

## 43 CFR 3809.100(a) Q & A's

### Valid Existing Rights

**Q. When a segregation or withdrawal is “subject to valid existing rights,” what are “valid existing rights” with respect to the Mining Law of 1872?**

A. To constitute a “valid existing right” that is exempt from segregation or withdrawal from the Mining Law, a mining claim must be valid as of the date of the segregation or withdrawal, and must continue to be valid. A valid mining claim contains a discovery of a valuable mineral deposit and has satisfied all applicable statutory and regulatory requirements for location and maintenance. (See “Valid Existing Rights Determination,” below, for more information about how the BLM determines whether a mining claim is valid.)

**Q. A mining claimant has paid the required maintenance fees. Does this mean that the mining claim is a “valid existing right”?**

A. Not necessarily. Payment of maintenance fees is only one requirement for mining claim validity. Until the BLM determines that there has been a discovery of a valuable deposit as of the applicable dates and the mining claim meets all other requirements for validity, the mining claim is considered “active” in the BLM’s records, with no assumption of validity.

**Q. A mining claimant has evidence of soil geochemical and geophysical anomalies and wants to drill a few more holes after the segregation or withdrawal because the claimant is sure he/she will discover a valuable deposit. Is this mining claim a “valid existing right”?**

A. Probably not. Soil geochemical anomalies and geophysical anomalies alone constitute exploration work only and will not qualify as a discovery of a valuable mineral deposit because these anomalies are not physical exposures (see next section). If the mining claimant has not made a discovery of a valuable mineral deposit and satisfied all applicable statutory and regulatory requirements for location and maintenance before the date of the segregation or withdrawal, the mining claim is not a “valid existing right.”

### Management Discretion under 43 CFR 3809.100

**Q. Who decides whether to determine mining claim validity before acknowledging a notice or approving a plan of operations on segregated lands, such as the SFAs?**

A. Consistent with BLM Manual Section 1203 “Delegation of Authority,” the district manager is the authorized officer for decisions about whether to determine mining claim validity before acknowledging a notice or approving a plan of operations on segregated lands. Depending on your state office, this authority may have been delegated to the field manager. Check your state’s supplement to this manual.

**Q. What factors does the district/field Manager consider when deciding whether to determine mining claim validity on segregated lands, such as the SFAs?**

A. On segregated lands, such as the SFAs, conducting an examination of a mining claim that is likely to be found valid by a mineral examiner is an unnecessary commitment of scarce mineral examination resources. Consequently, the district/field Manager must first consider whether operations under the notice or proposed plan of operations are likely to result in, or augment, a profitable mine. The district/field Manager should also consider the purpose of the segregation,

whether a mineral examination is necessary to protect the lands, and whether there is a mineral exposure that was physically disclosed and existing on the mining claim before the segregation.

**Q. What constitutes a physical exposure?**

A. A physical exposure may be a rock outcrop, a test pit, a drill hole, a shaft or an adit. It must display some degree of mineralization that separates it from the surrounding rock. Evidence of this degree of mineralization may be one of a variety of industry standard methods, including, but not limited to, assays, physical tests, chemical analysis, on-site concentration and processing, x-ray fluorescence, neutron activation, or gamma ray logging methods. Mere geophysical anomalies and soil geochemical anomalies do not constitute a physical exposure.

**Q. How does a district/field manager determine the presence of a physical exposure?**

A. For purposes of deciding whether to conduct mineral examination on segregated lands, the district/field manager should seek the assistance of a certified mineral examiner (CME) or a certified review mineral examiner (CRME) who is experienced with the type of deposit at issue and applicable analysis methods.

**Q. What if my field office does not have a CME to conduct the initial assessment and determination of physical exposure?**

A. Contact your state mining law administration lead to determine if CMEs are available within your state. If no CMEs are available in your state, then work through your state lead to contact the Washington Office Solid Minerals Division (WO-320).

Valid Existing Rights Determination

**Q. How does the BLM determine valid existing rights?**

A. A valid existing rights determination consists of an on-the-ground examination of a mining claim and preparation of a mineral examination report by a CME to document the agency's findings with respect to mining claim validity.

**Q. How long does it take to complete a mineral examination report?**

A. Assuming that CMEs are available, two to four years has been the BLM's recent experience. The length of time is also dependent on the number, size, and types of mining claims involved, the mineral commodities, the topography and competing workload.

**Q. How much does it cost to complete a mineral examination report?**

A. The cost to complete a mineral examination report, including the on-the-ground field examination, will depend on the number, size, and types of mining claims involved, the commodities, access, topography, number of samples required, and other factors. The BLM has found that the minimum cost to complete a mineral examination report is about \$125,000.

