



TESTIMONY OF  
JACK LYMAN  
EXECUTIVE VICE PRESIDENT  
IDAHO MINING ASSOCIATION

before the  
FEDERAL LANDS INTERIM COMMITTEE  
IDAHO LEGISLATURE

DECEMBER 4, 2013

I am Jack Lyman, Executive Vice President of the Idaho Mining Association. I appreciate the invitation to appear today to provide comments regarding the impact a transfer of federal lands to state ownership might have on the state's mining industry.

For over 100 years IMA has represented the interests of the state's mining industry. We currently represent six large mining companies (Agrium Conda Phosphate, Hecla Mining Company, J.R. Simplot Company, Monsanto Company, Thompson Creek Mining Company and U.S. Silver and Gold Corporation) that are producing minerals today.

We also represent four companies (Formation Capital, Midas Gold, Paris Hills AGRICOM and Sunshine Silver Mines) that are currently exploring for minerals in the state or are in various stages of preparing mineral lands for development.

While we don't represent the hundreds of small miners in the state, most of what I will say today will be equally applicable to them. I want to make clear, however, that my comments today represents only the views of IMA and our members.

You have undertaken a daunting task as you examine the issues surrounding the transfer of ownership of federal lands in Idaho. In the more than 35 years I have been engaged on natural resource issues, this is at least the third time I have been involved in such an effort. Your task is not easy but can certainly be worth the effort.

While previous efforts did not achieve the ultimate goal of transferring title, those efforts highlighted the frustration citizens and state officials have with their federal overseers. This attention sometimes led to modest changes in state and federal policies that resulted in marginal improvements on the ground. I encourage you to continue your efforts. Even if you don't accomplish your final goal, there may be meaningful opportunities to make a difference in how federal lands are managed in Idaho.

I would also like to congratulate you on the approach you've taken concerning the sale of any lands you may acquire through this effort. HCR 22 makes it clear that 95 percent of the proceeds from any land sale would be returned to the Bureau of the Public Debt to pay down the federal debt. The remaining five percent would be deposited in the Public School Endowment Fund.

I have been surprised that your critics have raised the specter of massive land sales. They are apparently unaware of this provision, have chosen to ignore it or don't take



you at your word. I believe the provisions of HCR 22 so discourage lands sales that the prospect of such sales is virtually non-existent.

You have asked me here today to identify issues and concerns the mining industry might have with this effort. There are several areas of concern but I am confident that none of these are insurmountable. Well-intentional people working together will be able to find solutions to each of these issues. My purpose today is to raise those issues not to offer solutions. If your efforts makes sufficient progress over the next year we will be prepared to come forward with more specific solutions to each of these potential issues.

The Bureau of Land Management has broad authority to administer the development of minerals for the federal government, regardless of land ownership. According to the Idaho Department of Lands BLM has jurisdiction over 35.8 million acres of land in Idaho including 2.3 million acres of split estate where the federal government owns the subsurface minerals and someone else owns the surface.

BLM classifies federal minerals into three broad categories: salable, leasable and locatable.

Salable minerals are widespread, of low unit value, and are often used for construction or landscaping materials; things like sand, stone, gravel, and common clay. Their value depends largely on market factors, the quality of the material, the availability of transportation, and transportation costs. Salable minerals are managed under the Materials Act of 1947 and BLM regulations and are disposed of through contracts of sale or free use-permits.

Leasable minerals are managed under the Mineral Leasing Act of 1920, other leasing acts and BLM regulations. Leasable minerals include energy-related mineral resources such as oil, natural gas, coal and geothermal as well as some non-energy minerals like phosphate, sodium, potassium and sulfur. The most important leasable mineral in Idaho, by far, is phosphate.

Locatable minerals are minerals not that are not leasable or salable and are managed under the federal mining law and BLM regulations. Locatable minerals include metals such as gold, silver, molybdenum, copper, lead and zinc, all of which occur in Idaho. Other locatable minerals include barite, gemstones, gypsum, and certain varieties of high calcium limestone.

The Department of Lands estimates that about 16.4 million acres of federal land would be eligible for transfer under HCR 22. If the state were to obtain title to those



lands, we would expect the minerals on those lands to be disposed of under a system very similar to that in use today on state lands.

