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ARTHUR B. LANGLIE, Governor
Department of Conservation and Development
W. A. GALBRAITH, Director

DIVISION OF MINES AND GEOLOGY
SHELDON L. GLOVER, Supervisor

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AN OUTLINE OF MINING LAWS OF THE STATE OF WASHINGTON

Compiled and Annotated by
MORTON H. VAN NUYS
MINING LAWYER, SEATTLE

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FOREWORD

In 1940 the Department of Conservation and Development, Division of Mines and Mining, published as a special report a pamphlet entitled "An Outline of Mining Laws of the State of Washington" that had been written by Mr. M. H. Van Nuys, a mining lawyer of Seattle. The preparation of this treatise was the result of a number of years of work on the part of Mr. Van Nuys in compiling in concise, usable form the information most commonly sought by prospectors, miners, and the general public on staking and filing mineral claims, assessment work, patenting claims, and other related matters of law. The publication was so well received that the edition of 3,000 copies was nearly exhausted within ten years.

Rather than reissue the pamphlet in its original form, Mr. Van Nuys concluded that it should be rewritten, completely revised, and considerably amplified in subject matter and in citations, making it of still greater value as a reference work for the mining industry. Accordingly, he has spent some three years on this task, the manuscript being completed in midyear 1953. The Division of Mines and Geology, the successor agency of the Division of Mines and Mining, is greatly indebted to Mr. Van Nuys for making this revision available to it for publication, and is issuing it as Bulletin No. 41 of its regular series of reports.

SHELDON L. GLOVER, Supervisor
Division of Mines and Geology

August 15, 1953

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REFERENCES

A .....Example, A-25800 means decision No. A-25800 of the Department of the Interior. (Loose leaf method; supersedes I.D.)

CFR .....Code of Federal Regulations

Cir. .....Circular of the Department of the Interior

C. J. .....Corpus Juris (Law encyclopedia)

C. J. S. .....Corpus Juris Secundum (Law encyclopedia)

Fed. .....Federal Courts Law Reports (other than U. S. Supreme Court)

Fed. Cas. .....Federal case

Fed. Suppl. .....Federal Supplement Reports

I.D. .....Department of the Interior Decisions. Begin with Vol. 53

Instr. .....Instructions of the Department of the Interior

L.D. .....Land Decisions of the Department of the Interior. End with Vol. 52

LRA, NS .....Lawyers' Reports Annotated, New Series

Lindley .....Lindley on Mining Laws

M .....Opinions of the Department of the Interior

M.R. .....Morrison's Mining Reports. Used herein only for early reports

Opin. Atty. Gen. ...Opinions of the Attorney General of the United States

Pac. .....Supreme Court Law Reports of Western States

R.S. .....Revised Statutes of the United States

RCW .....Revised Code of Washington. Example, RCW 60.04.010. (Is now superseding Rem.)

Reg. .....Regulations of the Department of the Interior

Rem. .....Remington's Revised Statutes of the State of Washington

Stat. L. .....United States Statutes at Large

U.S. .....United States Supreme Court Law Reports

U.S.C. .....United States Code

Wash. .....Washington State Supreme Court Law Reports

Note: The general mining laws of the United States are contained in Sections 21 to 52, Title 30, United States Code.

The statutes of the State of Washington relating to the location of mining claims, as amended to date, are contained in Chap. 78.08 of the Revised Code of Washington (RCW).

AN OUTLINE OF MINING LAWS OF THE STATE OF WASHINGTON

Compiled and annotated by
MORTON H. VAN NUYS

INTRODUCTION

This outline of the mining laws of the State of Washington applies to metals—gold, silver, copper, lead, zinc, mercury, molybdenum, antimony, iron, etc.; and to nonmetals—magnesite, talc, pumice, feldspar, marble, building stone, etc.

Coal, oil, gas, sodium, potassium, potash, phosphate, and compounds thereof (and sulphur in Louisiana and New Mexico), are not open to location or patenting but are governed exclusively by the United States Mineral Leasing Act. (See Index: U. S. Mineral Leasing Act.) And State-owned lands are not open to location or patenting but are governed exclusively by special state laws. (See Index: State-owned lands.)

The United States general mining laws (for locating, holding and patenting mineral lands) govern as to all metallic and nonmetallic minerals, except those nonmetallics covered by the United States leasing Acts, just mentioned, and except State-owned mineral lands just mentioned. Accordingly the term "the mining laws of the United States" does not include said leasing laws.① These general mining laws of the United States are supreme as to United States public lands in the western mining states, including Washington; but the legislatures of these states, under authority from Congress,② have supplemented such laws as to the manner of locating and recording mining claims and as to annual assessment work, provided such state laws are not inconsistent with the United States laws.③ Accordingly this present outline is devoted mostly to the general mining laws of the United States and the supplemental laws of the State of Washington. The mining laws of other mining states and Alaska are in most respects substantially the same as those of Washington.

Substantially all the general mining law of the United States is contained in the Act of Congress of May 10, 1872,④ which with a very few minor changes remains in effect at the present time. This Act followed the choice of the practical rules and customs adopted by

① Montgomery, 58 I.D., p. 21 (1942).
② See Index: State laws, jurisdiction over U. S. public lands.
③ *Florence-Rae Copper Co. v. Kimbel*, 85 Wash., p. 170 (1915).
④ Secs. 21 to 43, Title 30, U.S.C.; R.S. Secs. 2318 to 2338.

the early miners in California, Colorado, and other communities. So far as known to the author, local "Mining Districts" and "Miners' Rules" therein have long been abandoned, for the reason that the state supplemental laws just mentioned were so complete as to render such local rules unnecessary. The names of the former "Districts" are still used, but only to designate particular areas.

LANDS, WHETHER "OPEN" TO MINING LOCATION

The word "open" herein used means open to prospecting, location, and patenting of mining claims, lode and placer. If the land is "open," it is immaterial whether or not a governmental survey (of sections and subdivisions) has ever been made so as to include the land, or whether such area in which the claim lies has ever been classified by the government as mineral or nonmineral.⑤ If the land is "open," no permit or license is required for prospecting or locating a claim.⑥ A small fee is required for recording a mining location in the office of the county auditor where the claim is situated.

The following classes of United States public lands are "open" or not as indicated hereinafter.

UNITED STATES PUBLIC DOMAIN

Public domain lands are "open."⑦ Originally all the lands in the West belonged to the United States and constituted the "public domain." But from time to time the government has withdrawn from this public domain numerous portions for particular public purposes; for example, national forests, national parks, Indian reservations, military and naval reserves, Federal power sites, etc., which portions are known as reserves or reservations. Further, the government has donated vast areas in grants to early railroads connecting the East and West, and school lands to new states, and homestead patents to settlers, etc. Accordingly, only what is left undisposed of constitutes the "public domain" at present. In Washington at the present time there are only about 481,585 acres of public domain. Although usually the term "public lands" is loosely used to include reserved and unreserved lands, legally the term means

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⑤ *U. S. v. Stand. Oil Co.*, 20 Fed. Suppl. 427 (1937).
Land is presumed to be nonmineral until and unless proven to be mineral by the party claiming it as mineral. Steussy, 58 I.D. 474 (1943).

⑥ *U. S. v. Rizzinelli*, 182 Fed. 675 (1910).
Johnston v. Harrington, 5 Wash. 73 (1892).

⑦ *Armstrong v. Lower*, 6 Colo. 393 (1882).
By executive order 6964, Feb. 5, 1935, the President made a temporary withdrawal of all unappropriated, unreserved U. S. public lands (viz., public domain) in Washington and certain other states. 55 I.D. 188 and 247. Revoked by Congress—Sec. 315f, Title 43, U.S.C. (Taylor Grazing Act, June 26, 1936), thus leaving public domain lands now open.

public domain; viz., undisposed-of lands which are therefore subject to sale or other disposition under the general laws of the United States.[8]

UNITED STATES "ACQUIRED LANDS"

This is a growing class of United States lands, named "acquired lands" in recent years, and little understood. Congress has enacted laws authorizing acquisition by the United States of privately owned or State-owned lands by purchase or by exchange of United States public land therefor, and usually acquired for some special public need, such as watershed protection, soil conservation, military reserves, additions to national forests, etc. If the land acquired by the United States through exchange under the National Forest Exchange Act[9] lies within the exterior boundaries of a national forest, it thereby becomes part of the national forest under the express provision of that Act, and hence is "open."[10] But if acquired by the United States for a purpose which excludes mining, it is not "open."[11]

Reserves or reservations, above mentioned, are not "open" unless authorized by some act of Congress, as shown in the following.

NATIONAL FORESTS

National forests, surveyed or unsurveyed, are "open" by express Act of Congress.[12] In Washington there are seven full national forests and two fractional parts, making a total area of approximately 9,679,827 acres within the State, exclusive of patented lands. Because of such vast area and because national forests usually cover mountainous areas, national forests are the chief and most important class of "open" mineral lands in the State. For this reason national forests are discussed throughout this book. (See Index: National forests: Rights of way, Special use permits, Timber rights, Water rights.)

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[8] *Barker v. Harvey*, 181 U.S. 481 (1901).
31 Opin. Atty. Gen. 433 (1919).

[9] Sec. 485, Title 16, U.S.C. (1922).
See also Sec. 315g, Title 43, U.S.C. (Grazing Act, 1936) and Sec. 351, Title 30, U.S.C. (Leasing acts, 1947).

[10] 40 Opin. Atty. Gen. 260 (Jan. 13, 1943).

[11] El Mirador Hotel Co., A-25287, Mar. 1, 1949 (military use).
Acquired lands believed mineral may be opened to location by the Secretary of the Interior when advised by the Secretary of Agriculture that mineral development will not interfere with the primary purpose for which the land was acquired. Sec. 1011c, 1018, Title 7, U.S.C. (1937); Rawson, A-26302, Feb. 11, 1952.

[12] Secs. 478 and 482, Title 16, U.S.C. (1897).
55 I.D. 235 (Cir., 1935).

By Act of Congress[13] the Secretary of Agriculture (often re-referred to as the "Forest Service") is given exclusive control over the timber and surface use of national forests, except surveying, prospecting, locating, and patenting of national forest lands. And the Secretary of the Interior is given exclusive control of such surveying, prospecting, locating, and patenting. This distinction is important but occasionally overlooked. Subject to this distinction the Secretary of Agriculture is authorized to make general regulations,[14] which must be observed by the prospector and claim owner. These regulations, however, relate mostly to timber, trails, rights of way, and forest fire protection, and interfere very little with bona fide prospectors and miners. During the fire-hazard seasons large areas of national forests are usually closed by the Forest Service, but usually anyone having an existing mining claim may obtain a permit from the District Ranger to enter and work his claim.

The Forest Service also has control over nonmineral use of unpatented mining claims within national forests, and its regulations prohibiting such unlawful uses are valid and enforcible through the courts.[15]

In national forests there are certain areas set aside by the Forest Service for special uses. (See Index: National forests.) There are two classes of such uses. First, uses necessary for the Forest Service to function; for example, forest ranger stations, lookout stations, timber experimental areas, roads, etc.; Sec. 551, Title 16, U.S.C. (1897). Here, if at time of setting aside such an area the land was not known to be mineral and thereafter valuable improvements were made thereon by or through the Forest Service, such area is not "open" to mining location.[16] Second, uses, public or private, such as public camp sites, public recreation areas, summer homes, hotel sites, etc.; Sec. 497, Title 16, U.S.C. (1915). Here, such areas

[13] Sec. 472, Title 16, U.S.C. (1905).
U. S. v. Crocker, A-24666, Feb. 14, 1949.

[14] Sec. 478, Title 16, U.S.C.

[15] *U. S. v. Rizzinelli*, 182 Fed. 675 (1910)—Saloon on claim.
U. S. v. Grimaud, 220 U.S. 506 (1911)—Grazing sheep on claim.
See Index: Surface rights in general.

[16] 35 L.D. 262 (1906)—Opin. Atty. Gen.
U. S. v. Schaub, 103 Fed. Suppl. 873 (1952)—Gravel pit for road building; held, if area improved, not "open."
See *U. S. v. Crocker*, A-24666, Feb. 14, 1949—Where area is much larger than necessary, unimproved portion is "open."
Mining location on existing road or telephone line is subject to same. *U. S. v. Crocker*, above.

are "open" if the mineral claimant can prove by clear evidence that he has made a discovery; otherwise his claim is void.[17]

A "primitive area" is an area set aside by the Forest Service within a national forest to preserve its exceptional rugged scenery. Being so set aside for a special use but having no improvements, primitive areas logically are "open," although there appears to be no decision on that point. However, it is the usual policy of the Forest Service to keep roads out of primitive areas. In Washington are the Goat Rock and the North Cascade Primitive Areas.

Sec. 472, Title 16, U.S.C. (1905) authorizes the Secretary of Agriculture (Forest Service) to administer laws affecting national forests, but reserves to the Secretary of the Interior (Bureau of Land Management) control over "the surveying, prospecting, locating, . . . or patenting" of national forest lands. Accordingly, the Bureau of Land Management (in the Department of the Interior) tries the validity of mining claims in patent proceedings and often in direct proceedings, and decides not only as to discovery but also as to whether the land is "open"; all the Forest Service can do is to file a protest against the claim and act as the Government's attorney.

It appears that part of national forests withdrawn by the President for game and wild life conservation are not "open,"[18] on the principle that permanent withdrawals by the President authorized by Congress are not "open."

Within national forests, particularly in the Cascade Mountains, there are numerous patented sections and areas owned by the Northern Pacific Railway Company, the Northwestern Improvement Company (its subsidiary), timber companies, owners of patented mining claims, and others. Patented land, being private property, is not "open."[19] Patented railroad land is not "open."[20] In locating a mining claim, therefore, care should be taken to ascertain whether the land is national forest land or patented land. Unpatented Northern Pa-

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[17] *U. S. v. Dawson*, 58 I.D. 670 (1944).
U. S. v. Lillibridge, 4 Fed. Suppl. 204 (1932)—$250,000 spent on improvements before defendant located claim. He failed to make a discovery. The question whether area was "open" was not discussed.
In *U. S. v. Mobley*, 45 Fed. Suppl. 407, reported more fully in 46 Fed. Suppl. 676 (1942); held, no discovery. Court further held, without discussion, that an existing special use area (here summer home site) is not "open," merely citing Sec. 551, Title 16, U.S.C. (June 4, 1897). This Act merely authorizes the Forest Service to regulate and protect national forests. This same Act, in Sec. 482, Title 16, U.S.C. (June 4, 1897) declares that any mining land in a national forest shown to be such "shall continue to be subject to such location and entry, notwithstanding any provisions contained in . . . section 551 of this title." Until further court decisions the question is unsettled.

[18] Sec. 694, Title 16, U.S.C. (1934).
Birdsell, A-25440, Jan. 31, 1949 (S. Dak.).

[19] See Index: Privately owned lands.

[20] See Index: N. P. Railroad lands.

cific Railway Company land within a national forest is "open," hereinafter discussed.

The National Forest Exchange Act[21] not only authorizes the Secretary of Agriculture from time to time to exchange portions of a national forest for privately owned timber land lying within the exterior boundary of the national forest, but also authorizes the Secretary in his discretion to allow the private owner to reserve the minerals in his deed to the United States and to allow the United States to reserve the minerals in its patent to the private owner.[22]

A National Forest Purchase Act[23] authorizes the United States to purchase forest lands, within or without the boundaries of existing national forests, which then become national forest lands. However this Act, instead of making such new land "open," provides that the Secretary of Agriculture may issue permits for prospecting, developing, and mining minerals therein, under general regulations by the Secretary.[24] This is the "Weeks Act," but there are no national forest lands in Washington acquired thereunder.

Pickett Act. By Act of 1891[25] the President was authorized to create and fix, by proclamation, boundaries of national forests on United States public lands containing timber or underbrush. In 1910[26] this Act was amended, whereby any future creation or enlarging of any national forest in Washington, Oregon, Idaho, Montana, Colorado, or Wyoming (California added in 1912) is prohibited except by act of Congress; this is known as the Pickett Act. By a later Act, 1897,[27] the President is authorized to revoke or modify any such proclamation, and "by such modification he may vacate altogether any order creating a national forest." In Washington all national forests now existing were created by presidential proclamation prior to June 25, 1910, and hence can at any time be reduced or abolished by the President, except lands acquired by the United States by exchange, purchase, or donation.

NATIONAL PARKS AND NATIONAL MONUMENTS

These are not "open" unless expressly made open by Congress.[28] Mount Rainier National Park,[29] Olympic National Park,[30] and Whitman National Monument are not "open." A valid mining claim existing at the time of the creation of a national park, being vested property, is protected; and the Acts creating each of these two

[21] See Index: U. S. acquired lands.
[22] Sec. 486, Title 16, U.S.C.
See Index: Reserved minerals: In private deeds. In U. S. land patents.
[23] Secs. 513 to 521, Title 16, U.S.C.
[24] Sec. 520, Title 16, U.S.C.
[25] Sec. 471, Title 16, U.S.C.
[26] Sec. 471, Title 16, as amended.
[27] Sec. 473, Title 16, U.S.C.
[28] *Cameron v. U. S.*, 252 U.S. 450 (1920).
[29] Sec. 94, Title 16, U.S.C. (1908).
[30] Secs. 251 to 255, Title 16, U.S.C. (1938).

national parks expressly so provide.[31] The following national parks and monuments are open to prospecting and mining subject to regulations of the Secretary of the Interior: Mount McKinley National Park, Alaska; Crater Lake National Park, Oregon; Grand Canyon National Park, Arizona; Death Valley National Monument, California; Glacier Bay National Monument, Alaska.[32] National parks and monuments are under the charge of said Secretary. A national monument is intended to preserve historic and prehistoric landmarks and structures and other objects of historic and scientific interest.[33]

NORTHERN PACIFIC RAILROAD LANDS

By Act of July 2, 1864[34] Congress incorporated the Northern Pacific Railroad Company and authorized it to lay out and construct a railroad from Lake Superior westward to Puget Sound, with a branch line via the Columbia River Valley to or near Portland. The Act granted to the Company "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line as said Company may adopt, through the territories of the United States," and ten alternate sections per mile on each side through any state, except lands reserved, sold, or disposed of as of the time when the railroad line was definitely located. In lieu of lands reserved, sold, or disposed of in said granted zone, the Company was given the right to select odd-numbered alternate sections not more than 10 miles beyond and on each side of said granted zone, hereinafter referred to as the indemnity zones. The Act provided "That all mineral lands be, and the same are hereby, excluded from the operation of this act, and in lieu thereof a like quantity of unoccupied

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[31] Eagle Peak Copper M. Co., 54 I.D. 251 (1933).

[32] A mine existing in Grand Canyon Nat. Park was denied right of way for a tramway across the park, partly on the ground it would mar the beauty of the park. 58 I.D. 776 (1944).

[33] Sec. 431, Title 16, U.S.C.

Note: By Act of March 12, 1935, the State set aside for a public highway a strip of land from the mouth of the Queets River north "along the shores and beach of the Pacific Ocean" to Cape Flattery, and prohibited sale or leasing of any part of such lands except for oil and gas. The policy of the State Public Land Office, however, has been to refuse to sell or lease for oil or gas any such lands. Under the W.P.A. Appropriation Act of Congress of April 8, 1935, Sec. 5, the United States acquired by purchase or condemnation a narrow strip of land (about 2 or 3 miles wide) extending from the Olympic National Park to the Pacific Ocean near the mouth of the Queets River (about 13 miles), thence north along the coast about 50 miles (near the mouth of the Ozette River). In the early part of 1953 President Truman by proclamation converted these strips into part of the Olympic National Park. However, this coastwise strip of the Park does not include any part of the tidelands.

The State has ceded to the United States exclusive jurisdiction over the Olympic National Park. Sec. 256, Title 16, U.S.C. (1942).

[34] 13 Stat. L., p. 365 (1864).

and unappropriated agricultural lands, in odd-numbered sections, nearest the line of said road may be selected as above provided," but that coal and iron lands should be included in the grant and be not treated as mineral land. By resolution of January 30, 1865 Congress reaffirmed the exclusion of mineral lands other than coal and iron. By Act of May 31, 1870 Congress changed the main line so as to terminate on Puget Sound via the Columbia River Valley, and authorized a branch line across the Cascade Mountains to Puget Sound, and the indemnity zone (crossing the mountains to Puget Sound) was to be 10 miles on each side in addition to the above indemnity zone. By Act of September 29, 1890 Congress forfeited back to the United States all lands opposite any part of the lines "not now completed and in operation." The line from Wallula to Portland or Kalama was never built, so that the forfeiture covered that line. But the line from Portland or Kalama to Tacoma and the line from Pasco to Tacoma were in operation before 1890, and as to these lines there was no forfeiture. In 1899 when Mount Rainier National Park was established, the Company was given substitute lands in any territory or state through which the railroad ran.[35]

From time to time the Company would apply for a patent to particular sections of surveyed land; and the United States Land Department would make an examination, usually superficial,[36] and determine whether the land was mineral or nonmineral, and if nonmineral would issue a patent. In the State of Washington much of the granted and indemnity lands remains unpatented, many sections of which lie within national forest reserves, which reserves were all created long after 1870. The fact that such unpatented railroad lands lie within national forest reserves does not affect the right to locate mining claims thereon.

Substantially the same kind of land grant was made by Congress to other early transcontinental railroad companies (Southern Pacific, Central Pacific, etc.); and the following rules of law apply to the Northern Pacific Railroad (now Railway) Company and to such other companies:

> Rule 1. If any particular section (or fraction) of railroad granted or indemnity land is *unpatented*, it is "open." Accordingly a valid mining location may be made thereon at any time before a patent has actually been issued to the railroad com-

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[35] Sec. 93, Title 16, U.S.C.

[36] Congress should have known it would be impracticable to determine whether or not land in mountainous districts was mineral without expensive testing, costing more than most of the sections were worth. Further, it must be borne in mind there is a wide difference between mineral land and "reserved minerals." (See Index: Reserved minerals.)

A clause in railroad land grant patents excepting minerals (customary until 1903) was and is unauthorized and void. *Burke v. So. Pac. R.R. Co.*, 234 U.S. 669 (1914).

pany,[37] whether in national forests, public domain or other "open" lands.

Rule 2. If any such section (or fraction) has been *patented* to the railroad company, it is not thereafter "open," even though it was known to be mineral land prior to or at time of the patent.[38]

Rule 3. Although the Secretary of the Department of the Interior (who administers the public lands) has no authority to issue a patent to railroad land *known to be mineral*, at time of issuing the patent, yet if a patent is issued to the railroad company, only the United States Government can sue to cancel the patent.[39] This rule is of little practical use to a prospector, as the mineral ground remains closed unless and until the Government sees fit to bring suit.

Rule 4. If at the time of the railroad patent the land was *not known to be mineral*, but subsequent to the patent valuable mineral is discovered, the mineral belongs absolutely to the railroad company (or assigns) as its private property.[40]

Rule 5. If prior to or at time of the railroad patent being issued there was an *existing valid mining location*, such location, being vested property, will be protected by the courts.[41]

Inasmuch as patented railroad land is not "open," anyone desiring to prospect or mine such land should negotiate with the railroad company (or assigns) the same as with owner of any privately owned land. In years past the Northern Pacific Railway Company has sold much of its patented lands, reserving minerals to itself. (See Index: Reserved minerals: In private deeds.) In recent years the company has adopted the policy of carefully selecting its most promising reserved mineral rights and quitclaiming the rest to the surface owners.

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[37] *Barden v. N. P. R.R. Co.*, 154 U.S. 288 (1894)—Leading case.
55 I.D. 236 (Cir. 1935).
N. P. Ry. Co., 56 I.D. 201 (1938).

[38] *Burke v. So. Pac. R.R. Co.*, 234 U.S. 669 (1914)—Leading case.
Skinner v. Silver, 75 Pac. (2) 21 (Oreg. 1937).

[39] *Burke v. So. Pac. R.R. Co.*, above.
U. S. v. Central Pac. R.R. Co., 84 Fed. 218 (Calif. 1898).

[40] *Burke v. So. Pac. R.R. Co.*, above.
Roberts, 55 I.D. 430 (1935)—After R.R. patent A made discovery, located claim, made improvements, and held adverse possession for over 10 years. A acquired no rights.

[41] *Van Ness v. Rooney*, 116 Pac. 392 (Calif. 1911)—Leading case.
Ames v. Empire Star M. Co., 110 Pac. (2) 13 (Calif. 1941).
Noyes v. Mantle, 127 U.S. 348 (1888).

Occasionally the Northern Pacific Railway Company has in the past sold unpatented land or surface rights to unpatented land, thus clouding the title.[42]

In 1929[43] Congress directed the Government to bring suit against the Northern Pacific Railway Company to recover for land grant abuses, and to settle the respective rights of the United States and the Company in certain tracts of land, involving several millions of acres, patented and unpatented, mostly in Montana and Idaho.[44]

FEDERAL POWER SITES

Under the Federal Power Act,[45] Federal hydroelectric power sites or power projects are not "open," whether or not within the exterior boundaries of national forests. But the Act expressly authorizes the Federal Power Commission to determine at any time whether the value of any such power site or project would be injured for power development purposes by mining locations or patents or other public land entry, and if the Commission finds it would not, then it is the duty of the Secretary of the Interior to "open" such portion or portions as would not injure the site or project. However, the Act further reserves to the United States and its licensees the right at any time thereafter to reoccupy or use any part of such opened portion, without compensation to the miner (or other entryman) except for damages to crops, buildings, and improvements; which reservation must be inserted in any mining or other patent thereafter issued. Consequently, if A locates a mining claim within an existing power site or project, his claim is absolutely void; and his only relief is to petition the Commission to investigate and "open" the area covered by his claim, and if so opened he may then make a new location of the same ground before B locates.[46]

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[42] *Adams v. Henderson*, 168 U.S. 573 (1897).
Prior to U. S. survey the railroad company has no title or interest.
U. S. v. N. P. Ry. Co., 311 U.S. 317 (1940).
58 I.D. 577, 588, 591 (1944).
Even after a survey, if it is unknown whether or not the land is mineral, a sale of unpatented land by the railroad company is illegal.
Oakes v. Myers, 68 Fed. 807 (Mont. 1895).
Contra: *Central Pac. R.R. Co. v. Nevada*, 162 U.S. 512 (1896)—Inconsistent with later case of *Burke v. So. Pac. R.R. Co.*, above.
See Transportation Act of 1940, Sec. 65, Title 49, U.S.C. and Railroad Adjustment Act of 1887, Sec. 897, Title 43, U.S.C.

[43] Only a small amount of patented lands in Washington was involved. Final judgment rested largely on compromise. Long after 1870 Congress had withdrawn large areas of railroad indemnity lands for national forests and other reserves. Such withdrawals were held unlawful, but the company waived all rights to such lands. In compensation for this loss the court awarded the company money damages and other lands.

[44] *U. S. v. N. P. Ry. Co.*, 311 U.S. 317 (1940).

[45] Sec. 818, Title 16, U.S.C. (1920).
Roberts, 55 I.D. 430 (1935).
Burton, A-25457, June 14, 1949.

[46] Sec. 818, above.
Coeur d'Alene C. M. Co., 53 I.D. 531 (1931).
Hawkinson, A-25526, Jan. 17, 1949.

FEDERAL IRRIGATION AND FLOOD-CONTROL RESERVOIR SITES

Such sites on United States public lands are likewise not "open."[47] However, the Act gives the Secretary of the Interior discretionary authority to "open" any portion thereof known or believed to contain valuable mineral which has been "withdrawn for possible use for construction purposes under the Federal reclamation laws," but reserving to the United States such rights of way and other easements as the Secretary deems proper, or he may require a separate contract for such easements for the protection of irrigation interests.[48]

INDIAN RESERVATIONS

Indian reservations and lands allotted by the government to Indians are not "open."[49] But under the Indian Land Leasing Act[50] "unallotted lands within any Indian reservation or lands owned by any tribe, group, or band of Indians under Federal jurisdiction" may, with the approval of the Secretary of the Interior, be leased for mining purposes, metalliferous and nonmetalliferous, including coal, oil, and gas, by authority of the tribal council or representative. The Secretary may authorize the heads of the Indian Service to approve leases.

A mining claim located within an existing Indian reservation is void, and is not validated by the reservation subsequently being thrown open to mining by the Government.[51] After a reservation is thrown open by the Government the original locator may adopt his old discovery and locate anew, provided he does so before another locates.[52]

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[47] Sec. 662, Title 43, U.S.C.
Colomokas G. M. Co., 28 L.D. 172 (1899).

[48] Sec. 154, Title 43, U.S.C.
53 I.D. 706 (Instr., 1932).

[49] *Kendall v. San Juan Silver M. Co.*, 144 U.S. 658 (1892).
M-35049, May 24, 1949—Colville Indian Reser. surplus lands.

[50] Secs. 396 to 396d, Title 25, U.S.C. (1938).
This Act requires of a lessee a corporate surety bond for faithful performance in an amount satisfactory to the Secretary. The Secretary may accept two personal sureties on a bond with collateral or ownership of real estate worth twice the amount of the bond.
Circular 1781 authorizes the Director of the Bureau of Land Management to make regulations for mineral leases in reservations, which regulations are contained in Title 25, Part 186, CFR.

[51] *Kendall* case, above.
Noonan v. Caledonian Gold M. Co., 121 U.S. 393 (1887).

[52] *Kendall* case, above.

The north half of the Colville Indian Reservation was in 1892 restored to the public domain,[53] and is "open."[54] A large part of such north half is now in the Colville National Forest, which is "open."[55]

Mineral lands in the south half of the Colville Indian Reservation were in 1898 opened to mining, except the portions "allotted to the Indians or used by the Government for any purpose or by any school."[56] In 1934 this south half was, by order of the Department of the Interior, temporarily closed to mining and other entries, and is not "open"[57] but is subject to the above-mentioned Indian Land Leasing Act and regulations.

MILITARY RESERVES

Military reserves are not "open."[58] Where the President withdraws public lands for military purposes, it is presumed to be a permanent withdrawal and hence closed to mining.[59]

FEDERAL HOMESTEADS, TOWNSITES, TIMBER CLAIMS, ETC.

Congress expressly excepted mineral lands in its grants to agricultural homesteaders under the Homestead Act,[60] and in its grants to purchasers of desert lands for irrigation under the Desert Land Entry Act,[61] also in its grants to purchasers of timber (known as "timber claims") under the Timber and Stone Act,[62] and in its grants to purchasers of town lots under the Townsite Act.[63] In all these Congress intended to dispose of only nonmineral lands, as in the railroad grants hereinbefore discussed. Substantially the same rules apply to these special classes as to such railroad lands, except as follows: (a) In the above four special classes, the time for determining by the Government whether the land is mineral or not is when the applicant for patent has performed all required of him by law but before a final certificate of patent is issued to him,[64]

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[53] 27 Stat. L. 62.
[54] 29 Stat. L. 9.
[55] See Index: National forests.
[56] 30 Stat. L. 571.
[57] 54 I.D. 559 (Instr. 1934).
[58] *Scott v. Carew*, 196 U.S. 100 (1905).
Behrends v. Goldstein, 1 Alaska 518 (1902).
[59] Vol. 40, p. 73, Opin. Atty. Gen. (June 4, 1941).
During World War No. 2 numerous withdrawals were made by the President for military uses, such as military aviation fields, naval bases, bombing and gun practice ranges, army radio stations, etc.
[60] Sec. 201, Title 43, U.S.C. (1866).
[61] Sec. 322, Title 43, U.S.C. (1877).
[62] Sec. 311, Title 43, U.S.C. (1878).
[63] Secs. 717 and 722, Title 43, U.S.C. (1865 and 1867).
[64] Mabry, 48 L.D. 280 (1921)—Homesteads.
Dower v. Richards, 151 U.S. 658 (1894)—Townsites.

and (b) the Townsite Act[65] allows known mineral lands to be included in patents to incorporated towns, except as against existing valid mining claims. The law allows to settlers in national forests small areas for schools and churches, but not for townsites.[66] As the supply of public lands within the above four special classes is now about exhausted, no further discussion is necessary. The important rule, for practical purposes, is that after a final certificate (or patent) has been issued, such lands are not "open" to mining.

TAYLOR GRAZING ACT LANDS

This Act[67] authorizes the Secretary of the Interior to create grazing districts and additions thereto, not to exceed 142 million acres on United States vacant, unreserved, and unappropriated public lands, exclusive of Alaska and exclusive of *national forests*, national parks and monuments, and Indian reservations, which (available) lands are in his judgment chiefly valuable for grazing and raising forage crops; and to issue stock grazing permits thereon to bona fide residents and other stock owners, for terms not to exceed ten years with renewal privilege. The Act provides the following shall not be impaired:

> The right to prospect, locate, and patent mining claims, also to lease oil etc. lands under the U. S. Mineral Leasing Acts "without regard to classification and without restrictions or limitation" by any provision in the Act (Taylor Grazing Act);[68]
>
> Water rights for mining, etc.;[69]
>
> Right of ingress and egress and rights of way;[70]
>
> Right to use timber for mining, etc.[71]

Accordingly, such grazing districts and areas occupied by grazing permittees are "open." The miner is not required to compensate such permittees for damage to their grazing operations.[72] And the

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[65] Sec. 728, Title 43, U.S.C. (1891).
52 L.D. 126 (Reg. 1927).
Clark, 52 L.D. 426 (1928).

