity exam must be completed prior to approval of any Plan of Operation. Since 2005, the cost of this type of validity determination has been placed on the claim owner.

### **Definitions:**

**Withdrawal (also mineral withdrawal):** Public lands withdrawn (by law) from location and entry under the United States mining laws (30 U.S.C. Ch. 2) and reserved for specific public purposes.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 withdrawal and claims located before a withdrawal may be subject to a mineral examination prior to mining-related activities.

**Mineral examination (also validity examination):** a field examination of an unpatented mining claim by a minerals examiner to verify or refute the discovery alleged by the mineral claimant (Mineral Law – Terry Maley, 1996)

**Contest:** a mineral contest is an administrative challenge to the validity of a mining claim or site. The contest may be filed by the Government, through BLM; or under certain conditions (see 43 CFR §4.450) by private parties. (BLM Manual – 3870)

**Discovery:** A natural deposit of marketable minerals of sufficient size and quality that a person of ordinary prudence would be justified in further expenditure of time

and money with a reasonable chance of success in developing a mine.

**Notice:** A document, containing all of 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.

**Plan of Operation (Plan):** Documentation describing a mining proposal on BLM lands required when mining activity reaches production level, when exploration activities disturb greater than 5 acres, or when greater than 1,000 tons of presumed ore are extracted. A Plan of Operation may also be required in Alaska when Notice-level activities are proposed on withdrawn or other special status lands.

**Certified Mineral Examiner (CME):** a geologist or mining engineer who is certified by the Director pursuant to Manual Section 3895- Certification of Mineral Examiners, to perform validity examinations and who can testify at a hearing as an expert witness for the Government. (BLM Manual – 3970)

### **Background**

Placer gold mining has not only been an important contributor to the economy of Alaska for over one hundred years but it's also a part of its culture and identity.

Regulation of placer mining has evolved from individual mining districts to various state and federal agencies, however many of the rights created by the General Mining Act of 1872 still exist.

Much of the land managed by the Bureau of Land Management (BLM) in Alaska has been withdrawn, or in other words, reserved

for uses other than mineral development. Many of these mineral withdrawals were put in place in the 1970's primarily to allow the State and Native Corporations to select lands as a part of the Alaska Native Claims Settlement Act (ANCSA).

Where a mining claim existed before the withdrawals, regulations require a determination of valid existing rights. The right to develop the "valuable mineral deposit" on public land is maintained if it can be proven that valuable minerals, in most cases placer gold, existed when the land was withdrawn and that economic

quantities of those minerals still exist. These regulations ensure the mining claims are being used for the intent of the mining law, to promote extraction of minerals, and not for self-appropriation of public land.

The validity determination combines an administrative review of a claim's location and maintenance and a field examination. The purpose of the field examination is to determine if each claim contains the discovery of a valuable mineral deposit that satisfies the "Prudent Person" test, as defined in the 1894 court case *Castle v. Womble*:

*"... where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine, the requirements of the statute have been met."*

Court cases also dictate that every 10-acre parcel within a placer mining claim must be "Mineral-in-Character". This means that every 10-acre parcel contains some quantity of economically viable mineral resource—evidenced by either exposure or reasonable geologic inference. The mineral-in-character requirement also ensures that the claimed public lands are being used for mineral development and not for other personal uses.

If the claims are found to be invalid because of improper location or maintenance or for lack of a discovery - the BLM will act to cancel the mining claims and their associated rights. If any 10-acre parcels within the claim are not mineral-in-character the BLM will contest the non-mineral 10-acre parcels. See the following website for more information on mining claim regulations.

([http://www.blm.gov/wo/st/en/info/regulations/mining\\_claims.html](http://www.blm.gov/wo/st/en/info/regulations/mining_claims.html))

### **Regulations pertaining to mining operations on withdrawn lands**

In 2001 the following regulation went into effect:

43 CFR § 3809.100

*(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 a subsequent regulation was approved:

43 CFR § 3800.5 Fees

*(b) 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.*

There are other pertinent regulations within §3809.100 that allow limited activities mostly associated with on-going validity examinations. The regulations also state that any applicable time limits are

suspended during a validity examination. The process regularly takes 18-months to complete.

