

UPDATE: EXAMINATION OF TITLE TO UNPATENTED MINING CLAIMS¹

Discovery of Valuable Mineral Deposits

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For purposes of “discovery” of a valuable mineral deposit, the Interior Board of Land Appeals (IBLA) has recently held that the “prudent man” test does not require that Bureau of Land Management (BLM) consider the current high price of gold.² Instead, the IBLA recognized that “[t]he prudent person formulation predicts likely future prices based on the historic range of prices for the mineral on the marketability date, and accounts for fluctuations in price by averaging them for the period under consideration.”³ In so finding, the IBLA rejected the claimants’ arguments that the test is whether a prudent man at some point in the future under more favorable circumstances might expect to develop a profitable mine.⁴

The IBLA has articulated multiple and varying definitions of the Marketability Test over time. In a recent case, IBLA framed the marketability test as follows:

“To show that the mineral deposit is marketable, the minerals on the claims must have a reasonable prospect of being sold into an existing market at a profit. A present market encompasses what reasonably could be sold at the time of valuation; actual sales data is not required. . . . A discovery of a valuable mineral exists when there is a reasonable prospect that the commercial value of the deposit exceeds the cost of extracting, processing, transporting and marketing it.”⁵

In *United States v. Armstrong*, the IBLA held that significant changes in market demand can change an uncommon variety mineral (i.e., locatable) to a common variety mineral (i.e., unlocatable).⁶ As a result, the IBLA held that “[o]nce made, a discovery must be maintained,” and “[t]he loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, negates the locatability of the mineral.”⁷ The IBLA concluded that, under the facts presented, the “prudent man” test could not be satisfied; the claimant could not reasonably expect to mine and sell the subject pumice at a profit.

Determining whether there has been “discovery” of a valuable mineral can be a complicated issue, particularly given the varying formulations of the test and criteria in IBLA precedent. Consequently, careful preparation and attention to market and other factors is called for when facing a mineral examination or dispute regarding the existence of a discovery supporting the validity of a mining claim.⁸

¹ The following presents an update to Robert G. Pruitt, *Land and Mineral Ownership in the U.S.* (Rocky Mtn. Mineral Law Fdn. 2010) and Lynn R. Cardey-Yates, updated by Patricia J. Winmill and Jeff Merchant, *Examination of Title to Unpatented Mining Claims - A Refresher*, (Rocky Mtn. Mineral Law Fdn. 2007) (attached hereto). For a more comprehensive discussion covering the topic of discovery, please refer to the paper by Joel O. Benson, *Discovery in the 21st Century, Advanced Mineral Title Examination* (Rocky Mtn. Mineral Law Fdn. 2014).

² See Michael J. Sherman, *Annual Mining and Public Land Law Update* § 14.02[2][a] (Rocky Mtn. Mineral Law Fdn. 2014).

³ 184 IBLA 255, GFS (MIN) 1 (2013).

⁴ *Id.* at 270 (citing *United States v. Jenkins*, 75 I.D. 312, 318 (1968)).

⁵ *United States v. Armstrong*, 184 IBLA 180, GFS (MIN) 19 (2013).

⁶ *Id.* For a more detailed summary of the *Armstrong* opinion, see Michael J. Sherman, *Annual Mining and Public Land Law Update* § 14.02[2][b] (Rocky Mtn. Mineral Law Fdn. 2014).

⁷ *Id.* at 196.

⁸ For a more comprehensive discussion of discovery of valuable mineral deposits, see Joel O. Benson, *Discovery in the 21st Century, Advanced Mineral Title Examination* (Rocky Mtn. Mineral Law Fdn. 2014).

Fees

On June 30, 2014, the BLM increased fees for federal mining claims, as follows:⁹

Recording a Mining Claim (43 C.F.R. § 3830.21(a)):

- \$37.00 one-time location fee.
- \$155.00 initial maintenance fees for lode claims, mill sites and tunnel sites.
- \$155.00 initial maintenance fee for each 20 acres of the placer claim or portion thereof.¹⁰

Maintaining a Mining Claim or Site for One Assessment Year (43 C.F.R. § 3833.21(d)).

- \$155.00 for lode claims, mill sites and tunnel sites.
- \$155.00 for each 20 acres of the placer claim or portion thereof.

As a business and practice point, prior to filing and/or any payment due dates, miners should check for any updated state and federal statutes or regulations, including any changes in fees.

⁹ 79 Fed. Reg. 36662 (June 30, 2014). *See also* 43 C.F.R. § 3000.12 for processing fees.

¹⁰ 43 C.F.R. § 3830.21(a).