[66] Sec. 479, Title 16, U.S.C.

[67] Secs. 315 to 315n, Title 43, U.S.C., Original Act, June 28, 1934.

[68] Secs. 315e (1934) and 315f (1936), Title 43, U.S.C.
Sec. 315f in 16th line contains error. For correct wording see original in Vol. 49, Stat. L., p. 1976. See also Circular 1353b of the Department of the Interior (June 29, 1937).

[69] Sec. 315b, Title 43, U.S.C. (1947).

[70] Sec. 315e, Title 43, U.S.C. (1934).

[71] Sec. 315d, Title 43, U.S.C. (1934).

[72] *Scoggin v. Miller*, 189 Pac. (2) 677 (Wyo. 1948)—Except possibly for improvements. Carey, A-26140, June 28, 1951.

holder of a valid mining claim may protest against the issuing of a grazing permit which would seriously interfere with his mining operations.[73] The purpose of the Taylor Grazing Act is "to promote the highest use of the public lands pending its final disposal."[74] A grazing permittee has no contract or vested interest in the land; and the Department may at any time terminate or reduce grazing permits.[75] And the President may at any time withdraw grazing lands for other purposes.[76] The Taylor Grazing Act in effect repeals the Stockraising Homestead Act.[77]

UNITED STATES PUBLIC LAND WITHDRAWALS

The "Pickett Act," known also as the "Withdrawal Act," enacted by Congress June 25, 1910,[78] provides: "The President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress." On August 24, 1912, this Act was amended[79] to the effect that all lands so withdrawn "shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals." Under this Act and amendment the President has withdrawn numerous tracts of public lands in the United States and Alaska for specified public purposes.

"Temporary withdrawals" are "open" to metalliferous but not to nonmetalliferous mining.[80]

A "temporary withdrawal" remains in effect until revoked by the President or by Congress; thus it may not be temporary in fact but may continue indefinitely.[81] Since long prior to the Pickett Act the President has had inherent recognized power to create withdrawals, temporary and permanent.[82] The intent of the Pickett Act

[73] Oberan, A-25422, Dec. 9, 1949.
[74] Sec. 315, Title 43, U.S.C. (1936).
[75] State of Utah, A-23981, Feb. 24, 1949.
Steele v. Kirby, A-25713, Mar. 6, 1950.
[76] 55 I.D. 70 (Opin., 1934), 205, 212 (1935).
[77] Propp, 56 I.D. 347 (1938).
See Sec. 315, Title 43, U.S.C. (1936).
[78] Sec. 141, Title 43, U.S.C.
[79] Sec. 142, Title 43, U.S.C.
[80] Rankin, 47 L.D. 329 (1920, coal).
U. S. v. Dawson, 58 I.D. 670 (1944).
[81] *Shaw v. Work*, 9 Fed. (2) 1014 (1925).
Jackson Hole Irr. Co., 48 L.D. 278 (1921).
[82] *U. S. v. Midwest Oil Co.*, 236 U.S. 459 (1915).
Alaska S.S. Co. v. U. S., 290 U.S. 256 (1933).

was to remove doubt as to his power to make temporary withdrawals, particularly pending Congressional deliberation or policy determination. The fact that the President or Congress has power to revoke any withdrawal does not make it a temporary withdrawal. Unless the withdrawal by the President clearly indicates it as temporary, it is a permanent withdrawal. And permanent withdrawals are not "open" to mining, metalliferous or nonmetalliferous.[83] However, if the President or Congress makes a permanent withdrawal, converting the land into a class already "open," for example, national forest, it is "open."

No public land reserve and no kind of permanent withdrawal is "open" unless mining is authorized therein by some act of Congress.[84] In general, a mining location made on public land which at the time is not "open" is void, and is not validated by the locator making valuable improvements or remaining in actual adverse possession for ten years or longer.[85]

By Executive Order 9337, April 24, 1943, the President authorized the Secretary of the Department of the Interior "to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States to the same extent that such lands might be withdrawn or reserved by the President." "To 'withdraw' land is to make it unavailable for appropriation by private persons. To 'reserve' land is to make it available, either immediately or prospectively, for some public use or purpose."[86]

NAVIGABLE AND NON-NAVIGABLE WATERS

The law distinguishes between water rights (the right to appropriate and use the water) and the ownership of the bottom or bed (including minerals on or under the bottom).[87] Whether a mining claim may be located on or across a stream or lake depends on ownership of the bottom or bed and not on water rights. Thus, non-navigable waters are "open" if on United States public land that is "open."[88] Accordingly, in a national forest a mining claim may be located on or across a non-navigable stream or lake. On the other hand, non-navigable streams and lakes on State-owned lands are not "open," for the reason that State-owned lands are not "open" but are subject to mineral leasing from the State. (See Index: Navigable waters, and State-owned lands.)

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[83] Opin. Atty. Gen., Vol. 40, p. 73 (June 4, 1941).
A withdrawal is temporary where the withdrawal order of the President is temporary in its nature; e.g., for classifying public lands, or where it recites it is temporary, or usually where it recites that it is made under above Acts of June 25, 1910 and Aug. 24, 1912.
[84] *Gibson v. Anderson*, 131 Fed. 39 (1904).
[85] Roberts, 55 I.D. 430 (1935).
[86] M-36024, Mar. 16, 1950—Opin., Dept.
[87] *Ickes v. Fox*, 300 U.S. 82 (1937).
[88] Cataract G. M. Co., 43 L.D. 248 (1914).

The State, and not the United States, owns the beds (and minerals thereon or below) of all inland navigable rivers and lakes, and tidelands. (See Index: Waters and water rights: State Water Code.) Government meander lines are merely for calculating area,[89] and have nothing to do with navigability[90] or with fixing boundary or title lines.[91]

GAME SANCTUARIES

State or Federal game sanctuaries are not "open."[92]

STATE SCHOOL LANDS

The Act of Congress of 1853 creating Washington Territory[93] reserved sections 16 and 36 in every township for public school purposes, as soon as surveyed. The Act of 1889 by Congress[94] creating the States of North and South Dakota, Montana, and Washington granted to each for public schools sections 16 and 36 in every township within each such state, with indemnity lands as contiguous as might be in lieu of sections or parts already disposed of or sold. The Act also granted each state a liberal amount of public lands for state educational and other institutions. The Act excepted and excluded from both granted and indemnity lands "all mineral lands," also Indian, military, and other Federal reserves. In 1927[95] Congress abolished this mineral land exception, whereby each state was given sections 16 and 36 whether mineral or not, except indemnity mineral lands past and future. An Act of 1934[96] directed issuance of patents to the states of sections 16 and 36, if or when surveyed.

Before official survey, title remained in the United States.[97] But after the survey is completed the land is not "open."[98] Of course, if a mining claim were located prior to survey, it continues good if unabandoned.[99] There are many surveyed school lands within national forests; such school lands belong to the State and are not "open," but may be leased from the State. (See Index: State-owned lands.)

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[89] *Harper v. Holston*, 119 Wash. 436 (1922).
[90] *Lefevre v. Wash. Mon. Co.*, 195 Wash. 537 (1938).
Borax Consol. Ltd. v. Los Angeles, 296 U.S. 10 (1935).
[91] Above cases in [90].
[92] Birdsell, A-25440, Jan. 31, 1949.
See Secs. 661 to 667d, Title 16, U.S.C. (1946, 1949).
[93] Vol. 10, Stat. L., p. 172.
[94] Rem., Vol. 1, p. 331; Vol. 25, Stat. L., p. 676.
[95] Secs. 870-872, Title 43, U.S.C.
[96] Sec. 871a, Title 43, U.S.C.
[97] *U. S. v. Wyo.*, 331 U.S. 440 (1947).
[98] *Wheeler v. Smith*, 5 Wash. 704 (1893).
But one may apply to the State for a mining lease. *Rodgers v. Berger*, 103 Pac. (2) 266 (Ariz. 1940).
[99] *Peo. v. Dorr*, 157 Pac. (2) 859 (Calif. 1945).

PRIVATELY OWNED LANDS

After patent, United States public lands become private property and are not "open," whether wild or not.① Thus patented homestead lands, Northern Pacific Railroad lands, and Weyerhaeuser Timber Company lands are not "open." (See Reservation of minerals in U. S. land patents, on page 25.)

UNPATENTED MINING CLAIMS

An existing valid mining claim is not "open," and any attempted location by anyone other than the owner is void.② But if abandoned or in default of assessment work, it may be relocated by another. (See Index: Relocations.) After all the required steps for locating a claim have been completed, the locator is not required to remain in actual possession.③ After being patented a mining claim is private property and is not "open." As to right to a vein within a placer claim, see Index: Placer claims.

UNITED STATES PUBLIC LAND OCCUPIED UNDER A VOID MINING LOCATION OR BY A SQUATTER

Is such land "open"? We are here considering the situation in which the land is being held under a mining location void for lack of discovery, lack of proper staking, or other location defect; or held by a squatter.

As against the United States, such would-be locator or squatter is a trespasser, and he may be ejected and his claim cancelled by the Government, after a hearing.④

As between private parties, let A mean the would-be locator (or assigns) claiming under the void location, or the squatter; let B mean one who thereafter enters upon the land to locate a mining claim or to take possession. The law gives the right of exclusive possession only to a valid mining location. If invalid, the law does not protect it even though A is in actual possession when B enters, provided B enters peacefully.⑤ The law protects an invalid claim

① *Henshaw v. Clark*, 14 Calif. 461 (1859).
Shaw v. Kellogg, 170 U.S. 312 (1898).
O'Neal Land Co. v. Judge, 196 Wash. 224 (1938).

② *Lucky Five M. Co. v. Central Ida. Pl. G. M. Co.*, 235 Pac. (2) 319 (Idaho 1951).
See Index: Locating mining claims: Overlapping another's claim.

③ *Belk v. Meagher*, 104 U.S. 279 (1881).

④ *U. S. v. M'Cutchen*, 238 Fed. 575 (1916).
Cameron v. U. S., 252 U.S. 450 (1919).
Roberts, 55 I.D. 430 (1935).

⑤ *Zollars v. Evans*, 5 Fed. 172 (1880).
Du Prat v. James, 65 Calif. 555 (1884).

or a squatter's possession only when it becomes necessary to prevent violence or bloodshed.⑥ These two ideas underlie the following rules. The words "actual possession" mean actual possession or occupancy by A in person or by agent. The word "peacefully" means without violence, force, threats, or deceit.

First. If B's intention is not to prospect or locate a mining claim in good faith but simply to seize A's workings and improvements, B, the robber, acquires no rights, even though he enters during A's considerable absence.⑦

Second. If B enters by force, violence, threats, or deceit, B, the bandit, acquires no rights.⑧

Third. Where A is in actual possession in good faith diligently seeking a discovery, A is protected at least to the extent of the area actually occupied by him; this is the rule of "possessio pedis."⑨ But if A, although in actual possession, is not diligently seeking a discovery, B has the right to enter, prospect, and make a discovery and location, provided he does so peacefully.⑩

Fourth. Where A is not in actual possession at time B enters, and B enters peacefully, B has the right to prospect, make discovery, and locate a mining claim.⑪ In fact, B usually waits until A is not in actual possession.

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⑥ *Atherton v. Fowler*, 96 U.S. 513 (1878).
Fee v. Durham, 121 Fed. 468 (1903).

⑦ *Davis v. Dennis*, 43 Wash. 54 (1906)—Winter season.

⑧ *McNeil v. Pace*, 3 L.D. 267 (1884)—Threats.
Tweedy v. Parsons, 19 Pac. (2) 497 (Calif. 1933)—Ouster.
(Threats must be sufficiently serious.)

⑨ *Zollars v. Evans*, above.

⑩ *Borgwaldt v. McKittrick Oil Co.*, 130 Pac. 417 (Calif. 1903)—A absent negotiating for oil driller when B entered.
Whiting v. Straup, 95 Pac. 849 (Wyo. 1908)—A worked casually.
Chrisman v. Miller, 197 U.S. 313 (1905).

⑪ *Belk v. Meagher*, 104 U.S. 279 (1881).
New England Oil Co. v. Congdon, 92 Pac. 180 (Calif. 1907)—A's watchman to keep off jumpers, not actual possession.
Borgwaldt case, above—Same.
McLemore v. Express Oil Co., 112 Pac. 59 (Calif. 1910)—A absent seeking capital, not actual possession.
Union Oil Co. v. Smith, 249 U.S. 337 (Calif. 1918). A working Claim No. 1, but not No. 2 (adjoining) on which no discovery. B located over No. 2. Held, A not in actual possession of No. 2.
Actual possession of a part of a group of mining claims is treated as actual possession of the entire group. *Priestley M. & M. Co. v. Lenox M. & Dev. Co.*, 41 Wash. (2) 101 (Aug. 1952).
Duffield v. San Francisco Chem. Co., 205 Fed. 480 (Idaho 1913)—B is not required to vacate when A returns and orders him off.
Ejecting trespassers—If A, owner of land, is on the land when B enters, A may use all necessary force to eject B, but must not use a dangerous weapon except in self defense. But if A is absent and on returning finds B in possession, A's only legal remedy is to eject B through an officer of the law. 22 LRA, NS, p. 724, note, 728; *Hickey v. U. S.*, 168 Fed. 536 (1909)—Mining claim in Alaska.

Fifth. Where A, although in actual possession when B enters, acquiesces in B's entry and prospecting, B has the right to make a discovery and location.[12]

Sixth. Where A, although in actual possession, uses the land for nonmineral purposes, B has the right to enter, etc., provided B does so peacefully.[13]

Seventh. Where A's and B's mining locations are both invalid (because of lack of discovery, insufficient staking, etc.) but one of them is and remains in actual possession acquired peacefully, his rights are superior.[14]

These rules apply also to relocations for failure of assessment work; in that such failure makes the land "open" to relocation by B. (See Index: Relocations.)

RESERVATION OF MINERALS IN UNITED STATES LAND PATENTS

This is different from nonmineral land patents, such as the Northern Pacific Railroad patents. Thus, where a patent conveys the land but reserves to the United States all or certain minerals, the ownership of the surface belongs to the patentee but the minerals belong to another party; viz., the United States and its subsequent licensees. Beginning in 1909, the United States has reserved minerals in its patents in a number of instances, as follows:

The coal reservation Acts,[15] Act of July 17, 1914,[16] reserves oil, gas, phosphate, nitrate, potash, and asphaltic minerals; and Act of March 4, 1933,[17] reserves sodium. In each of these Acts, where prior to the patent the land (U. S. public land) is withdrawn or classified as coal, or as oil, gas, phosphate, etc., or as sodium, or prior to the patent is found to be valuable as such, the patent is required expressly to reserve such respective minerals to the United States.

The Taylor Grazing Act[18] authorizes the Secretary of the Interior to patent surveyed grazing district lands, or unreserved surveyed land, in exchange for privately owned land or for State-

[12] *Cole v. Ralph*, 252 U.S. 286 (1920).
Robbins v. Elk Basin C. P. Co., 285 Fed. 197 (Wyo. 1922).
[13] *Eagle-Picher M. & S. Co. v. Meyer*, 204 Pac. (2) 171 (Ariz. 1949)—Residence.
Douglass & Lodes, 34 L.D. 556 (1906)—Blacksmith.
[14] *Protective M. Co. v. Forest City M. Co.*, 51 Wash. 643 (1909).
[15] Sec. 81, Title 30, U.S.C. (Mar. 3, 1909)—Coal reservations in general.
Secs. 83 to 85, Title 30, U.S.C. (June 22, 1910)—Homestead and Desert Entry Act (exclusive of Alaska).
Secs. 86 to 89, Title 30, U.S.C. (Feb. 27, 1917)—Surplus lands in Indian reservations.
Sec. 90, Title 30, U.S.C. (Apr. 30, 1912)—Lands patented to states.
[16] Secs. 121 to 123, Title 30, U.S.C.
[17] Sec. 124, Title 30, U.S.C.
[18] Sec. 315g, Title 43, U.S.C. (1934, 1948).
55 I.D., p. 192, 582 (Reg. 1935-6).

owned land, lying within or outside a grazing district; and under certain conditions such patents must expressly reserve minerals to the United States, and under other conditions either party to the exchange may reserve minerals. Further, all private or State-owned lands received by the United States in the exchange, if lying within any grazing district, shall automatically become part of the district.

The Stockraising Homestead Act[19] reserved all minerals in patents thereunder, but is believed repealed by the Taylor Grazing Act. (See Index: Taylor Grazing Act lands.)

The National Forest Exchange Act[20] authorizes the Secretary of the Interior to patent nonmineral national forest land in exchange for privately owned land within the same state, chiefly valuable for forest purposes and lying within a national forest; and authorizes either party to the exchange to reserve minerals. And all lands so acquired by the United States automatically become part of the national forest.[21]

The Small Tracts Act[22] authorizes the Secretary of the Interior to sell or lease tracts, not to exceed 5 acres each, of surveyed reserved or unreserved public lands (exclusive of Alaska) for a home, cabin, or recreational or business purposes, but reserving to the United States in the patent or lease "oil, gas, and other minerals," with right to any licensee of the United States thereafter to prospect and mine minerals subject to regulations of the Secretary.

Each of the foregoing Acts (except the Small Tracts Act) expressly authorizes any qualified person (citizen or one who has declared his intention) to enter upon, prospect, mine, and remove such minerals under the law in force at the time (viz., under the general mining laws of the United States; or if the mineral be coal, oil, gas, phosphate, etc., then under the U. S. Mineral Leasing Acts).[23] This right to mine includes the right to use as much surface as reasonably necessary and to erect and use necessary mine buildings and structures.[24] But the miner is required first to pay the surface owner for damages to the land, improvements, and crops, or to furnish a bond therefor.

How is one to know what lands now privately owned are subject to mineral reservations in favor of the United States and its licensees? This can be ascertained by an abstract of title or by examining the county chain-of-title records, or by inquiring of the U. S. Bureau of Land Management. As often happens, the present surface owner may be unaware of such reservation.

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[19] Sec. 299, Title 43, U.S.C. (1916).
[20] Secs. 485 and 486, Title 16, U.S.C. (1922, 1925).
[21] Vol. 40, p. 260, Opin. Atty. Gen. (Jan. 13, 1949).
[22] Sec. 682a, Title 43, U.S.C. (1938, 1945).
[23] *Dean v. Lusk Roy. Co.*, 50 L.D. 192 (1923)—May also patent claim to minerals.
[24] *Kinney-Coastal Oil Co. v. Kieffer*, 277 U.S. 488 (1928).

RESERVATION OF MINERALS IN PRIVATE DEEDS

It is common for A, private owner, to convey land to B, reserving minerals. Here B owns the surface, and A the minerals. Neither the mineral nor the surface is "open," being private properties. The Northern Pacific Railway Company, Weyerhaeuser Timber Company, and other companies and ordinary individuals often sell land, reserving the minerals. A (the mineral owner), his heirs, and assigns, have the legal right at any time to enter upon the land, prospect, excavate, mine, sell, and ship the minerals, and to use as much of the surface as reasonably necessary for excavations, buildings, roads, etc.; and they owe no legal duty to compensate B (surface owner) except for injury to permanent improvements; and lapse of time in starting work is immaterial.[25] A mineral reservation does not cover ordinary sand, gravel, or earth.[26] Reserved minerals, being property distinct from the surface title, must be taxed separately.[27] Title to reserved mineral rights is not acquired by adverse possession of surface.[28]

OIL, GAS, PHOSPHATE, ETC. LANDS

United States public lands containing coal, oil, oil shale, gas, phosphate, potassium, and sodium, and compounds of same, are not "open" but may be leased from the United States. (See Index: U. S. Mineral Leasing Act.)

Even though valuable mineral is found, before locating a claim one should make certain the land is "open." A location made on United States land which happens to be not "open" is absolutely void, and is not validated by the land being subsequently thrown open by the Government. One should study a county or township map; examine the county auditor's mining records; consult the county tax assessor, the State Division of Mines and Geology at Olympia, the local Forest Service office, the State Department of Public Lands (as to State-owned lands), and the U. S. Bureau of Land Management at Spokane (as to what lands are patented and unpatented).

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[25] 58 C.J.S., pp. 332-337.
In a Mass. case approved by the Supreme Court of Washington in *Netherland Am. Mtg. Bank v. Eastern R. Co.*, 142 Wash. 204 (1927), Mr. Michah Mudge in 1763 conveyed a farm reserving minerals. Forty years later Mr. Mudge's heir entered and mined iron over protest of surface owner. Held, heir owned the minerals and had right to mine.

[26] *Puget Mill Co. v. Duecy*, 1 Wash. (2) 421 (1939).

[27] Where the owner of reserved mineral rights fails to give notice of his mineral rights to the county tax assessor, and no separate assessment against the mineral rights appears on the tax rolls, and the land is taxed as a unit without mention of any mineral rights, the tax sale and deed convey only the surface title, without affecting the mineral rights. *McCoy v. Lowrie*, 42 Wash. (2) —— (Feb. 10, 1953).

[28] Adverse possession of surface for 10 years or by paying taxes for 7 years is not adverse possession of reserved mineral rights. *McCoy v. Lowrie*, above.

MINERALS AND MINERAL LANDS

"Minerals" and "mineral lands" embrace not only metallic but all kinds of nonmetallic deposits① of commercial value, viz., capable of being mined at a profit; and the United States mining laws of 1872, now in effect, include all such minerals.② But the deposit in question must be reasonably accessible and of present or prospective commercial value. The fact that the deposit might become valuable sometime in the future is insufficient.③ Further, "mineral land" does not include those vast areas of United States public lands in the West which contain minerals but of such small quantities as not to justify expense of exploration and development.④ Some decisions hold that sand, gravel, and other like substances are "mineral" if they can be mined at a profit. But the majority of decisions hold that even if capable of being mined at a profit they are not "mineral" if they are so common in the general vicinity as to constitute a substantial part of the ordinary stone and earth material in the vicinity. This distinction is recognized in the U. S. Act of July 3, 1947⑤ which applies to natural material, such as sand, gravel, stone, and common clay, of such (poor) quality or quantity that it is not locatable under the mining laws, and the Act excludes national forests, Indian reservations, etc., and provides that such (poor) material may be sold by the U. S. Bureau of Land Manage-

① *N. P. Ry. Co. v. Soderberg,* 188 U.S. 526 (1903)—Granite near Index, Wash., for building.
State ex. rel. Atkinson v. Evans, 46 Wash. 219 (1907)—Limestone, silicated rock and clay; overrules *Wheeler v. Smith,* 5 Wash. 704, which held limestone not mineral.
Webb v. Am. Asphaltum M. Co., 157 Fed. 203 (Colo. 1907)—Asphaltum.
U. S. v. Heller, Cause 130, Fed. Dist. Court, Spokane (1947), unreported—Held, pumice (in Chelan County) mineral and locatable as placer.

② *McMullin v. Magnuson,* 78 Pac. (2) 964 (Colo. 1938).

③ *Ickes v. Underwood,* 141 Fed. (2) 546 (1944)—Speculators located as placer a sand bank on the Columbia River 1½ miles below Coulee Dam. Claim cancelled.
U. S. v. Dawson, 58 I.D. 670 (1944)—Pumice deposit in Oregon held not locatable, there being in the vicinity large areas thereof of no present commercial value. See also 58 I.D. 567.

④ *Davis v. Weibold,* 139 U.S. 507 (1891).

⑤ Pub. Law 291 (1947), 61 Stat. L., p. 681.
A bill, H.R. 334, known as the Regan Bill, was passed by the House in the 83d Congress, in 1953. This legislation would prohibit location of mining claims for sand, gravel, clay, and common stone on United States open public lands, but would make such deposits subject to public sale by the Department of the Interior in the manner provided in the above Act of July 3, 1947, known as the Materials Disposal Act.

ment. Under the state Public Land Act⑥ sand, gravel, stone, and timber on State-owned lands may not be leased but may be sold, through the Public Land Commissioner, separately or as part of the land.

VEIN AND PLACER DEFINED

"Vein," "ledge," and "lode" mean the same thing.① A vein is mineralized rock, usually quartz, lying "in place"; viz., lying between and encased on each side by fixed uncommercial rock (country rock). A vein must show sufficient mineral to constitute a discovery; otherwise it is a dike and not a vein. A placer is a deposit sufficiently mineralized but usually which has become disintegrated, and detached from veins, and ground (milled) by nature, and thus is usually found in sand, gravel, or ancient buried stream beds, with no hanging (upper) wall of solid rock.②

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⑥ Rem. Secs. 7797-22 to 7797-58, RCW 79.12.010 to 79.12.420.

Note: Building stone may be located as a placer claim under the Building Stone Placer Act of Aug. 4, 1892 (Sec. 161, Title 30, U.S.C.), or may be purchased under the Timber and Stone Act of 1878.
Forsythe v. Weingart, 27 L.D. 680 (1898).
Shepard v. Bird, 17 L.D. 82 (1893).
See Index: Materials.

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① Rem. Sec. 8625, RCW 78.08.010.

② In *Gregory v. Pershbaker*, 14 Pac. 401 (Calif. 1867), 15 M.R. 602, there was an ancient river bed of gold-bearing gravel, so hard it had to be broken by picks and wedges and then sluiced. It was covered by a very thick ancient lava flow, and could be reached only by tunnel. Held, placer, because not "in place." Court did not comment on the dip, 8° from horizontal. In *Jones v. Prospect Mt. Tunnel Co.*, 31 Pac. 642 (Nev. 1892) the facts were substantially the same as in the California case, except the dip was not shown but was very steep. Held, a vein, because "in place." The Nevada decision is technically correct, but the California decision is probably better law in that miners usually locate as placer ancient buried deposits which originally were surface placer. "It (a vein) is in place if it is enclosed and embraced in the general mass of the mountain and fixed and immovable in that position." *Stevens v. Williams*, 1 McCrary 480 (U.S. 1879) 1 M.R. 557.

Where the upper part of a vein near the surface was so disintegrated as to be slide, held placer if containing values. *Leadville M. Co. v. Fitzgerald*, Fed. Case No. 8158 (1879), 4 M.R. 381. But if by digging deeper, rock in place is found with values, held lode discovery. *Erhardt v. Boaro*, 3 McCrary 19 (U.S. 1881), 4 M.R. 432.

The geological origin of a vein is unimportant, and the mineral therein may be metalliferous or nonmetalliferous.③ But a vein must have walls or boundaries on each side, though these need not be visible to the eye, and one or both walls may be the same kind as or a different kind of rock than the vein itself. Walls may be determined by assays or analyses, showing where the values fade out.④ A vein may be a true fissure vein, a contact vein, or a bed of any other kind; may lie with or transverse to the stratification; may be as thin as a sheet of paper in places and have pockets and turns, or be solid or solidified breccia;⑤ or may lie flat or nearly so.⑥

Stone chiefly valuable for building or ornamental purposes is locatable as placer, under the Building Stone Placer Act of 1892. Here an important question arises: Is a deposit such as limestone, sandstone, marble, slate, and the like, which is valuable for uses other than building, a lode deposit or a placer deposit? A true lode deposit located as placer is a void claim, and a true placer deposit located as lode is a void claim; unless in either case an amended location is made or a new correct location is made prior to intervening rights of other persons. Further, a claim cannot legally be located as "lode or placer." The above question arises in contests between adverse miners, and in patent proceedings. In the following discussion the more recent decisions are cited. And no reference is made to a number of cases where the only issue was whether the land was mineral.

The law defines lode claims as "mining claims upon veins or lodes of quartz, or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits,"⑦ and defines placer claims as "including all forms of deposit, excepting veins of quartz, or other rock in place."⑧ It is now established that if a deposit such as limestone, sandstone, marble, or slate (other than as valuable building stone) is "in place"; viz., encased in and between a distinct

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③ *McMullin v. Magnuson*, 78 Pac. (2) 964 (Colo. 1938)—Vein of feldspar pegmatite, 300 to 600 feet wide, one wall granite, the other schist. The vein was part of the original magma which had been pushed up, forming the entire mountain. Held, vein and not placer, and that it is not necessary that a vein be formed subsequent to the mountain, or be formed in fissures or cracks, or by replacement, or from vapors or solvents from below or above. *Eureka M. Co. v. Richmond M. Co.*, 4 Sawyer 302 (U.S. 1877), 9 M.R. 578—Zone of metamorphosed limestone over a mile long, 500 to 800 feet wide at surface, narrowing at depth, encased between a zone of shale and a zone of quartzite. Evidently all three zones had been level sedimentary layers in the ocean floor and had been tilted together. Held, a vein.

④ *Beals v. Cone*, 62 Pac. 948 (Colo. 1900).

⑤ *Stevens v. Williams*, 1 McCrary 480 (U.S. 1879), 1 M.R. 557.

⑥ *Leadville M. Co. v. Fitzgerald*, above.

⑦ Sec. 23, Title 30, U.S.C.

⑧ Sec. 35, Title 30, U.S.C.

hanging wall and a footwall; such deposit is a vein or lode and is not a placer, regardless how wide it may be.⑨

In above cases, as in other cases holding likewise, the only test was whether or not the deposit was "in place." In short, the courts and the Department of the Interior overlook the words, "bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits" in above Section 23, Title 30, U.S.C. In the cases of Henderson v. Fulton and Roy McDonald, cited below, the Department points out that to constitute a vein or lode there are two requisites: first, "rock in place"; second, the deposit must "bear" gold, silver, cinnabar, lead, tin, copper, or other valuable deposits. The Department then points out that a uniform mineral deposit; for example, marble; which does not bear or contain any vein or any valuable mineral distinct from the marble itself and is valuable only as marble, does not come within the definition of a vein or lode, and hence must be and is placer, whether in place or not in place.⑩ This reasoning is logical and should make good law. But the Hemphill and the Big Pine cases, above, are later decisions, and the Hemphill case expressly overrules Henderson v. Fulton, thus making whether rock is in place the only test. Further, to determine whether the limestone, etc. deposit is in place or is loose and scattered often requires expensive and hazardous testing. In case of doubt it would appear safer to locate as lode.

On the other hand, where the limestone, etc. deposit contains valuable metal(s) disseminated through it or in scattered pockets,

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⑨ *Webb v. Am. Asphaltum M. Co.*, 157 Fed. 203 (1907)—Deposit of asphaltum —hard, solid, nonmetalliferous—was "in place." Held, lode, and not placer. Size and shape of deposit not shown. The court said: "The test which Congress provided by this legislation to be applied to determine how these deposits should be secured was the form and character of the deposits. If they are in veins or lodes in rock in place, they may be located and purchased under this legislation by means of lode mining claims; if they are not in fissures in rock in place but are loose or scattered on or through the land they may be located and bought by the use of placer mining claims."

Duffield v. San Francisco Chem. Co., 205 Fed. 480 (1913)—Deposit of calcium phosphate, about 50 feet wide, between limestone walls, was "in place." Held, lode, and not placer.

McMullin v. Magnuson, 78 Pac. (2) 964 (Colo. 1938)—See footnote 3 on page 30 for facts. Being "in place," held lode, and not placer.

Big Pine M. Corp., 53 L.D. 410 (1931)—Limestone deposit between granite walls; was conceded by both sides to be lode formation. Held, lode, and not placer.

Hemphill, 54 I.D. 80 (1932)—Limestone deposit valuable for making portland cement; well-defined walls of serpentine and greenstone; width not shown. Held, lode, and not placer.

⑩ *Henderson v. Fulton*, 35 L.D. 652 (1907)—Marble deposit containing no metal but valuable only for the marble itself. Held, placer, and not lode. Department also refers to the Building Stone Placer Act as confirming this conclusion; viz., as being the intent of Congress.

Roy McDonald, 40 L.D. 7 (1911)—Slate deposit, valuable only for the slate. Held, placer, and not lode. Affirms *Henderson v. Fulton*.

and is valuable not for the limestone, etc. but for the metal; the limestone, etc. is lode and not placer.⑪ Where the limestone, etc. contains valuable metal(s) in concentrated form or in the form of a fissure, the limestone, etc. would merely be country rock to a vein or lode.