To summarize, regulations require a claimant to pay the costs of a validity exam on mining claims where a new Plan is proposed on withdrawn lands. If the claims are found to be valid, the Plan of Operations will continue toward approval. If the claims are found to be invalid, the claims (or portions thereof) will be declared "null and void."

### **The BLM Alaska Mineral Examination Policy**

Regulation 43 CFR §3809.100 does not provide guidance for determining a) how to address mining proposals that are renewals or modifications of approved Plans and Notices or b) how to address reclamation of pre-regulation mining disturbances. The BLM Alaska issued instructional memorandum (IM) 2012-010, stating how the BLM Alaska will implement §3809.100.

### **The Mineral Examination Process**

When a Plan of Operation or Notice is submitted the proposal is reviewed for completeness. Notices submitted for withdrawn lands automatically become Plan-level operations if the land has a special designation such as a Wild and Scenic River. If the reviewer of the Plan determines that a validity examination may be required, the claim owner is informed and the Plan is forwarded to Field Office management for a final decision. If a validity examination is required, a notice will be sent to the claim owner. The claim owner then consults with a Certified Mineral Examiner (CME) assigned to carry out the examination. (See Appendix A- Plan of Operations Flow Chart for BLM Withdrawn Lands.)

The CME and the claim owner discuss how the examination will be best carried out and the CME will estimate the applicable costs. The claim owner will have an opportunity to request adjustments to the estimate by agreeing to provide in-kind support such as approved transportation, equipment use, and by providing information. Once the final estimate and the bill for the examination are sent to the claim owner no further work on the examination will take place until the first payment is received. The decision to require a validity examination and to recover costs from the applicant can be appealed to the Department of the Interior's Board of Land Appeals but no work on the examination will take place until a decision on the appeal is issued.

As stated previously, the process regularly takes 18-months to complete. Miners can reduce this time frame and likewise the cost of the examination if they provide reliable information that can be used by the CME in the mineral report such as regional and local geology; mine production and history; proposed mining plans with associated equipment; as well as fuel, labor, operating and capital costs.

Once payment is received and the examination commences, quarterly payments will be required until the examination is complete and the subsequent report is written, reviewed, and signed by the authorizing manager. If the claim owner or operator withdraws their Plan of Operation, work on the examination with respect to the proposed Plan will stop. The BLM retains the right as the land manager to examine any active mining claim.

For the field examination, a schedule will be arranged for the CME to meet with the claim owner(s) at the mining claims. The operator is encouraged to prepare exposures of the mineral resources for sampling and is allowed to observe the sampling. The owner will also be invited to point out discovery points, claim corners and other pertinent features.

During a mineral examination it is critically important for the *owner* to demonstrate their claim(s) contain a discovery of a valuable mineral deposit under the mining laws, as of the date of withdrawal and as of the date of the mineral examination. The CME's responsibility is merely to confirm the claimant's discovery – the examiner is prohibited from performing exploration.

After the field examination and report are complete the claims will either be found valid and the Plan will proceed toward approval; found invalid and a contest will be filed against the claims to declare them null and void; or they may be found valid with non-mineral 10-acre parcels. If portions are found non-mineral it will be recommended that the claim to be amended to exclude the uneconomic 10-acre portions of the claim or a contest will be filed against just the non-mineral sections.

### Validity Examination References for Placer Miners

There are four main sources used for guidance in regard to how and when validity examinations take place.

