

# Fergus County Land Use Policy

August 17, 1992

Restated October 15, 2007

Revised \_\_\_\_\_

The Fergus County Land Use Policy is the county land use plan developed by the Fergus County government to guide the use of lands and resources in Fergus County and to protect the rights of the private landowners.

Federal and State lands make up a substantial part of Fergus County. The nature and intent of Fergus County's land use policy is to protect the customs and cultures of county citizens through protection of private property rights, the facilitation of a free market economy, and the establishment of a process to ensure self-determination by Fergus County residents.

The policy addresses land use management issues directly and is intended to be used as a positive guide to assist federal and state land management agencies in their development and implementation of land use plans and management actions. Fergus County and its citizens support the continued multiple use of federal and state lands in Fergus County. Therefore, in compliance with federal statutes, federal and state agencies to the extent bound by federal law and regulation shall inform local governments of all pending actions affecting local communities and citizens and coordinate with them in the planning and implementation of those actions. The Fergus County Commission, when affected by such actions, shall be consulted and coordinated with in accordance with the constitutions and Laws of Montana and the United States.

Finally, in compliance with federal and state law, including but not limited to the National Environmental Policy Act, the Federal Land Management and Policy Act of 1976 and the National Forest Management Act, all federal and state agencies shall consider, to the maximum extent required by law, the Fergus County Land Use Policy and coordinate with the County Commission for the purpose of planning and managing federal and state lands within the geographic boundaries of Fergus County, Montana.

The Fergus County Commission can amend and add to this Policy at any given time and if any part of the Policy is held invalid such invalidity does not affect other parts of the Policy.

## Preamble

*We, the people of Fergus County, State of Montana, accept, support, and sustain the Constitution of the United States and of the State of Montana. We have demanded through our elected legislature and governor that the federal and state governments comply with the constitution of the United States, Article One, Section Eight, which lists: (1) the specific powers of congress; (2) things forbidden to Congress; and (3) things forbidden to the States. These rights are empowered by Amendment X which says, "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or the people." That the Fifth and Fourteenth Amendments to the United States Constitution provides that private property shall not be taken for a public use without payment of just compensation and without due process. That the Presidential Executive Order 12630 was enacted and requires federal agencies to analyze the economic effects or takings implications of their proposed policies, decisions, rules, and regulations on the private property, private property rights and investment backed expectations of individual citizens. That the purpose of the Civil Rights Act, 42 U.S.C. is to protect the citizens of the United States from acts which "injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States."*

*Further, we reaffirm the fundamental rights of mankind as enumerated in the Declaration of Independence and acknowledge the limited nature of government as intended by the nation's founding father. Based on these cherished traditions, we declare that all natural resource decisions affecting Fergus County ~~shall be all natural resource decisions affecting Fergus County~~ shall be guided by the principles of protecting private property rights, protecting local customs and cultures, maintaining traditional economic structures through self-determination, and opening new economic opportunities through reliance on free markets. Resource decisions made in this manner will enhance environmental quality.*

## **SCHOOLS AND EDUCATION**

Fergus County believes in the continuation of quality education for all children, while recognizing changing educational need and the limitation of funding.

### **POLICIES:**

1. Fergus County recognizes the need for mandatory identification of all public land ownership and/or jurisdiction for all lands in Fergus County on a yearly basis.
2. Fergus County will protect the original interpretation and intent of public and school lands to fund public education.
3. Fergus County will protect and promote private ownership of lands.
4. Fergus County school districts will continue to have control of their long-term policies.

## **BUSINESS AND INDUSTRY**

Fergus County recognizes that business and industry are vital to its economy. Therefore, it is the policy of Fergus County to promote the continuation of a sustainable industrial/business climate by promoting economic opportunity, relying on self-determination, and ensuring open markets conditions.

### **POLICIES:**

1. Land use policies, set forth herein, shall be informed by local government on a county-wide basis, rather than federal or state governments.
2. Fergus County maintains that sufficient water should be available for county-wide agricultural, business, urban, and industrial uses but protected from pollutants.
3. Fergus County believes in the promotion of multiple uses of land and natural resources protecting the ability of agriculture and industry to utilize and develop those resources to their best economic potential in an environmentally sound manner.