DISCOVERY

IMPORTANCE OF DISCOVERY IN LOCATING CLAIMS

Discovery is the most essential and important step in making a valid location, lode or placer, and the location dates from discovery; and without a discovery the location is void.① The settled definition of discovery, laid down by the Supreme Court of the United States, is: "The facts which are within the observation of the discoverer, and which induce him to locate, should be such as would justify a man of ordinary prudence, not necessarily a skilled miner, in the expenditure of his time and money in the development of the property."②

Finding a "vein" constitutes a lode discovery (see Index: Vein). When expert geologists and practical miners disagree whether a certain mineral deposit in place is a vein, the courts follow the views of the miners. Practical miners look for a "lead"—from which "lode" is derived—sufficiently promising as to lead them to believe that by following it they would find a profitable ore body; hence when they find such a lead, it (the lead) constitutes a discovery.③ Willingness to expend time and money in development work is not sufficient;

⑪ Palmer, 38 L.D. 294 (1909)—Gold found at bottom of a 60-foot shaft "in soft sandstone, very easy picked." Held, lode, and not placer.

Eureka M. Co. v. Richmond M. Co., 4 Sawyer 302 (U.S. 1877)—For facts, see footnote 3 on page 30. Here the limestone contained at places a series of ore bodies more or less closely connected, in other places in isolated chambers, and in other places in scattered grains. Kind of metal not shown. Held, lode, and not placer.

① *Jupiter M. Co. v. Bodie C. M. Co.*, 11 Fed. 666 (1881).

Cole v. Ralph, 252 U.S. 286 (1920).

The common practice of locating a claim without a discovery must not be tolerated. *Burke v. McDonald*, 33 Pac. 49 (Idaho 1890).

Doing assessment work or extensive improvements many years is insufficient evidence of discovery. *Cole v. Ralph*, above; *Cochran v. Bonebrake*, 57 I.D. 105 (1940).

② *Chrisman v. Miller*, 197 U.S. 313 (1905).

Cameron v. U. S., 252 U.S. 450 (1920)—"This is not a novel or mistaken test, but is one which the Land Department has long applied and this court has approved."

③ *Book v. Justice M. Co.*, 58 Fed. 106 (1893).

Finding a promising stringer in a crosscut tunnel, held sufficient. *Iron Silver M. Co. v. Mike, etc. Co.*, 143 U.S. 349 (1932).

An outcrop of vein on the surface may be so rich as to constitute a discovery without further work. *Bevis v. Markland*, 130 Fed. 226 (1904)—98% pure silica.

the locator must be a man of ordinary prudence.④ On the other hand, it is not necessary that the locator find pay ore or a placer pay deposit; viz., mineral which will produce a profit over and above expense of mining, milling, and shipping.⑤

Where the vein or stringer with no pay ore in sight is similar to others in proven mines in the district which led to pay ore at depth, there is a discovery.⑥

The fact that there is a rich mine or a rich vein close by is insufficient. A discovery, lode or placer, must be actually and physically found inside the claim itself.⑦

If the locator continues work in the hope of making a discovery or for speculation, this is insufficient.⑧ Courts consider the property in its undeveloped condition as is.⑨

Where promising mineral is found but cannot be mined at a profit because of inaccessibility, remoteness, lack of market for the mineral, difficulty in treating the ore, etc., the courts are liberal, in suits between mineral claimants, in allowing a discovery, provided the prospects for roads, increase in price, lower costs, etc., would reasonably justify future development.⑩ It is otherwise in patent proceed-

④ *U. S. v. Mobley*, 45 Fed. Suppl. 407, 46 I.D. 676 (1942)—Woman artist, locator. *Kramer v. U. S. Machy. Co.*, 76 Pac. (2) 540 (Calif. 1938).
U. S. v. Calif., 55 I.D., p. 180 (1935).

⑤ *Book v. Justice M. Co.*, above.
Jupiter M. Co. v. Bodie C. M. Co., above.
If a valid discovery is once made but subsequent extensive development fails to show any pay ore—(see *Iron Silver M. Co. v. Mike, etc. Co.* in footnote 3 above).

⑥ *McShane v. Kenkle*, 44 Pac. 979 (Mont. 1896).
Shoshone M. Co. v. Rutter, 87 Fed. 801 (1898).
As a general rule, discovery usually depends on the geological formation and the peculiar geological characteristics of the district. *Bonner v. Meikle*, 82 Fed. 697 (1897).

⑦ *Dahl v. Raunheim*, 132 U.S. 260 (1889)—Vein within 300 feet, and strike in direction of the claim in question.
U. S. v. Telluride H. Corp., A-25727, Jan. 18, 1950—Dip.
U. S. v. El Portal M. Co., 55 I.D. 348 (1935)—Group.
A scientific possibility of a valuable ore deposit at depth is insufficient. *U. S. v. Strauss*, 58 I.D. 567 (1943).
Whether diamond drilling which shows valuable mineral at depth constitutes discovery appears not to have been decided in any case. However, the U. S. Land Department (which always has been stricter than courts) allows diamond drilling to apply on the $500 work requirement in patenting claims, and hence also on assessment work. *McCormick*, 40 L.D. 498 (1912).
In past sessions one or more bills recognizing geophysical discovery were introduced in Congress without becoming law.
Finding a rich vein outcrop without development work may be a discovery. *Bevis v. Markland*, 130 Fed. 226 (1904).

⑧ *U. S. v. M'Cutchen*, 238 Fed. 575 (1916).
Waterloo M. Co. v. Doe, 56 Fed. 685 (1893).

⑨ *U. S. v. Lillibridge*, 4 Fed. Suppl. 204 (1932).

⑩ See *Golden Terra M. Co. v. Mahler*, 4 M.R. 390 (Dak. 1879).
Variations in price no bar. *Star M. Co. v. Fed. M. & S. Co.*, 265 Fed. 881, 254 U.S. 65.

ings and proceedings to cancel mining claims (see page 35). Citations to cases involving insufficient discovery are given in footnote ⑪.

Each individual location, lode or placer, whether single or part of a group of contiguous locations, must have an actual discovery within each such location; otherwise each such location is void.⑫

A discovery may be made at the end line of a claim if there is inside the line a substantial part of the discovery.⑬ Accordingly, if the common end line of two end-to-end claims bisects the discovery, each claim will be treated as having a separate discovery provided there is a substantial portion of the discovery area on each side of the line equivalent to the size of the mouth of a shaft.

A locator may adopt an old or abandoned discovery. (See Index: Relocations.)

A lode claim based on a placer discovery is void, and vice versa.⑭

A claim void for lack of a discovery is validated by a subsequent discovery inside the claim, if there have been no intervening rights of others, and the claim then dates from the subsequent discovery.⑮

In suits between mineral claimants, where all the locators are dead or cannot be found as witnesses and many years have elapsed during which the claim has remained uncontested, and the recorded location notice is in due form, the courts will presume a discovery from circumstantial evidence, such as old workings, substantial development work or annual assessment work, old stakes, shipments of valuable ore, etc., even though at the time of the trial no actual vein is exposed or known and the discovery spot is unknown; be-

⑪ *U. S. v. El Portal M. Co.*, above.
Brofy v. O'Hare, 34 L.D. 596 (1906).
Austin v. Mann, 56 I.D. 85 (1937)—Iron gossan cap.

⑫ *U. S. v. M'Cutchen*, above.
Pidgeon v. Lamb, 24 Pac. (2) 206 (Calif. 1933).
Copper Globe M. Co. v. Allman, 64 Pac. 1019 (Utah 1901).
Where a discovery is made on the dip of a vein at depth, may the claim be located on the surface so as to include the probable apex of the vein based on the upward dip indicated at discovery? Pro: *Brewster v. Shoemaker*, 63 Pac. 309 (Colo. 1900); see *Grant v. Pilgrim*, 95 Fed. (2) 562 (Alaska 1938); (see Index: Tunnel site locations).
Contra: *U. S. Telluride H. Corp.*, A-25727, Jan. 18, 1950; *U. S. v. Mouat*, A-26181, May 16, 1951.
A lode discovery must be on a vein whose apex (top edge), whether at depth or on the surface, is within the claim; if outside the claim, the claim is void. *Iron Silver M. Co. v. Murphy*, 3 Fed. 368 (1880).

⑬ *Upton v. Larkin*, 17 Pac. 728 (Mont. 1888), 15 M.R. 404.

⑭ *Cole v. Ralph*, 252 U.S. 286 (1920).

⑮ *Cedar Canyon C. M. Co. v. Yarwood*, 27 Wash. 271 (1902).
Protective M. Co. v. Forest City M. Co., 51 Wash. 643 (1909).
Silver King C. Co. v. Conkling M. Co., 256 U.S. 18 (1920).
As to whether discovery must be on center line of claim, see Locating mining claims (lode): Staking. (Footnote 51 on page 44.)

cause of the practical necessity of preserving mining titles now held by bona fide purchasers or by heirs.⑯

A few citations to cases involving insufficient discovery are given in footnote ⑰.

DISCOVERY IN PATENT AND OTHER UNITED STATES PROCEEDINGS

Let "Class A" mean suits between mineral claimants, and "Class B" mean suits and proceedings between the United States and mineral claimants (usually patent proceedings and proceedings to cancel mining claims) or between mineral claimants and nonmineral claimants. In Class A the courts are liberal in proving a discovery, the usual reason given being that both parties admit the land mineral; whereas in Class B the Federal courts and the Department of the Interior require direct and strict proof of discovery.⑱

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⑯ *Cheesman v. Hart*, 42 Fed. 98 (1890).
Rodgers v. Berger, 103 Pac. (2) 266 (Ariz. 1940).
Vogel v. Warsing, 146 Fed. 949 (Alaska 1906).
Steele v. Preble, 77 Pac. (2) 418 (Oreg. 1938).
Kramer v. Gladding, McBean & Co., 85 Pac. (2) 552 (Calif. 1938).
Allen v. Laudahn, 81 Pac. (2) 734 (Idaho 1936).
But a location notice of itself is not evidence of a discovery. *Priestley M. & M. Co. v. Bratz*, 40 Wash. (2) —— (May 1952).

⑰ Finding traces of mineral:
Cole v. Ralph, 252 U.S. 286 (1920)—Trace up to $1.34 gold.
Bonner v. Meikle, 82 Fed. 679 (1897)—Trace; one assay $4.22.
U. S. v. Mobley, 45 Fed. Suppl. 407, 46 I.D. 676 (1942).
Kramer v. U. S. Machy. Co., 76 Pac. (2) 540 (Calif. 1938).
Multnomah M. M. Co. v. U. S., 211 Fed. 100 (1914)—Fine gold colors all along the Columbia River.
Float and slide:
Van Zandt v. Argentine M. Co., 8 Fed. 725 (1881); *Terrible M. Co. v. Argentine M. Co.*, 89 Fed. 583 (1883).
Ebner Gold M. Co. v. Alaska Juneau Co., 210 Fed. 599 (1904)—Slide.
Isolated rich pocket, no continuity of vein:
Waterloo M. Co. v. Doe, 56 Fed. 685 (1893).
Ledoux v. Forester, 94 Fed. 600 (1899).
Placer ground originally good, played out:
U. S. v. Reed, 28 Fed. 482 (1886)—Old prospector trying to make living.

⑱ *Chrisman v. Miller*, 197 U.S. 313 (1905).
See Index: Minerals and mineral lands, and Patenting mining claims.
The fact that in Class B as well as in Class A one and the same "prudent man" definition of discovery (hereinbefore discussed) is cited and relied on, is confusing. The Federal courts and the Department of the Interior have never held that it is necessary to show pay ore or pay placer in order to prove a discovery. But in several fairly recent decisions the Department and a few of the courts have attempted to create a new definition of discovery in Class B cases; viz., that the property must be shown to be capable of being mined at a "probable profit."
U. S. v. Lavenson, 206 Fed. 755 (1913); *U. S. v. Lillibridge*, 4 Fed. Suppl. 204 (1932); *U. S. v. Bullington*, 51 L.D. 604 (1926); Big Pine M. Corp., 53 I.D. 410 (1931); *U. S. v. El Portal M. Co.*, 55 I.D. 348 (1935). Such new definition is not consistent with the "prudent man" definition. In recent decisions the Department reverts to the "prudent man" definition. Rochon, A-26203, July 18, 1951. *U. S. v. Mouat*, A-24427, Jan. 27, 1949; Draper, A-25800, Apr. 19, 1950.

In Class B the Federal courts and the Department of the Interior have laid down the rule that if the land is more valuable for its timber,[19] or as a water power site or reservoir,[20] or for agriculture,[21] or for a summer home,[22] or for recreation,[23] or for a hotel site,[24] or for other nonmineral use,[25] than it is for its minerals, then a mining patent will be refused or the mining claim will be cancelled, on the theory that the land is nonmineral. If the real motive of the claim owner is to obtain title to the land for its timber or for other nonmineral use, he is seeking nonmineral land under the mining laws, which is a fraud on the Government. On the other hand, the fact that the land contains valuable timber or is valuable for some nonmineral use is no bar to a mineral patent or to a valid mining claim, provided there is clear and convincing proof of a discovery and the motive in applying for a patent is bona fide.[26]

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[19] Wells, 54 I.D. 306 (1933)—Patent refused.
Meiklejohn v. Hyde Co., 42 L.D. 144 (1913)—Same.
Rochon, above—Building stone claim cancelled.

[20] *U. S. v. Lavenson*, above—Patent cancelled.

[21] *Multnomah M. M. Dev. Co. v. U. S.*, 211 Fed. 100 (1914)—Patent refused.

[22] *U. S. v. Mobley*, 45 Fed. Suppl. 407 (1942)—Claim cancelled.

[23] *U. S. v. Lillibridge*, above—Claim cancelled.

[24] *Cameron v. U. S.*, 252 U.S. 450 (1920)—Claim cancelled.

[25] *Richards v. Dower*, 22 Pac. 304 (Calif. 1889)—Townsite.

[26] *U. S. v. Denison*—Here claim had valuable white pine; manganese discovery clear; Denison, a bona fide prospector, had never dealt in timber; patent allowed. This decision by Secretary of the Interior found in Pat. Application 082157, Jan. 9, 1948, Arizona, Mineral Survey 4291, Phoenix 082157-N.

LOCATING MINING CLAIMS

LOCATORS

Who Is Qualified to Locate

Any United States citizen or any person who in good faith has declared his intention of becoming a citizen (viz., who has taken out "first papers") may locate a mining claim.① A claim may be located by a resident or nonresident of the State,② a single or married woman,③ a minor if of discretion and understanding④ and by a corporation incorporated under the laws of the United States or of any state or territory,⑤ even though part of or all its stockholders are aliens.⑥ The locator's affidavit as to his citizenship is presumptive evidence of his citizenship.⑦

Aliens

It is undisputed that an alien who has not declared his intention of becoming a citizen cannot obtain from the United States a patent to a mining claim.⑧ If an alien locates or acquires an unpatented mining claim, no one except the United States can object; so that as between the alien and private citizens or corporations, the alien's claim is treated as valid.⑨ Further, if such alien becomes naturalized or files his intention to become a citizen (viz., his "first papers"), or in good faith transfers the claim to a citizen *before* the United States takes direct steps to cancel the claim, the defect in the title is cured for all purposes and the claim is valid.⑩ A claim located jointly by a citizen and an alien is valid.⑪

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① Sec. 22, Title 30, U.S.C.
55 I.D. 235 (Reg.).
② *Book v. Justice M. Co.*, 58 Fed. 106 (1893).
③ *Atchley v. Varner*, 280 Pac. 616 (Okla. 1929).
④ *West v. U. S. ex rel. Alling*, 30 Fed. (2) 739 (1929).
Davis v. Dennis, 43 Wash. 54 (1906).
⑤ *Book v. Justice*, above.
55 I.D. 235 (Reg. 1935).
⑥ 51 L.D. 62 (Instr. 1925).
⑦ *Hammer v. Garfield M. Co.*, 130 U.S. 291 (1889).
Stolph v. Treas. G. M. Co., 38 Wash. 619 (1905).
⑧ *Herrington v. Martenez*, 45 Fed. Suppl. 543 (1942).
⑨ *Herrington* case, above.
Davis v. Dennis, above.
⑩ *Stewart v. Gold etc. Co.*, 82 Pac. 475 (Utah 1905)—Pat. proceedings.
Wilson v. Triumph C. M. Co., 56 Pac. 300 (Utah 1899)—Same.
Manuel v. Wulff, 152 U.S. 505 (1894)—Naturalized during pat. proc.
No one, except the United States, is allowed to question or attack a mining claim located or held by an alien. *Davis v. Dennis*, above.
⑪ *Providence G. M. Co. v. Burke*, 57 Pac. 641 (Ariz. 1899)—Here both conveyed to a citizen. If before then the U. S. had cancelled the alien's interest, would the other's interest be half?

Accordingly, a citizen has no right to locate ground already covered by a mining claim located or held by an alien.[12]

In Washington, an alien can acquire and own valuable mineral patented land.[13]

Locating by Agent

All steps in locating and holding a mining claim, up to time of applying for patent, may be performed by an agent.[14] Where A locates for B's benefit or for the joint benefit of both, the usual practice is for the posted and recorded location notice to be signed: B by A, his agent. But if B is present at the locating, B may treat A as his helper and not as agent; and it is not necessary that every stake be driven in B's presence.[15] Assuming A intends to locate as B's agent, the notice probably would be valid although in B's name, without mention of A.[16]

In Washington (but not in Alaska) authority or a power of attorney to locate mining claims, and grubstake agreements, need not be in writing.[17]

If A without B's knowledge or consent locates in B's name, the mining claim belongs not to A but to B until and unless B refuses to accept it.[18] If in so locating A intends the claim for himself and not for B, this is a fraud on the Government for which it may object; but a third party may not take advantage thereof.[19]

Where there is a verbal agreement supported by some legal consideration, whereby A agrees to locate for B's benefit or for their joint benefit, but A locates in his own name, the courts hold A as trustee for B to the extent of B's interest.[20] But a third person cannot take advantage thereof.[21]

It is not unlawful to locate with intent to transfer or lease the claim immediately to another person.[22]

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[12] *McKinley Creek M. Co. v. Alaska U. M. Co.*, 183 U.S. 563 (1902).
[13] State Constitution, Art. 2, Sec. 33.
Rem. Sec. 3836-16, RCW 23.08.110.
State ex rel. Atkinson v. Evans, 46 Wash. 219 (1907).
Chap. 10 of 1953 Wash. Laws, p. 10.
[14] *MacDonald v. Cluff*, 206 Pac. (2) 730 (Ariz. 1949).
[15] *Riley Inv. Co. v. Sakow*, 98 Fed. (2) 8 (Alaska 1938).
[16] See 2 C.J.S., pp. 1348-9, and Costigan Min. Law (1908), p. 173.
[17] *Mack v. Mack*, 39 Wash. 190 (1905).
[18] Alaska Dano Mines, 52 L.D. 550 (1929).
Morton v. Solambo C. M. Co., 26 Calif. 527 (1864)—A posted notice in names of A, B, and C without the others' knowledge and later tore it down and posted notice in own name.
Wiesenthal v. Goff, 120 Pac. (2) 248 (Idaho 1941).
[19] *Brassey v. Peck*, 123 Pac. (2) 1014 (Idaho 1942).
[20] *Palmer v. Sunnyside G. etc. Co.*, 61 Pac. (2) 444 (Ariz. 1936).
Wiesenthal v. Goff, above.
[21] *Siedletz v. Griffith*, 114 Pac. (2) 598 (Calif. 1941).
Wiesenthal case, above.
[22] *Mason v. U. S.*, 260 U.S. 545 (1923).

Co-Locators

It is common practice for several persons to join in locating mining claims, also for A to locate a number of claims each separately in the name of some relative or friend. It should be borne in mind that each such nominal locator legally owns the claim or his interest therein, as above explained. Further, the majority of such locators usually evade contributing to the annual assessment work and often block advantageous sales or leases; and their heirs multiply and make matters worse. It is far better for A, if able, to locate a group of claims each in his own name.

GENERAL CONSIDERATIONS

Number of Locations Allowed

In Washington and most western states there is no limit to the number of lode or placer locations that a qualified person, association, or corporation may make, at the same or at different times, and whether directly or through an agent, and whether on same vein or not, and whether or not the locations are contiguous.[23] (In Alaska there is a limit to placer locations.) However, an honest locator will not attempt to locate more claims than he can protect by honest annual assessment work.

Overlapping Another's Claim

If B in locating a mining claim overlaps part or all of A's existing valid claim, which is not abandoned nor in default of assessment work at the time, B's overlap is absolutely void, and is not validated by A's subsequent failure to do assessment work.[24]

To make his end lines parallel (for extralateral rights), it often becomes necessary for B to overlap part of A's existing valid claim, patented or unpatented, but to do so B has no right to stake on A's ground without his consent or acquiescence; and if A does consent or acquiesce, B secures extralateral rights but without affecting A's rights (including any extralateral rights which A already has.)[25]

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[23] *U. S. v. Cal. Midway Oil Co.*, 279 Fed. 516 (1922).
Last Chance M. Co. v. Bunker Hill etc. Co., 131 Fed. 579 (1904) and page 109.

[24] *Belk v. Meagher*, 104 U.S. 279 (1888).
Swanson v. Sears, 224 U.S. 180 (1909).

[25] *Del Monte M. & M. Co. v. Last Chance M. Co.*, 171 U.S. 55 (1897).
It is recommended that B in his posted and his recorded location notices expressly disclaim any rights in the overlap, and recite his only purpose in the overlap is to make his end lines parallel so as to secure extralateral rights. Otherwise B creates a cloud on A's claim.

Use of Terms "Location," "Claim," "Group"

The term "location" and "claim," lode or placer, are used indiscriminately by miners and law writers. Miners usually use the word "claim." A single location or claim is a legal unit. A group of contiguous lode or placer locations may be called a claim, but they constitute several locations. The law permits group assessment work but not a group of claims as one location. Thus each location in a group of contiguous lode or placer claims must contain a separate discovery, must have a separate posted location notice and a separate recorded notice—in other words, must be located separately, although all the locations in the group may be located at the same time. If anyone attempts to locate as one location or claim, say, 3,000 by 600 feet (the equivalent of two lode claims) or, say, 40 acres of placer ground, it would be void.[26]

An "association placer claim" is a single location, consisting of more than 20 acres but not to exceed 160 acres, located by several co-locators, viz., by an association of persons; being a single location legally, it requires only one discovery and only $100 annual assessment work.[27] One or several locators may locate several independent contiguous 20-acre placer claims; this makes a "group" of claims and is not an "association placer claim."[28]

HOW TO LOCATE A LODE CLAIM

A full-sized lode claim is 1,500 feet by 600 feet—20.66 acres. Measurements, for either lode or placer claims, are made horizontally, regardless of the contour of the ground.

The proper order in locating a lode claim is:

Make a lode discovery;

Post location notice;

Stake corners and mark boundary lines;

Dig a 10-foot discovery shaft or its equivalent work, where required;

Record a location notice (often called location certificate).

This order is not essential, but in Washington the law requires all these steps to be completed within 90 days. However, if completed after 90 days but before another person makes a discovery and posts a notice, the first location is protected.[29] A substantial failure to comply with any one of the foregoing steps renders the location

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[26] See Index: Locating mining claims: Oversized claims.

[27] *Houch v. Jose*, 72 Fed. Suppl. 6 (Calif. 1947).
Reeder v. Mills, 217 Pac. 562 (Calif. 1923).

[28] *Houch v. Jose*, above.

[29] *Protective M. Co. v. Forest City M. Co.*, 51 Wash. 643 (1909).
Union Oil Co. of Calif. v. Smith, 249 U.S. 337 (1919).

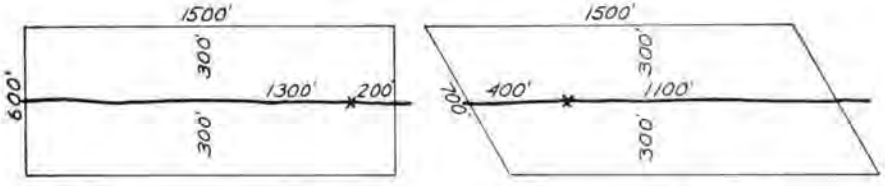

FIGURE 1

FIGURE 2

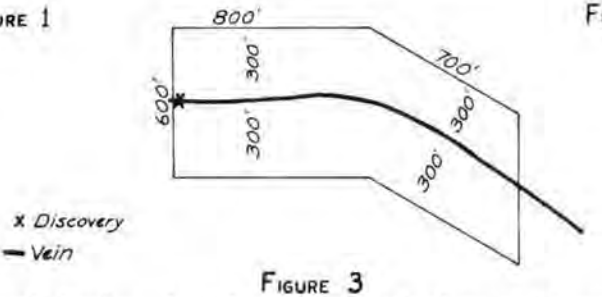

FIGURE 3

void; and the fact that the state statute does not expressly provide for a forfeiture or loss is immaterial.[30]

FIRST STEP—DISCOVERY

In the absence of discovery even the performance of all the other location steps creates no location rights.[31] Further, merely posting a location notice on an outcrop without an actual discovery creates no location rights.[32] Likewise, merely posting a location notice and marking the corners and lines initiates no rights.[33] As to effect of a subsequent discovery, see Index. When a discovery is made prior to or at time of posting the location notice, the location is initiated and takes effect from date of the posting, provided all other steps are completed within the required 90 days or before any rights of others intervene. (See Index: Discovery.)

SECOND STEP—POSTING NOTICE

The Washington law reads: "Post at the discovery at the time of discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery.[34] The Washington

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[30] *Knutson v. Fredlund*, 56 Wash. 634 (1910)—Recorded notice void.
Protective M. Co. case, above—Not staked.
Buckeye M. Co. v. Powers, 257 Pac. 833 (Idaho 1927)—Notice improperly posted.
Slothower v. Hunter, 88 Pac. 36 (Wyo. 1906)—Recorded notice void.

[31] *Cole v. Ralph*, 252 U.S. 286 (1920).
Copper Globe M. Co. v. Allman, 64 Pac. 1019 (Utah 1901).

[32] *Erhardt v. Boaro*, 113 U.S. 527 (1885).
Armstrong v. Lower, 6 Colo. 581 (1882).

[33] *New Eng. Oil Co. v. Congdon*, 92 Pac. 180 (1907).

[34] Rem. Sec. 8623, RCW 78.08.060.

law[35] implies "date of discovery," "date of posting," and "date of location" to mean one and the same date, on the theory that the locator should post the notice when he makes the discovery. But it usually happens that he makes his discovery, say, August 1st but does not post the notice until, say August 21st. Here it would be proper for him in the notice to state August 21st as the date of discovery and posting, since he may adopt his prior discovery then, without injury to anyone. Or he may state August 1st as date of discovery and August 21st as date of location, but should claim as and from August 21st.

"Name of the lode," although poorly worded, means not the name of the vein but of the claim. As the locator may name his claim any name he pleases, a claim named "Colfax Lode" was upheld.[36] If the only indication of his name is the locator's signature, that is a sufficient naming of the locator.[37] The posted notice need not be signed but may wholly be written, painted, printed, typed, or engraved, although there appears to be no case on this point.

The notice is usually posted on a tall substantial post, stump, tree, or monument of stones—called "discovery post." It must be posted inside the claim, on the surface, and at or very near the discovery.[38] If the discovery is in a shaft or tunnel, the notice is properly posted at the rim or entrance.[39] If posted outside the claim, the claim is invalid.[40] If the discovery spot is obscure and no bona fide attempt is made to make it reasonably conspicuous, as by clearing the brush, the notice is void.[41]

Some reasonable care must be taken to protect the notice against the elements; otherwise the notice is void.[42] Illustrations: building a little shed over the notice; shellacking the paper notice; using galvanized tin sheet on which the notice is painted. It is good practice to put the paper notice in a tin can or glass jar, closed securely or screwed tightly, fastened to the discovery post securely.[43] But if a can or jar is used, it is recommended that a sign be placed on or above it, such as "Mining Location Notice."

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[35] Rem. Secs. 8622, 8623, 8631; RCW 78.08.050, 78.08.060, 78.08.100.
[36] *Phillpotts v. Blasdell*, 8 Nev. 62 (1872), 4 M.R. 341.
[37] *Berquist v. W. Va.-Wyo. C. Co.*, 106 Pac. 673 (Wyo. 1910).
[38] *Buckeye M. Co. v. Powers*, 257 Pac. 833 (Idaho 1927).
Copper Globe Co. case, above.
[39] *Campbell v. Ellett*, 167 U.S. 116 (1897).
[40] *Copper Globe Co.* case, above.
[41] *Tweedy v. Parsons*, 19 Pac. (2) 497 (Calif. 1933).
Buckeye M. Co. v. Powers, 257 Pac. 833 (Idaho 1927)—Putting a notice in can on ground; another on stone monument with a stone partly on top of notice; another on ground with piece of bark on top; all void.
[42] *Houch v. Jose*, 72 Fed. Suppl. 6 (1947)—Paper exposed wholly to weather.
[43] *Gird v. Calif. Oil Co.*, 60 Fed. 531 (Calif. 1894)—Can.
Houch v. Jose, above—Jar.
Scoggin v. Miller, 189 Pac. (2) 677 (Wyo. 1948)—Jar.
Kramer v. Sanguinetti, 90 Pac. (2) 103 (Calif. 1939)—Can.

The purpose of the posted notice is to give immediate notice of a discovery and to warn others off.[44] It may become destroyed, whereas the recorded location notice is intended to be permanent.[45] The posted notice legally need contain only the things above explained;[46] but it must contain all these things. The law requires the recorded notice to contain several more things (see page 48). It is good practice to prepare in triplicate a complete notice, containing all the things required in both kinds of notice, and to post one copy, record one copy, and keep the third copy. It is good practice to have a witness sign, "Posted in presence of_____." The law does not prescribe any form of notice for posting or recording.

After A, locator, has made a sufficient discovery and posted a proper notice, the law allows him a reasonable time—90 days in Washington—in which to explore and determine the course of the vein and to perform the remaining location steps. During such period B has no right to locate part or all the ground which A finally stakes, even though at the time B enters it is still uncertain where A will actually place his corners and lines.[47] It is proper in the posted notice to claim "1,500 feet on this vein," since the law does not require the vein to be staked.[48]

Third Step—Staking Claim

"The location must be distinctly marked on the ground so that its boundaries can be readily traced."[49] The laws of Washington[50] require the locator to:

> "mark the surface boundaries of the claim by placing substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must not be less than three (3) feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a

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[44] *Florence-Rae M. Co. v. Kimbel*, 85 Wash. 162 (1915).
[45] *McMillen v. Ferrum M. Co.*, 74 Pac. 461 (Colo. 1902).
Berquist v. W. Va.-Wyo. C. Co., 106 Pac. 673 (Wyo. 1910).
[46] *Gird v. Calif. Oil Co.*, above.
Gleeson v. Martin White M. Co., 13 Nev. 442 (1878), 9 M.R. 429.
[47] *Erhardt v. Boaro*, 113 U.S. 527 (1885).
Union M. & M. Co. v. Leitch, 24 Wash. 585 (1901).
[48] *Book v. Justice M. Co.*, 58 Fed. 106 (1893).
See *Erhardt* and *Union* cases, above.
[49] Sec. 28, Title 30. U.S.C.
[50] Rem. Sec. 8623, RCW 78.08.060.
Staking a claim requires three things. First, each corner must be marked by a post (tree or stump) or stone monument of the dimensions herein specified. Second, each such corner post must be marked with name of the claim and date of location. It is advisable also to state name of locator(s) and designation of corner (for example, "S.E. cor."). Third, the lines between the corners must be blazed or marked on the ground as herein specified.

substantial manner. If any such claim be located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claims to indicate the location of such lines."

In Washington it is unnecessary to mark the center or vein line, or the center of the two end lines. If unable to trace the vein all the way, the corners and lines must be marked as well as possible and if necessary amended later. (See Index: Amending locations.)

The end lines must not be more, but may be less, than 1,500 feet apart measured along the vein. On a vein making a turn the end lines would thus actually be less than 1,500 feet apart. (See fig. 3 on page 41.) To secure "extralateral rights" the end lines must be parallel. (See Index: Extralateral rights.) The side lines need not be straight or parallel; but each side line at any point must not be more, but may be less, than 300 feet from the center line of the vein.[51] Fractional or irregularly shaped claims (less than 1,500 by 600 feet) are allowed, usually to avoid overlapping neighboring claims.

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[51] Rem. Sec. 8616, RCW 78.08.020.
Quilp Gold M. Co. v. Republic M. Corp., 96 Wash. 439 (1917).
Jim Butler T. M. Co. v. West End C. M. Co., 247 U.S. 450 (1918).
The end lines may each be over 600 feet long. *Liggatt v. Stewart*, 5 Mont. 107 (1883), 15 M.R. 358. (See fig. 2 on page 41.)

