

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[WO-620-1430-00-24 1A]

**Notice of Policy on Mineral Commodity Pricing and Opportunity for Comment****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of policy and opportunity for comment.

**SUMMARY:** The Bureau of Land Management (BLM) is instituting a policy for calculating the mineral commodity price to use when determining whether a mining claim contains a "discovery" of a valuable mineral deposit. The policy is necessary to establish a consistent approach in determining claim validity.

**DATES:** The policy statement is effective July 6, 2000, but BLM will accept public comments for 60 days. BLM will consider the comments and decide whether or not to amend this policy statement. If you wish to comment on the policy, you should submit your comments by September 5, 2000.

**ADDRESSES:** Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240.

Personal or messenger delivery: Room 501, 1620 L Street, NW, Washington, DC 20036.

*Internet e-mail:*

WOCComment@blm.gov. (Include "Attn: MINERAL PRICING")

**FOR FURTHER INFORMATION CONTACT:** Roger Haskins in the Solid Minerals Group at (202) 452-0355. For assistance in reaching Mr. Haskins, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-(800) 877-8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

- I. Public Comment Procedures
- II. Background
- III. Statement of Policy

**I. Public Comment Procedures***How Do I Comment on the Proposed Policy Statement?*

Please submit your comments on issues related to the proposed policy statement, in writing, according to the **ADDRESSES** section above. Your comments should explain the need for any changes you recommend and, where possible, refer to specific paragraphs in the statement.

*Will My Comments Be Available to Others?*

BLM will make your comments, including your name and address, available for public review at the "L Street" address listed in **ADDRESSES** above during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays).

*Can BLM Keep My Identity Confidential?*

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

**II. Background**

The General Mining Law of 1872 establishes the terms by which you may locate and patent mining claims—transfer them to private ownership—on public lands. In order to be valid, your mining claim must contain a "discovery" of a valuable mineral deposit. This means you must have found a mineral deposit and you must have enough evidence to show that the mineral deposit is of such a character that a person of ordinary prudence would be justified in expending additional labor and means, with a reasonable prospect of success, in developing a valuable mine. *Castle v. Womble*, 19 Pub. Lands Dec. 455, 457 (1894). You must show that the mineral can be extracted, removed and marketed at a profit. *United States v. Coleman*, 390 U.S. 599, 602-603 (1968). When determining the validity of mining claims, Federal land management agencies conduct examinations of your asserted discovery to evaluate whether the mineral deposit can be removed and marketed at a profit given the production costs and the prevailing market on a given date. The Bureau of Land Management, the National Park Service, and the U.S. Forest Service each employ certified mineral examiners who conduct these examinations on behalf of the Secretary of the Interior. Their conclusions may later be reviewed by administrative law judges (ALJ) in the Department of the Interior's Office of Hearings and Appeals, by the Interior Board of Land

Appeals (IBLA), and ultimately by the federal courts.

The Secretary must determine the validity of a mining claim when you as the claimant seek to patent the claim, and may also determine the validity of the claim at any other time for any other reason. In any case, you must be able to show that you have discovered a valuable mineral deposit on a particular significant date. We refer to this date as the marketability date. "Marketability date" means the date on which we determine if the mineral deposit you discovered can be removed and marketed at a profit given the production costs and the prevailing market conditions on that date. When we determine the validity of your mining claim, we may determine whether you have discovered a valuable mineral deposit on one or more marketability dates depending, for example, on whether you have filed a patent application or your mining claim is in an area subsequently withdrawn from mining claim location.

An essential element in determining whether a mineral deposit is marketable is the market value of the mineral commodity. For the most part, the commodities subject to the Mining Law—gold, silver, copper, lead, zinc, etc.—have widely reported spot market prices and are traded on public exchanges. Many of these minerals, especially those with volatile prices, are also the subject of "futures" trading based on the projected future market price for the mineral. The major exchanges for mineral commodities are the London Metals Exchange, the New York Commodities Exchange (COMEX) and the Chicago Board of Trade. On these exchanges, the historical spot prices are charted on a monthly basis. Futures prices are often set on a quarterly basis, but monthly futures prices are posted some of the time.

With these published market prices, determining a market value for the mineral to be mined might seem straightforward, but it has not proved a simple matter. While the value must be tied to an appropriate time period, this does not necessarily mean that the market price of the mineral on a specific date must be used to set the mineral's value. The market price on one date may be anomalous, or may represent a rising or falling market that should be taken into account in determining whether a prudent miner may reasonably expect to develop a profitable mine. This problem is obviously more severe in the case of minerals such as gold or molybdenum that historically have markets that may fluctuate substantially, even over a short

period of time. The IBLA summarized these issues in holding that “a mining claimant must show that, as a present fact, considering historic price and cost factors and assuming that they will continue, there is a reasonable likelihood of success that a paying mine can be developed.” *In re Pacific Coast Molybdenum Co.*, 90 I.D. 352, 360, 75 IBLA 16 (1983).