## **FORESTRY**

The customs and cultures associated with timber and wood products production in Fergus County is necessary to the livelihood and well-being of its citizens. It is the policy of Fergus County to protect timber resources and promote the continuation of an economically viable and sustainable wood products industry.

### **POLICIES:**

1. To the extent required by statute, local, state and federal agencies must comply with Fergus County's weed management plan.
2. As required by federal law and regulation, federal and state government shall consult with Fergus County before setting policies, thus taking into account local concerns. ~~instead of yielding to outside interest.~~
3. Fergus County recognizes the need for more intensive management of state and federal lands to identify lands for high forest productivity; using modern techniques to utilize and promote timber growth, wildlife, and livestock grazing.
4. State, federal, or local governments should not be able to deny or restrict timber harvesting on private lands.
5. Fergus County Endorses the planning efforts of any governmental agency in promoting healthy forests which involves timber harvesting.

*(NOTE\* #5. Was moved and inserted here from the proposed natural resource section.)*

### **WILDLIFE/ENDANGERED SPECIES**

Fergus County shall promote wildlife opportunities compatible with local customs and cultures and within the constraints of private property rights and local self-determination.

#### **POLICIES:**

1. State and federal agencies furnishing wildlife habitat must take on management of those species and the control of wildlife populations, Fergus County supports the requirement that state and federal wildlife management agencies assume financial responsibility, including depredation to private property by said species.
2. Fergus County strongly encourages federal and state agencies to manage their wildlife populations in Fergus County taking into consideration of local economics, heritage, cultures, and private property rights.
3. Fergus County shall support realistic sustainable wildlife population levels allowing for recreational hunting of game animals as a management tool for population control. The property rights of individuals is recognized as more important than fish, wildlife, and endangered or threatened species.
4. Fergus County supports no net loss of livestock grazing AUM'S for any permittee due to increasing wildlife population and habitats. If there is an increase in available public habitat for wildlife and game numbers are allowed to increase, there will be a proportionate increase in livestock AUM'S
5. Pursuant to the 5<sup>th</sup> Amendment of the US Constitution, there will be no "taking without just compensation" of private property rights to create

protected habitat for fish, wildlife, and threatened or endangered species.

6. Fergus County will establish policies concerning designation and responsibility of endangered species and their habitat, both monetarily and physically, for depredation caused by and for the maintenance of these designated species. As required by law, any state or federal agency will coordinate with the Fergus County Land use Policy if considering declaration of or introduction of an endangered species.
7. Realizing that Fergus County relies on the multiple use of public lands for recreation, livestock grazing, logging, fishing, and mining and that these uses are sustainable and renewable resources, Fergus County shall promote multiple uses and shall oppose the creation of wilderness designations which impede economic opportunities.

### **TOURISM AND RECREATION**

Fergus County recognizes that the development of its recreation resources is essential to its long term economic and cultural viability. Fergus County shall promote recreational and cultural opportunities compatible with local customs and cultures within the constraints of private property rights and local self-determination.

#### **POLICIES:**

1. Fergus County's policy will be to retain adequate legal access for multiple use of public lands.
2. Fergus County will endeavor to promote better understanding/communication regarding access to public lands and the legal description of those public lands.
3. Fergus County supports and encourages historic tourism/recreation – i.e. rodeos, fairs, winter recreation.
4. Hunting and fishing are part of Fergus County's customs and cultures. Therefore, the Fergus County Land Use Policy supports hunting and fishing rights.

### **MINING, RENEWABLE ENERGY, AND NATURAL RESOURCES**

Fergus County recognizes that the development of its abundant mineral, renewable energy, and natural resources are economically desirable. It is the policy of Fergus County to promote long term availability and responsible development of its mineral, renewable energy, and natural resources.