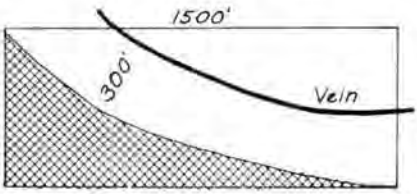

FIGURE 4

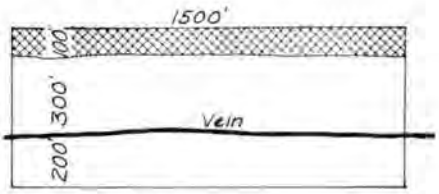

FIGURE 5

In figures 4 and 5 let the shaded portion represent area in claim more than 300 feet from center line of vein. Some courts hold such shaded portions invalid and open to location by others. Other courts hold the only effect is on extralateral rights. See Costigan Min. Law, p. 199 (1908). The Supreme Courts of the United States and Washington appear not to have passed on the question. The practical remedy is to amend as soon as the true course of the discovery vein is traced, taking in new ground and eliminating the shaded portions.

Contrary to popular notion, there is no law requiring the discovery to be on the center line of the discovery vein. The Washington law merely requires that each side line must not be more than 300 feet from such center line, and that the recorded location notice state the distance from discovery to each end line. Thus a valid discovery could be at the edge of a wide vein and within a few feet of a side line. Further, cases holding a subsequent discovery validates a claim do not hold it must be on the vein center line; in most instances it would be off the line. Further, in patent proceedings the U. S. mineral examiner recognizes any discovery if inside the claim. And the U. S. law (Sec. 23, Title 30, U.S.C.) requires, "no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located."

The lines between the corners; viz., the exterior lines of the claim, should be marked in some practical way, so as to be readily traced.[52] Even though the posted or recorded notice accurately describes the boundaries, it is still necessary to mark the corners and lines on the ground.[53] A number of courts outside Washington have held that if the corners are staked properly on the ground it is not essential that the lines between the corners be staked in any way, where the country is barren, open, level, or rolling and the corners can be easily found or seen. The converse of this is also true, that where the country is not like a golf course but is rugged or wooded, and the view obstructed from one corner to another, "it is necessary to blaze the trees along the lines, or cut away the brush, or set more stakes, at such distances that they may be seen from one to another, or dig up the ground in a way to indicate the lines, so that the boundaries may be readily traced."[54] The Supreme Court of Washington has held that the staking of corners and lines is absolutely necessary, but in these cases the contour of the ground is not disclosed.[55] The only safe way is to stake the corners and lines. The purpose of staking is to give notice to others as to where the lines are and to prevent swinging the claim.[56] Merely posting a notice and staking corners and lines does not create any location rights.[57]

Witness stakes

If one or more corners are so inaccessible to an experienced climber that an attempt to reach them would endanger his life, a "witness stake" (on a line as far as accessible and stating the approximate distance and direction to the true corner) is permissible.[58] But if, during part or all the open season, although accessible only by a circuitous route, the true corner is accessible to an experienced climber without his risking his life, the true corner must be actually

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[52] "All authorities agree that any marking on the ground, by stakes, monuments, mounds, and written notices, whereby the boundaries of the location can be readily traced, is sufficient." *Book v. Justice M. Co.*, 58 Fed. 106 (1893).

[53] *Doe v. Waterloo M. Co.*, 70 Fed. 455 (1895).
Eaton v. Norris, 63 Pac. 856 (Calif. 1901).

[54] *Ledoux v. Forester*, 94 Fed. 600 (Wash. 1899).
Ehrhart v. Bowling, 97 Pac. (2) 1010 (Calif. 1940).

[55] *Protective M. Co. v. Forest City M. Co.*, 51 Wash. 643 (1909).
Paragon M. & D. Co. v. Stevens County Expl. Co., 45 Wash. 59 (1906).
Prospectors' Dev. Co. v. Brook, 32 Wash. 315 (1903).

[56] *Gold Creek etc. Co. v. Perry*, 94 Wash. 624 (1917).

[57] *New England Oil Co. v. Congdon*, 92 Pac. 180 (Calif. 1907).

[58] *Gird v. Calif. Oil Co.*, 60 Fed. 531 (1894).
See *Eilers v. Boatman*, 2 Pac. 66 (Utah 1884)—Inaccessible corner could be determined from location notice and other stakes; witness stake excused.

staked.[59] And the fact that the ground is extremely rough is no excuse.[60]

Advantage of maintaining posts and markings

If the corners and lines were once properly marked on the ground but the posts or monuments have disappeared through no fault of the claim owner, there is no legal duty on his part to maintain or renew them; and the fact that others can not now find the corners or lines or determine them from the recorded location notice is immaterial.[61] However, to avoid litigation it is advisable to renew lost posts or monuments.[62] The burden of proving where such lost corners actually were is on the claim owner, and such proof must be "with certainty."[63]

Claim as staked varying from the recorded location notice

Here the actual staking governs, even though the variance is substantial.[64] However, to cure such variance the claim owner may amend the claim; in so doing, so long as his discovery remains inside the claim as amended, it is not necessary that he know where the lost corners were, since he may pull in his boundaries or take in new ground provided he does not overlap a neighbor's claim.[65]

Jumper knowing boundaries

Where A's mining claim is void for failure of proper staking or for failure of sufficient description in the recorded location notice, but B (jumper) actually knows where the boundaries are when he attempts to locate part or all the ground, B's attempted location is void; the purpose of staking and description is to impart knowledge,

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[59] *Gird v. Calif. Oil Co.*, above.
Croesus etc. Co. v. Col. Land & M. Co., 19 Fed. 78 (1884).
Taylor v. Parenteau, 48 Pac. 505 (Colo. 1897).
Beals v. Cone, 62 Pac. 948 (Colo. 1900).

[60] Same cases.

[61] *Book v. Justice M. Co.*, 58 Fed. 106 (1893).
Nichols v. Ora Tahoma M. Co., 151 Pac. (2) 615 (Nev. 1944).
Larned v. Dawson, 90 Fed. Suppl. 14 (1950).

[62] *Eaton v. Morris*, 63 Pac. 856 (Calif. 1901).

[63] *Book v. Justice M. Co.*, above.
Cullacott v. Cash etc. Co., 8 Colo. 179 (1884), 15 M.R. 392.
Treadwell v. Marrs, 83 Pac. 350 (Ariz. 1905).

[64] *Book v. Justice M. Co.*, above.
Bramlett v. Flick, 57 Pac. 869 (Mont. 1899).
Treadwell v. Marrs, above.
In *Leveridge v. Hennessy*, 135 Pac. 906 (Mont. 1913) and *Swanson v. Koeninger*, 137 Pac. 891 (Idaho 1913) the variance in shape and dimensions was so gross as to impute bad faith.

[65] See *Nichols v. Ora Tahoma M. Co.*, 151 Pac. (2) 615 (Nev. 1944).

which B already has;[66] likewise, where B could easily have inquired of A as to his boundaries.[67]

Oversized claims

If a mining claim is staked on the ground in good faith longer or wider than allowed by law; for example, 100 or 200 feet too long, the claim is valid, except that the excess is invalid and is open to location by others.[68] But if the excess is so great as to indicate bad faith or ignorance of the law, the entire claim is void.[69]

FOURTH STEP—DISCOVERY SHAFT OR LIEU WORK

Between 1899 and June 8, 1949 the state mining laws required, in locating a lode claim east of the summit of the Cascade Mountains, a 10-foot discovery shaft on the vein.[70] Accordingly, east of the summit (viz., in eastern Washington) such discovery shaft was required not only in original locations but in relocations of lode claims.[71] and a lode location without such discovery shaft was void.[72] The shaft was required to be at least 10 feet from the lowest part of the rim.[73] The law allowed a 10-foot open cut or tunnel (on floor) cutting a vein 10 or more feet below the surface, as equivalent to said discovery shaft.[74] It was permissible to deepen an old or abandoned shaft 10 feet deeper, including reopening any filled-in portion.[75]

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[66] *Gold Creek Antimony M. & S. Co.*, 94 Wash. 624 (1917).
Ninemire v. Nelson, 140 Wash. 511 (1926).
Gerber v. Wheeler, 115 Pac. (2) 100 (Idaho 1941)—B "knew the substantial location and boundaries" of A's claim.

[67] *Nichols v. Ora Tahoma M. Co.*, 151 Pac. (2) 615 (Nev. 1944).
Lucky Five M. Co. v. Central Ida. Placer G. M. Co., 235 Pac. (2) 319 (Idaho 1951).

[68] *Flynn Group M. Co. v. Murphy*, 109 Pac. 851 (Idaho 1910).
Ehrhart v. Bowling, 97 Pac. (2) 1010 (Calif. 1940).
Steele v. Preble, 77 Pac. (2) 418 (Oreg. 1938)—Placer claim described as 1,500 by 600 feet, slightly over 20 acres.
Alaska courts have a different rule.

[69] *Madeira v. Sonoma Mfg. Co.*, 130 Pac. 175 (Calif. 1940)—2,000 feet long.
Ledoux v. Forester, 94 Fed. 600 (Wash. 1899).
Nicholls v. Lewis & Clarke M. Co., 109 Pac. 846 (Idaho 1910).

[70] Rem. Secs. 8623, 8629; RCW 78.08.060, 78.08.090.

[71] *Nat. M. & M. Co. v. Piccolo*, 57 Wash. 572 (1910).

[72] *Paragon M. & D. Co. v. Stevens County Expl. Co.*, 45 Wash. 59 (1906).
If owner amends his lode claim, taking in new ground but leaving his discovery shaft (containing discovery) within the new boundaries, it is not necessary to dig a new discovery shaft.
Becker v. Pugh, 29 Pac. 173 (Colo. 1892).
If owner digs a 10-foot shaft without making a discovery, but prior to intervening rights of others he makes a discovery in some other part of the claim, his claim is validated.
Chambers v. Harrington, 111 U.S. 350 (1884).
Gibson v. Hjul, 108 Pac. 759 (Nev. 1910).
See *Protective M. Co. v. Forest City M. Co.*, 51 Wash. 643 (1909).

[73] Rem. Sec. 8623, RCW 78.08.060.

[74] Rem. Sec. 8624, RCW 78.08.070.

[75] *Brewer v. Heine*, 106 Pac. (2) 495 (Ariz. 1940).

The law expressly stated that the provisions regarding discovery shafts "shall not apply to any mining location west of the summit of the Cascade Mountains."[76] This exception was probably due to the rugged mountains, heavy overburden, dense forests, difficult accessibility, and rainy climate in western Washington.

In 1949 the state legislature amended the discovery-shaft law, Rem. Sec. 8630[77]—the amendment taking effect June 8, 1949—so as to allow in lieu of a 10-foot discovery shaft (or tunnel) "an equal amount of development work within the borders of the claim." However, the locator or relocator should not overestimate the proper cost of such development work; it must still equal the cost of digging a 10-foot shaft. The amendment was intended not to lessen the cost but to allow substitute development work, such as open cuts, so as better to explore the vein. The amendment leaves to the locator or relocator his choice, whether to dig a 10-foot discovery shaft (or tunnel) or whether to do any other kind of development or prospecting work of equal amount anywhere within the claim.

Fifth Step—Recording Location Notice

"Within ninety (90) days from date of discovery" the locator of a lode claim is required to make and record a written location notice, also called "location certificate," in the county auditor's office where the claim is located, stating:

> "the name or names of the locators, the date of the location, the number of feet in length claimed on each side of the discovery, the general course of the lode, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim."[78]

The name of the claim should also be stated. As explained on page 42, the "date of discovery" and the "date of location" mean the date of actual posting of the posted location notice. "The number of feet in length claimed on each side of the discovery" means the distance from discovery to each end line measured along the vein. (See figs. 1, 2, and 3 on page 41.)

In Washington the recording of a location notice is considered essential to a valid location.[79] Recording a copy or duplicate of the posted location notice containing only the name of the claim, name of locator, and date of location, is fatal.[80] A recorded notice which omits one or more of the five things in the list above is fatal.[81] But

Note: The above location work is one of the location steps and is not assessment work. It should be done inside the claim.

[76] Rem. Sec. 8630, RCW 78.08.130.
[77] RCW 78.08.090.
[78] Rem. Sec. 8622, RCW 78.08.050.
[79] *Florence Rae C. Co. v. Kimbel*, 85 Wash. 162 (1915).
[80] *Knutson v. Fredlund*, 56 Wash. 634 (1910).
[81] *Knutson* case, above.

honest mistakes in the notice as to directions and distances are very common, and are not fatal.[82]

The most common error in recorded notices is due to the inability of the locator to describe the whereabouts of the claim with sufficient definiteness as to enable anyone familiar with the district to go and find the claim after reading the notice and after making a reasonable search. The words "reference to some natural object or permanent monument as will identify the claim" mean stating in the recorded notice the approximate or exact direction and distance of the claim or of some corner or point thereof or of the discovery from some natural object or permanent monument in the neighborhood. "Natural object" means one made by nature, such as a well-known mountain peak, a lake, junction of two streams, a canyon, cliff, etc. "Permanent monument" means an object made by man, such as a bridge, a cabin, road, trail, a well-known mine, a patented mining claim, a U. S. survey section or quarter section corner, a U. S. mineral monument, etc. Such objects may lie outside or inside the claim.[83] In the illustrations below the following were held sufficient[84] and insufficient,[85] after first naming the state, county, and usually the mining district. Giving the direction and distance from an unpatented mining claim in the neighborhood is usually insufficient, because its whereabouts is usually no better known than that of the claim being located.[86] Describing a claim as being on or near a certain river or stream is insufficient, since a river or stream extends a long distance.[87] The law does not prescribe any particular

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[82] *Book v. Justice M. Co.*, 58 Fed. 106 (1893)—Locators are not required to be surveyors or lawyers or to survey their claims.
Bramlett v. Flick, 57 Pac. 869 (Mont. 1899), 20 M.R. 103.
See Index: Amending locations, and Locating mining claims: Staking claims, Oversized claims.

[83] *Bismark Mt. M. Co. v. N. Sunbeam G. Co.*, 95 Pac. 14 (Idaho 1908).

[84] *Hammer v. Garfield M. & M. Co.*, 130 U.S. 291 (1889)—"This lode is located about fifteen hundred feet south of Vaughan's Little Jennie mine."
Ninemire v. Nelson, 140 Wash. 511 (1926)—". . . bordered on the north end by Camp Creek. It also joins the Gold Eagle on the south."
Bismark Mt. case, above—Described as situated on "Bismark Mountain." This mountain is very small, and the claim thereon could easily be found.

[85] *McAvoy v. Hyman*, 25 Fed. 596 (1885)—". . . situated on Aspen Mountain."
Clearwater Short-Line Ry. Co. v. San Garde, 61 Pac. 137 (Idaho 1900)—". . . 600 feet from the mouth of what is known as 'Big Canyon'." Insufficient because of omission of direction.

[86] *Brown v. Levan*, 46 Pac. 661 (1896).
Storrs v. Belmont G. Co., 76 Pac. (2) 197 (Calif. 1938)—Claim one of a group, "Marie" claims, all located at same time.
In *Bramlett v. Flick*, 57 Pac. 869 (Mont. 1899)—Claim named "Blacktail" in a new mining district near locator's camp where prospectors entering and leaving the district would visit; "The Golden Eagle being about one mile S.E. from the Blacktail." Blacktail was located by same locator a few weeks after Golden Eagle. Sufficient.

[87] *Riley Inv. Co. v. Sakow*, 110 Fed. (2) 345 (1940).
Cloninger v. Finlaison, 230 Fed. 98 (1916).

form of notice; but a complete and safe notice should declare the name of the state, county, mining district, national forest (if in one), the nearest U. S. survey corner (if known), and also refer to one or several natural objects or permanent monuments, in addition to the other above-mentioned requirements for a recorded notice. It is common to find in county mining records location notices mentioning the state, county, and mining district, and then a metes and bounds description, such as, "Commencing at this post, being the discovery post where this notice is posted, thence 300 feet southerly to the S.E. corner, thence 1,500 feet westerly," etc. It would be almost as difficult to find "this post" as to find the needle in a haystack. A few courts have properly held such a recorded description void.[88] The Supreme Court of Washington has never passed on this question. A number of courts of other states, including two United States courts, have held such a description sufficient; but in most of these cases the ground was open, barren, and featureless, where any good-sized post would be conspicuous from a distance. These cases are entirely too liberal.

The law does not require the notice to give a metes and bounds description, although customary.[89] In the recorded notice it is not necessary to tie (refer) to some definite point, such as a United States survey section corner or a United States mineral monument. It is sufficient to tie to some well-known natural or artificial object.[90] A defective description in the notice is protected against a jumper who knows the boundaries (see Index: Locating mining claims: Jumper knowing boundaries, Staking).

After the locator has properly performed all the required steps in locating a lode or placer claim, his location is completed and he is not thereafter required to be in actual possession; he is entitled to exclusive possession.[91]

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[88] *Storrs v. Belmont G. Co.*, 76 Pac. (2) 197 (Calif. 1938).
McAvoy v. Hyman, 25 Fed. 596 (1885).

[89] *Flynn Group M. Co. v. Murphy*, 109 Pac. 851 (Idaho 1910).
Upton v. Larkin, 17 Pac. 728 (Mont. 1888).

[90] *Young v. Papst*, 37 Pac. (2) 359 (Oreg. 1934).
Steele v. Preble, 77 Pac. (2) 418 (Oreg. 1938).
See footnote 84 on page 49.

[91] *Belk v. Meagher*, 104 U.S. 279 (1881).

HOW TO LOCATE A PLACER CLAIM[92]

First Step—Discovery

A discovery may be made anywhere within a placer location. (See Index: Discovery.)

Caution in locating placer claims

Although a single placer claim or association claim requires only one discovery, the Department of the Interior has ruled that in patent proceedings the Department can require that each 10-acre block composing the claim must be mineral,[93] which means that unless the owner can show a discovery in each such 10-acre portion, it will be rejected from the patent.

Second Step—Posting Notice and Staking

"He (locator) must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (a) the name of the claim; (b) the name of the locator or locators; (c) the date of discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of the location; (d) a description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys, otherwise, a description with reference to some natural object or permanent monuments as will identify the claim; and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground the same as other locations."[94]

Staking

Section 8631 of Remington's Revised Statutes of the State of Washington clearly requires the locator actually to stake the corners and lines on the ground, even where the land is covered by a United States survey. In other states where the local statute is silent in this respect the court decisions are conflicting and confusing. But where staking is required an unstaked placer location is invalid.[95] A placer locator is not required to survey his claim, whether on United States surveyed or unsurveyed land.[96] If, as he is apt to do, he mistakes the government survey and his lines vary from same, the government survey controls.[97] Upon learning the true lines he should amend (see Index: Amending locations). The state statutory requirements as to the manner of posting location notices, marking lines, dimen-

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[92] Rem. Sec. 8631, RCW 78.08.100; Secs. 35 and 36, Title 30, U.S.C.
[93] *Central Pac. Ry Co. v. Mullin*, 52 L.D. 573 (1929).
[94] Rem. Sec. 8631.
[95] *Worthen v. Sidway*, 79 S.W. 777 (1904).
[96] *Dripps v. Allison's M. Co.*, 187 Pac. 448 (Calif. 1919).
[97] Government corners and survey subdivisions as marked on the ground control and are conclusive. *Murray v. Bousquet*, 154 Wash. 42 (1929). See 2 Lindley, Sec. 454 (1914).

sions, and markings of corners for lode claims, apply also to placer claims so far as applicable.[98]

Conforming to United States survey system

The United States mining law provides[99] that in locating placer claims "legal subdivisions of forty acres may be subdivided into ten-acre tracts" and that "where placer claims are upon surveyed lands and conform to legal subdivisions, no further survey or plat shall be required, and all placer mining claims . . . shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each additional claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands . . . " Accordingly, where the locator knows or can find a Government survey corner he should describe the claim as being, for example, the "south half of the N.W. quarter of the N.E. quarter, Section 3, Township 20 North, Range 17 East, W. M., Kittitas County, Washington." However, a locator is not required to survey his claim.① And where he does not know or cannot find such corner, or where the land is unsurveyed public land, he is then required to conform "as near as practicable" to the Government survey system; namely, the claim should be composed of 10-acre squares (660 by 660 feet) or 20-acre blocks (660 by 1,320 feet), with lines running north and south and east and west.② Even on surveyed land described by legal subdivisions it is recommended that in the notice the claim be tied to some natural object or permanent monument.③

In Ortman, 52 L.D. 467 (1928), the locators had located a placer claim on U. S. surveyed public land in the form of a parallelogram 1,500 by 600 feet running northwesterly. They contended, and it was undisputed, that this took in substantially all the actual placer deposit and excluded nonmineral land. Held, fatal error, in that the deposit could be included in several contiguous 10-acre survey squares. See figure 6, the dotted lines being the claim as originally located. The locators then amended the claim as shown by the solid lines in figure 6; viz., "NW.¼NW.¼SW.¼, Sec. 29, E.½SE.¼NE.¼ and NE.¼NE.¼SE.¼, Sec. 30," etc. This description as amended was approved by the Department and patent allowed. In Young v. Papst, 37 Pac. (2) 359 (Oreg. 1934) the locator had located four placer claims on U. S. surveyed public land in blocks each 660 by 1,320

[98] Rem. Sec. 8633.

[99] Secs. 35 and 36, Title 30, U.S.C.

① *Dripps v. Allison's M. Co.*, 187 Pac. 448 (Calif. 1919).

② *Wood Pl. M. Co.*, 32 L.D. 363 (1903).

③ *Wheeler v. Smith*, 5 Wash. 704 (1893)—Mistake in Range cured by tie to President's Channel, Orcas Island.

feet, with lines north and south and east and west, but staggered along a placer stream, as shown in figure 7. Held, proper.

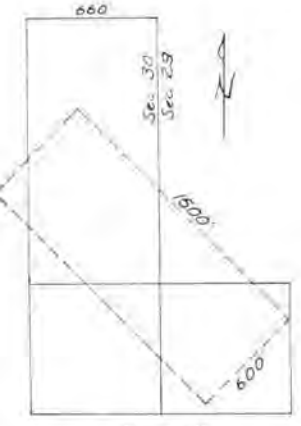

FIGURE 6

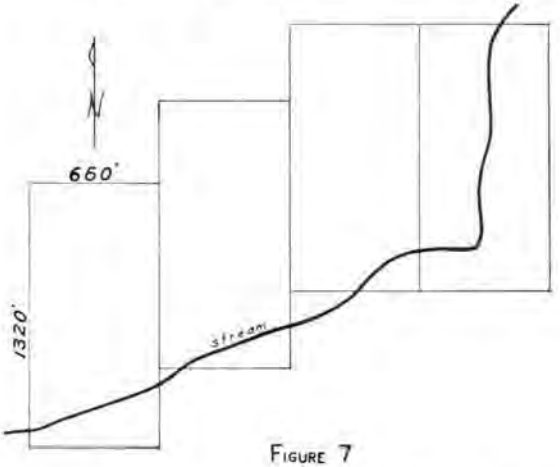

FIGURE 7

There are two exceptions to the above general rule. The first and important exception is "gulch claims." Where the placer ground lies in a deep canyon or gulch with nonmineral sides, the courts and the Department of the Interior hold it impracticable to conform to the U. S. survey system, whether or not on Government surveyed land. They therefore allow placer claims in such canyons to be in irregular shapes so as to include the actual placer ground, provided the area limit (above explained) is not exceeded, and provided the claim is not unduly long.④ But where the claim is not truly a "gulch claim" the general rule and not this exception governs; the policy being to prevent United States public lands from being cut into irregular or fantastic or unduly long shapes even where the deposit follows a winding stream.⑤ The second exception applies to locating the claim over an isolated, irregular-shaped area surrounded by existing valid claims; but such placer claim must not overlap any such

④ Snow Flake Pl., 37 L.D. 250 (Alaska 1908)—Fundamental policy.
Carr, 53 I.D. 431 (1931)—Patent allowed to an 80-acre claim a little over 1 mile long, on U. S. unsurveyed land.
Wiesenthal v. Goff, 120 Pac. (2) 248 (Idaho 1941)—On U. S. surveyed land.
Steele v. Preble, 77 Pac. (2) 418 (Oreg. 1938).

⑤ Golden Chief Pl., 35 L.D. 557 (1907)—On unsurveyed land; claim 8,500 feet long, followed stream; held, void.
Hanson v. Craig, 170 Fed. 62 (Alaska 1909)—Claim along creek, 2 miles long; void.
Hogan & Ida. Pl., 34 L.D. 42 (1905)—Two adjoining placer claims, 3½ miles on Crooked River, Idaho, on unsurveyed land; claims varied from 1,200 to 2,008 feet wide; held, not gulch claims, as the slopes from the river rose only 20 to 30 degrees and were mineralized sufficiently for placer mining; patent denied.

existing claims and cannot embrace noncontiguous parts (as by extending across and beyond another claim).⑥

A few courts have attempted to create a third exception, by allowing placer claims to conform to the actual shape of the placer ground and thus exclude nonmineral ground.⑦ If this were law, nearly all placer claims would have irregular and fantastic shapes. The true rule is the general rule stated in the Ortman case, figure 6, and in the Hogan & Ida. Placer case, above; viz., where 10-acre squares with lines north and south and east and west can include nearly all the placer ground, the fact that a considerable part of any such square is nonmineral is immaterial so long as such square as a whole is more valuable for its mineral than for nonmineral uses.⑧

A placer claim in the shape of a lode claim (600 by 1,500 feet) may be corrected by amendment. (See Index: Amending locations, and Locating mining claims: Oversized claims.)

A lode claim located on ground clearly more valuable as placer is void, and vice versa.⑨

The owner of an unpatented placer claim has no legal right to a vein inside the placer claim, unless he locates the vein as a separate lode claim,⑩ in which event the lode claim cannot exceed 25 feet on each side of the middle line of the vein.⑪

Third Step—Recording Notice

"Within thirty (30) days from the date of such discovery he must record such notice or certificate of location in the office of the auditor of the county in which such discovery is made, and so distinctly mark his location on the ground that its boundaries may be readily traced."⑫

Fourth Step—Location Work

"Within sixty (60) days from the date of discovery, the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall be equivalent in the aggregate to at least ten (10) dollars' worth of such labor for each twenty acres, or fractional part thereof, contained in such location or claim."⑬

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⑥ Snow Flake Pl., 37 L.D. 250 (Alaska 1908).
Stenfjeld v. Espe, 171 Fed. 825 (1909).
Dripps v. Allison's M. Co., 187 Pac. 448 (Calif. 1919).
⑦ *Mitchell v. Hutchison*, 76 Pac. 55 (Calif. 1904)—No canyon.
Young v. Papst, 37 Pac. (2) 359 (Oreg. 1934)—Decision correct, but not reasoning.
⑧ *St. of Ariz.*, 53 I.D. 149 (1930), affirming 52 L.D. 573.
⑨ *Cole v. Ralph*, 252 U.S. 286 (1920).
⑩ *Bevis v. Markland*, 130 Fed. 226 (1904).
⑪ *Clipper M. Co. v. Eli M. & L. Co.*, 194 U.S. 220 (1904).
Sec. 37, Title 30, U.S.C.
⑫ Rem. Sec. 8631.
⑬ Same.

Fifth Step—Affidavit of Work

"Such locator shall, upon the performance of such labor, file with the auditor of the county an affidavit, showing such performance and generally the nature and kind of work so done."[14]

Other Regulations

Size and number of claims allowed

A placer claim must not exceed 20 acres if located by one locator.[15] There is no limit to the number of such placer claims that an individual or individuals or a corporation may locate.[16] There is no prohibition against two or more locators joining in locating a 20-acre placer claim.

Association placer claims[17]

The United States laws permit "association placer claims"; viz., a claim exceeding 20 acres located by several locators (an association of locators); they permit a 40-acre claim if located by two or more locators, a 60-acre claim if located by three or more locators, an 80-acre claim if located by four or more locators, a 100-acre claim if located by five or more, the maximum being a 160-acre claim located by eight or more locators; the idea being that no one locator shall have more than the equivalent of 20 acres. A corporation is not an association of persons but counts only as one person or locator.[18] As before explained, an association placer claim is legally one and not several claims, for which reason only one discovery is required and only $100 annual assessment work is required.[19] There is no limit to the number of association placer claims that an association of co-locators may locate, even though such claims adjoin, forming a group of association claims.[20]

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[14] Rem. Sec. 8631.

Note: As explained hereinbefore, the location date from which the 30 and 60 days commence is not the discovery date but the date of actual posting of the notice, which may be the date of discovery or some time after discovery. (See page 42.)

It must be noted, the recorded notice must be a copy or duplicate of the posted notice, each containing all the four items above listed.

The above location work is one of the location steps and is not assessment work, and should be done inside the claim.

[15] Secs. 35 and 36, Title 30, U.S.C.

[16] *U. S. v. Cal. Midway Oil Co.*, 259 Fed. 343 (1919), affd. 263 U.S. 682; *Riverside Sand & C. Co. v. Hardwick*, 120 Pac. 323 (N. Mex. 1911).

[17] Secs. 35 and 36, Title 30, U.S.C.

[18] 2 Lindley, Sec. 449 (1914).

[19] See Index: Locating mining claims: Use of terms "location," "claim," "group."

[20] *Houch v. Jose*, 72 Fed. Suppl. 6 (1947).

The mining laws of Alaska limit strictly the number of placer claims and association claims that may be located, and require $100 assessment work per each 20 acres.

Dummy locators in association claims

Where, for example, A, B, and C locate an association placer claim, and at the time it is understood between them that after the locating B is to release his interest to A, thereby vesting in A more than a 20-acre interest, such location is void.㉑ But if at the time of locating there was no such understanding, it is then lawful for B to release to A after the location has been completed.㉒

ANNUAL ASSESSMENT WORK

GENERAL STATEMENTS

The United States law reads: "On each claim located after the 10th day of May 1872, and until a patent has been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year." Sec. 28, Title 30, U.S.C.

A large part of the law relating to assessment work is covered in "Relocations." (See Index.)

Work done prior to discovery, however much or expensive, cannot be counted as assessment work.① Likewise, where the claim is void for lack of discovery or some other fatal defect or omission, it is immaterial whether or how much annual work is done.②

Excess work done in any assessment year cannot be credited on the following year or years.③ There is no Federal or State law allowing payment of money to the Government in lieu of assessment work.

Assessment work for any year may be done piecemeal or all at once, and thus may be done at the close of the year; and it is for this reason that the claim is protected against relocators during such entire year. (See Index: Relocations.)

Test of Value of Work

It is not necessary that the work add to the value of the claim, for, work done in good faith but with poor judgment may be of

㉑ *Cook v. Klonos*, 164 Fed. 529 (1908).
Nome & Sinook Co. v. Snyder, 187 Fed. 385 (1911).

㉒ *Rooney v. Barnette*, 200 Fed. 700 (1912)—This is good theory but the facts arouse suspicion, particularly harmful in patent proceedings.

In *U. S. v. Cal. Midway Oil Co.*, 259 Fed. 343 (1919), 263 U.S. 682, A, promoter, obtained powers of attorney from many persons in New York to locate placer claims in California. They never manifested interest thereafter, but A later paid them dividends in good faith. Held, no fraud, and no dummies.

① *Cole v. Ralph*, 252 U.S. 286 (1920).
② *Borgwardt v. McKittrick Oil Co.*, 130 Pac. 417 (Calif. 1903).
③ Copp's U. S. Mineral Lands (2nd ed. 1882), p. 222—Opinion, Gen. Land Office.

little actual value,④ or work in extracting ore tends to deplete the mine. The established theory is that the value is determined not by the actual wages and cost of tools, supplies, etc., but by the reasonable value of the actual work or improvements accomplished;⑤ however, the courts usually, as a more practical test, accept the actual wages and cost of supplies, etc., and cost of their transportation to the mine, as the reasonable value, unless excessive.⑥

Nature of Assessment Work

In the following discussion, G stands for good assessment work, and N for not good assessment work.

Assessment work must result in some physical change or improvement of the ground in or near the claim,⑦ and have a direct relation to mining, and not an indirect or remote relation.⑧

In general, assessment work may be in any of the three stages of mining; viz., prospecting,⑨ development,⑩ and extracting and removing the ore or mineral.⑪

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④ *Wailes v. Davies*, 158 Fed. 667 (1907).
52 L.D. 561 (1929)—Opinion, Gen. Land Office.
Mattingly v. Lewisohn, 35 Pac. 111 (Mont. 1893).

⑤ *Stolp v. Treas. G. M. Co.*, 38 Wash. 619 (1905).
Fredericks v. Klauser, 96 Pac. 679 (Oreg. 1908).

⑥ *Stolp* case, above.
Norris v. United M. Pr. Co., 158 Pac. (2) 679 (Wyo. 1945).
Where tools, machinery, and equipment are purchased and used, their reasonable rental value may be applied as assessment work for the year in which purchased and subsequent years in which used.
Fredericks case, above—Tools and horses.
Anderson v. Robinson, 126 Pac. 988 (Oreg. 1912)—Placer hydraulic washing plant and equipment.