Today, all minerals on state lands are disposed of through competitive leases. IDL's Mineral Leasing Program manages almost 200 leases across the state covering more than 40,000 acres. Minerals currently being extracted from state endowment trust lands include phosphate, sand and gravel, decorative stone, garnets, clay and cinders.

State mineral leases are issued for a maximum term of ten years with the right of renewal if the lease is being developed or is in production. The maximum lease size is 640 acres and rent is paid annually with the amount based on the acreage under lease. A royalty is paid on all minerals mined and removed from the lease. Royalty rates vary by commodity: for oil and gas the rate is 12.5 percent, for precious and base metals five percent, for phosphate five percent and for sand and gravel and industrial minerals five to ten percent depending on local market conditions and use.

Rental payment can generally be used as a credit against a production royalty during a lease year. In 2011 IDL received just over \$100,000 in rents and \$3.5 million in royalties from mineral lands. The federal leasing program that same year generated \$9.3 million in mineral royalties plus another \$46,000 in oil, gas and geothermal royalties. The vast majority of state and federal royalties are derived from the mining of phosphate.

If the state were to acquire ownership of federal lands I don't anticipate significant problems dealing with salable minerals and would expect existing contracts to be honored after the transfer. New development of salable minerals would be done under leases which would be executed under rules similar or identical to existing state leasing rules.

I also don't anticipate significant problems dealing with leasable minerals. Again, I expect the state would honor existing federal leases until their renewal date or expiration. The resources would then be available to the operator under a state lease that would be either identical or very similar to the existing state leasing program. I expect royalty rates to remain at the federal rate until the lease expires. Whether or not royalty rates should change to the state rate at lease renewal is an issue we will need to discuss at the appropriate time.

That leaves us with locatable minerals. This is potentially a very sticky wicket. The reason is the federal system for discovering, owning and developing these minerals is significantly different from the state system. In fact, the federal system is so different and the state constitutional requirements are so restrictive that it will not be possible to replicate the federal system at the state level.



The federal mining law allows individuals and companies to acquire the right to minerals through the process of discovery. Anyone can enter federal lands that are open for mineral entry and stake a mining claim if they discover a mineral. That claim, known as an unpatented mining claim, gives the person a well-recognized property right. Subject to the provisions of the law and federal regulations, the claimant can retain that property right for years without actually developing the mineral.

All federal public lands are open for mineral entry unless they have been specifically withdrawn. Withdrawn lands include national parks, national monuments, wilderness areas, Indian reservations, military reservations, scientific testing areas, Bureau of Reclamation projects, wildlife refuges and other similar federal lands in the state. Most of these lands would not be involved in a transfer of ownership. IDL estimates about 16.4 million acres would be eligible for transfer.

According to BLM there are almost 22,000 unpatented mining claims on federal lands in Idaho. Those claims are predominantly on the lands that are eligible for transfer or on the 8.5 million acres of roadless lands that IDL indicates would not be transferred. Claims are generally 20 acres in size so that means about 435,000 acres of land are covered by unpatented mining claims. That represents less than two percent of the lands that would be transferred. A BLM publication describing the mining claim process is attached to my testimony.

One of the real incentives for people to explore for minerals on federal lands is they obtain an exclusive right to what they find. The minerals they seek are difficult to find and are very easy to miss. Any mineral rights system that doesn't provide exclusive ownership to mineral discoveries can only decrease the amount of exploration that occurs. Less exploration will necessarily result in less mineral development over time.

Under the current state mineral system, individuals and companies can explore on state lands but do not obtain any enhanced rights to what they discover. The right to explore is granted by a license and licensees are not given exclusive rights to what they discover and they do not get preferential lease rights. Article 9 of the Idaho Constitution requires that all leases must be made available for public auction. Under that system you can look for gold and you can find gold. But if you do, you then have to compete with others for a lease to develop the gold you found.

If the state acquires title to federal lands we expect you would recognize the valid existing rights associated with unpatented mining claims. The minerals produced wouldn't pay a royalty but would still be subject to the state's mine license tax and

companies and the people they employ would pay income taxes. Our economic studies indicate that each individual miner employed by our members in 2011 added about \$330,000 in additional gross state product, created another 1.83 jobs and generated a total \$33,000 of additional local and state tax revenue.