#### **POLICIES:**

1. Fergus County's policy will be to assure that mining will enjoy Constitutional opportunities provided by law, the multiple use concepts,

and protect private property rights. The policy endorses the 1872 Mining Law concepts of self initiation, right of access to mineral land (with consideration of surface ownership), diligent development, security of tenure, and the rights of the small miner. (Attachment B Summary of 1872 Mining Law)

2. Fergus County recognizes that mining, **renewable energy, and natural resource development** has been and continues to be an important social and economic part of Fergus County and must be allowed to continue in an environmentally and socially responsible manner. Fergus County will encourage the education of the public regarding the importance of mining, **renewable energy, and natural resource development** to its economy and the free enterprise system, the value to and uses of extractive minerals, **renewable energy, and natural resource development** in our society, and the effect of legislative and regulatory activities on mining, **renewable energy, and natural resource development**.
3. Fergus County endorses the compliance by mining, **renewable energy, and natural resource development** interests of all applicable laws and regulations, terms and conditions of operating permits, and sound reclamation practices.
4. Fergus County will endorse policy to ensure that no undue restraints are placed on mining within historic mining areas and districts in Fergus County.
5. **Fergus County will endorse policy to ensure that no undue restraints are placed on natural resource development in Fergus County.**
6. **Fergus County will endorse policy to ensure that no undue restraints are placed on renewable energy development in Fergus County.**

## **AGRICULTURE**

The customs and cultures associated with agricultural production in Fergus County are necessary to the livelihood and well-being of its citizens. Therefore, it is the policy of Fergus County to protect agricultural land and promote the continuation of agricultural pursuits by protecting private property rights, relying on self-determination, and ensuring open market conditions.

### **POLICIES:**

1. Fergus County supports the protection of private property rights including the historical use of the land by individuals to produce food and fiber without undue regulation.
2. Fergus County believes all land use decisions should take into account the effect on the economy with recognition of the fact that agricultural production is the largest segment of our economy and affects other area businesses, services, schools, and our tax base.

3. Fergus County believes in no “takings” or “condemnations” without just compensation and in local control versus outside mandates in regard to, but not limited to, environmental concerns, water uses, and endangered species.
4. Fergus County supports the “multiple use” concept on public land and believes there should be “no net gain” of public lands within Fergus County ~~within any two year time frame.~~
5. Fergus County will not endorse any federal or state monument, wilderness, or wildland designations unless it has support of the Fergus County constituents and the Fergus County Commissioners.

## **WATER RESOURCES**

Fergus County recognizes that the protection and development of its water resources are essential to its short and long term economic and cultural viability. Fergus County shall recognize, within the context of customs and cultures, the use and development of private rights and shall require, to the extent mandated by law, full compliance in the acceptance and enforcement of such designations, and final adjudication of existing rights in a timely manner.

### **POLICES:**

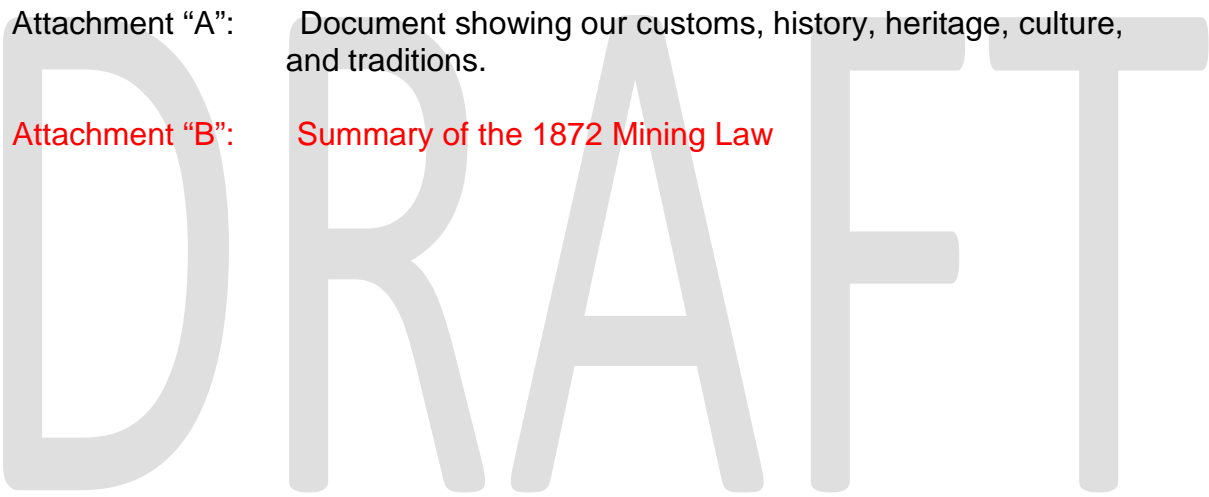
1. The protection of existing water rights and the protection of historic water uses within the county are of primary importance to the county’s economic and cultural well-being. Therefore, transfers in water uses should be carefully considered in relationship to the history, traditions, economics, and culture of Fergus County. Any federal or state proposed designation of Wild and Scenic Rivers and all federal and state policies regarding riparian management in Fergus County shall be coordinated with the county commission. Federal and state agencies managing waterways and wetlands containing endangered or threatened species shall coordinate their management activities and plans with the County Commission to the maximum extent of the law.
2. Fergus County shall promote, monitor and pursue development of water uses for existing as well as future water rights for agriculture, municipal, industrial, and domestic purposes. In addition, Fergus County shall promote alternative uses of water, including but not limited to recreation and hydro-electric power.
3. Fergus County recognizes the historical use of water by man, vegetation, livestock, and wildlife within Fergus County.
4. To the maximum extent allowed by law, the Fergus County government shall be notified of all state, interstate, and federal actions that have any impact on the water of Fergus County prior to such actions being initiated. In addition, such proposed actions, including federal and state proposed Wild and Scenic River designations, shall be coordinated with the Fergus County Commission and the Fergus