⑦ *Kirkpatrick v. Curtiss*, 138 Wash. 333 (1926)—Engineer determining best route for road to mine, N. Mental work only. But services of a foreman boss at mine, G. Same case, p. 336.

⑧ *McGarrity v. Byington*, 12 Calif. 426 (1859), 2 M.R. 311—Travel expenses, negotiations, making contracts, and other business preparatory to starting work at mine, N.
Du Prat v. James, 4 Pac. 562 (Calif. 1884); appd. in 138 Wash., p. 336—Travel, N.
Bishop v. Baisley, 41 Pac. 936 (Oreg. 1895)—Taking samples and assays, N; approved in 138 Wash., p. 334.
Buckeye M. Co. v. Powers, 257 Pac. 833 (Idaho 1927)—Same, N.

⑨ McCornic, 40 L.D. 498 (1912)—Diamond drilling, G.
Bishop v. Baisley, above—Lode holes, G.
49 L.D. 91, Min. Reg. (1922)—Drill holes, G.
Chambers v. Harrington, 111 U.S. 350 (1884)—Shaft, G.
Schlegel v. Hough, 188 Pac. (2) 158 (Oreg. 1947)—Prospecting to find pay dirt, placer, G.

⑩ *New Mercur M. Co. v. South Mercur M. Co.*, 128 Pac. (2) 269 (Utah 1942)—Cross-cut tunnel, G. (See Sec. 28, Title 30, U.S.C.—Tunnels as assessment work.)
Ricken v. Davis, 148 Pac. 1130 (Oreg. 1915)—Removing timber and overburden so as to dredge placer ground below, G.

⑪ *Taylor v. Parenteau*, 48 Pac. 505 (Colo. 1897), G.

Roads, tramways. Building or repairing a road or tramway on or leading to a claim or group, G⑫

Moving machinery and material to claim or mine, if used or to be used, G⑬

Building, if strictly for mining, G⑭

Mill, smelter, N⑮

Surveying claim, restaking, N⑯

Watchman, if strictly necessary, G⑰

Dewatering mine, reopening old tunnels, etc.⑱

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⑫ Tacoma & Roche Harbor Lime Co., 43 L.D. 128 (1914), 50 L.D. 601, G.
Sexton v. Wash. M. & M. Co., 55 Wash. 380 (1909)—Road into mining district, passing through A's claims, G.
Florence Rae C. Co. v. Kimbel, 85 Wash. 162 (1915)—Road and trail to mine, G.
Doherty v. Morris, 28 Pac. 85 (Colo. 1891)—A and B each owning adjoining groups built road to same, G.
Lind v. Baker, 88 Pac. (2) 777 (Calif. 1939)—Private road to group, G.
U. S. v. El Portal M. Co., 55 I.D. 348 (1935)—Aerial tramway, G.—Held, no distinction between road and tramway.

⑬ *Florence Rae* case, above—Donkey engines, G.

⑭ 49 L.D. 91 (1922)—Reg.
Pac. Gas & Elect. Co., 50 L.D. 599 (1924)—Building to be used as bunkhouse, tool house, and blacksmith shop, G.
McCaig v. Bryan, 15 Pac. 413 (Colo. 1887)—Ore house, G.
Remmington v. Baudit, 9 Pac. 819 (Mont. 1886)—Bunkhouse (off claim), N.
Dawson, 40 L.D. 17 (1911)—Bunkhouse on claim, N.
Garden Gulch Bar Pl., 38 L.D. 28 (1909)—Boarding house and office, N.
Note: The cost of a building used, one part for living quarters (bunk house) and one part for tools (mining), could be apportioned.

⑮ Milling or smelting is treated by courts not a mining operation but as manufacturing; hence building or repairing a mill or smelter, not good assessment work.
Golden Giant M. Co. v. Hill, 198 Pac. 276 (N. Mex. 1921)—Repairing stamp mill, N.
Copper Glance Lode, 29 L.D. 542 (1900)—Smelter, N.
Schirm-Carey Pl., 37 L.D. 371, 468 (1908)—Lime kiln, N.

⑯ *Wigand v. Byrne's Unknown Heirs*, 24 Fed. (2) 179 (1928)—Upheld an Alaska statute allowing survey of claim lines by a U. S. surveyor as assessment work. Strongly criticized by the Dept. of the Interior in 52 L.D. 561 (1929), which holds survey of claim lines benefits mining only remotely.
See 7 L.D. 359 (1888), survey of ditch never built, N.
Rogers v. Cooney, 7 Nev. 213 (1872)—Fencing a mining claim does not tend to develop it.

⑰ Keeping watchman at mine to guard valuable machinery, G; but if to warn off prospectors and trespassers, N.
Altoona Q. M. Co. v. Integral Q. Co., 45 Pac. 1047 (Calif. 1896), G.
Gear v. Ford, 88 Pac. 600 (Calif. 1906), G.
Fredericks v. Klauser, 96 Pac. 679 (Oreg. 1908)—Machinery had been removed, N.
James v. Krook, 25 Pac. (2) 1026 (Ariz. 1933)—$2,600 machinery, but no loose tools, N.

⑱ *Evalina G. M. Co. v. Yosemite G. M. Co.*, 115 Pac. 946 (Calif. 1911)—Dewatered mine, not to develop but to show to prospective purchaser, N.
Relying on this case, *U. S. v. N. P. Ry. Co.*, 1 Fed. (2) 53 (1924), held clearing out debris from an open pit, N. Note: Dewatering mine or cleaning out old pits, tunnels, etc., is as necessary as digging new ones, if for development purposes.

Sharpening tools, G[19]

Assessment work done but not paid for, G[20]

Assessment work paid for but not done, N[21]

Assessment work done by mistake on neighbor's claim, N[22]

Assessment work done by one in privity with owner (e.g. employee, lessee, optionee, contract purchaser, agent), G;[23] but if done by a stranger, N[24]

Assessment work done on A's patented claim, adjoining and tending to benefit A's unpatented contiguous claims (group), G[25]

Assessment work done by A on B's patented claim, adjoining and tending to benefit A's unpatented contiguous claims (group), if done with B's consent or license, G[26]

Group Assessment Work

Where the same owner(s) holds a group of contiguous lode or placer claims, assessment work intended to and tending to develop and benefit all such claims may be done outside the group, as by constructing a tunnel or road, or may be done inside one or several of the claims,[27] although such tunnel, etc., has not yet reached the group.[28] Even a shaft is good group work if at the time intended, later on, to serve all the claims, as by underground drifts.[29] But digging an open cut is not good group work unless at the time intended as a portal to a tunnel or shaft for all the group.[30] Thus open pit mining or surface placer mining is not good group work.[31] Stoping and removing ore from one claim is good group work if done under a general plan to mine the whole group, as where the shaft or tunnel is intended later on to reach or serve all the claims.[32]

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[19] *Stratton v. Raine*, 197 Pac. 694 (Nev. 1921), G.
[20] *Lockhart v. Rollins*, 21 Pac. 413 (Idaho 1889), G.
[21] *Protective M. Co. v. Forest City M. Co.*, 51 Wash. 643 (1909), N.
[22] *Weigle v. Salmino*, 290 Pac. 552 (Idaho 1930), N.
[23] *New Mercur M. Co. v. South Mercur M. Co.*, 128 Pac. (2) 269 (Utah 1942).
[24] McCornic, 40 L.D. 498 (1912).
Pueblo Quarries, Inc. v. Clark, 110 Pac. (2) 1115 (Colo. 1941).
[25] *Justice M. Co. v. Barclay*, 82 Fed. 554 (1897).
[26] *Hall v. Kearney*, 33 Pac. 373 (Colo. 1893).
[27] *Mt. Diablo M. Co. v. Cullison*, 5 Sawyer 439 (U.S. 1879)—Tunnel.
Sexton v. Wash. M. & M. Co., 55 Wash. 380 (1909)—Road.
Rickard v. Thompson, 72 Fed. (2) 807 (Alaska 1934)—Placer ditch.
[28] Ortman, 52 L.D. 467 (1928).
[29] *Chambers v. Harrington*, 111 U.S. 350 (1884).
Carretto, 35 L.D. 61 (1907).
[30] Krushnic, 52 L.D. 282 (1927).
[31] *Parker v. Belle Fourche Bentonite P. Co.*, 189 Pac. (2) 882 (Wyo. 1948).
Wood Placer M. Co., 32 L.D. 401 (1904).
[32] *Taylor v. Parenteau*, 48 Pac. 505 (Colo. 1897).

The United States law[33] reads, "where such claims are held in common, such expenditure may be made upon any one claim;" the word "contiguous" is not mentioned. Where, for example, A owns two separate noncontiguous claims or two separate groups and does outside work, such as a road serving both claims or groups, there is doubt whether such work is good for both or for only one. The Supreme Court of Washington appears not to have ever decided this question. The courts of other states are divided. The Department of the Interior, and the Supreme Court of the United States (by way of dictum), hold such work is good only for one claim or group. To avoid litigation it is safer to apply all such work on one claim or group.

Where A owns one group and B owns another group and the groups are contiguous, A and B may by mutual agreement do joint assessment work good for both groups.[34]

Where A owns a group but one or several of the claims therein are too remote from the actual work to be benefited in any substantial degree, the work can not be applied on such remote claims.[35]

Group work need not benefit each claim equally or to the extent of $100. It is sufficient if it tends to develop such claim and the total work equals the full amount; for example, $400 for a group of four claims.[36] Assuming however, that A, having a group of four claims, does $200 total work, and that B relocates all four claims; one may ask what effect results. The Supreme Court of Washington appears not to have discussed this question. The courts of some states hold A forfeits all four claims. Others hold such work will protect only the claim on which the work was actually done. Others hold that A may apply the $200 on two of the claims. Moral: One should do the full $400 work.

Where A does his assessment work outside his claim or group, it is necessary that he have a license or right of way or at least a legal right to condemn a right of way; he must not trespass on another's land.[37]

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[33] Sec. 28, Title 30, U.S.C.

[34] *Karnes v. Flint*, 153 Wash. 225 (1929).

[35] Union Phosphate Co., 43 L.D. 548 (1915)—One claim 3 miles away.
Gird v. Cal. Oil Co., 60 Fed. 531 (1894).
In *Karnes v. Flint*, above, and *Florence Rae Copper Co. v. Kimbel*, 85 Wash. 162 (1916) there were 28 lode claims and 18 lode claims, respectively, but the question of remoteness was not discussed.

[36] *Mt. Diablo M. Co. v. Callison*, 5 Sawyer 439 (U.S. 1879).
Carretto, 35 L.D. 361 (1907), 36 L.D., p. 553.
Frymire v. Rice, 194 Pac. (2) 679 (N. Mex. 1948).

[37] *New Mercur M. Co. v. South Mercur M. Co.*, 128 Pac. (2) 269 (Utah 1942).
Chicagoff Exten. M. Co., 53 I.D. 669 (1932)—Held, claim owner has right to drive tunnel in unappropriated public domain. (But in national forests and other reserves, necessary to get consent of Forest Service or superintendent in charge.) 105 N.W. 460 (S. Dak. 1905) and 83 Pac. 127 (Colo. 1905) hold it not trespass so long as the owner of the ground where the work is done does not object.

Assessment Work During Patent Proceedings

Whatever kinds of work or improvements are good annual assessment work are also good work required in patent proceedings, which require $500 per claim; and vice versa.[38] However, in patent proceedings it is impracticable to determine the value of old tunnels and the like which have become caved in or obliterated. Further, in patent proceedings it is allowable to credit the full value of expensive equipment on the required work,[39] whereas in annual assessment work it is advisable to credit only the current annual rental or use value for each year of actual use. During patent proceedings it is necessary as against relocators for the applicant for patent to keep up his annual assessment work, until he pays in full the purchase price of the claims and a certificate of entry is issued by the Department of the Interior, the theory being that then and then only does he become the equitable owner.[40]

As between the United States and the owner of an unpatented mining claim, whether during patent proceedings or independent of any patent proceedings, the United States can not attack the validity of a mining claim on the ground of default of assessment work, for the reason that under the law (Sec. 28, Title 30, U.S.C.) only a person, association, or corporation is allowed to relocate for default of assessment work.[41]

Assessment Work; Co-Owners

Full assessment work may be done by one co-owner although the others refuse to contribute.[42] If one co-owner does only his proportionate share and the others do nothing, the claim is open to relocation by strangers.[43]

"Advertising out"

Let A and B stand for co-owners. If A performs all the assessment work for one or more years, the law[44] gives A the right to serve on B a written demand for his (B's) proportionate share of the total work, on the basis of not to exceed $100 total work per claim, as follows: After the July 1st following completion of the work, A (or agent) may serve the notice on B personally or may publish it in a

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[38] Copper Glance Lode, 29 L.D. 542 (1900).
Fredericks v. Klauser, 96 Pac. 679 (Oreg. 1908).
[39] *U. S. v. El Portal M. Co.*, 55 I.D. 348 (1935)—$40,000 tramway.
Gulch Bar Placer, 38 L.D. 28 (1909)—$35,000 placer dredge.
[40] *McKnight v. El Paso Brick Co.*, 120 Pac. 694 (N. Mex. 1911).
Gillis v. Downey, 85 Fed. 483 (Wyo. 1898).
U. S. v. Ternahan, A-26359, Aug. 5, 1952—Certificate not final where question of discovery not yet determined.
[41] *Wilbur v. U. S. ex rel. Krushnic*, 280 U.S. 306 (1930).
Ickes v. Va.-Col. Dev. Corp., 295 U.S. 639 (1935).
[42] *Yarwood v. Johnson*, 29 Wash. 643 (1902).
[43] *Sanders v. Mackey*, 6 Pac. 361 (Mont. 1885).
[44] Sec. 28, Title 30, U.S.C.

newspaper once a week for 90 days (13 times). If B fails to contribute in money his share, then at the expiration of the 90 days from date of personal service or, if published, 90 days from date of last publication, B's interest in the claim(s) automatically becomes vested in A, as A's property. However, it is the established practice for A to make and record in the county where the claim is located an affidavit of the personal service of notice, or if published an affidavit by the publisher, together with a copy of the notice in either case, also in either case a further affidavit that B failed to contribute his share within the 90-day limit. This procedure applies likewise to any number of co-owners. One notice may include several years of B's default.[45] The newspaper must be published "nearest the claim," regardless of distance by road or travel.[46] Mailing the notice is insufficient.[47] The notice should state the amount and value of work done by A on each claim of a group (if so done); merely stating the total value is insufficient.[48] One notice may include one claim or a group.[49] The notice may be served on B personally or be published, whichever A elects to do.[50] It would appear advisable, in case of personal service, to have an agent or friend actually serve the notice. If B is dead or if there are liens against B's interest, the notice should be published, as the law gives a published notice the effect of clearing title.[51] If B is dead, the notice whether served or published should be against B's heirs;[52] and it is sufficient to state "heirs of" B without naming them; but there is no objection to adding B's "administrators and to all it may concern."[53] If the work is not good assessment work performed by A,[54] or if an Act of Congress suspends the necessity for assessment work,[55] A's advertising out proceedings are of no effect. B is not personally liable for his share of assessment work performed by A.[56]

A co-owner who refuses or fails to share in assessment work, however long, does not thereby forfeit or lose his interest in the mining claim.[57] He forfeits or loses it only after he (intentionally) abandons it,[58] or after advertising-out proceedings above explained.

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[45] *Elder v. Horseshoe M. & M. Co.*, 194 U.S. 248 (1904)—Eight years.
[46] *Donohoe v. Tjosivig*, 6 Alaska 139 (1919).
Haynes v. Briscoe, 67 Pac. 156 (Colo. 1891).
[47] *Haynes* case, above.
[48] *Haynes* case, above.
[49] *Donohoe* case, above.
[50] *Elder* case, above.
[51] *Elder* case, above.
[52] *O'Hanlon v. Ruby Gulch M. Co.*, 209 Pac. 1062 (Mont. 1913).
[53] *Elder* case, above.
[54] *Riek v. Messinger*, 234 Pac. 30 (Nev. 1925).
[55] *Kline v. Wright*, 51 Fed. (2) 564 (1931).
In *Royston v. Miller*, 76 Fed. 50 (1896) A did the assessment work before, but published the notice after, the suspension Act became effective; held for B.
[56] *McDaniel v. Moore*, 112 Pac. 317 (Idaho 1910).
[57] Clark, 57 I.D. 244 (1941).
[58] A few cases hold that the abandoned interest automatically vests in the other co-owner(s). (See Index: Co-owners.)

Affidavit of Assessment Work

The affidavit of performance of assessment work must be recorded within 30 days after time for completing the work.[59] Failure to record the affidavit within the time limit does not open the claim to relocation by others, but merely casts on the owner the burden of proving the work was actually done.[60]

UNITED STATES LAWS SUSPENDING ASSESSMENT WORK; RELOCATIONS

The various United States laws suspending the necessity for assessment work—"moratorium laws"—if complied with (as by filing in time a notice to hold, if required), have the same effect as though the owner of the unpatented claim, lode or placer, actually did and recorded his full assessment work on each of his claims for and in the year covered by the suspension Act, and accordingly have the same effect as though he actually resumed and completed full assessment work in and for that year, thereby curing all past defaults, thus making it immaterial whether or not the owner did assessment work, and thus protecting the claim against relocators until the end of the following assessment work year.[61] Failure to file a notice to hold had the same effect as failure to do assessment work,

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[59] Rem. Sec. 8627, 8628. The affidavit may thus be recorded on or before July 31st.
There is no bar to recording the affidavit before then, as soon as the work is actually completed. *McGinnis v. Egbert*, 8 Colo. 49 (1884), 15 M.R. 329.

[60] *Book v. Justice M. Co.*, 58 Fed. 106 (1893).
Schlegel v. Hough, 186 Pac. (2) 576 (1947).
See Index: Relocations.

[61] *Field v. Tanner*, 75 Pac. 916 (Colo. 1904), leading case. Here no proof that Field, owner, did assessment work for and in 1897. Act of July 2, 1898 suspended assessment work in favor of enlisted men during the war with Spain and 6 months thereafter. Field enlisted in Dec. 1898 and filed the required notice. Tanner relocated Jan. 1, 1899—Relocation void. Approved in most cases and in 52 L.D. 524 (1928).
Judson v. Herrington, 130 Pac. (2) 802 (Calif. 1943).
U. S. Smelting Co. v. Lowe, 74 Fed. Suppl. 917 (Alaska 1947).
Pine Grove Nev. G. M. Co. v. Freeman, 171 Pac. (2) 366 (Nev. 1946).
Scoggin v. Miller, 189 Pac. (2) 677 (Wyo. 1948).
Contra: *Oliver v. Burg*, 58 Pac. (2) 245 (Oreg. 1936), dictum.
Carrey v. Secesch Dredging M.& M. Co., 39 Pac. (2) 772 (Idaho 1934)—Here Carrey relocated May 26, 1932 before U. S. Resolution of June 6, 1932, and thus his relocation became vested property and not subject to confiscation by a subsequent law. The rest of the court's comments are dictum. In *Pine Grove Nev. G. M. Co. v. Freeman*, 171 Pac. (2) 286 (Nev. 1946), properly held suspension laws not retroactive. If a relocation were initiated prior to the suspension Act but not completed until after the Act took effect?
See *Royston v. Miller*, 76 Fed. 50 (Nev. 1896).

and opened the claim to relocation by others.[62] Filing the notice within the time limit was essential, unless the recording office closed before office hours.[63] Sickness and the like was no excuse for failure to file a notice.[64]

List of United States Moratorium Acts Suspending Assessment Work

Prepared July 1, 1953

Long before 1932 there had been acts of Congress suspending assessment work, usually during a war or business depression. The following list beginning with 1932 is complete up to July 1, 1953. (Alaska not included here.)

Date when each Act took effect	*Suspended assessment work for year* **ending**	*Remarks*
1932 June 6; Amended June 30	July 1, 1932, noon	This 1932 Act and the 1939 and 1950 Acts were the only Acts not requiring filing of a notice of intent to hold, called "Notice."
1933 May 18	July 1, 1933, noon	Acts of 1933 to 1938 inclusive required Notice also to declare owner exempt from U. S. income tax.
1934 May 15	July 1, 1934, noon	
1935 June 13	July 1, 1935, noon	Acts of 1934 to 1938 inclusive limited Notice to 6 lode and 6 placer claims (total 120 acres placer) to each individual, and 12 lode and 12 placer (total 240 acres placer) to each association or corporation.
1936 April 24	July 1, 1936, noon	
1937 June 24	July 1, 1937, noon	
1938 June 29	July 1, 1938, noon	
1939 June 30	July 1, 1939, noon	This 1939 Act did not require any Notice, but merely extended assessment work time from July 1 to Sept. 1, 1939.

[62] *Kramer v. Gladding, McBean & Co.*, 85 Pac. (2) 552 (Calif. 1938). However, if the relocator failed to prove discovery and neglected the other steps on his part for making a valid relocation, the claim was not forfeited. *Pine Grove* case, above.

[63] *Scoggin v. Miller*, above.

[64] *Pine Grove* case, above.

Date when each Act took effect	*Suspended assessment work for year ending*	*Remarks*
1940 Oct. 17 (Contained in Sec. 505 (1) and (2), Soldiers' Civil Relief Act, 1940)		This 1940 Act applied only to men in military service, exempting them from assessment work until 6 months after termination of service or during hospitalization. Required Notice of having entered service and to hold.
1941		No suspension Act in 1941.
1942 May 7	July 1, 1942, noon and July 1, 1943, noon	This 1942 Act thus covered each of 2 years. It also limited each individual to 6 lode claims, and associations and corporations to 12 lode claims (no limit on placers).
1943 May 3	July 1, 1944, noon and each year until and ending July 1, 1947 (being the first July after the President's proclamation of cessation of hostilities, Dec. 31, 1946).	This 1943 Act required filing of Notice for each of these years, including for year ending July 1, 1947.
1948 June 17	July 1, 1948, noon	
1949 June 17	July 1, 1949, noon	This 1949 Act required Notice to be filed on or before Aug. 1, 1949, and also credited on the following year assessment work done for year ending July 1, 1949; notice of claim of such credit to be filed on or before July 1, 1950.
1950 July 1		This 1950 Act did not require any Notice, but merely extended assessment work from July 1 to Oct. 1, 1950.

Note: The second column (July 1, noon) also shows the time limit for filing Notices. As above shown, assessment work was necessary for years ending July 1, 1939; July 1, 1940 (except as to military men); and July 1, 1941; also for year ending July 1, 1950 and thereafter.

Act of Congress of October 17, 1940, Chap. 88, 54 Stat. L., p. 1188, provided for suspension of the requirement of annual assessment work on any mining claim(s) regularly located and recorded held by any person in the *"military service,"* during the period of his such service, or until 6 months after the termination of such service, or during the period of his hospitalization because of wounds or disability incurred in the service; provided, however, that before the expiration of the assessment year during which he entered the military service he filed in the office where the mining claim was recorded "a notice that he has entered such service and that he desires to hold his mining claim under this section."

MINING LOCATIONS ACQUIRED BY "ADVERSE POSSESSION"

The state law permitting the acquiring of land by "adverse possession"; viz., by 10 years' open, actual, continuous, and adverse possession under claim of ownership, is sanctioned by the United States law, and has the same effect as making an ordinary, valid, and complete mining location.① But if the land is not "open," adverse possession, however long, is of no effect, regardless of making valuable mining improvements.②

The possession must be actual and continuous during the 10 years. Doing annual assessment work and then being absent the rest of each year is insufficient.③ But absence during the winter season is allowed if in accordance with the custom of the country.④ In addition to possession there must be a discovery and performance of assessment work each year (except when suspended by Congress);⑤ and the corners and lines must be kept up, so as to give notice of the land claimed.⑥ Paying taxes is not necessary.⑦ (See also footnote 28 on page 27.)

① *Judson v. Herrington*, 162 Pac. (2) 931 (Calif. 1945).
Newport Mining Co. v. Bead Lake etc. Co., 110 Wash. 120 (1920).

② Roberts, 55 I.D. 430 (Oreg. 1935).

③ *Law v. Fowler*, 261 Pac. 667 (Idaho 1927).

④ *Allen v. Laudahn*, 81 Pac. (2) 734 (Idaho 1938).
See *Davis v. Dennis*, 43 Wash. 54 (1906).

⑤ *Cole v. Ralph*, 252 U.S. 286 (1920).

⑥ *Law v. Fowler*, above.

⑦ *McLean v. Ladewig*, 37 Pac. (2) 502 (Calif. 1904).

AMENDING LOCATIONS

The law is liberal in allowing unpatented mining locations to be amended.① The right to amend applies to placer as well as lode locations,② and to relocations as well as to original locations.③

The purposes for which a location may be amended are: To correct clerical errors;④ to add or eliminate name of a co-locator;⑤ to change name of the location;⑥ to cast off excess ground;⑦ to make end lines parallel;⑧ to cast off or disclaim an overlap on another prior location;⑨ to swing a location so as to follow the vein;⑩ to take in new ground;⑪ to claim a new discovery where the original one is void or doubtful;⑫ to conform a placer location to U. S. survey;⑬ to make more definite the description of the whereabouts of the location in the recorded notice;⑭ to correct fatal errors and omissions in the recorded notice;⑮ and possibly other purposes. The purpose is to cure defects in the original location and put the owner in the same position he would have been in had there been no defect.⑯

In the absence of intervening rights of others, an amended location, even where it takes in some new ground, is legally the same as the original, in that it relates back and takes effect as of the date of the original location, and is therefore not a relocation nor a new location,⑰ whereas a relocation by the owner creates a new location.⑱ A location while in default of assessment work can not be put into good standing by amending.

It is not legally necessary in the amended notice to state that it is an amended notice, or to state the purpose of the new notice, or to

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① *Morrison v. Regan*, 67 Pac. 955 (Idaho 1902).
Rem. Sec. 8626, RCW 78.08.080.
② Ortman, 52 L.D. 467 (1928).
③ *Olympic Mgn. M. Co. v. Downing*, 156 Wash. 686 (1930).
④ *Seymour v. Fisher*, 27 Pac. 240 (1891).
⑤ *Doe v. Waterloo M. Co.*, 70 Fed. 455 (1895).
⑥ *Shoshone M. Co. v. Rutter*, 87 Fed. 801 (1898).
⑦ *Nichols v. Ora Tahoma M. Co.*, 151 Pac. (2) 615 (Nev. 1944).
⑧ *Doe v. Sanger*, 23 Pac. 365 (Calif. 1890).
⑨ *Tyler M. Co. v. Last Chance M. Co.*, 71 Fed. 848 (1895).
⑩ *Duncan v. Fulton*, 61 Pac. 244 (Colo. 1900).
See *Karney v. Flint*, 153 Wash. 225 (1929).
⑪ *Tonopah & S. L. M. Co. v. Tonopah M. Co.*, 125 Fed. 389 (1903).
⑫ *King Solomon T. & D. Co. v. Mary Verna M. Co.*, 127 Pac. 129 (Colo. 1912).
⑬ Ortman, above.
⑭ *Olympic Mgn. M. Co. v. Downing*, above.
Butte C. M. Co. v. Barker, 89 Pac. 302, 90 Pac. 177 (Mont. 1907).
⑮ *Olympic Mgn. M. Co.* case, above.
Kirkpatrick v. Curtiss, 138 Wash. 333, 156 Wash. 690 (1926).
McEvoy v. Hyman, 25 Fed. 596 (1855).
Morrison v. Regan, above.
⑯ *Butte C. M. Co. v. Barker*, above.
⑰ *Tonopah & S. L. M. Co. v. Tonopah M. Co.*, above.
⑱ *Cheesman v. Shreeve*, 40 Fed. 787 (1889)—And fact that a relocation notice is designated an amended notice is immaterial.

refer to a prior notice.[19] It is common to find in the county records one or more new location notices by the same owner which do not disclose the purpose nor make any corrections or changes. If at the time the location was in good standing, it would appear that such new notice (which made no change or correction) would be a useless paper except as evidence of nonabandonment.

The courts construe the amended and the recorded original location notice as one; if one is defective it may be cured by the other.[20] Instead of the amended notice merely referring to the original and specifying the correction or change, it is customary among miners to set forth in the amended notice all things necessary in an original notice, but with the desired corrections or changes, and to recite that it is an amended notice and that the owner reserves all rights which he had under the original. The question has been asked whether in addition to making and recording the amended location notice, it is necessary also to post a copy of same.[21] If there is nothing in the original posted notice to be added, corrected, or changed, it would appear unnecessary. But if, as often happens, the original posted notice was a duplicate of the recorded notice, it would then be safer to post a copy of the amended notice. If some change in the boundaries is made, as where some new ground is taken in or the claim is made to conform to the course of the vein, the claim as amended should be staked on the ground.[22] But it is not necessary to make a new discovery, if the original still remains within the amended lines, or to take actual possession of the new ground.[23] If a location had a valid discovery but thereafter the owner makes a new discovery at another point within the location and he adopts it (by posting a new location notice there or by recording an amended notice designating the new discovery) some courts hold it not a new location but an amended location which relates back.[24] But if such new discovery

[19] *Johnson v. Young*, 34 Pac. 173 (Colo. 1893).
Tonopah case, above.
Shoshone case, above.

[20] *Duncan v. Fulton*, 61 Pac. 244 (Colo. 1900).

[21] The following hold that a subsequent discovery within the location validates the location, but say nothing about amending:
Cedar Canyon C. M. Co. v. Yarwood, 27 Wash. 271 (1902).
Steele v. Preble, 77 Pac. (2) 418 (Oreg. 1938).
See *Silver King C. Co. v. Conkling M. Co.*, 256 U.S. 18 (1920).
The following hold posting unnecessary, on the ground that the original recorded notice, being permanent, serves the purpose of the original posted notice:
Treas. Tunnel M. & R. Co. v. Boss, 74 Pac. 888 (Colo. 1903).
McMillen v. Ferrum, 74 Pac. 461 (Colo. 1902).
But in *Smart v. Stanton*, 239 Pac. 514 (Ariz. 1925) the court says, "We will assume for the purposes of this opinion that it is contemplated that an amended notice must be posted" at the discovery.

[22] *Tonopah Salt Lake M. Co. v. Tonopah M. Co.*, 125 Fed. 389 (1903).
Contra: *Becker v. Pugh*, 29 Pac. 173 (Colo. 1892).

[23] *Tonopah* case, above.

[24] *King Solomon T. & D. Co. v. Mary Verna M. Co.*, 127 Pac. 129 (Colo. 1912).
Contra: *Beals v. Cone*, 62 Pac. 948 (Colo. 1900).

is in fact no valid discovery, the location is void because of the original and only discovery thus being abandoned.[25]

Often the original location is void (for example, because of omission in the recorded notice to tie it to some natural object or permanent monument). "Tie" means stating the distance from and direction of such object or monument. However, it is well settled that a void location is cured if the owner amends his location notice, correcting the fatal error or omission, before the right of some other person intervenes. Here the word "void" means void until and unless amended before the right of another person intervenes.[26] But if the rights of others intervene prior to such amending, the amendment is too late.[27] These rules apply likewise to amending a void relocation notice.[28]

In the absence of intervening rights prior to the owner amending, it is immaterial whether the owner intended an amendment or a new location.[29]

If the original location was valid and in amending the owner swings his location or otherwise takes in some new ground, after the rights of others intervene, the amendment is too late.[30] If the original location was valid and in amending the owner does not swing his location or take in any new ground, but he makes the description more definite or changes the claim name or the like, and the rights of others intervene before such amendment, the amendment holds and relates back, because here no one is injured.[31]

The words "prior to intervening rights" or "in the absence of intervening rights" need explanation. Assume that A's location is void for lack of discovery or on account of some fatal omission or error in his location notice, and that B enters and posts a location notice but that B makes no discovery or that his location notice is fatally defective or that he fails ever to complete his location. Here B has no rights; hence there are no "intervening rights," for which reason A may safely proceed and amend his own location.[32]

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[25] *Smart v. Stanton*, 239 Pac. 514 (Ariz. 1925).

[26] *Kirkpatrick v. Curtiss*, 138 Wash. 333, affirmed 156 Wash., p. 690.
Morrison v. Regan, 67 Pac. 955 (Idaho 1902).
Ortman, 52 L.D. 467 (Calif. 1928).

[27] *Karnes v. Flint*, 153 Wash. 225 (1929).
Berquist v. W. Va.-Wyo. C. Co., 106 Pac. 673 (Wyo. 1910).

[28] *Olympic Mgn. M. Co. v. Downing*, 156 Wash. 686 (1930).

[29] *Duncan v. Fulton*, 61 Pac. 244 (Colo. 1900).
Berquist case, above.

