



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
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In Reply Refer To:
3809 (910)

Mr. Sheldon Maier
President, Forty Mile Miners Association
276 Eagle Ridge Road
Fairbanks, Alaska 99712

Dear Mr. Maier:

I would like to thank the Fortymile Miners Association for inviting me to attend your September 19 meeting in Fairbanks. I am impressed by the commitment you have to the Fortymile region and appreciate your desire to directly communicate your concerns. I acknowledge the complexity of the issues and want to assure you that I am committed to working with all users of BLM-managed public lands.

During the meeting, I heard concerns that the Bureau of Land Management (BLM) may be misinterpreting regulations, specifically in terms of what "valid existing rights" means and whether a mineral examination is required to start or expand operations on claims in the Fortymile National Wild and Scenic River corridor (WSR). At the conclusion of our meeting I agreed to review the Federal policy and regulations with respect to your major concerns. I am including the requirements for the operation of mining claims in areas affected by mineral withdrawals, specifically claims in the Fortymile WSR. We sincerely hope that the information detailed within this letter can be used by your membership in planning for the future development of their mineral rights.

Discussion

What is the purpose of a mineral withdrawal? As you know, a mineral withdrawal removes an area from entry under the mining laws, meaning that no new mining claims may be staked or filed. Withdrawals (including the Fortymile WSR withdrawal) limit mining activities in areas to maintain other public values reserved for a specific public purpose, in this case the Fortymile WSR. These restrictions are not intended to abolish all activity on existing mining claims.

Does a mineral withdrawal affect my property rights as legal claimant? No. A claimant on withdrawn lands still has the sole right to develop their mineral resources and use of the surface, subject to the laws and regulations that govern mining on BLM-managed public lands.

Is a withdrawal subject to valid existing rights? Yes. However, valid existing rights do not exist until positively established through a mineral examination and subsequent determination of validity. If, on the withdrawal date, a claim was valid under the mining law then it may continue to be operated, subject to the laws and regulations that govern mining on all public lands. The claim would also have to support its validity on the day of the mineral examination.

How does a mineral withdrawal affect mining claims that existed prior to the withdrawal?

There are no immediate effects on to the disposition of the claim. However, additional regulations, titled “*What special provisions apply to operations on segregated or withdrawn lands?*” under Section 3809.100 of Title 43 Code of Federal Regulations (43 CFR 3809.100) may apply. 43 CFR 3809.100 first became effective on November 21, 2000.

How does BLM’s management of claims on withdrawn lands differ from open lands? Activities on either land status require the same administration, environmental evaluation, and operational monitoring. The Secretary of Interior has the discretion at any time to determine if a claim is ‘valid’; 43 CFR 3809.100 requires the BLM to make a determination of validity prior to approving a plan of operations (plan) or notice-level operation (notice) on withdrawn lands. It is important to note that what triggers the validity determination is a claimant’s request to authorize a new plan or notice for withdrawn lands.

Under the regulations, can I continue to operate under my current plan or notice that was in effect prior to the mineral withdrawal? All notices and plans in effect prior to the withdrawal date continue to provide operational authorization. The validity requirement under 3809.100 is triggered by a claimant requesting review and authorization of a new plan, acknowledgement of a new notice, or a ‘substantive’ modification of a pre-existing plan or notice. The Authorized Officer makes the determination if a modification is substantive and requires a validity determination. Examples of a substantial modification could include the addition of new mine areas that were not previously authorized or changing from a hand-shovel-type placer operation to a mechanical operation. The BLM will accept a minor modification without formal approval if it is consistent with the approved plan of operations and does not constitute a substantive change that requires additional analysis under the National Environmental Policy Act.

What is BLM-Alaska’s policy on implementing 43 CFR 3809.100 on withdrawn lands?

Supplementary guidance for implementing the national regulation was issued by the Alaska State Office in 2006, and again in 2012 through Instruction Memorandum No. AK 2012-010. It states, that for withdrawn lands:

The BLM will review and may accept minor modifications to plans and notices without formal approval if they are consistent with the approved plan of operations without requiring a validity examination. The BLM may use the NEPA process to determine if a proposed modification constitutes a substantive change [material modification]. Proposed modifications which are found to be a substantive change to the approved plan will require a mineral exam.

If a claimant or operator submits a plan or notice that is similar to a previously approved plan and it is determined and stipulated that any existing mining related disturbance will be reclaimed, the BLM may approve the plan without conducting a validity examination. If the plan of operation is for land not previously disturbed, a validity exam shall be conducted.

How do the terms validity examination, mineral examination, and administrative review relate to a determination of mining claim validity? A mineral examination to determine valid existing rights is the same as the examination used to evaluate a mineral patent application. An administrative review looks at whether the claim has been maintained properly under administrative procedures, such as proper initial recording, timely filing of maintenance fees, and chain-of-title. The administrative review precedes a mineral examination. In the case of a determination of validity for claims on withdrawn lands, the terms validity examination and mineral examination are often used synonymously. However, the final determination of validity rests with the Authorized Officer and is based on the results of the mineral examination and administrative review.

Who pays the costs for a mineral examination? On October 7, 2005, the BLM issued new regulations requiring the recovery of costs it incurs processing certain documents. Specifically, 43 CFR 3800.5 (b) requires cost recovery for mineral examinations conducted because of 3809.100. Section 3800.5 (b) discusses processing fees on a case-by-case basis as described in 43 CFR 3000.11. Section (b) gives the BLM Authorized Officer the discretion to allow the claimant or operator to conduct some of the work of the examination, thereby reducing direct costs.

It is the claimant's request to initiate a new plan or notice which triggers a mineral examination, which ultimately benefits only the claim owner. The claimant/operator then is responsible for bearing the government's cost to perform the examination.

Enclosed is an excerpt from the recently revised 3809 Surface Management Manual, detailing the examination requirements for all withdrawn and segregated lands (Section 2.7). Also enclosed is the Alaska-specific supplementary guidance issued through Instruction Memorandum AK 2012-010.

The BLM supports mining to the greatest extent possible under the laws and regulations that govern mining on BLM-managed public lands. Occasionally, even with review and careful deliberation, disagreements on interpretation of laws and regulations remain. Under these circumstances, the administrative appeal process available to the public as outlined in 43 CFR 3809.800.

I encourage you to participate in the Eastern Interior Resource Management Plan/Environmental Impact Statement (EIRMP/EIS) planning process. The BLM is required to protect and enhance the outstandingly remarkable values of the Fortymile National Wild and Scenic River while making available as much land as possible for public use. Your specific knowledge and technical experience on mining can contribute to the planning effort. The planning process allows collaboration to ensure that RMP/EIS decisions provide a balance among the diverse interests of the American public.

The BLM is committed to building a strong relationship with the Fortymile Miners Association and other users of BLM-managed public lands. With continued commitment, and open communication and cooperation, we can make the Fortymile the model mining district spoken of at the meeting. If you have any additional questions, please feel free to contact Lenore Heppler, Field Manager, Eastern Interior Field Office, at (907) 474-2320.

Sincerely,



Bud Cribley
State Director

Enclosures

cc: Sheldon and Janne Maier
David Likins
Jeff and Ted Owen
George Seuffert
Janelle Perry
Althea St. Martin
Rhonda Boyles
Bob Walsh
Chad Gerondale