Neither BLM nor the Department has ever addressed the mineral pricing issue in published regulations or established a formal policy in handbooks or manuals. Instead, over the years, mineral examiners, ALJs and the IBLA have followed an *ad hoc* approach. The IBLA case law has not established a firm pricing rule. Rather, the IBLA has reviewed the valuation method used by the mineral examiner or the ALJ to determine whether it is reasonably based on the facts of the case before it. The methods for establishing a market price that emerge from the Department’s practice have ranged widely, but fall into two basic categories: using the market price on a given date, or averaging the market price over several years.

In several cases, the IBLA has approved using market prices on definite dates to set the value of the minerals. For example, in *U.S. v. Shining Rock Mining Corp.*, 112 IBLA 326 (1990), the IBLA affirmed a mineral examiner’s decision to set the price of the mineral as the market price on the date of the hearing before the ALJ. In another case, *U.S. v. Garner*, 30 IBLA 42 (1977), the IBLA affirmed the ALJ’s assessment of marketability based on the market price at the date of the hearing and the market price on the date of the withdrawal of the lands. In *Pacific Coast*, the IBLA concluded that the market price on the date of withdrawal could also be used to determine the profitability of the claim on the date the IBLA decided the appeal, despite a wide swing in molybdenum prices over the intervening four years. 90 I.D. at 360–361.

IBLA has also adopted or affirmed marketability determinations based on average price calculations. In *U.S. v. Crowley*, 124 IBLA 374 (1992), the IBLA used the average price for the five years preceding the pertinent date of withdrawal. A longer average period was selected in *U.S. v. Laczowski*, 111 IBLA 165 (1989), where the IBLA adopted a seven-year average price, from the date that the Government first sampled the claim to the date of the hearing before the ALJ. Mineral examiners report using other averaging methods as well—up to ten-year

historical averages, or weighted averages that give more weight to more recent prices.

In at least one case, the IBLA ignored both the exact date and the average price methods. In *U.S. v. Waters*, 146 IBLA 172 (1998), the IBLA rejected an ALJ’s selection of a six-year average price. Instead, the IBLA adopted the mineral examiner’s slightly higher price as a “reasonably projected price,” noting that the mining claimant had used that price as well. Raising even more questions, the IBLA never actually stated what price would be used in *U.S. v. Gold Placers, Inc.*, 25 IBLA 368 (1976). After rejecting the ALJ’s decision to use the price of gold on a date after the hearing (the ALJ was attempting to reflect a surge in the market price following the hearing), the IBLA concluded that rising costs for mining had outpaced the increase in the value of gold, so the mine would be uneconomic.

This diversity of approaches to mineral pricing is not good policy. It creates uncertainty in the process—for mineral examiners, for claimants, and for others. It can give rise to distortions and accusations of bias, as a sympathetic or unsympathetic mineral examiner may select the method that yields the highest or lowest value for the mineral. The range of pricing approaches used also encourages speculation before the Office of Hearings and Appeals regarding future market prices; the reported cases commonly describe speculative and contradictory evidence on the future of minerals markets.

In order to reduce uncertainty and establish a consistent and reasonable basis for analyzing the economic marketability of a mineral deposit during a mining claim validity determination, the BLM is adopting the following Statement of Policy on the proper method to determine the market price of the mineral at issue. This policy relies on the prices for minerals set in the free market and avoids the speculative approaches that have reduced the reliability and authority of claim validity determinations in the past.

### III. Statement of Policy

The BLM will use the following steps to determine the price of mineral commodities when analyzing the economic marketability of a mineral deposit in determining the validity of a mining claim. This policy will apply to validity determinations for all unpatented mining claims, including those located on lands administered by the BLM, the National Park Service and

the U.S. Forest Service. We will use this methodology only for minerals that have a commodity market price established through trading on a public exchange.

1. *Marketability Dates.* The dates described below are the significant dates on which we will determine if the mineral deposit the claimant discovered can be removed and marketed at a profit given the production costs and the prevailing market conditions on that date.

A. *Mining claims on withdrawn lands.* For any claim located before the withdrawal of the affected lands from mineral entry, BLM will determine if it is valid both as of the date of the withdrawal and the date of the mineral examination.

B. *Mining claims in patent applications.* For any claim included in a patent application, BLM will determine the validity of the claim as of the date it determines the claimant met all the requirements for patenting.

C. *All others.* For any mining claim validity determination where there is no patent application and no withdrawal, BLM will determine the validity of the claim as of the date of the mineral examination. Except for claims subject to paragraph B above, if a mineral examiner concludes that the claim is invalid as of the date of the mineral examination, the examiner must be prepared to address any evidence the claimant might present at the contest hearing regarding validity of the claim on the date of the hearing.