[30] *Morrison v. Regan*, above.

[31] *Doe v. Waterloo M. Co.*, 70 Fed. 455 (Calif. 1895).
Gleeson v. Martin White Co., 13 Nev. 442 (1878), 9 M.R. 429.
Shoshone M. Co. v. Rutter, 87 Fed. 801 (1898).

[32] *Nichols v. Ora Tahoma M. Co.*, 151 Pac. (2) 615 (Nev. 1944).
Strepy v. Stark, 5 Pac. 111 (Colo. 1884).

It is irregular for a locator to alter the face of his posted notice or to tear it down and post a new and different notice. However, if he acted in good faith and no one has been misled, the courts treat the notice as amended.㉝

A location may be amended by an authorized agent.㉞

CO-OWNERS

See Index: Annual assessment work; Co-locators; Patenting mining claims; Relocations.

In law, co-owners are usually known as "tenants in common." Their relation to one another is fiduciary.① In the following discussion let A represent one co-owner and B the other co-owner(s) of a mining claim.

A has the right to enter, prospect, work, and mine the claim, without B's knowledge or consent,② and whether A has a majority or minority interest,③ provided A does not actually exclude or oust B④ and provided A works in a minerlike manner without waste. Here A alone must bear all the expense, liabilities, and losses; and B's interest is not subject to liens incurred by A.⑤ If there are any net profits over and above A's cost of prospecting, developing, and mining the claim, B is entitled to his (B's) proportionate share in such profits, after first deducting said costs.⑥ If B attempts to enter and work the claim, it appears he must not interfere with A's operations.⑦

Where A relocates the claim for the reason that assessment work was not performed or that B has abandoned his interest in the claim

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㉝ *Omar v. Soper*, 18 Pac. 443 (Colo. 1888).
Cole v. Ralph, 252 U.S. 286 (1920).

㉞ *Morrison v. Regan*, above.
Berquist case, above—Ratified.
U. S. v. Mouat, A-25527, Jan. 18, 1949—Unauthorized.
See *MacDonald v. Cluff*, 206 Pac. (2) 730 (Ariz. 1949).

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① *Donaldson v. Greenwood*, 40 Wash. (2) 238 (1952).
Here it appears the property consisted partly of patented land and partly of mining claims. In general, the courts appear to make no distinction between patented and unpatented mining claims held by co-owners.

② *Silver King C. M. Co. v. Silver King, etc. Co.*, 204 Fed. 166 (1913).
Grant v. Pilgrim, 95 Fed. (2) 562 (Alaska 1938).

③ *Madar v. Norman*, 92 Pac. 572 (Idaho 1907).
Earl v. Mid.-C. Petr. Corp., 27 Pac. (2) 855 (Okla. 1933).

④ *Binswanger v. Henninger*, 1 Alaska 509 (1902).

⑤ *Rico R. & M. Co. v. Musgrave*, 23 Pac. 458 (Colo. 1890).
See *Mattocks v. G. N. Ry. Co.*, 94 Wash. 44 (1916)—Grubstake.

⑥ *Silver King* case, above.
Grant v. Pilgrim, above.
See *De La Pole v. Lindley*, 131 Wash. 354 (1924)—Wheat ranch. A co-owner is not entitled to possession or to share in the sale of the ore unless he pays the agreed purchase price of his interest. *Cedar Canyon Co. v. Yarwood*, 27 Wash. 271 (1902).

⑦ See *Butte, etc. Co. v. Mont., etc. Co.*, 60 Pac. 1039 (Mont. 1900).

(if untrue), the law treats this as a fraud on B and makes A (whether he relocated in his own name or that of a confederate) a trustee for B to the extent of B's interest or share.⑧

Where B abandons his interest, some courts hold that B's interest automatically vests in A.⑨ Where B abandons his interest, the question has arisen whether A may relocate the claim and thereby acquire B's interest. If A can and does prove that B intentionally abandoned his interest, A's relocation should be fully valid.⑩ The dearth of decisions on this point is due probably to the fact that one who abandons his interest is not apt to contest a relocation. Where A relocates fraudulently without any legal basis but thereafter for a long time openly works the claim, and during such time B acquiesces or neglects to make reasonable inquiries, B is guilty of "laches" and thereby forfeits his interest to A.⑪

Co-owners as such are not partners.⑫ It is only when they enter into a partnership agreement or start working the claim together that they immediately become partners; and the partner having a majority interest controls the management.⑬

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⑧ *Yarwood v. Johnson*, 29 Wash. 643 (1902).
Kittilsby v. Velvestad, 103 Wash. 126 (1918)—Mining partnership. A does not forfeit his own interest; he relocates 100 percent interest. *Hulst v. Doerstler*, 75 N.W. 270 (S. Dak. 1898); *Wiesenthal v. Goff*, 120 Pac. (2d) 248 (Idaho 1941). Of course, if A attempts to relocate but assessment work has been performed and B has not abandoned his interest, A's relocation is void, and no trust would be involved. *Yarwood v. Johnson*, above.

⑨ *Worthen v. Sidney*, 79 S.W. 777 (Ark. 1904).
Crane v. French, 104 Pac. (2) 53 (Calif. 1940).
Contra: *Badger Co. v. Stockton Co.*, 139 Fed. 838 (1905). *O'Hanlon v. Ruby Gulch Co.*, 135 Pac. 913 (Mont.)—Holding B's interest reverts to the government—an impractical situation.

⑩ Guerin, 54 I.D. 62 (1932); *Del Giorgio v. Powers*, 81 Pac. (2) 1006 (Calif. 1938).
See *Oroville Co. v. Rayburn*, 104 Wash. 137 (1918)—Here B, a defunct corporation, "abandoned" its interest; A later located same ground and did assessment work; held A did not abandon his own interest, and his rights superior to C, a trespasser.
Abandonment must be intentional; and B's failure to contribute to assessment work and absence for a long time is insufficient proof of abandonment.
Clark, 57 I.D. 160 (1941).
Del Giorgio v. Powers, 81 Pac. (2d) 1006 (Calif. 1938).
Danich v. Culjak, 190 Wash. 79 (1937).

⑪ *Teeter v. Brown*, 130 Wash. 506 (1924).
Harvey v. Laurier Min. Co., 106 Wash. 192 (1919).
Guerin v. Am. S. & R. Co., 236 Pac. 687 (Ariz. 1925).
See Index: Patenting claims.

⑫ *Madar v. Norman*, above.

⑬ *Dougherty v. Creary*, 30 Calif. 291 (1866).

GRUBSTAKE AGREEMENTS

Where A advances money or supplies to B to enable B to prospect, with the understanding that A is to have an interest in any discoveries and locations made by B (viz., locations not yet in existence), it is a grubstake agreement. It is not a partnership; so that A is not personally liable for debts incurred by B, nor is A's loose equipment furnished to B subject to liens.① Grubstake agreements② and, in general, powers of attorney to locate mining claims③ need not be in writing. (In Alaska, placer powers of attorney must be in writing, signed, acknowledged, witnessed, and recorded.)

EXTRALATERAL RIGHTS①

Apex means the top edge of a vein, whether outcropping at the surface or deep below the surface.② The strike of a vein means its general horizontal direction. The dip means its general direction downward into the earth, and is always at right angles to the strike.③ The dip is usually measured from horizontal to 90 degrees; viz., from horizontal to perpendicular. Let A stand for the owner of a lode claim, patented or unpatented.

The theory of extralateral rights (known sometimes as apex rights) is that if A discovers the apex of a vein and locates, say 1,500 feet of the strike, he deserves and owns that 1,500-foot slice of vein down into the earth as far as it actually extends, even though the vein happens to cross one of the perpendicular side lines of the claim, extending beyond and outside of such side line. Extra- (beyond) lateral (side) rights cover only the segment of the vein lying outside the side line; A owns the inside segment as a matter of course.

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① *Mattocks v. G. N. Ry. Co.*, 94 Wash. 44 (1916).

② *Mack v. Mack*, 39 Wash. 190 (1905).

③ *Palmer v. Sunnyside G. Co.*, 61 Pac. (2d) 444 (Ariz. 1936).

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① Sec. 26, Title 30, U.S.C.
Cedar Canyon C. M. Co. v. Yarwood, 27 Wash. 271, 278 (1902).

② *Jim Butler Tonopah M. Co. v. West End C. M. Co.*, 247 U.S. 450 (1918).

③ Where there are only surface workings, the practical way to determine the strike is to follow the natural outcrops and exposed workings on the vein and draw a horizontal line between the two extremities although they are at different elevations.
Brugger v. Lee Yim, 55 Pac. (2) 564 (Calif. 1936).

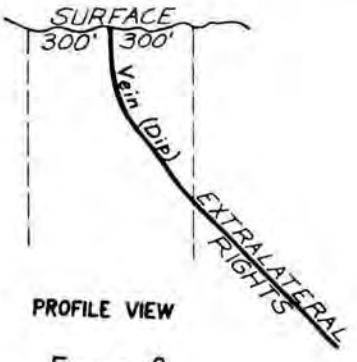

FIGURE 8

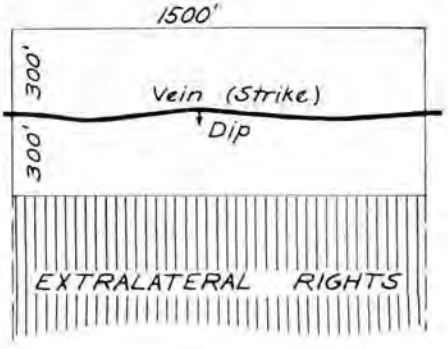

FIGURE 9

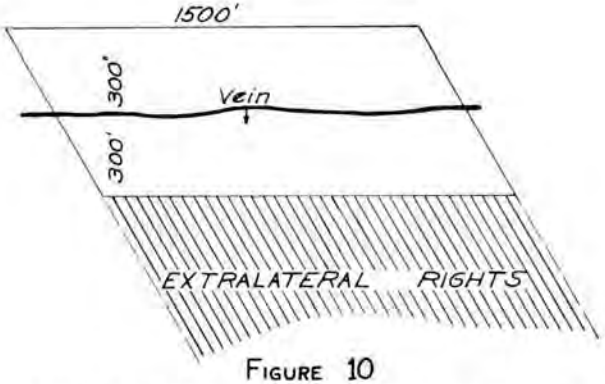

FIGURE 10

In figure 11 the end lines are not parallel. If A were given extralateral rights, he would thus own an ever-increasing slice of the vein. Consequently, if the two end lines are not parallel there are no extralateral rights.④ However, if the two end lines are substantially parallel, and particularly if they converge, extralateral rights are allowed.⑤

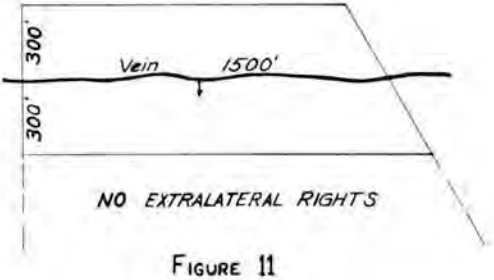

FIGURE 11

④ *Mont. Co., Ltd. v. Clark*, 42 Fed. 626 (1890).
⑤ *Grant v. Pilgrim*, 95 Fed. (2d) 562 (Alaska 1938).

So long as a lode claim has parallel end lines—and this is required only for extralateral rights—and is not over 1,500 by 600 feet, it may be in any shape. The two side lines may be crooked, unequal, and nonparallel, and the end lines may be unequal and short.

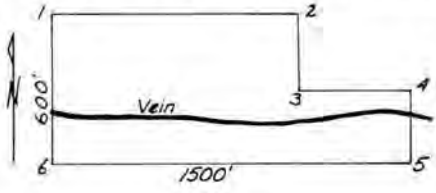

FIGURE 12

Thus in figure 12, line 1-2-3-4 was held to be a side line, and lines 1-6 and 4-5 were end lines.⑥ If the vein had instead crossed lines 1-6 and 2-3 these would be the two end lines, and lines 1-2 and 3-4-5-6 would be the two side lines.⑦

In staking a lode claim the locator often mistakes the course or strike of the vein, so that the vein actually crosses the two side lines (fig. 13), or one end line and one side line (fig. 14). Here the courts treat as end lines whatever line or lines the vein actually crosses, provided they are parallel, and treat all the other lines as side lines.⑧

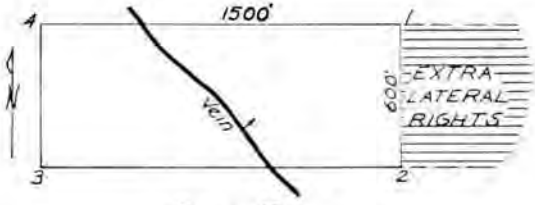

FIGURE 13

In figure 13, lines 1-4 and 2-3 are treated as end lines, and 1-2 and 3-4 as side lines; so that here A has extralateral rights on the dip in the shaded area,⑨ but no extralateral rights here north of line 1-4.⑩

⑥ *Quilp G. M. Co. v. Republic M. Corp.*, 96 Wash. 439 (1917).
⑦ *Walrath v. Champion M. Co.*, 171 U.S. 293 (1898).
⑧ *King v. Amy & S. M. Co.*, 152 U.S. 222 (1894).
Argentine M. Co. v. Terrible M. Co., 122 U.S. 478 (1887).
Cosmopolitan M. Co. v. Foote, 101 Fed. 518 (1900).
⑨ *Empire M. & M. Co. v. Tombstone M. & M. Co.*, 100 Fed. 910 (1900).
⑩ *King v. Amy etc. Co.*, above
Argentine M. Co. case, above.
Parrott Silver Co. v. Heinze, 64 Pac. 326 (Mont. 1901).

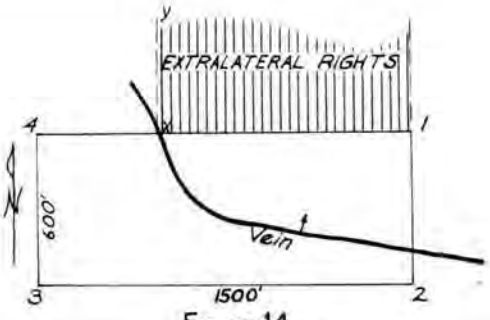

FIGURE 14

In figure 14, the courts draw an imaginary line from the point of the crossing marked x, extended in the direction of the dip (here north), but parallel to end lines 1-2 and 3-4, and thus treat line x-y as an end line (instead of 3-4). Here A has extralateral rights in the shaded area, but none west of line x-y.[11] In figures 13 and 14, the idea is to give extralateral rights to as much of the vein as apexes inside the claim between parallel walls in the general direction of the dip.

Not only the discovery vein but all other veins (called secondary veins) including branch veins, known and unknown, apexing inside the claim, have extralateral rights.[12]

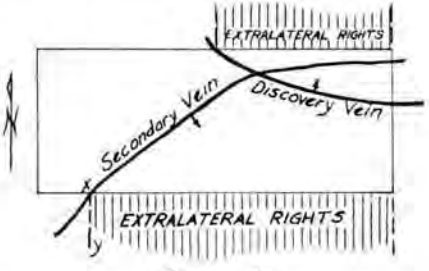

FIGURE 15

Thus in figure 15, A has extralateral rights on his discovery vein (as in figure 14) and also on the secondary vein here as far west as line x-y.[13]

Only lode claims, patented and unpatented, have extralateral rights. Patenting a lode claim does not affect extralateral rights; in patenting, the government makes no attempt to determine whether the claim has extralateral rights.[14] As between neighboring lode claims, one asserting and the other denying extralateral rights, pri-

[11] *King v. Amy etc. Co.*, above.
Del Monte, etc. Co. v. N. Y. and Last Chance M. Co., 66 Fed. 212 (1895).
[12] *Jim Butler T. M. Co. v. West End M. Co.*, 247 U.S. 450 (1919).
[13] *Ajax v. Hilkey*, 72 Pac. 447 (Colo. 1903).
[14] *Silver King C. M. Co. v. Conkling*, 256 U.S. 18 (1921).

ority of location or patent is not material, except where such adverse claims overlap,[15] and except where a wide vein is bisected by the common side line of the two adjoining claims.[16]

A placer claim has no extralateral right, even though the patent included an unknown vein at time of patent.[17] Coal lands have no extralateral rights, as they are not subject to the general mining law. Nonmineral land has no extralateral rights, even though it contains a vein unknown at time of location or patent; e.g., a townsite,[18] mill site,[19] etc. Nonmineral land patented prior to the location of a lode claim asserting extralateral rights is not subject to such rights.[20]

In exercising extralateral rights the vein owner must follow the vein beyond his own side line; he has no right to crosscut through his neighbor's country rock to reach the ore body.[21] But in following the vein he need not literally follow its curves.[22] He may follow a faulted vein, provided he can prove it the same vein.[23] Further, he must never go beyond his own end lines.[24]

He who enters under his neighbor's claim or land, claiming extralateral rights, has the burden of proving that there is a vein, that it apexes inside his own claim, and that it, the same vein, continues between defined walls all the way to the ore body in dispute.[25]

If two veins each apexing in different claims cross on their dip, each locator owns his own vein, but the prior locator owns the ore in the intersection space and the second locator has a right of way through such intersection.[26] If instead of crossing they unite on their dip into one vein, the prior locator owns the ore in the intersection and all the vein below that.[27]

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[15] *Eureka M. Co. v. Richmond Co.*, 4 Sawyer (U.S.) 302 (1877), 9 M.R. 578.
[16] *Empire State Ida. M. Co. v. Bunker Hill Sullivan M. Co.*, 121 Fed. 973 (1903).
[17] *Woods v. Holden*, 26 L.D. 198 (1898).
A lode claim has extralateral rights under a neighboring placer claim. *Clipper M. Co. v. Eli M. & L. Co.*, 194 U.S. 220 (1904).
[18] *Empire Star M. Co. v. Butler*, 145 Pac. (2) 49 (Calif. 1944).
[19] Costigan Min. Law, p. 409.
[20] *Reeves v. Oreg. Explor. Co.*, 273 Pac. 389 (Oreg. 1929)—Here homestead was patented prior to lode location. Patent dates back to date of original location. *U. S. M. Co. v. Lawson*, 134 Fed. 769 (1904).
[21] *St. Louis M. & M. Co. v. Mont. M. Co., Ltd.*, 194 U.S. 235 (1904).
[22] *Twenty One M. Co. v. Orig. 16 to 1 Mine*, 265 Fed. 547 (1920).
[23] *Iron Silver M. Co. v. Murphy*, 3 Fed. 368 (1880).
[24] *Quilp Gold M. Co. v. Republic M. Corp.*, 96 Wash. 439 (1917).
[25] *Leadville M. Co. v. Fitzgerald*, Fed. Cas. 8158 (1879), 4 M.R. 380.
Brugger v. Lee Yim, 55 Pac. (2d) 564 (Calif. 1936).
British Columbia repealed its extralateral rights law in 1892, and other Canadian provinces have done likewise.
[26] Sec. 41, Title 30, U.S.C.
[27] Sec. 41, Title 30, U.S.C.
In the absence of actual testing, the question whether the veins cross or unite may be determined indirectly by the geological indications at and near the outer point of contact.
Empire Star M. Co. v. Butler, 145 Pac. (2) 49 (Calif. 1944).
Sec. 41 does not apply to veins crossing on their strike.
Lee v. Stahl, 22 Pac. 436 (Colo. 1889).

MILL SITES[1]

A mill site may be located on any "open" United States public land by a qualified locator.[2] A mill site is a mining claim.[3] The law does not prescribe the manner for locating mill sites; but the established manner is the same as for locating lode claims so far as applicable; viz., by posting and recording a location notice and marking the corners and lines.[4] A mill site must not exceed 5 acres, and should be in compact form, usually a square (466⅔ by 466⅔ feet) or a rectangular parallelogram (e.g., 330 by 660 feet). One class of mill sites is one used "for mining or milling purposes" in aid of the owner's lode claim or lode mine in the vicinity. The other class is one used exclusively as "a quartz mill or reduction works," the owner of which does not have any lode mine or claim in connection therewith; viz., a custom mill serving the public. The general rules of law apply to both classes; the only difference is the purpose of each class.

Mill sites must be located on nonmineral land.[5] If the land is not worth developing it is nonmineral.[6] Whether it is nonmineral is determined as of the time when the mill site is located, and not by a subsequent discovery.[7] A mill site must not be "contiguous to the vein or lode" of the owner's claim; viz., it must not touch the vein itself, but it may adjoin the side line of the claim.[8] If the mill site adjoins an end line of the claim it then must be shown that the vein does not actually extend into the mill site.[9] A mill site may be contiguous to the owner's mine or claim(s) or at a reasonable distance therefrom.[10]

The owner of a group of lode claims is entitled to only so many mill sites as are necessary to serve same; usually one mill site is sufficient for a small group.[11]

A mill site may serve the owner's patented lode claim.[12] The above first mentioned class of mill sites must be "used or occupied"

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① Sec. 42, Title 30, U.S.C.
② Nicol, 44 L.D. 197 (1915)—Mill site may be in a national forest.
③ *Dalton v. Clark*, 18 Pac. (2) 752 (Calif. 1933).
Eagle Peak Copper M. Co., 54 I.D. 251 (1933).
④ *Eagle Peak* case, above.
Ritter v. Lynch, 123 Fed. 930 (1903)—Used site for tailings without locating.
⑤ *Dalton v. Clark*, above.
This rule applies to both classes. *Cleary v. Skiffich*, 65 Pac. 59 (Colo. 1901).
⑥ *Cleary* case, above.
⑦ *Cleary* case, above.
⑧ Yankee M. Site, 37 L.D. 674 (1909).
⑨ Coeur d'Alene Co., 53 I.D. 531 (1931).
⑩ *Hartman v. Smith*, 14 Pac. 648 (Mont. 1887)—2½ miles.
Valcada v. Silver Peak Mines, 86 Fed. 90 (1898)—About 4 or 5 miles.
See *Big Silver Star Mill Site*, 25 L.D. 165 (1897)—About 4 miles.
⑪ Alaska Copper Co., 32 L.D. 128 (1903).
Hard Cash Mill Site, 34 L.D. 325 (1905).
⑫ Eclipse Mill Site, 22 L.D. 496 (1896).

by the lode owner "for mining or milling purposes." Constructing a mill on the site to serve the owner's lode mine or claim(s) would of course be sufficient.[13] The cases cited in footnote 14 are good examples of using a mill site "for mining purposes." Let P mean proper use, and N mean not proper use.[14]

Merely locating a mill site is insufficient; and intention to make valuable improvements thereon, without actually so doing, is insufficient.[15] In short, a mill site must be used. A custom mill site must have a mill or reduction works.[16] After locating a mill site (of either class) the owner is allowed a reasonable time in which to construct a mill or other proper improvement.[17] But if once properly used, a mill site is not lost by nonuse unless intentionally abandoned.[18] Placer claims are not entitled to mill sites.

Annual assessment work is not required of mill sites.[19] Constructing or repairing a mill is not good assessment work for the owner's lode claim.[20] The $500 improvement or work required in patent proceedings is not required, at least for mill sites of the "mining and milling" class.[21]

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[13] Alta Mill Site, 8 L.D. 195 (1889).

[14] Dwelling house for men who work in the mill or in the lode mine, P. Eagle Peak C. M. Co., 54 I.D. 251 (1933); Satisfaction Ext. Mill Site, 14 L.D. 173 (1892).
Building used only for storing some used mine equipment, N. *U. S. v. Reinartz*, A-25808, Aug. 6, 1951.
Dumping waste tailings or waste rock on mill site. Logically P, but there appears no case in point.
Storing valuable tailings on mill site, P. *Ritter v. Lynch*, 123 Fed. 930 (1903); *U. S. v. Grosso*, 53 I.D. 115 (1930).
Cutting timber on mill site for owner's lode claim which had no suitable timber, N. Two Sisters L. & M. Site, 7 L.D. 557 (1888), on ground of not "using" mill site. But owner may cut mill site timber for the mill or other mill site accessory. Page, 1 L.D. 614 (1883).
Constructing road on mill site for necessary access to owner's lode mine, N, on ground of not "using" mill site. *Hales v. Symons*, 51 L.D. 123 (1925).
Making valuable and lasting improvements on mill site for using water or power for mill or mine, P. *Sierra Grande M. Co. v. Crawford*, 11 L.D. 338 (1890); Gold Springs Mill Site, 13 L.D. 175 (1891); *Valcada v. Silver Peak Mines*, 86 Fed. 90 (1898). If such improvements are never used, N. Lennig, 5 L.D. 190 (1886); Peru Mill Site, 10 L.D. 196 (1890); Mint Mill Site, 12 L.D. 624 (1891). Further, water rights can not be acquired by locating a mill site. *Lennig* case, above. Merely piping water from mill site to the mine, N. *Lennig* case, above.

[15] Crowley, 46 L.D. 178 (1917).
Brodie G. R. Co., 29 L.D. 143 (1899).

[16] Hecla C. M. Co., 12 L.D. 75 (1891).
Miers, A-26569, Dec. 29, 1952—Held, a mill for crushing pumice is not a "quartz mill or reduction works."

[17] *Cleary v. Skiffich*, 65 Pac. 59 (Colo. 1901).

[18] *Valcada v. Silver Peak Mines*, 86 Fed. 90 (1898).

[19] *Dalton v. Clark*, 18 Pac. (2) 752 (Calif. 1933).
Alaska Copper Co., 32 L.D. 128 (1903).

[20] See Index: Annual assessment work: Nature of assessment work.

[21] Alta Mill Site, 8 L.D. 195 (1889).
Copp's U. S. Mineral Lands, p. 133 (1882)—Instr. Gen. Land Off.

TUNNEL SITE LOCATIONS[1]

A "tunnel site location" is not a mining location or claim but is only a means of discovering and locating hidden veins.[2] If the prospector drives an ordinary crosscut tunnel in search of a hidden vein and finds such a vein, thus making an underground discovery on which he then makes a surface location, he is liable to so locate off the apex of the vein. Further, some other prospector is likely to make the first discovery at or near the surface. To avoid these risks, the United States general mining Act of 1872 provides for "tunnel site locations." The United States Mining Regulations[3] direct how a tunnel site location may be located, as follows:

Post a location notice at the tunnel entrance;

Stake on the surface a double straight line as far apart as the width of the intended tunnel, a distance of 3,000 feet, representing the line of the tunnel;

Record the notice, and affidavit of having so located.

This protects an area 1,500 feet on each side of the tunnel line, thus making a total area of 3,000 by 3,000 feet; the exterior boundary of which may then be staked, if so desired. If the tunnel site locator in driving his tunnel along said line of the tunnel penetrates a vein, he thus makes an underground discovery and is entitled to make a lode location (1,500 by 600 feet) as though on the surface. The law does not prescribe how such location should be made; but the United States Supreme Court has sanctioned two different ways:

First, a subsurface location, by posting a location notice at the entrance of the tunnel, stating the fact of discovery of a vein in the tunnel, and distance from tunnel entrance to discovery, and recording a copy of the notice, the notice to comply with the state law in all other respects. The court admits a surface location would be necessary for patenting, or for exclusive surface rights, or for extralateral rights in other veins.[4]

Second, instead of a subsurface location, a surface location made in the same manner as for ordinary surface lode locations, treating as the discovery point a point on the surface directly perpendicular from the actual discovery in the tunnel.[5] What extralateral rights, if any, such a surface location would carry is yet undetermined.

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[1] Sec. 27, Title 30, U.S.C.

[2] *Creede, etc. Co. v. Uinta, etc. Co.*, 196 U.S. 337 (1905).

[3] 49 L.D. 60 (1922).

[4] *Campbell v. Ellett*, 167 U.S. 116 (1897).

[5] *Enterprise M. Co. v. Rico-Aspen C. M. Co.*, 167 U.S. 108 (1897). *Campbell v. Ellett*, above.

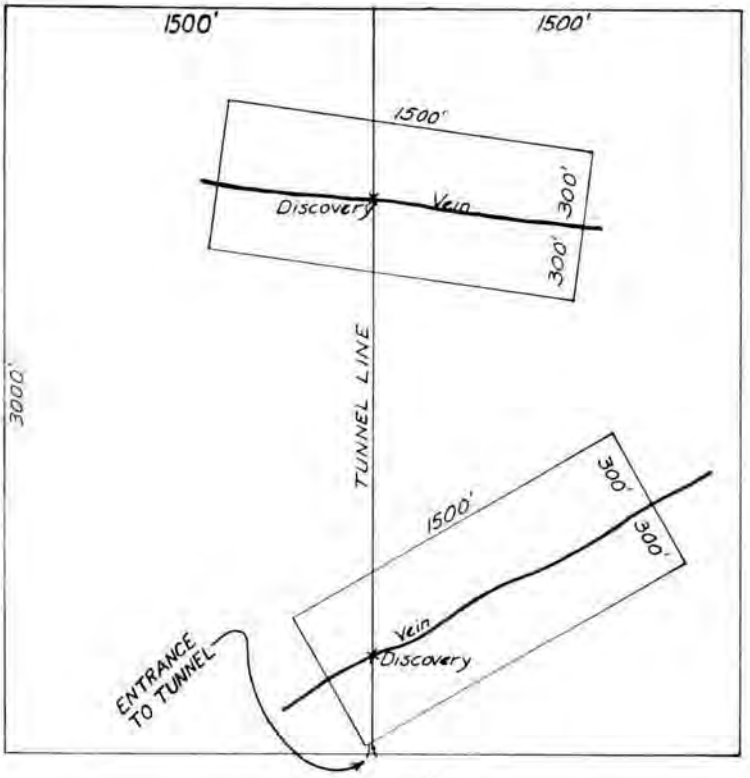

FIGURE 16

Let A mean the tunnel site locator, and B mean another prospector who attempts to make a surface location within A's 3,000-by-3,000-foot area. The law protects A against B's claim if it was made subsequent to date of A's tunnel site location.⑥ Further, prior to an actual discovery by A in his tunnel, A is not required to adverse patent proceedings by B.⑦ However, if before date of A's tunnel site location B has an existing valid surface location, patented or unpatented, A has no right to drive his tunnel into, through, or under B's claim.⑧

The law expressly provides that "failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right of all undiscovered veins on the line of such tunnel."⑨ However, actual work by A on the tunnel is good assessment work for his surface claim if such work tends to develop the claim.⑩

⑥ *Enterprise M. Co.* case, above.
Campbell v. Ellett case, above.
⑦ *Creede* case, above.
⑧ *Calhoun G. M. Co. v. Ajax G. M. Co.*, 182 U.S. 499 (1901).
⑨ Sec. 27, Title 30, U.S.C.
Fissure M. Co. v. Old Susan Co., 63 Pac. 587 (Utah 1900)—Failure to resume work on the tunnel within the 6 months destroys all tunnel site location rights.
⑩ *Fissure M. Co.* case, above.

RELOCATIONS[1]

GENERAL

Where A, owner of a lode or placer unpatented claim, has intentionally abandoned it[2] or has failed to do assessment work for the last one or more years,[3] B has the right to relocate part of or all the same ground, provided A does not resume assessment work before B initiates a valid relocation (by B's making or adopting a valid discovery and posting at discovery a proper relocation notice).[4] A relocation made upon the ground covered partly or wholly by a prior existing claim which at the time is not abandoned nor in default of assessment work is premature and absolutely void,[5] and is not revived or validated by A's subsequent failure to resume or do assessment work.[6]

Failure to do assessment work, however long, does not of itself forfeit the claim; only if and when B relocates part of or all such claim does the claim or part become forfeited in favor of B, the relocator.[7] But if B does initiate a valid relocation, the law allows him the same length of time in which to record and complete it as in the case of original claims.[8] A's failure to record an affidavit of assessment work does not forfeit the claim nor make it open to relocation by B, except that A has the burden of proof of having done the work.[9] Further, before B may show A's failure to do assessment work, B must first prove he himself has performed all steps required by law in locating his own claim.[10]

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① Rem. Sec. 8629, RCW 78.08.090.

② *Farrell v. Lockhart*, 210 U.S. 142 (1908).

③ *Olympic Mgn. M. Co. v. Downing*, 156 Wash. 686 (1930).

④ *Florence Rae C. Co. v. Kimbel*, 85 Wash. 162 (1915).
Karnes v. Flint, 153 Wash. 225 (1929).
Belk v. Meagher, 104 U.S. 279 (1881).

⑤ *Belk v. Meagher*, above.
Independence Pl. M. Co. v. Hellman, 109 Pac. (2) 1038 (Idaho 1941).

⑥ *Belk v. Meagher*, above.
Griffith v. Noonan, 133 Pac. (2) 375 (Wyo. 1943).

⑦ *Florence Rae C. Co. v. Kimbel*, above.
Karnes v. Flint, above.

⑧ *Florence Rae* case, above.
Olympic Mgn. M. Co. v. Downing, above.
Eureka Expl. Co. v. Tom Moore M. & M. Co., 123 Pac. 655 (Calif. 1912).