The more difficult task for all of us will be to figure out how to encourage mineral exploration and development on the 98 percent of the land the state would acquire that isn't covered by mining claims. The current system will need to be examined and, perhaps altered, to meet everyone's needs and expectations. We won't offer specific solutions today but will commit to work with you and others to find a solution to this issue at the appropriate time.

Finally, the Department of Lands has indicated concerns with the thousands of abandoned mines on the lands eligible for transfer. These sites are truly "orphan" sites. That is, there is no identifiable responsible party we can look to for the cleanup of these sites. We share the department's concerns and recommend the federal liability for these sites be clearly established before any transfer of ownership.

Thank you again for the opportunity to share our views on this important effort. We will follow your progress with interest and will notify you if additional issues of concern to the mining industry arise as you proceed. We will also count on you to let us know if there is anything else we can do to assist in your efforts.





**BUREAU OF LAND MANAGEMENT  
IDAHO STATE OFFICE**



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**IDAHO INFORMATION GUIDE:  
LOCATING MINING CLAIMS**



Jan 2010



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Idaho State Office  
1387 South Vinnell Way  
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<http://www.id.blm.gov>



In Reply Refer To:  
3830 (933 NP)

Enclosed is information about locating mining claims in Idaho. We do not maintain a general map of existing claims or areas open to mineral entry. We have surface status maps that indicate BLM, Forest, State, and private lands. A map index is included at the back of this brochure to help you identify the map and BLM District Office that covers your area of interest.

BLM records of land status in Idaho, called Master Title Plats (MTPs), are available for inspection at the Idaho State Office or the BLM District Offices for their management area. These records indicate ownership of lands, and whether or not lands are open to mineral entry. You need to know the legal description (township, range, section) of the area in question in order to use these records. Paper copies of the MTPs may be purchased for \$1.10 each. MTPs are also accessible at the GLO website <http://www.glorerecords.blm.gov/> under the LSR tab.

Mining claim files are kept at the Idaho State Office. These files contain location notice(s), map(s), and other filed documents. Copies from these files are available for a fee (see the enclosed fee list).

Active and closed unpatented mining claim data can be viewed on the Land and Mineral LR2000 web page at [www.blm.gov/lr2000](http://www.blm.gov/lr2000). You may research by owner name, claim name, IMC number, or legal description (meridian, township, range, section). The legal description is required when searching for claims in a particular area. To completely research what lands are open for mining claim location, a combination of these records, in addition to the applicable County's records, should be inspected.

We do not provide official forms but provide sample formats for the following: Mining Claim Location Notice, Affidavit of Assessment of Work, Notice of Intent to Hold, Maintenance Fee, and Relinquishment. The only official form is the Small Miners Waiver

The Information Access Center is open Monday through Friday from 9:00 am to 4:00 pm, except Federal holidays. We can also be reached by phone at (208) 373-3889, or fax (208) 373-3899.



## FREQUENTLY ASKED QUESTIONS

### 1. What are Locatable Minerals?

Locatable minerals can be obtained by locating a mining claim. Locatable minerals include both metallic minerals (gold, silver, lead, etc.) and nonmetallic minerals (fluorspar, ornamental stone possessing unique characteristics, sulfur, barite, zeolite, gemstones, etc.) Originally, all minerals except for coal were obtained under the General Mining Laws, however, Congress has removed certain minerals from the operation of the General Mining Law.

Leasable Minerals. Leasable minerals today include oil and gas, oil shale, geothermal resources, potash, sodium, native asphalt, solid and semisolid bitumen, bituminous rock, phosphate, and coal.

Mineral Materials. Since 1947, the Federal Government has sold common varieties of sand, gravel, homate, stone, pumice, pumicite, cinders, and ordinary clay. Use of salable minerals requires either a sales contract or a free use permit. The BLM may issue free use permits to a government agency or a non-profit organization. The Forest Service administers the disposal of salable minerals from the National Forest System lands.