**Q. Is the BLM required to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act (NEPA) before completing a mineral examination report?**

A. No. Determining the validity of a mining claim is a non-discretionary action to ascertain whether rights exist. The outcome is governed strictly by facts pertaining to

the mining claim involved. The BLM is not at liberty to choose among alternatives, nor to consider environmental impacts in determining whether a mining claim is valid. For these reasons, the BLM is not required to comply with NEPA before completing a mineral examination report.

**Q. What happens if the mining claim is found not to be a “valid existing right”?**

A. If the mining claim does not meet the requirements for validity then the BLM will initiate an administrative contest proceeding before the Department’s Office of Hearings and Appeals. A hearing is held before an Administrative Law Judge (ALJ). If the mining claimant is not able to demonstrate that the mining claim was valid as of the date of segregation, and continues to be valid, the ALJ will declare the mining claim void. Specific contest procedures and responsibilities are found in Chapter IV of H-3870-1, “Adverse Claims, Protests, Contests, and Appeals.”

**Q. How is the validity determination process affected if the segregated lands are reopened to location under the Mining Law?**

A. If the segregated lands are reopened to location under the Mining Law, either because the segregation expires or the withdrawal application is denied as to those lands, then 43 CFR 3809.100 no longer applies and the BLM is no longer required to conduct a valid existing rights determination before acknowledging a notice or approving a plan of operations.

**Q. How will a Notice or Plan for which the validity determination process has begun be treated, if the segregated lands are reopened to location under the Mining Law?**

A. The BLM will immediately begin processing the plan or notice. The district/field manager will determine if there is a benefit for the BLM to continue with the validity determination or contest. If the district/field manager decides to continue with the validity determination, the BLM will pay all remaining costs (see cost recovery section, below); however, the mining claimant or operator is not entitled to a refund for work completed while the lands were segregated.

Cost recovery

**Q. When is cost recovery required for valid existing rights determinations?**

A. Under 43 CFR 3800.5(b), mining claimants or operators must pay a case-by-case processing fee to cover the cost of any valid existing rights determination and mineral examination report that the BLM requires before acknowledging a notice or approving a mining plan of operations on segregated lands. Cost recovery applies once the district/field manager decides to require a mineral examination report.

**Q. Is cost recovery available for determining the validity of mining claims that are within the boundaries of the proposed plan or notice, but are not on segregated or withdrawn lands?**

A. No. The requirement to determine the validity of the mining claims is triggered by the proposal of operations on segregated or withdrawn lands. Consequently, cost-recovery is available only to determine the validity of the mining claims situated on segregated or withdrawn

lands. If a district/field manager decides to include mining claims on open lands in the mineral examination, or continue with a mineral examination on lands that are reopened after the segregation terminates, then the BLM must pay for that portion of the exam.

### Allowable Operations

**Q. What type of activities can a mining claimant or operator conduct on segregated lands, such as the SFAs, if the field manager decides not to determine mining claim validity before acknowledging a notice or approving a mining plan of operations?**

A. If the field manager decides not to determine mining claim validity before processing the notice or plan of operations on segregated lands, the mining claimant or operator may conduct any activities that are authorized under the notice or approved mining plan of operations, consistent with 43 CFR Subpart 3809 and all other applicable laws and regulations. If the mining claim is declared void for any reason during the segregation or withdrawal, however, the mining claimant or operator must immediately cease operations unless the decision declaring the mining claim void is stayed.

**Q. What type of operations can a mining claimant or operator conduct on segregated lands, such as the SFAs, if the district/field manager decides to determine mining claim validity before acknowledging a notice or approving a mining plan of operations?**

A. Consistent with 43 CFR 3809.100(b), if the field manager decides to determine mining claim validity before acknowledging a notice or approving a mining plan of operations on segregated lands, the mining claimant or operator may conduct activities under a notice or an approved plan of operations limited to taking samples to confirm or corroborate mineral exposures that were physically disclosed and existing on the mining claim before the segregation. The mining claimant may also conduct the minimum necessary annual assessment work under an approved plan of operations.

**Q. How are currently approved plans of operations or accepted notice-level operations affected by the segregation?**

A. The requirement of 43 CFR 3809.100(a) does not apply to currently approved plans of operations or accepted notice-level operations. These operations may continue with no additional approvals or environmental analyses (NEPA) so long as no substantial changes are proposed by the operator. Modifications within segregated areas are treated similarly to a new notice or plan, and 43 CFR 3809.100(a) would apply.