County Land Use Policy prior to adoption and implementation. It is the intent of Fergus County to assist federal and state agencies in the planning and management of Fergus County's natural, cultural, and economic resources.

- 5. Fergus County shall continue to develop a water use policy to ensure both water quantity and water quality.
- 6. Fergus County shall protect water quality by requiring solid, toxic waste, or hazardous sitings comply with county policy. No radioactive waste sites shall be allowed in Fergus County due to unknown danger to the county water resources.
- 7. Fergus County will support all applicable regulations pertaining to the monitoring of water resources.
- 8. Fergus County will insist that any treatment of Big Springs water for municipal use shall be determined by the people of Lewistown.

Attachment "A": Document showing our customs, history, heritage, culture, and traditions.

Attachment "B": Summary of the 1872 Mining Law



## **Attachment A**

### **Fergus County Land Use Policy**

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### **FERGUS COUNTY HISTORY**

The area now known as Fergus County has fallen under many jurisdictions in the past two centuries. Originally part of the Louisiana Territory when President Thomas Jefferson purchased it from France in 1803, it was later part of the Territories of Nebraska, Dakota, Idaho and finally Montana. When the Territory of Montana was formed in 1864, it was necessary to divide it into counties. The First Territorial Legislature established the original nine counties, and seven more were added before the territory became a state. After several years of appealing to Congress for statehood, Montana joined the Union as the forty-first state on November 8, 1889.

The Judith Basin was the summer encampment for the Crow, Blackfeet, Nez Perce, Flathead and various other Native American tribes for at least a century before the Lewis and Clark expedition in 1805. The present location of Lewistown was the center of Indian encampments and the gathering place of many Indian tribes, owing to its splendid access to wood, water, grass and abundant game.

With a treaty pending to locate the Crow Indians on a reservation in the Judith Basin, Nelson Story, Sr. and Charles W. Hoffman of Bozeman sent Peter Koch to the Judith Basin to build a trading post for the new Crow Agency. The site was on Trout creek, now Big Spring Creek, near the mouth of Little Casino Creek and was named Fort Sherman.

But, the treaty was not ratified, and Fort Sherman was sold to the Dawes brothers who then sold to Alonzo Reed and John Bowles. Reed and Bowles floated the dismantled Fort Sherman down Big Spring Creek and rebuilt on the site where the Carroll Trail crossed Big Spring Creek. They operated there under the name of Reed and Bowles from Nov. 1874 to 1880. In 1880 Reed and Bowles dissolved their partnership and in 1881 Reed returned to the Fort Sherman site and ran a trading post and post office there under the name of Reed's Fort.

The 7<sup>th</sup> United States Infantry came to the area in the summer of 1874 and established Camp Lewis (at 311 W Main in the present town of Lewistown). Camp Lewis was established to guard the Carroll Trail, which stretched from Carroll, Montana located on the Missouri River above the Musselshell to Reed and Bowles' Trading Post, through Judith Gap to Fort Logan and on to Helena. Camp Lewis was named in honor of Major William H. Lewis, but the major was never stationed in the camp. After 1881, the community on Big Spring Creek was commonly known as Lewistown.