2. *General Policy.* BLM will use a six-year average pricing method. To determine the mineral commodity price to use on any specific marketability date, the mineral examiner will begin with an average of the commodity price of the mineral for the month in which the marketability date occurred. The examiner will then average that price together with: (a) the monthly average commodity prices for each of the 36 months before the marketability date; and (b) the monthly average commodity futures prices for each of the 36 months after the marketability date. To obtain monthly figures for futures prices, the mineral examiner will use the highest volume quarterly futures prices for each of the three months covered by that quarter. For example, if a quarterly price is posted as a first-quarter futures price, that price would establish monthly prices for January, February, and March. The examiner will average a total of 73 monthly averages to arrive at the 6-year average commodity price to use for the marketability date. See paragraphs 3 and 4 for exceptions to the general policy.

The examiner should never use actual commodity prices when determining

the futures prices for each of the 36 months after the marketability date. For example, if the marketability date is February 2, 1996, the mineral examiner will not use prices at which the mineral commodity actually sold on the market for the 36 months after the marketability date. Instead, the examiner will use the futures data that were reported on February 2, 1996. This policy is designed to reflect the futures market that the claimant faced on the marketability date. We are using 36 months, or three years, of futures price data because that is all that is usually available.

The monthly average commodity prices can be obtained from the London Metals Exchange (LME) at <www.lme.co.uk>, the New York Commodities Exchange (COMEX) at <www.nymex.com> or the Chicago Board of Trade at <www.cbtc.com>. Quarterly futures prices can be obtained at <goldsheet.simplenet.com>, <www.futuresweb.com>, and <www.futuresguide.com>. Other sources of archival data are the LME and <www.kitco.com>. The Uniform Resource Locators for these sites may change frequently. There are many other sites available which post commodity pricing data.

3. *Limited Futures Markets.* In instances where a publicly-traded mineral has no futures prices available on the market, the mineral examiner will average the monthly average commodity price for the month in which the significant marketability date occurred with the monthly average commodity prices for each of the 36 months before the marketability date. The mineral examiner will average a total of 37 numbers in this instance. If quarterly futures prices are available for any of the 36 months following the marketability date, the mineral examiner will average the available futures prices on a monthly basis with the monthly average commodity price for the month in which the significant marketability date occurred and the monthly commodity prices for each of the 36 months before the marketability date.

4. *Operating Mines.* When determining the validity of mining claims that are being developed by an operating mine, the mineral examiner will substitute the prices at which the claimant actually sold the commodity during any of the 36 months preceding the marketability date, and during the month in which the marketability date occurs, for the monthly average commodity price that otherwise would be used under paragraph 2. Also, the mineral examiner will substitute any of

the claimant's actual futures sales contract prices for production from the mine for any of the 36 months following the marketability date.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

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**BILLING CODE 4310-84-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-084-1150-EU]

#### Notice of Realty Action, Sale of Public Land in Custer County, Idaho (IDI-32472)

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Sale of public land in Custer County.

**SUMMARY:** The following-described public land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 at no less than the appraised fair market value of \$24,600. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

#### Boise Meridian

T. 7 N., R. 24 E., sec. 25, Lots 7 and 10.

T. 7 N., R. 24 E., sec. 30, Lot 8.

The area described contains 49.2 acres in Custer County.

The patent, when issued, will contain a reservation to the United States for ditches and canals under the Act of March 30, 1890.

The patent, when issued, will be made subject to the following existing rights of record:

1. IDI-21021—A telephone line right-of-way authorized to ATC Communications.
2. IDI-23188—A road right-of-way authorized to Lost River Highway District.
3. IDI-22582—A power line right-of-way authorized to Bonneville Power Administration.

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

**DATES:** Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land

laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

**ADDRESSES:** Upper Columbia—Salmon Clearwater District, Challis Field Office, Rt. 2, Box 610, Salmon, Idaho 83467.

**FOR FURTHER INFORMATION CONTACT:** For additional detailed information, contact Gloria Romero, Realty Specialist, at the address shown above or (208) 756-5421.

**SUPPLEMENTARY INFORMATION:** This land is being offered by direct sale to Dave Nelson of Mackay, Idaho, based on historic use and value of added improvements. Failure or refusal by Dave Nelson to submit the required fair market appraisal amount by September 29, 2000, will constitute a waiver of this preference consideration and this land may be offered for sale on a competitive or modified competitive basis. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests will be conveyed simultaneously.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Challis Field Office Manager, Upper Columbia-Salmon Clearwater District, Challis Field Office, at the above address. Any adverse comments will be reviewed by the Field Office Manager, who may vacate or modify this realty action to accommodate the protests. If the protest is not accommodated, the comments are subject to review of the State Director who may sustain, vacate, or modify this realty action. This realty action will become the final determination of the Department of the Interior.

Dated: June 29, 2000.

**Fritz Rennebaum,**

*District Manager.*

[FR Doc. 00-17093 Filed 7-5-00; 8:45 am]

**BILLING CODE 4310-66-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Bay-Delta Advisory Council's Ecosystem Roundtable Meeting and Ecosystem Roundtable Amendments Subcommittee Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** The Bay-Delta Advisory Council's (BDAC) Ecosystem