

# EXPLANATION OF "DISCOVERY"

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## Locatable Minerals

Locatable minerals include both metallic minerals (gold, silver, lead, etc.) and nonmetallic minerals (fluorspar, asbestos, mica, etc.). It is very difficult to prepare a complete list of locatable minerals because the history of the law has resulted in a definition of minerals that includes economics of minerals.

Also, certain minerals have been formally excluded from the operation of the law. Starting in 1873, the Department of the Interior began to define locatable minerals as those minerals that make the land more valuable because of their existence, are recognized as a mineral by the standard experts, and are not subject to disposal under some other law. Locatable type minerals on most lands acquired (purchased or received) by the United States and on Indian reservations are leasable. Therefore, it is easier to list minerals that are not locatable because of the complexities listed above.

Since 1955, **common varieties** of sand, gravel, stone, pumice, pumicite, cinders, and ordinary clay are salable, not locatable. Use of salable minerals requires either a sales contract or a free use permit. Disposals of salable minerals from BLM-administered lands are regulated by Title 43, Code of Federal Regulations (CFR), Part 3600. Sales are at the estimated fair market value. A free use permit may be issued to a Government agency or a nonprofit organization. Disposals from National Forest System lands are regulated by Title 36 CFR Subpart C, 228.40. On National Forest System lands, you may need a special use permit from the Forest Service.

**Uncommon varieties** of salable type minerals may be locatable provided that the deposits meet certain tests created by various judicial and administrative decisions. Federal mineral examiners determine uncommon varieties on a case-by-case basis.

Since 1963, **petrified wood** has not been locatable under the mining laws. Hobbyists may remove small amounts of noncommercial use free of charge. The Federal Government may sell larger amounts of petrified wood under applicable regulations (see 43 CFR 3620).

Since 1920, the Federal Government has leased fuels and certain other minerals (see 43 CFR 3000-3590). **Leasable minerals** today include oil and gas, oil shale, geothermal resources, potash, sodium, native asphalt, solid and semisolid bitumen, bituminous rock phosphate, and coal. In Louisiana and New Mexico, sulfur is leasable.

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## "Discovery" of a Valuable Mineral Deposit

Federal statutes do not describe what constitutes a valuable mineral deposit. However, the Government adopted an "economic" definition of locatable minerals that has resulted in a test that makes use of the concept of an economic ore body. Consequently, several judicial and administrative decisions have established the "prudent man rule" of discovery. A Land Decision of the Department of the Interior in 1894, *Castle v. Womble*, 19 LD 455 (1894), states: "...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 statutes have been met."

The Supreme Court approved this definition in *Chrisman v. Miller*, 197 US 313 (1905). In 1968 the Supreme Court approved a parallel concept, the marketability test, in *U.S. v. Coleman*, 290 US 602-603 (1968). The marketability test adds to the prudent man rule and considers economics. It requires that the claimant show a reasonable prospect of selling minerals from a claim or a group of claims. Its use by the Department of the Interior since 1933 is based on the Solicitor's opinion in *Layman v. Ellis*, 52 LD 714 (1929). This decision involved widespread nonmetallic minerals. The Solicitor noted a need for a distinct showing that the mineral could be mined, removed, and marketed at a profit. The Interior Board of Land Appeals ruled in *Pacific Coast Molybdenum*, 90 ID 352 (1983) that proof of past or present profit is not a requirement. However, a profit must be a reasonable likelihood.

Other Departmental decisions require a discovery on each claim, based on an actual physical exposure of the mineral deposit within the claim boundaries. *Jefferson-Montana Copper Mines Co.*, 41 LD 320 (1912), establishes the full test for a lode claim:

- a physical exposure of the mineral deposit,
- evidence that the deposit contains a valuable mineral, and
- engineering and economic data showing a possible profit.

For placer claims, in addition to proof of a discovery of a pay streak, each 10 acres must be shown to be mineral-in-character. Mineral-in-character is based on geologic inference and marketability, not necessarily on an actual exposure. It is used to show the extent of the discovery on the claim(s), but cannot be used alone.

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The above information was taken from the BLM Website on June 28, 2002. If there have been changes to BLM policy or regulations since then, some of the information above may be outdated. You may want to visit the [BLM site](#) to see if there have been any changes.