“In 1879, some 25 Metis families, traveling in Red River carts, ended their circuitous journey from Canada to Big Spring Creek. These Metis, descendants of the French and Indian, arrived in Central Montana to establish their first permanent settlement before any appreciable white migration occurred. ‘Big Spring Creek’ had 150 Metis families. The present site of Lewistown was taken as homesteads by Francis A. Janeaux and Paul Morase...” (From Lewistown Historic Resource Survey by Ellen Cornwall and Kenneth R. Sievert)

In the spring of 1885, during the 14<sup>th</sup> Legislative Assembly, Montana Territory, a bill sponsored by the Honorable James Fergus, delegate from Meagher County was introduced and passed. This bill created Fergus County out of the northeastern part of Meagher County. The new county became operative on December 6, 1886 through the selection of officers on November 2, 1886. The following men were chosen to hold office:

Sheriff: John Beck	Clerk of District Court: Charles S. Fell
Clerk & Recorder: Wm. H. Kelly	Probate Judge: Daniel A. Meagher
County Attorney: Frank E. Smith	Assessor: Michael Gurnett
Surveyor: L.W. Eldridge	Coroner: A. W. Sifton
Superintendent of Schools: David Galbreath	
Public Administrator: S. W. Darling	

The new county covered an area approximately 130 miles from east to west and 90 miles from north to south at the longest points. It contained 209 townships, over 7,524 square miles and 4,814,000 acres. The original Fergus County was subsequently divided into what are now entirely or partly the counties of Musselshell, Petroleum, Judith Basin, Wheatland, Golden Valley and the present Fergus County. The size of Fergus County at its inception was greater than many of the New England states.

Lewistown, with a population of 125, was picked as the county seat in 1886. By 1888, the population had grown to almost four hundred people. Lewistown became an incorporated city in 1899 and at that time had a population of over nine hundred people.

Fort Maginnis was established in 1880 to provide military protection for the settlers in the Judith Basin. The fort site was northeast of Gilt Edge. The

soldiers were never very successful in controlling either the Indians or outlaws and was abandoned in 1889. At a later date everything at the fort, including buildings, were sold at auction.

Mining developed around Lewistown when gold was discovered in the Judith Mountains in the 1880's. Maiden became a bustling town of 1500 people. During this period Maiden was larger than Lewistown. Gold was discovered in Gilt Edge in 1893. The Gilt Edge Mill was the first mining site in Montana and one of the first in the United States to use the newly developed cyanide process for low grade ore. Kendall, north of Lewistown, was also an active mining community. Mining continued there until World War II. Utica began operations in about 1879 near the world famous Yogo Sapphire Mines, which were later discovered in 1895. Here many millions of dollars worth of blue sapphires were supplied to the world market.

Cottonwood was one of the first homestead communities, and was a thriving village until it was bypassed by the railroad in 1903. At one time it was in contention to be the county seat of Fergus County.

The "Jawbone" or Montana Central Railroad reached Lewistown in October, 1903. Arrival of the railroad transformed the livelihood of the entire county. Real estate values and population increased. As the number of homesteaders grew, from 1903 to 1919, Lewistown became more and more the merchandising and distributing center for Central Montana. In 1912, the Great Northern built its spur from Moccasin to Lewistown.

It was during this period that the Croatian stonemasons put their stamp on Lewistown and many of the county's small towns. Lewistown was actually dubbed "The Stone City" because of the major buildings constructed by these craftsmen from local sandstone.

Ethnic groups that came to Fergus County were many and varied and all made valuable contributions to its early success.

At one time Fergus County supported a huge variety of businesses. Some of those that are no longer in existence are: an Air Force Base, two gypsum mines, gold mines, small silver mines, lumber mills, a school of nursing, two railroads, grain elevators in almost every small town, as well as three in Lewistown, men's clothing stores, a flour mill, a bus station, many "corner" grocery stores, creameries and multiple meat processors.

At the beginning of the 21<sup>st</sup> century the Fergus County seat and surrounding area is in a transition phase. With the upgrades to the transportation system and reduced railroad service commodities for the community are brought in via semi-trucks. Additionally, with better roads and vehicles, travel to the larger communities is not the hardship it once was. Updates in communications

have allowed the rural population to request and provide goods and services via phone and internet. Increases in small, clean manufacturing businesses and other cottage industries are revitalizing the local economy.