⑨ See Index: Annual assessment work: Affidavit of assessment work.

⑩ *Knutson v. Fredlund*, 56 Wash. 634 affd. 153 Wash., pp. 235-6.

WHAT CONSTITUTES A "RELOCATION"

Between 1899 and June 8, 1949 the Washington law (Rem. Sec. 8629) required every relocation notice to contain a *statement* that "the whole or any part of the new location is located as abandoned property." The words "abandoned property" were construed to mean "abandoned or forfeited" (on account of default in assessment work).[11] If B, the would-be locator, omitted such statement from his notice, his relocation was not a relocation but was treated as an original location, for which reason B was not allowed to show A's abandonment or failure to do assessment work;[12] he was allowed only to show that A's location in itself was void.[13]

As the necessity for B's relocation notice to contain above *statement* has been repealed by the state legislature (in effect from and after June 8, 1949), the following questions have arisen: What must B's notice (posted and recorded notice) contain to make it a relocation notice? Is the use of the word "relocation" or "relocates," without more, sufficient? It is established law that a "relocator" can not hold the ground except upon proof of abandonment or forfeiture through default of assessment work by the former owner;[14] which means the same as above *statement* in substance.[15]

A relocation impliedly admits the validity of the prior location.[16]

The effect of a third person having located before A and B, in a suit between A and B, is set forth in the references below.[17]

HOW TO RELOCATE A CLAIM

A lode claim is relocated substantially in the same manner as an original lode claim (Rem. Sec. 8629, RCW 78.08.090), as follows:

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[11] *Florence Rae* case, above.

[12] *Gold Creek Antimony M. & S. Co. v. Perry*, 94 Wash. 624 (1917).

[13] *Paragon M. & D. Co. v. Stevens Co. Expl. Co.*, 45 Wash. 59 (1906).

[14] *Zerres v. Vanina*, 134 Fed. 610 (Nev. 1915).

[15] Strangely, there appears to be no case on whether the word "relocation" or "relocates" or "relocator" in B's notice is sufficient to constitute it a relocation notice. However, in the *Zerres* case, above, and a number of other relocation cases B's notice recited not only these words but also gave the name of the prior location, but did not mention the word "abandoned" or "forfeited."

Where B is uncertain but there is visible evidence on the ground of a prior location, B should relocate; otherwise B may locate as an original locator. *Ninemire v. Nelson*, 140 Wash. 511 (1926).

[16] *Karnes v. Flint*, 153 Wash., p. 236 (1929).
Florence Rae case, above.
Belk v. Meagher, above.
Rodgers v. Berger, 103 Pac. (2) 266 (Ariz. 1940).

[17] Here in such suits the burden is on B to prove there was a valid existing third person's location as of time A located. See 164 Fed. 529; 86 Fed. 56; 98 Fed. (2) 8; 19 Pac. (2) 497. The rule is different in patent adverse suits, 110 Pac. (2) 1115.

FIRST STEP—DISCOVERY

The relocator may make a new discovery or may adopt an old or abandoned known discovery,[18] by posting his relocation notice thereat and in his recorded notice giving distance to each end line.

SECOND STEP—DISCOVERY SHAFT OR TUNNEL (OR LIEU WORK)

Between 1889 and said June 8, 1949, *east* of the summit of the Cascade Mountains, the relocator was required to dig a 10-foot discovery shaft, in which case he was allowed to dig a new 10-foot shaft or to deepen an old or abandoned shaft 10 feet deeper than its then open bottom.[19] A discovery shaft was not and is not required *west* of said summit.[20] In 1949 the state legislature amended said Section 8629, by permitting equivalent cost of surface work inside the claim (such as open cuts, roads, etc.) *east* of said summit, in lieu of digging or deepening a 10-foot discovery shaft; so that after June 8, 1949, east of the summit, the relocator may do one of three things: dig a new 10-foot discovery shaft; or deepen an old one 10 feet deeper; or do such lieu work, to cost as much as digging a 10-foot discovery shaft.

THIRD STEP—POSTING RELOCATION NOTICE

The posted relocation notice should contain the same things as required for an original posted notice, except that before June 8, 1949 it was required also to contain said *statement*. As to relocations after that date, see footnote 15 on page 82.

FOURTH STEP—STAKING CLAIM

The corners and exterior lines of a relocated claim should be staked and marked the same as required for original claims. However, existing stakes or monuments may be used by the relocator provided he alters same so as to fit the present facts (such as changing the date and stating the name of the new claim and of the relocator).

FIFTH STEP—RECORDING RELOCATION NOTICE

The recorded relocation notice should contain the same things as required for original recorded location notices, except that before June 8, 1949 it was required to contain also said *statement*. As to notices after that date, see footnote 15 on page 82. The notice must be recorded within the 90 days after posting notice,[21] but it may be recorded thereafter prior to intervening rights of others.[22]

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[18] *Hayes v. Lavagnino*, 53 Pac. 1029 (Utah 1898).
Kramer v. Gladding, McBean & Co., 85 Pac. (2) 552 (Calif. 1938).
[19] *McMillen v. Ferrum M. Co.*, 74 Pac. 461 (Colo. 1902).
[20] *Nat. M. & M. Co. v. Piccolo*, 54 Wash. 617 (1909).
[21] *Olympic Mgn. M. Co. v. Downing*, 156 Wash. 686 (1930).
Kirkpatrick v. Curtiss, 138 Wash. 333 (1926).
[22] *Eureka Explor. Co. v. Tom Moore M. & M. Co.*, 123 Pac. 655 (Colo. 1912).

PLACER RELOCATIONS

Placer relocations are made in the same manner as an original placer location, except that prior to June 8, 1949 the posted and recorded notice was required to contain said *statement*, but after that date it should on its face be clearly designated as a relocation, as indicated in footnote 15 on page 82. Discovery shaft, or said work "in lieu" thereof, has never applied and does not apply to placer locations.

In relocating a group of lode or placer claims, each claim must be relocated separately.[23]

In the following discussion let A stand for the first locator (or his heirs or assigns) and B for the relocator (jumper), and let "relocates" or "relocation" mean that B initiates his relocation (by discovery and posting a proper relocation notice), followed by completion of all relocation steps in due time.

RESUMPTION OF WORK

Where, after A fails to do assessment work on an unpatented lode or placer claim for one or more years, however long (provided he has not intentionally abandoned the claim), and before B relocates, A actually resumes assessment work, A thereby protects his claim against B from the moment he resumed such work, and all past and delinquent years are cured, provided, however, that A with reasonable diligence continues such work until $100 worth is completed, or $100 per claim in a group.[24]

Examples: A resumes assessment work, say June 29, 1951 (viz., before July 1, noon), and completes the $100 worth, say July 12th; here the claim is protected against B from June 29, 1951 until July 1,

[23] *Olympic Mgn. M. Co. v. Downing*, 156 Wash. 686 (1930).
[24] *Karnes v. Flint*, 153 Wash. 225 (1929).
Sec. 28, Title 30, U.S.C.

1952, noon. If A resumed work, say July 10, 1951 (after July 1, 1951), here claim is protected from July 10, 1951 to July 1, 1953, noon.[25]

No assessment work is required for the period between the date of A's location and the following July 1, noon; the first assessment work year commences on this July 1, noon, so that A's claim is protected against B until the end of such first assessment work year.[26]

For the effect of moratorium of assessment work laws, see page 63.

A relocation is entirely different from amending a location, even where some new ground is added by the amendment. The basis for a

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[25] Prior to Dec. 31, 1920 the assessment work period was the calendar year. By Acts of Dec. 31, 1920 and Aug. 24, 1921 (41 Stat. L., p. 1084; 42 Stat. L., p. 186) Congress changed this so as to be from July 1, noon to July 1, noon commencing July 1, 1921. Further, the general Mining Act of 1872 was supplemented by an Act of 1874, requiring the first assessment work to be done in 1874, and thereafter annually.

Belk v. Meagher, 104 U.S. 279 (1881), leading case.—A located before 1872; failed to do assessment work in 1874 but did one year's work in 1875, but none thereafter. B relocated Dec. 19, 1876—*premature* and void, A's claim being protected until Dec. 31, 1876 midnight. C relocated Feb. 21, 1877—C's relocation valid. *Reason why A's claim was protected during all 1876 was that the law allowed A to do the 1876 work any time during 1876;* viz., A could do it the last day or so before Dec. 31, 1876 midnight. With above exception of assessment work now being July 1 to July 1, all the rules in *Belk v. Meagher* are law today.

Richen v. Davis, 148 Pac. 1130 (Oreg. 1915)—A located in 1905; did a little work (insufficient) off and on until 1913, in which year he did a full year's work. B relocated in June 1914—premature and void.

Winters v. Burkland, 260 Pac. 231 (Oreg. 1927).

A premature relocation is not revived by A's subsequent failure to do assessment work. *Belk* case, above; *Griffith* case, above; *Von Gal-Scale v. Cottrell*, 37 Pac. (2) 715 (Calif. 1934).

Note: Resuming work implies starting work while the claim is in default of assessment work. (See wording of Section 28, Title 30, U.S.C.) For illustration, let us assume that A did full $100 work during year ending July 1, 1951, noon; this protected claim until July 1, 1952, noon. A, however, starts work, say June 20, 1952, doing $50 work between then and July 1, 1952, noon (during which period the claim was already in good standing). A continues working diligently, doing $50 work between July 1, 1952, noon and July 10, 1952, when he ceases work. B relocates, say July 13. To avoid litigation and the difficulty of construing the court decisions, the safe way would be for A to do $100 work after July 1, 1952, noon, working continuously. Further, this would not only cure A's failure to do sufficient assessment work for year ending July 1, 1952, noon, but would protect the claim until July 1, 1954, noon. (See Index: Annual assessment work.) To head off relocators, A should of course start actual work shortly before July 1, noon and be actively working at July 1, noon.

[26] Sec. 28, Title 30, U.S.C.

Von Gal-Scale v. Cottrell, 37 Pac. (2) 715 (Calif. 1934)—A located in August 1925; B relocated Nov. 16, 1925—void.

Banfield v. Crispen, 226 Pac. 235 (Oreg. 1924)—A located March 21, 1922 but did no work thereafter; B relocated Dec. 30, 1922—void.

Griffith v. Noonan, 133 Pac. (2) 375 (Wyo. 1943)—A located May 17, 1939; B relocated May 14, 1940—void.

Malone v. Jackson, 137 Fed. 878 (Alaska 1905)—Act of 1880 exempted assessment work from date of location until end of that year. A located Dec. 6, 1898, but did no work thereafter. B relocated July 10, 1899—void.

relocation is either A's failure to do assessment work or A's abandonment, whereas the basis for amending is to correct defects and omissions, perfect descriptions, change name, or add some new ground or cast off some ground.[27]

RELOCATION BY CO-OWNER; BY OWNER

It is well established, that one co-owner can not lawfully secretly relocate for himself, and that a relocation by an agent, employee, lessee, optionee, etc. of A, is fraudulent against A, also that a relocation is fraudulent where made by a person who although not technically a fiduciary has gained A's confidence and trust. (See Index: Co-owners.)

The owner of an unpatented lode or placer claim has the same right to relocate it in his own name and for himself as a stranger would have. Illustrations:

Except in Montana and Idaho, the owner may relocate his own claim even to avoid doing assessment work.[28] However, if he relocates before his claim is in default of assessment work, his relocation is void;[29] viz., any relocation by the owner must be founded on default in assessment work.

By relocating, the owner waives all his prior rights, inasmuch as a relocation in its nature can not relate back.[30] For this reason, if after relocating his own claim he later on applies for a patent, the work and improvements made by him or his predecessors prior to date of relocation can not be applied on the $500 work required in patenting a claim.[31]

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[27] Rem. Sec. 8629, RCW 78.08.090 (relocations); Sec. 8626, RCW 78.08.080 (amending locations).
Cheesman v. Shreeve, 40 Fed. 787 (1889).
Teller, 26 L.D. 484 (1898).
A notice recorded in Snohomish County reads, "This claim has been surveyed and relocated to better define the boundaries." This is not a relocation but an amended notice.
See Index: Amending locations.
The owner who has intentionally abandoned his claim can not save it by resuming work or possession; he should relocate.
Hartman Gold M. Co. v. Warning, 11 Pac. (2) 854 (Ariz. 1932).

[28] *Warnock v. DeWitt*, 40 Pac. 205 (Utah 1895), approved in *Legoe v. Chicago Fishing Co.*, 24 Wash. 175 (1901), fish trap relocation by delinquent licensee.
Rohn v. Iron Chief M. Co., 200 Pac. 644 (Calif. 1921).

[29] *Lehman v. Sutter*, 198 Pac. 1100 (Mont. 1921)—A relocated own claim before assessment work delinquent; B relocated after it became delinquent. Held, for B.
McCann v. McMillan, 62 Pac. 31 (Calif. 1900)—A relocated own claim, pretending an abandonment after default in assessment work. Held, there can be no abandonment by owner seeking to hold the ground.

[30] *Star M. Co. v. Fed. M. & S. Co.*, 265 Fed. 881 (Idaho 1920).
Duffy Quartz Mine, 18 L.D. 259 (1894).

[31] Guerin, 54 I.D. 62 (1932).

If the owner in relocating fails to make a discovery or to perform all the steps required for any valid relocation, his relocation is void.[32]

Like any other relocator, the owner relocating his own claim is exempted from doing any assessment work for the period between the date of his relocation and the following July 1, noon and is also protected against relocators for and during the year commencing that July 1.[33]

Where the owner in attempting to relocate his own claim makes a void relocation, he does not thereby waive or abandon his prior claim, inasmuch as any abandonment must be intentional.[34]

PATENTING MINING CLAIMS

PROCEDURE

A circular as to procedure for obtaining patents to mining claims may be had on request from the U. S. Bureau of Land Management, Spokane, Washington. Forms and procedure are shown in Morrison's Mining Rights (16th ed., 1936).

The Department of the Interior through its Bureau of Land Management (formerly U. S. Public Land Office) has charge of patenting mining claims.

The principal items of expense in patenting are: the surveyor's fee; the attorney's fee; and the purchase price payable to the government, which price is $5.00 per acre or fraction for lode claims and mill sites, and $2.50 per acre or fraction for placer claims. The claim owner employs and pays his own surveyor and attorney. The surveyor must be a licensed deputy United States mineral surveyor, and is prohibited from rendering legal services. The first official step in patenting is to employ the mineral surveyor, and to request the Regional Administrator, Region 1, Bureau of Land Management, whose office for Washington is at Swan Island, Portland 18, Oregon, to cause the survey to be made, and to deposit with him his estimated expense of office work. The mineral surveyor acts under the Regional Administrator. It is the duty of the surveyor not only to make the survey of each claim, but also to examine and report work and improvements and the value of same. To save time and heavy expense the claim owner should, *before* the arrival of the mineral surveyor and his crew, prepare the property by finding, restaking, and marking the corners and lines where obliterated, by making (lode) end lines parallel, by casting off excess areas, and by amend-

[32] *Peachy v. Gaddis*, 127 Pac. 739 (Ariz. 1912).
[33] *Sellers v. Taylor*, 279 Pac. 617 (Idaho 1929).
[34] *Peachy v. Gaddis*, above.
Wiltsee v. Utley, 179 Pac. (2) 13 (Calif. 1947).
Berquist v. W. Va.-Okla. C. Co., 106 Pac. 673 (Okla. 1910).

ing the claim(s) so as to make the description more definite and to correct errors and omissions in the recorded location notice(s). Also the owner should open up and make visible the old discoveries or make new ones, and perform the $500 work or improvements required for patenting each claim. Further, it will aid the surveyor and later the government mineral examiner if the owner furnishes them a copy of some mining engineer's report showing the exact place of each discovery, as well as assay certificates (if available).

The two things which concern the government most in patent proceedings are: First, within each separate location or claim there must be a sufficient discovery; second, each location or claim must primarily be mineral land. If the secret motive of the patent applicant is primarily to acquire valuable timber, water power site, agricultural land, gasoline station site, or land for other nonmineral use, a patent will be denied.① In patenting placer claims the government will reject any 10-acre subdivision which as a whole it finds more valuable for some nonmineral use.②

If a patent is refused, this does not cancel the claim(s) but leaves the rejected claim(s) as though no application for patent had ever been made, and third persons can not take advantage of such refusal.③ But after refusing a patent, and independent of any patent proceedings, the government has the legal right to hold a hearing for the express purpose of cancelling the claim(s), after due notice to the owner.④

The $500 work per claim above mentioned is of the same nature as annual assessment work, and may be performed within or outside the claim(s),⑤ but must be clearly proven to the government.⑥ Such work may consist of several years' assessment work, or may be done all at once.⑦ Like assessment work, group work is not apportioned according to actual benefit to each claim in a group, but is apportioned equally.⑧

To protect against relocators (jumpers), the patent applicant must perform his annual assessment work pending the patent proceedings until he has done everything required of him (including payment of the purchase price) and has received the official final

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① See Index: Discovery.
② Sec. 36, Title 30, U.S.C.
Meiklejohn v. Hyde & Co., 42 L.D. 144 (1913).
③ *Clipper M. Co. v. Eli M. Co.*, 194 U.S. 220 (1904).
④ *Cameron v. U. S.*, 252 U.S. 450 (1920).
⑤ 49 L.D. 71 (Reg. 1922).
See Index: Annual assessment work.
⑥ 49 L.D. 71 (Reg. 1922), pp. 72, 91.
⑦ *Nielson v. Champagne M. & M. Co.*, 29 L.D. 491 (1900).
Where A relocates his own claim or that of another, A can not apply work done prior to the relocation as improvement work in patenting the claim. (See Relocations, page 86.)
⑧ Carretto, 35 L.D. 361 (1907).

certificate entitling him to a patent.[9] But the fact that assessment work is in default is of no concern to the government.[10]

If application is made to patent several mining claims, all such claims must be contiguous, forming one group;[11] and this rule applies to placer as well as to lode claims.[12] If the claims are all contiguous and are owned by the same owner(s), they may be included in one application and be covered by one survey number and one patent.[13] If the government rejects one or several of the claims, the remaining claims although no longer contiguous may be patented under one patent.[14]

A placer claim on United States surveyed land and conforming to the subdivisions thereof need not be surveyed for patenting. But if the claim has never been actually staked on the ground it is void.[15]

PATENTING OF MILL SITES

A mill site is a mining claim.[16] But one is entitled to locate or patent only as many mill sites as are necessary to serve his lode claim.[17] Where a mill site or group of mill sites adjoin a group of lode claims, all forming one group and owned by the same owner(s), the entire group may be included in one application and in one patent.[18] In the patent survey the lode claims are designated by "A" and the mill sites by "B"; for example, No. 254-A and 254-B. The $500 improvement work required in patent proceedings does not apply to mill sites.[19]

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[9] *Poore v. Kaufman*, 119 Pac. 785 (Mont. 1911).
South End M. Co. v. Tinney, 35 Pac. 89 (Nev. 1894).
Pending an adverse suit in patent proceedings, the applicant for patent is not required to keep up assessment work.
Chicagoff Ext. G. M. Co., 53 I.D. 669 (Alaska 1932).
See *Chicagoff Ext. G. M. Co. v. Alaska Handy G. M. Co.*, 45 Fed. (2) 553 (1930).

[10] See Index: Annual assessment work: Assessment work during patent proceedings.

[11] *Hales & Symons*, 51 L.D. 123 (1925).

[12] *U. S. v. Millfork Co.*, 52 L.D. 610 (1929).

[13] *Carson City G. S. M. Co. v. North Star M. Co.*, 83 Fed. 658 (1897).
St. Louis Smelting & L. Co. v. Kemp, 104 U.S. 636 (1881).

[14] *U. S. v. Millfork Co.*, above.

[15] *Worthen v. Sidway*, 79 S.W. 777 (Ark. 1904).

[16] *Eagle Peak C. M. Co.*, 54 I.D. 251 (1933).

[17] See Index: Mill sites.

[18] *Hartman v. Smith*, 14 Pac. 648 (Mont. 1877).
Ebner G. M. Co. v. Hallum, 47 L.D. 32 (1919).

[19] *Copp's Mineral Lands* (1882), p. 133, (Opin. Gen. Land Office).
Dalton v. Clark, 18 Pac. (2) 752 (1933).

CO-OWNERS IN PATENT PROCEEDINGS

All co-owners must join in an application for patent; one of them has no right to apply for a patent in his own name.[20] However, if one co-owner does succeed in obtaining a patent in his own name, the others may sue to have him declared a trustee for their interests,[21] provided they are not guilty of laches[22] (which means acquiescence or long delay). If one co-owner does apply for a patent in his own name, the other co-owners are not required to file a protest, but they may do so.[23]

DANGER TO OVERLAPPED CLAIMS

B locates over part or all of A's existing valid claim, thus making B's overlap invalid. But later B applies for a patent including the overlap. A, having no actual notice or knowledge of this patent proceeding, fails to adverse within the 60 days published and posted notice, as required by law. Here B acquires full title to the overlap.[24] If A's claim had been patented, this could not happen. The courts hold that the published notice is a summons and due process of law;[25] that therefore it is not necessary that A be served personally with the notice;[26] and that it is immaterial that B is an infant, over seas, or under disability.[27]

BENEFITS OF PATENTING

The benefits resulting from a patent are:

Annual assessment work is no longer required.

Boundaries are surveyed and fixed permanently.

Patentee acquires full title to the land, including surface, timber, minerals; the patented claim is real estate and private property.[28] Patentee may sell or dispose of the timber as he pleases, and may use the claim for any lawful purpose, whether mineral or nonmineral.[29] A patented lode claim carries ownership of

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[20] *U. S. v. Logomarcini*, A-25448, Oct. 24, 1949—Abstract of title disclosed co-owners.

[21] *Turner v. Sawyer*, 150 U.S. 578 (1893).
Malaby v. Rice, 62 Pac. 228 (Colo. 1900).

[22] *Ruthrauff v. Silver King, etc. Co.*, 80 Pac. (2) 338 (Utah 1938).

[23] 54 I.D., p. 137 (Cir. 1278, July 21, 1932).
On the filing of a protest the Department may give opportunity to litigate in a court. *Coleman v. Homestake M. Co.*, 30 L.D. 364 (1900). But improper for co-owner to file adverse claim. *Turner v. Sawyer*, above.

[24] *Golden Reward M. Co. v. Buxton M. Co.*, 79 Fed. 868 (1897).

[25] Same case.

[26] *N. P. R.R. Co. v. Cannon*, 54 Fed. 252 (Mont. 1893).

[27] *Stevens v. Carson*, 42 Fed. 821 (1890).

[28] *Steel v. St. Louis S. & R. Co.*, 106 U.S. 447 (1882).
West v. Minneapolis M. & S. Co., 217 Pac. 342 (1923).

[29] *Schwab v. Beam*, 86 Fed. 41 (Colo. 1898).

all veins apexing within the claim, known and unknown. A patented placer claim carries with it all veins apexing within the claim which were unknown at time of application for patent.㉚

The patent relates back to date of original location, and conclusively presumes a valid discovery and a proper location.㉛

MINING CLAIMS, SEPARATE AND PERSONAL PROPERTY

An unpatented mining claim is property in the fullest sense of the word, and may be sold, leased, mortgaged, willed, and inherited.①

An unpatented mining claim is the separate property of the locator, his heirs and assigns. The reason is that the general mining law of 1872 (Sec. 26, Title 30, U.S.C.) gives the full possessory title to the "locators, . . . their heirs, and assigns."② Prior to and until a patent to United States public land is issued, the ownership is governed exclusively by the United States laws.③ But at the moment the patent is issued the United States laws cease to apply, and instantly the state laws apply exclusively and from then on; so that as soon as the patent is issued the land (or mining claim) immediately becomes separate or community property as determined by the laws of the State of Washington.④

㉚ Sec. 37, Title 30, U.S.C.
㉛ *Frey v. Garibaldi*, 72 Pac. (2) 554 (Calif. 1937).

① *Phoenix Co. v. Scott*, 20 Wash. 48 (1898).
② *Guye v. Guye*, 63 Wash. 340 (1911).
Karnes v. Flint, 153 Wash., p. 233 (1929).
McAllister v. Hutchinson, 75 Pac. 41 (N. Mex. 1904).
Phoenix case, above—Husband located mining claim in own name, later deeded it to daughter; after his death wife sued daughter for the claim. Held, for daughter.
Husband and wife may each locate claims in his or her name. *Guye* case, above. If they join as co-locators, the interest of each would be his and her separate property; they would be tenants in common.
The fact that community funds were used in locating a mining claim in name of husband (or wife) or in improving the claim, would not make the claim community property. *James v. James*, 51 Wash. 60 (1908)—Timber claim.
③ *McCune v. Essig*, 199 U.S. 282 (1905)—Homestead.
It is true that as soon as a patent applicant has performed everything required of him and a purchase money receipt has been given and it has been finally determined exactly what location is patentable, he acquires an equitable title. *Bash v. Cascade M. Co.*, 29 Wash. 50 (1902). But bear in mind that this result rests on U. S. law, also that the United States retains legal title until the patent is issued; in short, the U. S. laws continue to govern until the patent is actually issued.
④ *Buchser v. Buchser*, 231 U.S. 161 (1913)—Homestead.
The decisive point appears to be whether at time of the original location or settlement A (locator or settler) was married or single. The general rule thus appears to be: if at time of the original location or settlement A was unmarried and A subsequently marries prior to patent, the land becomes A's separate property upon issuance of the patent; but if at said original time A was married the property becomes community property upon issuance of the patent, regardless of A's second marriage prior to patent. *Teynor v. Heible*, 74 Wash. 222 (1913)—Homestead. 46 LRA, NS 1033, note.

As to acquiring equitable title in patent proceedings, see Index: Patenting mining claims: Final certificate.

In the State of Washington an unpatented mining claim is personal property and not real estate.⑤ In nearly all other western states and in Alaska it is real estate. In British Columbia it is a "chattel" interest, transferable by bill of sale. In Washington an unpatented mining claim, being personal property, can properly be conveyed by a written bill of sale; viz., notary's certificate not necessary. However, in Washington, the usual method of conveyance is by a quitclaim deed. But an ordinary quitclaim deed merely conveys only whatever interest or equity, if any, the grantor happens to have. A warranty deed, whether general or special, properly should recite that the mining claim is unpatented, and that the grantor's possessory or mining title is subject to the paramount title of the United States, and that any and all warranties therein contained do not bind or apply to the United States. If desired, a provision for after acquired title can be inserted.⑥

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⑤ *Phoenix M. & M. Co. v. Scott*, 20 Wash. 48 (1898).
Huffman v. Ellen M. Co., 118 Wash. 546 (1922).
Woodworth v. Edwards, 3 Wash. (2) 578 (1940).
Am. Smelting & R. Co. v. Whatcom County, 13 Wash. (2) 295 (1942).
The owner of a completed and valid unpatented mining claim has a "possessory title" or "possessory mining title"; viz., the exclusive right of possession and right to develop and mine, so long as he complies with the requirements of mining law; his possessory title is subject to the paramount title of the United States; viz., the United States has not only the legal title but also the equitable title so long as the claim remains unpatented. The equitable title vests in the patent applicant when he has done all required of him for patent and it has been definitely determined that the claim is patentable. Finally the patent, when issued, vests the legal title in the patentee.

⑥ In all ejectment and quiet title decisions of the Supreme Court of Washington, it will be observed that the procedure followed has been that prescribed by state statutes relating to "real estate." [See *Priestley M. & M. Co. v. Bratz*, 40 Wash. (2) 525 (1952).] However, such practice appears the only practicable procedure. A state law (Rem. Sec. 809-1, RCW 7.28.310) expressly authorizes quiet title suits for personal property.

TAXATION

A patented mining claim, being real estate, is taxed as such.① An unpatented mining claim; viz., the possessory title subject to the paramount title of the United States, is valuable private property and is taxable.②

If the county tax assessor's valuation of a mineral deposit, whether in privately owned land or in a patented or unpatented mining claim, is based on some substantial evidence, his valuation is conclusive, even though the quantity and quality of the hidden mineral is unknown, unless he acts maliciously, capriciously, or fraudulently.③ The State Constitution authorizes that mines and mineral deposits may be taxed on their value or yield or both;④ which provision merely limits the kind of taxation.⑤ As yet there is no yield or production tax in the state, except an "occupation tax" of one-fourth of one percent of the gross value mined.⑥

A group of contiguous mining claims held by the same owner may be taxed as a unit.⑦ If patented, the name of each claim with its U. S. survey number is sufficient identification.⑧

A recent state law⑨ authorizes the commissioners of each county to levy and collect a tax on the sale or exchange of "real estate" or an "interest in real estate," such tax not to exceed 1 percent of the total purchase price. The tax is against the seller. The tax applies to real estate sales and contracts of sale and to "any lease with an option to purchase real estate"; but does not apply to preliminary options, nor to leases with no option to purchase. The tax thus applies to sales of patented mining claims, since these are real estate. This tax does not apply to sales of unpatented claims, being personal property. The tax becomes due when the deed or contract of sale is made; and such papers cannot be recorded unless the tax is first paid. Even though the purchase price is payable in installments or from

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① *Eureka Dist. M. Co. v. Ferry County*, 28 Wash. 250 (1902).

② *Am. Smelting & R. Co. v. Whatcom County*, 13 Wash. (2) 295 (1942)—County taxed Azurite Mine, group of unpatented claims (lode), based on tax valuation of $200,000 (50%).
Forbes v. Gracey, 94 U.S. 762 (1876).

③ *Am. Smelting* case, above—Unpatented.
Eureka Dist. case, above—Patented.
Wash. Union Coal Co. v. Thurston County, 105 Wash. 208 (1919)—Private coal land.

④ 14th Amendment (1930).

⑤ *Am. Smelting* case, above.

⑥ Rem. Sec. 8370-4a, RCW 82.04.230.

⑦ *Eureka Dist.* case, above.

⑧ *Eureka Dist.* case, above.
See *Wheeler v. Smith*, 5 Wash. 704 (1893).

⑨ 1951 Session Laws, Chap. 11; RCW 28.45.010 to 28.45.110 (1951). In effect May 1, 1951.

royalties, no refund is allowed seller in case purchaser defaults. Unpaid tax is subject to lien foreclosure.

Even though reserved mineral rights are not segregated on the tax rolls, a tax sale of the land does not include or affect the mineral rights.⑩

TAILINGS

Milling or treating a tailings dump is not mining.① But an abandoned tailings dump on unappropriated United States public land may be located as a placer claim.② If the owner allows his tailings to flow and escape at large, or to flow upon another's claim, or to mingle with another's tailings, he abandons same.③ But tailings dumped on unappropriated United States public land and not abandoned by the owner belong to the owner, and may not be located by another.④ Unabandoned tailings from a custom mill belong to the mill owner and not to his customers.⑤ Unabandoned tailings are personal property.⑥

An upstream miner has no right to dump his tailings into a stream if it causes substantial injury to a downstream operator, whether or not a miner.⑦ It is otherwise if the upstream miner merely muddies the water, and the tailings or accumulated debris are small.⑧ But no one has a right seriously to pollute a stream.⑨

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⑩ *McCoy v. Lowrie*, 42 Wash. (2) —— (Feb. 10, 1953).

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① *Atlas Milling Co. v. Jones*, 115 Fed. (2) 61 (1940).
Am. Smelting & R. Co. v. Whatcom County, 13 Wash. (2) 295 (1942).

② *Rogers v. Cooney*, 7 Nev. 213 (1872), 14 M.R. 85.
U. S. v. Grosso, 53 I.D. 115 (1930)—Dictum.

③ *Jones v. Jackson*, 9 Calif. 237 (1858), 14 M.R. 72.
U. S. v. Grosso, above—Dictum.

④ *Jones v. Jackson*, above.
Ritter v. Lynch, 123 Fed. 930 (1903).
Esmeralda Water Co. v. Mackley, 208 Pac. (2) 821 (Nev. 1949).
U. S. v. Grosso, above—Owner hoped for improved method of treating tailings.

⑤ *Esmeralda* case, above.

⑥ *U. S. v. Grosso*, above.
Esmeralda case, above.

⑦ *Dripps v. Allison's Mines Co.*, 187 Pac. 448 (Calif. 1919)—Lower placer claim injured.
Pac. Gas & Elec. Co. v. Scott, 75 Pac. (2) 1054 (Calif. 1938)—Lower power company plant injured.

⑧ *Dripps* case, above.

⑨ *Packwood v. Mendota Coal Co.*, 84 Wash. 47 (1915)—Creek through stock ranch polluted by washing coal.
Bradley v. Consol., etc. Co., 162 Wash. 198 (1931)—Arsenic from tailings injured cattle.