1. The Mineral Examiners Handbook (H-3890-1) which is currently being revised so it isn't available on-line but hard copies are available from the Alaska State Office- Energy and Minerals Branch.
2. The BLM Alaska Criteria for Conducting Validity Examinations (IM AK 2012-010).
3. Title 43 of the Code of Federal Regulations:  
[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=911f09acfc483a31a02799f8475dc8af&c=ecfr&tpl=/ecfrbrowse/Title43/43tab\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=911f09acfc483a31a02799f8475dc8af&c=ecfr&tpl=/ecfrbrowse/Title43/43tab_02.tpl)
4. Mineral Law Sixth Edition, by Terry Maley published by Mineral Land Publications, Boise, Idaho. Area libraries should have a copy.

For more information contact your local BLM Field Office or John Hoppe – Certified Mineral Examiner, BLM Alaska State Office by phone at (907)-271-3218 or email: [J05hoppe@blm.gov](mailto:J05hoppe@blm.gov).

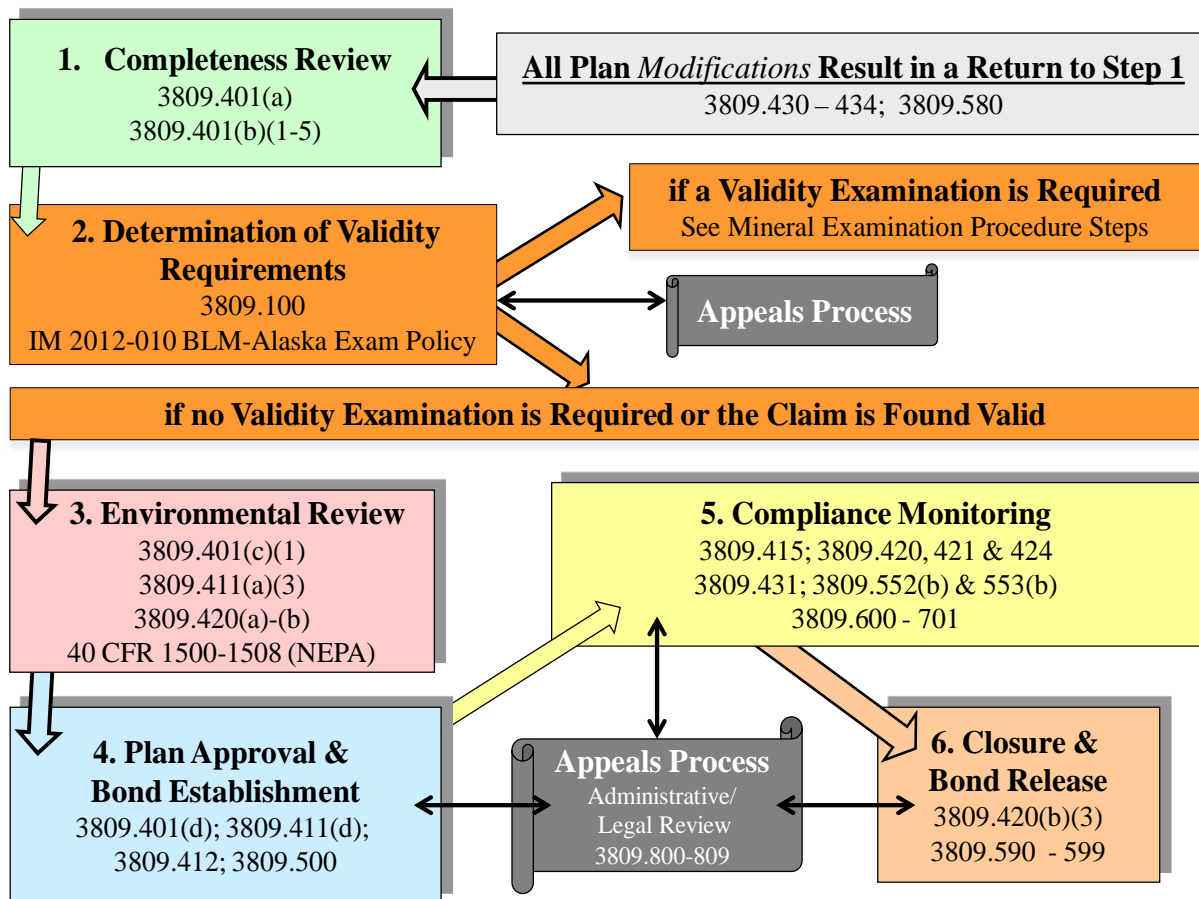
**APPENDIX A: Plan of Operations Process for BLM Withdrawn Lands\***