### 2. What is a mining claim?

“That portion of the public mineral lands which a miner, for mining purposes, takes and holds in accordance with mining laws”. The right is restricted to the development and extraction of a mineral deposit as regulated by the BLM or the Forest Service. The rights granted by a mining claim are valid against a challenge by the United States and other claimants only after the discovery of a valuable mineral deposit. Generally speaking, a mining claim is referred to as a lode claim if mineralization occurs as a vein of ore in place or as a placer claim if minerals are dispersed among particles of sand or gravel. A millsite is used to process minerals from a lode or placer claim.

### 3. Can I file a mining claim on any Federal land?

Not all Federal lands are open for mining claims. There are Federally administered lands in 19 States where you may file a mineral claim or site: Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. In these States, the BLM manages the surface BLM lands and the Forest Service manages the surface National Forest System lands. Excepting mineral materials, the BLM is responsible for the minerals on both BLM and National Forest System lands.

You may prospect and locate claims and sites on lands open to mineral entry. Claims may not be staked in areas closed to mineral entry by a special act of Congress, regulation, or public land order. These areas are withdrawn from the operation of the mining laws.

Areas withdrawn from location of mining claims include National Parks, National Monuments, Indian reservations, most reclamation projects, military reservations, scientific testing areas, most wildlife protection areas (such as Federal wildlife refuges), and lands withdrawn from mineral entry for other reasons. Lands withdrawn for power development may be subject to mining location and entry only under certain conditions. Mining claims may not be located on lands that have been:

- designated by Congress as part of the National Wilderness Preservation System,
- designated as wild portions of a Wild and Scenic River, or
- withdrawn by Congress for study as a Wild and Scenic River.



There is usually a 1/4 –mile buffer zone on either side of a river while the river is being studied for inclusion in the Wild and Scenic Rivers System.

Locatable (hard-rock) minerals on most lands acquired by the United States and on Indian reservations are leasable. The Bureau of Indian Affairs is responsible for leasing minerals on Tribal lands and lands held in trust for the benefit of individual American Indians.

#### **4. Can I start mining after I file my mining claim?**

No. You must get all necessary permits before you start mining, even if you have completed filing your mining claim. Most Federal agencies have regulations to protect the surface resources of the Federal lands during exploration and mining activities. You must submit a notice or a plan of operations before conducting any surface-disturbing activities, except for casual use activities. You also must reclaim disturbed sites after you complete your exploration and mining activities. Most State governments also have mining and reclamation requirements. To avoid duplication, several States have entered into cooperative agreements with Federal agencies. Operators should check with Federal and State agencies to determine the proper lead agency before submitting a plan of operation. You must also provide a financial guarantee

-BLM Lands: Exploration and mining activities on mining claims on BLM-administered land are subject to the regulations of the Secretary of the Interior in 43 CFR 3809 and for Wilderness Study Areas, 43 CFR 3802. These regulations require an operator to prevent unnecessary or undue degradation of the land. For activities other than casual use, they require the operator to submit either a notice or plan of operations and a reclamation plan.

-Forest Service Lands: Exploration and mining activities on lands administered by the Forest Service are subject to the regulations of the Secretary of Agriculture in 36 CFR 228(A). These regulations require that anyone whose proposed operation could likely cause significant disturbance of surface resources must submit a plan of operations. Miners wishing to prospect or locate claims or sites in National Forests should contact the local Forest Service District Ranger concerning questions about operating plans.

#### **5. How can I get minerals commonly used for construction?**

There is no specific application form for requesting removal of mineral materials from public lands. Persons interested in buying mineral materials on public land should contact the nearest BLM Field Office or the Forest Service for mineral materials located in National forests.

#### **6. Can I get mineral materials for free?**

The BLM may grant free use permits to governmental agencies, non-profit organizations, and corporations. The permittee is not allowed to barter or sell the mineral materials acquired under the permit. Federal, State and local governmental agencies may be granted free use permits for mineral materials, if they can show that a public need exists for the material. The BLM may allow non-profit organizations and corporations, such as churches and scouting organizations, to remove limited quantities of mineral materials.

#### **7. Who May file a mining claim?**

- Citizens of the US over the age of discretion, which for Idaho is 18
- Legal Immigrants who have filed an application for citizenship
- Business entity organized under the law of any state
- Duly constituted and appointed agent