Fergus County now covers approximately 4,253 square miles and 2,765,685 acres. It is 70 miles north to south at the longest distance and 90 miles across the longest east to west distance. Farming and ranching remains Fergus County's primary industry and recreational activities like hunting and fishing are still an important part of our culture.

Montana in the Making, Newton Carl Abbott, Copyright 1959, 12th edition.

A Sketch of Lewistown, Montana History (Indian Days-1884), Anna Zellick and John R. Foster, Copyright, 1980.

Early History of Fergus County, Discovery and Settlement, Dave Hilger, 1923-1924.

Taxable Valuation Study, Sue Elings, 2001.

Montana History, Shirley Barrick, 1984

Lewistown Area Chamber of Commerce

Fergus County Historical Sites Inventory and Big Spring Creek Planning Area Historical Inventory, 1976.

A Short History of Lewistown, Robert L. Dissly, 1979.

## Attachment B

### Fergus County Land Use Policy

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#### The Mining Law: Summary

The 1872 Mining Law (as amended) governs locatable minerals in the **Fergus County Planning Area**. The BLM must approve any Plan of Operations or Notice on all public land. Except for areas withdrawn or otherwise segregated from mineral location, all BLM-administered mineral estate remains open for prospecting and development of locatable minerals. Development is subject to the regulations contained in 43 CFR 3809.

#### History

The General Mining Law of 1872 (17 Stat. 91) is the authorizing act for mineral exploration and development in the planning area. The origin of the Mining Law can be traced to the 16<sup>th</sup> century and reflects close ties to English and Spanish traditions.

Early American colonial charters contained outright grants of mineral land to settlers; however, these grants were accompanied by certain permanent reservations of precious metals to the sovereign. This formed the basis for the early traditions and customs regarding mineral rights for the colonies in the eastern part of United States until early 1800's.

In 1849, there was no formal mining law in the United States. Congress passed several leasing or sales acts of limited duration for gold, silver, lead, and iron. These acts were administered by the War Department. In 1849, when the California gold rush began, miners were technically in mineral trespass when they located claims on the public domain. The gold rush brought into conflict the two mining traditions. In 1860, the silver strike in the Comstock Lode in Nevada started a second mining rush to the West, opening up further conflict between the two mining traditions. As eastern interests were financing the Comstock Lode as well as the California Mother Lode, the question of security of title and tenure became a major political issue in Congress.

From 1865 to 1885, congressional policy for the public lands focused on encouraging westward migration of people to settle and develop the West. In furthering this policy a series of statutes was passed including various homestead acts, agricultural entry laws, soldier compensation acts and several acts designed to emphasize mineral exploration and development.

On July 26, 1866, the first mining law was passed as the Lode of 1866 (14 Stat. 251). This act provided for the entry and location of lode claims, assessment work and patents for lode claims.

The Placer Act was passed on July 9, 1870. It provided for the entry and location of placer claims on non-agricultural land, for location by legal description, and patent.

These two acts were consolidated, with amendments, into the General Mining Law of May 10, 1872. This statute is the basis for appropriation of mineral resources from the public domain today.

## **Principles**

The Mining Law consists of five basic elements: discovery of a valuable mineral, location of mining claims, recordation of claims, maintenance – performance of annual requirements on claims, and patenting of the mineral, and possibly surface estate to the claimant.

### **Discovery**

There is no federal statutory definition of what constitutes a valuable mineral deposit, but several judicial and administrative rulings or declarations on the subject have been made. In 1894 in the case of *Castle v. Womble*, the Department of the Interior established the “prudent person rule.” This rule 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.”

This definition was approved by the United States Supreme Court in 1905.

In 1968 in the case of *U.S. v. Coleman*, the Supreme Court approved the marketability test as a complement to the prudent person rule. This test requires a showing of marketability to confirm that a mineral could be mined, removed and marketed at a profit. In other words, the marketability test takes into account economics, requiring the claimant to show that there is a reasonable prospect of selling material from a claim or a group of claims. It is not necessary that the material has been sold or is selling at a profit, but that there is a reasonable likelihood that it could be sold at a profit. Demonstrating an established market is not difficult for precious metal commodities.