The mining application process for BLM starts when a Plan of Operation or Notice is filed either through an Alaska DNR - Annual Placer Mining Application (APMA) or filed directly with a BLM Field Office.

The proposal is first reviewed for completeness to ensure all of the information necessary to process the application is included. After the Completeness Review, the type and size of the activity is reviewed as well as the status of the land where the activity is proposed.

If the proposed mining activity is on withdrawn land and is determined to be greater than a Casual Use level activity, it is reviewed by the Field Office to see if a mineral examination is required under 43 CFR §3809.100 and under the BLM Alaska Criteria for Conducting Validity Examinations (IM 2012-010) to establish valid existing rights. If no restrictions exist in the area proposed and it is determined to be a Plan-level operation, the application proceeds to an Environmental Review.

If it is determined a mineral examination *is* required the claim owner and the BLM State Office are notified. The BLM State Office and the claim owner/operator then coordinate to arrange the mineral examination. The following flowchart summarizes how BLM Alaska processes Plans of Operations.



Note: numeric citations refer to section 3809 of Title 43 of the Code of Federal Regulations (CFR), for example, 43 §CFR 3809 includes the regulations for surface management of mining activities under the general mining laws.

**Mineral Examination Procedure:**

- Step 1.** If it is determined a mineral examination is required to establish valid existing rights on withdrawn lands, a decision of the validity requirement is sent to the operator, claim owner(s), and the BLM - State Office. This decision letter will include a description of how to appeal the decision with the required form.
- Step 2.** The operator/claim owner will also be directed to contact the Certified Mineral Examiner (CME) assigned to the application to discuss rights, requirements and anticipated costs of the examination.
- Step 3.** CME sends an initial cost estimate to claimant.
  - a. The costs that must be paid upfront are for the first three months of activity on the mineral examination. This usually includes an administrative review of the mining claim and the field examination.
  - b. The costs, as described in 43 CFR §3000.11, include “BLM’s actual costs” which includes overhead and indirect costs.
  - c. The claimant is then billed 30 days before the end of each quarter for the next quarter’s anticipated costs. If the fees are not paid the work on the exam stops.
- Step 4.** Claimant reviews the estimate and may suggest changes.
- Step 5.** The CME considers suggestions, makes necessary changes, and sends the claimant a final Decision Letter, Final Cost Estimate, Courtesy Statement (invoice), and an Appeal form.
- Step 6.** The claimant has 30-days to appeal the cost recovery decision to the Department of the Interior’s Board of Land Appeals (IBLA) as described in 43 CFR §4.20. The mineral exam process stops, pending the IBLA decision. If the appeal is denied, the CME awaits the first payment.
- Step 7.** Claimant sends initial funds for the cost of the Validity Exam to Collections and Billing System (Initial funds cover the first 3 months.)
- Step 8.** The first 3 months of mineral exam commences – (likely includes field examination, sample processing and resource calculations)
- Step 9.** Claimant makes quarterly payments or preparation of the report stops (BLM may continue at its discretion and cost)
- Step 10.** Samples are processed and a report is prepared by CME (6 to 15 months)
- Step 11.** Report is sent to a Certified Reviewer for Technical Review
- Step 12.** Reviewer returns signed report or recommends corrections.
- Step 13.** Reviewed and approved report is forwarded to the Field Manager.
- Step 14.** Field Manager carries out recommendations of the report.

