

Locatable Mineral Determination

The requirements of the federal regulations at 3809.101, are applicable when operations may involve a common variety mineral. The federal regulations at 3830.11 and 12 provide the framework for determining whether a mineral is locatable: locatable minerals must be subject to the general mining laws and certain varieties of mineral materials, such as cambrillic stone and pozzolan, are locatable if they are uncommon because they possess a distinct and special value. Distinct and special value is based on the criteria in *McClarty v. Secretary of the Interior*, 408F.2d 907 (9th Cir. 1969), which are addressed in the regulations at 3830.12(b)(1)(5). Plans of operations for locatable minerals, i.e. uncommon varieties, are properly processed under the regulations at 3809. If the minerals are salable, i.e. common varieties, then the minerals are disposed through a sale contract with the BLM.

As stated in the previous paragraph the criteria used to determine whether or not the material found on a mining claim is locatable and to distinguish between common and uncommon varieties are found in Title 43 CFR Part 3830 Locating, Recording, and Maintaining Mining Claims or Sites; General Provisions, Subpart C – Mining Law Minerals (68 FR 61064, Oct. 24, 2003). The criteria for determining whether material is a common or uncommon variety mineral are found at 43 CFR 3830.12(b) which states:

(b) Under the Surface Resources Act, certain varieties of mineral materials are locatable if they are uncommon because they possess a distinct and special value. As provided in *McClarty v. Secretary of the Interior*, 408 F.2d 907 (9th Cir. 1969), we determine whether mineral materials have a distinct and special value by:

- (1) Comparing the mineral deposit in question with other deposits of such minerals generally;
- (2) Determining whether the mineral deposit in question has a unique physical property;
- (3) Determining whether the unique property gives the deposit a distinct and special value;

(4) Determining whether, if the special value is for uses to which ordinary varieties of the mineral are put, the deposit has some distinct and special value for such use; and

(5) Determining whether the distinct and special value is reflected by the higher price that the material commands in the market place.

The BLM does not mandate any specific testing per say, but in order for an operator to show that their material is locatable, they should provide testing results to BLM that support the contention that the material is locatable because it is an uncommon variety material.

To that end, they should indicate to BLM what unique physical property, properties or combinations of properties, some intrinsic quality, that differentiates it from ordinary varieties of mineral deposits. Tests should be conducted and the results given to BLM including an explanation as to how the tests results show that a given property is unique.

A unique property is not enough in itself to show that the material is uncommon. The unique property must give the material a distinct and special value and that distinct and special value must be for some use. This use may be one to which ordinary varieties of the material are put or it may be one to which ordinary varieties of the mineral cannot be put. In other words, a mineral material has a distinct and special value if it is either more suitable for a common use, or suitable for an uncommon use. Even if a material may have certain physical properties which make it of a good quality for certain purposes, one would still need to demonstrate that the material can be used in a special manner or market. An operator must show that these properties give the material special value.

The comparison of a mineral deposit must include comparison with other deposits of similar material and with other competitive material, used for the same purposes. When the same classes of minerals used for the same purposes are being compared, about the only practical factor for determining whether one deposit of material has a special and distinct value because of a specific unique property is to ascertain the price at which it is sold in comparison with the price for which the

material in other deposits without such property is sold. If a material is purported to have a unique property, is used as other ordinary varieties of the material for similar usages and does not command a higher price than competing material, then there would appear to be no special and distinct value demonstrated.

If a material is put to a use to which ordinary varieties of the substitute materials can be or are put, then an operator must demonstrate that their material would command a higher price in the market than other material used for the same purpose. Such documentation could include signed sales contracts or price commitments with customers. It is not sufficient to simply show that the material meets ASTM criteria. ASTM is a minimal standard for a product to be used in certain applications; it does not imply or impart an unusual quality. To use ASTM standards as a basis for a determination that a material is an uncommon variety, it would be necessary to show that the qualities of the given material so exceed an ASTM standard that the material commands a higher price in the marketplace than similar material.

The BLM should be notified when samples are taken, either in bulk or from drilling. The BLM may take splits, to be used if it becomes necessary for the BLM to implement its own testing as part of a common/uncommon variety determination.