Some minerals, such as bentonite, can be classified as either locatable (uncommon variety) or salable (common variety), depending on the characteristics of the deposit. To classify a mineral as locatable, the 1968 ruling from *U.S. Minerals Development Corp.*, 75 ID 127 (1968) stated that the mineral must meet the following characteristics: In 1969, *McClarty v. Secretary of the Interior* (408 F.2d 907, 908) set the following standards to distinguish locatable minerals from salable minerals (Maley 1990): “There must be a comparison of the mineral deposit in question with other deposits of such minerals generally.

1. the mineral deposit in question must have unique property;
2. the unique property must give the deposit a distinct and special value;
3. if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and
4. the distinct and special value must be reflected by the higher price which the material commands in the market place (or by reduced cost or overhead so that the profit to the claimant would be substantially more).”

### **Location**

Mining claims may be located only by citizens of the United States, persons who have declared an intention to become citizens, and corporations organized under any State law. Mining claims may only be located on federal lands open to mineral entry under the mining laws, and only for mineral commodities considered to be locatable. A mineral is locatable if it is in the public domain, and is a metallic mineral, or of an uncommon variety valuable chiefly for chemical, rather than physical properties. Mining claims may be located before or after discovery of valuable mineral, on unappropriated public domain land. This claim grants the locator an exclusive possessory right to the mineral deposit. This possessory right allows the locator to continue to develop the claim as provided for by law. It is valid against the United States and other claimants only if a valuable mineral deposit has been discovered.

There are two main types of mining claims: lode and placer. Lode claims are located on indurated bedrock; while placer claims are usually located on loosely consolidated materials such as mineral bearing sands and gravels. Two additional types of mining claims may be located under the mining law: mill sites and tunnel sites. A mill site may be located on unappropriated public domain land that is nonmineral in character. It is used for the construction of a mill or reduction works, or for other uses reasonably incident to a mining operation. A tunnel site may be located on a plot of land where a tunnel is run to develop a vein or lode, or for the purpose of intersecting unknown veins or lodes. The actual location of a mining claim in Montana involves posting a notice of location at the discovery point and erecting corner posts, or monuments, on the ground to insure that the claim boundaries are readily identifiable.

## **Recordation**

Prior to the Federal Land Policy and Management Act (FLPMA), claimants were required to file their location and assessment notices only in the office of the County Recorder, or County Clerk, in the county in which the claim was located. Since enactment of FLPMA, notices of location and other notices must be filed with the BLM state office, as well as the appropriate county recorder. This requirement has allowed BLM to know the number, types, and their current status of claims located on public land. Failure to file these documents with the BLM is considered abandonment of a mining claim.

## **Maintenance**

The General Mining Law of 1872 requires performance of an annual minimum of \$100 worth of labor or improvements to retain a possessory interest in the claim. An affidavit of assessment work must be filed with both the county recorder and with the BLM State Office. Owners of mill and tunnel sites are not required to file assessment work, but are required to file a notice of intent to hold the site.

Exploration and mining activities on BLM administered lands are subject to regulation under 43 CFR 3715, 43 CFR 3802, and 43 CFR 3809. These regulations require that an operator prevent unnecessary or undue degradation and perform reasonable reclamation.

## **Patents**

It is not necessary to have a patent to mine to remove minerals from a mining claim. In fact, it is not even necessary to have a mining claim at all if the land is open to mineral entry. However, a patent gives the Owner exclusive title to the locatable minerals and, in most cases, to the surface estate. In order to obtain patent, the claimant must have performed at least \$500 worth of development work per claim; had a mineral survey and plat prepared at their expense; show they hold possessory rights by chain of title documents; publish a notice for potential adverse claimants to assert their claims; and demonstrate discovery of a valuable mineral deposit within the meaning of the Mining Law. Upon satisfactory completion of the above requirements, the claimant is given the opportunity to purchase the mining claim(s) at \$2.50 per acre for placer claims and \$5 per acre for lode claims.

Since October 1, 1994, Congress has imposed a budget moratorium on BLM acceptance of any new mineral patent applications. Until the moratorium is lifted, no new applications may be accepted by the BLM.