JURISDICTION OF STATE LAWS OVER UNITED STATES LANDS

The United States, being the sole owner and proprietor of all United States public lands, has the sole and absolute control of all such lands, their holding, use, and disposition. No state has any authority to legislate or to supplement by legislation as to this, except only so far as Congress expressly or by clear implication gives such authority to the state.① The locating, holding, and using of United States mineral lands is governed by United States laws, and by state law so far as not inconsistent with such United States laws.② In general, the civil and criminal laws of a state are in force over United States public domain and reserves (for example, national forests) only where not inconsistent with the purposes for which such lands were established, and provided the state laws are not inconsistent with United States laws and regulations, except that no state has any jurisdiction over the matter of acquiring title or other rights in United States public lands.③

RIGHTS

SURFACE RIGHTS IN GENERAL

The owner of an unpatented mining claim has the right to use it for mining only, whether on public domain or in a reserve (for example, a national forest). If he uses it principally for a nonmineral use, the government may cancel the claim and eject him, after a hearing.① Further, in a national forest, the owner is also civilly and criminally liable for violating the regulations of the Forest Service.② The owner of a completed and valid unpatented claim is entitled to exclusive possession; he need not be in actual possession.③ (See Index: Discovery; National forests; Patenting mining claims; Rights of way; Timber rights; Water rights.)

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① *Gibson v. Chouteau*, 13 Wall. (U.S.) 92, 99 (1872).
U. S. v. Utah Power & L. Co., 209 Fed. 554 (1913).
Griffin v. U. S., 168 Fed. (2) 457 (1948)—County, no jurisdiction.
Florence Rae C. Co. v. Kimbel, 85 Wash., p. 170 (1915).

② Secs. 22, 26, 28, Title 30, U.S.C.

③ Wash. Law Review, Jan. 1939, p. 1.

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① *Cameron v. U. S.*, 252 U.S. 450 (1920)—Hotel.

② *U. S. v. Rizzinelli*, 182 Fed. 675 (1910)—Saloon.
Sec. 472, Title 16, U.S.C.
A Forest Service officer may file a protest against patenting, and may initiate contest for unlawful use of claim in a national forest. *U. S. v. Lavenson*, 206 Fed. 755 (1913)—Water reservoir.

③ Sec. 26, Title 30, U.S.C.
Belk v. Meagher, 104 U.S. 279 (1881).

TIMBER RIGHTS

Timber Rights on Unpatented Claims

The owner of an unpatented lode or placer claim has the right to cut and use timber thereon, but only for his mining needs. He has no right to sell or dispose of the timber.④

> "This right has been extended to the use of sufficient timber upon the claim for development purposes, and includes the use of timber for fuel and what is necessary for shafts, tunnels, and the construction of buildings as may be necessary as an adjunct to such development. . . . If the Secretary of Agriculture can deprive these locators of two-thirds of the timber upon the contention that they do not need but one-third thereof, he would be granted the power of deciding what amount of timber is necessary to be used in the development of mines, and those engaged in locating and developing mining property would have to acquire permission from the Secretary as to the amount of timber they could use upon their claims. The law does not contemplate such course to be taken."⑤

The owner of a group of claims has the right to cut timber from one and use it on another claim of the group, provided it aids in the development of the group.⑥

In removing overburden to reach a placer deposit or a hidden vein, the owner may cut and dispose of timber which is part of such overburden.⑦

The owner has the right to cut and use so much timber on his claim as needed for his present use, but not for planned future needs.⑧

If a claim in a national forest has the appearance of an abandoned claim, the Forest Service claims the right to dispose of the timber thereon.⑨

See Index: Mill sites (footnote 14 on page 78); Patenting mining claims.

Timber Rights in National Forests

This refers to national forest land lying outside of valid mining claims, patented or unpatented. The Forest Service (of the Department of Agriculture) has jurisdiction over the cutting and use of timber in national forests.⑩

The Secretary of Agriculture is authorized, in his discretion and under regulations made by him, to permit free-cutting and use of timber needed by prospectors and miners for firewood, fencing, buildings, and mining within national forests; the timber to be used

④ *Teller v. U. S.*, 113 Fed. 273 (1902).
Forest Service Circular R-6, Portland, Oreg. (1933).
⑤ *U. S. v. Deasy*, 24 Fed. (2) 108 (1928).
⑥ Circular R-6, above.
⑦ *U. S. v. Nelson*, 5 Sawyer (U.S.) 68 (1878), 14 M.R. 331.
⑧ *U. S. v. Nelson*, above.
⑨ Nat. Forest Regulations (1928).
See Sec. 594-1, Title 16, U.S.C. (1947) as to authority of the Forest Service to destroy infected and diseased trees on mining claims in national forests.
⑩ Mecum, 43 L.D. 465 (1914).

within the state or territory where cut.[11] A permit for this is required from the Forest Service, which designates the particular area and trees. It is the policy of the Forest Service to refuse free-use permits to corporations or producing mines.

For the purpose of preserving timber and promoting its growth in national forests, the Secretary of Agriculture is authorized, under regulations made by him, to sell dead, matured, and large growth timber at not less than the appraised value and in such quantities to each purchaser as he prescribes; provided that the timber so sold be used in the state or territory where obtained and be not exported therefrom. Before any sale the Secretary shall designate the timber and appraise it and advertise the sale. He may in his discretion sell without advertising, in quantities to suit purchasers and at a fair appraisement, timber and forest products not exceeding $500 in value in any one sale. Likewise, where a bid is not satisfactory or is not completed, a private sale may be made. All timber sold must be designated, cut, and removed under the supervision of the Forest Service.[12] Sales may be made to an individual, corporation, or paying mine. However, it is the policy of the Forest Service to limit free-use permits usually to dead or defective timber or thinnings, and sales of commercial timber preferably to small quantities, except overmature timber; the policy being not to commercialize the timber, but to maintain a sustained yield basis, and to benefit the community and public rather than a few dealers.

Timber Rights on Public Domain

As elsewhere used, public domain means United States public lands outside of national forests and other reserves. The Secretary of the Interior has jurisdiction over the public domain.

The Secretary of the Interior is authorized to sell, under regulations made by him, to the highest bidder at public auction or through sealed bids, dead or down timber or timber seriously damaged by forest fires, on the public domain.[13]

There are several earlier Acts authorizing the Secretary of the Interior to issue free-use permits for cutting matured timber for mining and domestic use, on the public domain.[14]

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[11] Sec. 477, Title 16, U.S.C.
[12] Sec. 476, Title 16, U.S.C.
[13] Sec. 614, Title 16, U.S.C. (1913, 1926).
51 L.D. 574 (Reg. 1926).
52 L.D. 42 (Reg. 1927).
[14] Act of 1878, Sec. 603, Title 16, U.S.C. authorized free-cutting upon nonmineral lands on the public domain, in "all public land states," which would include Washington.
Same Act authorized free-cutting upon mineral lands on the public domain, but excluded Washington. Sec. 604, Title 16, U.S.C.
Act of 1891 authorized free-cutting in the "gold and silver regions" of Washington and certain other states. Sec. 607, Title 16, U.S.C.
The free-use permittee may not sell the timber. *Caldwell v. U. S.*, 250 U.S. 14 (1919).
24 L.D. 167 (Instr. 1897).
54 I.D. 26 (Reg. 1932).

United States Timber and Stone Act, 1878

This Act relates to timber claims, and authorizes the Secretary of the Interior to sell to United States citizens, or persons who have declared their intention to become such, surveyed public lands of the United States not within any reserve (viz., public domain land), not to exceed 160 acres to any one purchaser, and at not less than $2.50 an acre, provided the land is chiefly valuable for timber or stone and is unfit for agriculture; but a purchaser may make only one purchase and no more.[15]

If in the judgment of the Secretary of the Interior the land is more valuable for agriculture or for mining, grazing, water power, recreation, or any purpose whatever other than for timber or stone, the application for purchase is denied.[16]

Building stone may be located under the Building Stone Placer Act,[17] or may be purchased under the above Act.[18]

Land, covered with heavy timber, which would be fit for agriculture if logged off may be purchased under the Timber and Stone Act.[19]

The Timber and Stone Act is still in full effect; but it is of less importance as time goes on, as nearly all available timber land has been taken up by settlers and timber men.

RIGHTS OF WAY OVER UNITED STATES PUBLIC LANDS

There is a confusing array of Acts of Congress for the granting of rights of way over United States public domain and national forests, for roads, dams, reservoirs, ditches and other water conduits, telephone lines, and the like. So far as they cover the same scope, the earlier of these Acts are impliedly repealed by the later acts.[20] Further, prior to the Federal Power Act of 1920 there were several Acts of Congress for the granting of rights of way by the Secretary of the Interior or other department heads having jurisdiction, for hydroelectric power dams, reservoirs, plants, and transmission lines over United States public lands and reserves, including national forests. All such prior Acts are now repealed by the Federal Power Act of 1920.[21] In the following discussion "public domain" means as hereinbefore; viz., public United States lands unappropriated and not within a national forest or other reserve.

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[15] Secs. 311-313, Title 43, U.S.C.
[16] Chilcott, A-25659, Apr. 5, 1949.
Russell, A-25916, Oct. 4, 1950.
[17] See Building stone (note on page 29).
[18] Roberts, A-26337, Mar. 4, 1952—Applicant to purchase must show a discovery; viz., that the stone deposit is in quantity and quality sufficient to justify a prudent person in expending time and money in an effort to find a paying mine.
[19] *Whitney v. Spratt*, 25 Wash. 62 (1901), 189 U.S. 346.
[20] *U. S. v. Utah Power & L. Co.*, 209 Fed. 554 (1913). See 53 I.D. 295 (Reg. 1931).
[21] 32 Opin. Atty. Gen. 525 (1921).

Rights of Way on Public Domain

Roads

"The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."[22]

Tramroads

The Secretary of the Interior is authorized to permit the use and right of way "through the public lands of the United States, not within the limits of any national forest, park, military, or Indian reservation, for tramroads, canals, or reservoirs," to citizens of the United States engaged in mining, quarrying, or cutting of timber, or certain other purposes.[23]

Ditches

Whenever, by the law of prior appropriation or prescription as established by local law, the right to use water becomes vested, such rights shall be recognized by the United States and shall be protected; and the right of way for the construction of ditches for such purpose over the public domain is confirmed, subject to liability for damage to any settler on the public domain.[24] And public land patents shall be subject to such vested rights.[25]

Rights of Way in National Forests

Ingress and egress

Actual settlers within national forests have the right of ingress and egress to and from their homes or property. And wagon roads and other improvements may be constructed thereon to reach their homes or utilize their property, subject to Forest Service regulations. "Nor shall anything herein prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral

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[22] Sec. 932, Title 43, U.S.C. (1866).
This Act does not apply to U. S. Reserves. *Stofferan v. Okanogan County*, 76 Wash. 265 (1913)—Indian reservation. Nor to a road over an existing valid mining claim. *Robertson v. Smith*, 1 Mont. 410 (1871), 7 M.R. 196.
A right of way over the public domain is created only by formal proceedings of the county or state or by prescription.
Stofferan case, above; *State v. Rixie*, 50 Wash. 676 (1908).

[23] Sec. 956, Title 43, U.S.C. (1895).
53 I.D. 300 (Reg. 1931).
58 I.D. 776 (Opin. re tramway in national park, 1944).
It is submitted that the Forest Service may allow a tramway for mining or other purposes under a special use permit.

[24] Sec. 51, Title 30, U.S.C. (1866).

[25] Sec. 52, Title 30, U.S.C. (1891).

resources thereof. Such persons must comply with the rules and regulations covering such national forests."[26]

Roads and trails

The Secretary of the Interior is authorized to approve surveys and rights of way "for a wagon road, railroad, or other highway over and across any national forest or reservoir site."[27]

No road or trail in a national forest may be laid out or constructed without a permit from and supervision of a Forest Service officer. The policy of the Forest Service is to administer, protect, and utilize all natural resources within national forests, including minerals, for the public good. It issues without charge special permits for roads and trails for public use, but usually regards making roads and trails to mines as a private benefit. It will usually issue a permit for a road or trail to a single mine or community of mines or prospects, provided this will not interfere with other forest need considered by it more important, but not at its expense, viz., not at government expense; the miners, with or without state aid, must build the road or trail or bear the expense. Its policy is never to build a road to a single paying mine at government expense. However, if the Forest Service will have use for a mining road for forest fire protection or other forest need, it will share the expense and will bargain with the miners and also with the state or county if interested. If it does build a road at its own expense leading to or near a mine, its primary purpose is usually to serve some needed forest use, such as fire protection or timber cutting. All roads and trails in national forests are open to public use, except during fire hazard periods or when dangerous to traffic, as during logging operations. The established policy is not to charge any road toll. In "primitive areas" the policy is to bar road making. Forest Highways (primary roads) are under the jurisdiction of the U. S. Bureau of Public Roads, the Forest Service, and the State Highway Department. But the Forest Service controls the "Forest Development Fund," which, when applied on roads, is nearly always used for low-standard roads. Twenty-five percent of all money income from Forest Service earnings must be donated to the state where earned, for the benefit of public schools and public roads.

See Index: Mine-to-Market roads.

[26] Sec. 478, Title 16, U.S.C. (1897). Roads, etc. within an unpatented mining claim.—An unpatented mining claim is not segregated from but is part of the national forest in which located. *U. S. v. Rizzinelli*, 182 Fed. 675 (1910).

The author finds no case or ruling as to whether the owner of an unpatented mining claim within a national forest has the right to cut or appropriate the timber within the roadway *inside* the claim. Such owner could of course comply with the Forest Service regulations as to the manner of cutting and then either purchase the timber or allow the Forest Service to sell it to others.

[27] Sec. 525, Title 16, U.S.C. (1889).

Special use permits

Prior to February 1, 1905 the Secretary of the Interior had the sole control and administration of national forests; hence the numerous Acts of Congress enacted prior to that date and authorizing the "Secretary of the Interior" to grant rights of way in national forests. By the Act of February 1, 1905[28] Congress transferred from the Secretary of the Interior to the Secretary of Agriculture (Forest Service) the control and administration of all past and future laws affecting national forests, "excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands." This means that the Secretary of the Interior retains control over granting in national forests rights of way and other easements which in their nature are permanent and irrevocable easements running with the land; but the Secretary of Agriculture is given control over granting in national forests rights of way and other permits which in their nature are temporary or revocable licenses, without any vested or contractual right in the permittee.[29] Accordingly, the Forest Service has adopted the practice of issuing two classes of "special use permits": (a) permits from month to month for an indefinite time, revocable whenever the Forest Service needs the land for a higher forestry use, and (b) permits for a fixed period of years, not unreasonably long, revocable for nonuse or for breach of terms and conditions. The Forest Service in its discretion issues special use permits not only for rights of way but for a large variety of other purposes, much as a large landed proprietor might do,[30] with or without charging a rental fee.[31] It usually waives making any rental charge to bona fide nonproducing miners, but not to producing mines, for special use privileges.

Hydroelectric power dams, sites, and transmission lines in national forests

See Index: Federal Power Act, 1920.

Rights of way in national forests for dams, etc.

Rights of way for dams, reservoirs, water power and storage plants, ditches, flumes, pipes, tunnels, and canals, for mining and milling purposes, are granted to citizens and corporations, under regulations of the Secretary of the Interior, and subject to the laws of the state or territory where located.[32]

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[28] Sec. 472, Title 16, U.S.C.
[29] 29 Opin. Atty. Gen. 303 (1912).
53 I.D. 297-298 (Reg. 1931).
[30] 25 Opin. Atty. Gen. 470 (1905)—Permit for fish saltery, oil and fertilizer plant.
[31] 26 Opin. Atty. Gen. 421 (1907).
[32] Sec. 524, Title 16, U.S.C.
See also Sec. 522, Title 16, U.S.C.
53 I.D. 302 (Reg. 1931).

Railroads in national forests

See footnote 27 on page 100. The Act of 1875, Secs. 934 to 944, Title 43, U.S.C., applies only to public service common carrier railroads.

Telephone lines

The head of the department having jurisdiction is authorized, under his general regulations, to grant an easement for rights of way for a period of not over 50 years for telephone and telegraph lines upon the public lands of the United States to citizens and corporations of the United States, subject, however, to the approval of the chief officer of the national forest or other reserve affected.[33]

Roads in Indian Reservations

In Indian reservations and over lands allotted to individual Indians, the Secretary of the Interior may grant to states and counties rights of way for public roads,[34] and the Secretary of Agriculture may cooperate in their construction.[35]

WATER RIGHTS

Water Rights Under Federal Laws

Water rights in national forests

"All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated, or under the laws of the United States and the rules and regulations established thereunder.[36]

This Section extends all state water right laws—"prior appropriation," "riparian rights," etc.—to national forests.[37] Accordingly, the holder of a patented or unpatented mining claim within a national forest who desires to appropriate water from a stream or lake within the national forest must first file with the Forest Supervisor (of the Forest Service) application for a permit, and likewise with the state Supervisor of Water Resources (who in turn is required to notify the state Directors of Fisheries and of Game in case the water permit is issued); and this procedure applies also to applica-

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[33] Sec. 5, Title 16, U.S.C.
See also Secs. 522 and 523, Title 16, U.S.C.
53 I.D. 295 (Reg. 1931).

[34] Sec. 311, Title 25, U.S.C.
See footnotes 22 and 23 on page 99.

[35] Sec. 3-a, Title 23, U.S.C.
For regulations of rights of way over U. S. land see 53 I.D., pp. 295-310 (1931).

[36] Sec. 481, Title 16, U.S.C. (1897).
But such state laws must not be inconsistent with U. S. laws or regulations. (See Index: State laws, jurisdiction over U. S. public lands.)

[37] See *U. S. v. Central Stockholders Corp.*, 43 Fed. (2) 977 (1930).

tions for any power project. In deciding whether to issue a water or power use permit the Forest Supervisor must conform to the Forest Service regulations; and he and the State Supervisor of Water Resources must also conform to the state water rights laws. (See Index: Rights of way: Over U. S. public lands.)

Wherever the United States owns undisposed-of areas in a national forest abutting on a stream or lake, the United States has the same "riparian rights" as any private riparian owner; and thereafter a licensee or patentee from the United States acquires the same rights the United States had.[38]

Federal Power Act, 1920[39]

This Act does not apply to power projects on non-navigable waters on privately owned lands.[40] The Act applies not only to navigable waters but to "any part of the public lands and reserves of the United States." Thus, constructing a power dam on a non-navigable stream in a national forest and a power house on the bank and a power pole line across part of the national forest would clearly come within the Act. Where the Federal Power Commission has jurisdiction, anyone proposing to construct a power dam, plant, or transmission line within a national forest or on other United States public land must first obtain a license from the Commission.[41] He must also comply with the state Water Code Act, so far as not inconsistent with the Federal Power Act.[42] The Federal Power Act completely supersedes and repeals all prior Acts of Congress relating to hydroelectric power projects on navigable waters or on United States public lands.[43]

Where a stream originates wholly within A's land, A's water rights are the same as though it originates outside and above his land.[44] It is submitted this rule applies also to mining claims within a national forest as elsewhere, and that the owner of such a claim before using the water on his claim for mining purposes or for power should apply for a permit to the Forest Supervisor and state Supervisor of Water Resources and, where his power line is to extend beyond the claim, to the Federal Power Commission.

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[38] *U. S. v. Central Stockholders Corp.* case, above.
Hunter v. Laugenour, 140 Wash., p. 573 (1926).

[39] Secs. 791a to 825r, Title 16, U.S.C. (1920).

[40] *U. S. v. Appalachian Electr. Co.*, 311 U.S. 377 (1941).

[41] *First Iowa Hydro-Electr. Co. v. Fed. Pow. Com.*, 328 U.S. 152 (1946).

[42] The Federal Power Act requires applicant to show his legal water rights under state law, but he is not required to obtain a state water use permit, as otherwise the state could veto any Federal Power Commission license. *First Iowa Hydro-Electr. Co.* case, above.

[43] 32 Opin. Atty. Gen. 525 (1921).

[44] *Hollett v. Davis*, 54 Wash. 326 (1909).
Re Ahtanum Creek, 139 Wash. 84 (1926).

Water Rights Under State Laws

Water rights in navigable waters and tidelands

Subject to the paramount right of the United States to regulate interstate and foreign commerce, navigable waters within the state and the beds beneath[45] and also tidelands[46] belong to the state where situated, and are governed by state laws. (See Index: Navigable waters.)

Water rights in non-navigable lakes and streams abutting on privately owned or state-owned lands are governed by state laws.[47] If on United States public domain, they are also governed by state law, due to consent of Congress in several Acts;[48] but if on United States reserves, then they are governed by United States laws.[49]

Law of "Prior Appropriation"

This is a special law which originated by custom among settlers and miners on the United States public domain in the early territorial days when practically all public lands were public domain (unappropriated and not set aside as national forests, national parks, and other reserves), which rule of law was recognized by Act of Congress in 1866.[50] This rule of law is: Any settler or miner, heirs and assigns, other than a squatter,[51] who is the first in time actually to appropriate water from a non-navigable stream or lake on United States public domain land for irrigation, mining or milling, or other beneficial use for his unpatented land or unpatented mining claim is entitled to appropriate as much of the water as reasonably necessary for his needs, as against subsequent water users and subsequent "riparian owners" (below defined), and such first appropriator's land or claim need not necessarily abut on the stream or lake.[52]

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[45] Sec. 1, Art. 17, State Constitution.
Borax, Ltd. v. Los Angeles, 296 U.S. 10 (1935).
Eliz. Bailey, A-26244, May 29, 1951.

[46] Sec. 1, Art. 17, above.
Scarf, N-035421, Nov. 16, 1948 (Calif.)—Calif. tidelands not subject to U. S. Mineral Leasing Acts. Likewise, Eliz. Bailey, above.
In *U. S. v. Calif.*, 332 U.S. 19 (1947) and *U. S. v. La. & Tex.*, 339 U.S. 699, 707 (1950), which held the U. S. owns the coastal belt seaward from tidelands, there was no dispute as to the states owning the tidelands and inland navigable waters and beds beneath.
Contrary to rumor, the case of *U. S. v. State Gas & Oil Dev. Co.*, pending in 1953 in the District Federal Court at Tacoma, does not involve or affect the ownership to or rights in tidelands or inland navigable waters in the State of Washington or to the beds and minerals therein; it involves ownership to certain accretion land.

[47] *Lawrence v. Southard*, 192 Wash. 287 (1937 irrig.).

[48] *Colburn v. Winchell*, 93 Wash. 388 (1916).
Ickes v. Fox, 300 U.S. 82 (1937).

[49] 55 I.D. 371, 378 (Opin.).

[50] Sec. 51, Title 30, U.S.C.
Jennison v. Kirk, 98 U.S. 453 (1879).

[51] *Tacoma v. Mason County Pow. Co.*, 121 Wash. 281 (1922).

[52] *Alpowa Creek*, 129 Wash. 9 (1924).
Hunter Land Co. v. Laugenour, 140 Wash. 558 (1926).

Law of "Riparian Rights"

This was and is part of the common law of England and the United States. "Riparian" means land abutting on one or both sides of a stream or lake whether on the public domain or on privately owned land. Hence this law does not apply to land not touching the water.[53] Further, this law applies only in favor of riparian title owners and not to unpatented mining claims or unpatented homesteads. The law is based on the idea that all riparian owners have equal rights to the water. The rule is: Each abutting title owner is entitled to have the water flow or remain in its natural condition and quantity, except as reduced by those owners who actually divert and use their proper share of the water; and any of or all the owners are entitled to divert and use their proportionate shares, depending on their respective needs, for irrigation, mining, milling, or other beneficial use. Under this rule of law it is thus immaterial which owner is up or down stream, which one actually was the first to settle on or locate his land or mining claim, which was the first patentee, or which one was the first to divert and appropriate part of or all the water.[54] Prior to patent the holder of an unpatented mining claim or unpatented homestead has "prior appropriation" rights if exercised; but after patent he has "riparian rights."[55] And "riparian rights" relate back to date of his application for patent.[56]

If A is the first to locate a mining claim on or across a stream he has no water rights at all except by actual prior appropriation (before patent); and if B is the first actually to appropriate and use the water or part thereof, A is subject to B's rights.[57]

Most water rights cases happen to be irrigation cases, but both laws—"prior appropriation" and "riparian rights"—apply as well to mining and milling as to irrigation.[58] And both laws apply to navigable and non-navigable waters,[59] except that no one has the right to lower a navigable stream or lake below its ordinary low water mark.[60]

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[53] *Alexander v. Muenscher*, 7 Wash. (2) 557 (1941).

[54] *Benton v. Johncox*, 17 Wash. 277 (1897).
Hunter Land Co. v. Laugenour, above.

[55] *Benton v. Johncox*, above.
Kendall v. Joyce, 48 Wash. 489 (1908).

[56] *Benton v. Johncox*, above.
Sturr v. Beck, 133 U.S. 541 (1890).

[57] *Dripps v. Allison's Mines Co.*, 187 Pac. 448 (Calif. 1919).
Snyder v. Col. Gold Dredge Co., 181 Fed. 62 (1910).

[58] *Re Alpowa Creek*, 129 Wash. 9 (1924).

[59] *Kalez v. Spokane V. L. & W. Co.*, 42 Wash. 43 (1906).
Re Crab Creek, 134 Wash., p 14 (1925).

[60] *Kalez* case, above.

State Water Code [61]

This Act applies to all waters in the state, navigable and non-navigable, except where the United States has exclusive control; and is intended to adjust and settle water disputes in an informal and inexpensive manner without resort to court unless necessary, and any aggrieved person injured by the issuance of a permit may appeal to the courts. The Act saves and protects existing vested water rights,[62] subject, however, to the power of eminent domain below mentioned. Before anyone may divert or use part of or all the water of a stream or lake, even on his own land or mining claim, he must apply to and obtain from the state Supervisor of Water Resources a *permit*. The Supervisor administers the Act.

The state Water Code Act expressly declares the beneficial use of water a public use, and authorizes condemnation of water rights where they are found to be inferior to the proposed superior use.[63] The Act also allows condemnation of water rights which the owner is not using nor intending to use within a reasonable time.[64]

RIGHTS OF WAY UNDER STATE LAWS; EMINENT DOMAIN

United States Act of 1866[65] authorizes state legislatures to make laws for easements, drains, and other necessary means for the complete development of mines.

An early state law[66] gives to individuals and companies incorporated under the laws of Washington the right to divert and appropriate water from any river, stream, or creek where necessary for mining or manufacturing, and to construct dams, ditches, and other water conduits necessary for running the water to their mines or plants, provided they first compensate downstream and upstream owners and the owners of the land where the stream flows or where the dam or conduit is to be located.

Another state law[67] authorizes the owner or one entitled to the beneficial use of land to acquire by eminent domain proceedings "a private way of necessity," which is therein defined as a road or way necessary for ingress or egress to or from his land, or necessary for

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[61] Rem. Secs. 7351 to 7402, RCW 90.04.010 to 90.32.030.
Rem. Sec. 7400-1 to 7400-19, RCW 90.44.020 to 90.44.240—Ground waters.
[62] Rem. Sec. 7351, RCW 90.04.020.
Funk v. Bartholet, 157 Wash., p. 593 (1930).
[63] Rem. Secs. 7354, 7351; RCW 90.04.030, 90.04.020.
[64] *Brown v. Chase*, 125 Wash., p. 550 (1923).
[65] Sec. 43, Title 30, U.S.C.
[66] Rem. Secs. 11575, 11576 (1879); RCW 90.16.020, 90.16.100.
There appears to be nothing in this Act impairing the "prior appropriation" or "riparian rights" laws. On the other hand, this and other eminent domain laws make mining claims, patented or unpatented, subject to the right of eminent domain the same as ordinary private lands.
[67] Rem. Sec. 936-1 to 936-3 (1913); RCW 8.24.010 to 8.24.040.
State ex rel. Wheeler v. Superior Ct., 154 Wash. 117 (½-mile road from coal land to highway).

the construction and use of roads, ditches or other water conduits, tramways, and other structures by which timber, stone, minerals, and valuable materials or products thereof may be transported.

A more recent state law[68] authorizes any mining, milling, or smelter company incorporated under the laws of Washington or any other state or territory to condemn a right of way (a) for a road, railroad, or surface or elevated tramway to its property, (b) for a tunnel, ditch, or other water conduit for conveying water to its property or for conveying water or tailings from its property, or (c) for a tunnel or shaft for the better working of its property.

MINE-TO-MARKET ROADS[1]

This is a state-aid law, enacted in 1939, with subsequent amendments. It requires first a petition by five or more interested citizens to be filed with the commissioners of the county where the proposed road lies. The county commissioners then make some investigation through the county engineer and may approve or disapprove the petition. If the petition is approved, the Act requires the county to acquire the right of way for the proposed road at the county's expense. In a national forest no right of way can be had without the consent of the Forest Service; but the Forest Service usually donates a right of way provided the route, grade, and standard of the road is acceptable to the Forest Service and the survey is without expense to it. If the county commissioners approve the petition, it is then filed with the state Mine-to-Market Road Commission, which then makes a careful investigation as to the mineral merits of the district to be served and as to the feasibility, route, grade, and estimated cost of the road; the mineral investigation being done by the state Division of Mines and Geology and the road investigation by the state Highway Department. If the petition is finally approved by the Mine-to-Market Road Commission, the road is constructed by the state under the supervision of the Highway Department. The survey and construction costs come out of the Motor Vehicle Fund in the hands of the state treasurer, 75 percent from the state's share thereof and 25 percent from the county's share; thus none of the money passes through the hands of the county treasurer. After the road is completed the Act requires the county to maintain

[68] Rem. Secs. 8608 to 8610, RCW 78.04.010, 78.04.020.
Baillie v. Larson, 138 Fed. 177, 152 Fed. 93 (1905)—Mine tunnel. In Washington, an alien or a company incorporated under the laws of a foreign country or in which the majority stock is owned by aliens has no right of eminent domain. *St. ex. rel. Morrell v. Superior Court*, 33 Wash. 542 (1903).

[1] Rem. Sec. 6450-25a to 6450-25g.

the road at the expense of the county. The completed road is open to public use.②

LEASING OF MINERAL LANDS

LEASING OF STATE-OWNED MINERAL LANDS

State-owned public lands include school lands (usually sections 16 and 36 in every township), university lands, tidelands, and beds of navigable waters. State-owned public mineral lands are not subject to sale, but may be leased from the state. By Act of March 20, 1907 the State must reserve and since that date has reserved ownership to all minerals in all its lands sold or deeded by it. These reserved mineral deposits thus belong to the State, and may be leased the same as full title lands,① except that the mineral prospecting permittee or mineral lessee is required to compensate the surface owner or lessee for probable damage to the surface before receiving his prospecting permit or long-term lease.② And unless the statute provides the manner of determining the damage, such damage is to be determined by a court if the parties can not agree.③ The state Public Land Commissioner administers the leasing of State-owned mineral lands and deposits. As the statute requires the land to be in United States survey subdivisions, it is not necessary for the mineral applicant to stake or locate the ground.④ A mineral permittee or lessee is prohibited from leasing or acquiring by assignment or otherwise more than the area limit fixed for any one prospecting permit or lease.⑤ Mineral permits and leases may be assigned, subject to approval of the Commissioner.⑥ The Enabling Act admitting Washington as a state in 1889 limited all land leases by the State to a period of 5 years; but the Act was amended April 13, 1948, authorizing mineral leases by the State for such periods as the state legislature may prescribe. There are three classes of state mineral leases: leases for "gold, silver, copper, lead, cinnabar or other valuable minerals"; leases for oil and gas; and leases for coal. As to timber, sand, gravel, stone, and other like material on state land, see page 114.

② Serious difficulties have arisen. County commissioners sometimes are unwilling that the county bear the expense of a right of way or the maintenance of the road after completion. Further, long delays are usually encountered.

Note: The 1953 state legislature failed to pass a bill appropriating money for mine-to-market roads during the ensuing two years.

① *State ex rel. Hall v. Savidge*, 93 Wash. 676 (1916).
② Same case.
③ Opin. Atty. Gen. (State), 1929-30, p. 592, Apr. 3, 1930.
④ *State ex rel. Sims v. Savidge*, 104 Wash. 79 (1918).
⑤ *Peninsula Dev. Co. v. Savidge*, 163 Wash. 36 (1931).
⑥ Rem. Sec. 7797-73, RCW 79.12.270.

OUTLINE OF ACT⑦ FOR LEASING STATE LANDS CONTAINING "GOLD, SILVER, COPPER, LEAD, CINNABAR OR OTHER VALUABLE MINERALS"

Applicant must be a United States citizen or a corporation organized under the laws of a state or territory of the United States, "finding" any of the minerals just mentioned, on State land or land reserved by the State. He is required first to apply for a prospecting lease (permit), and for same to pay a fee of $5.00 for each 40 acres or fraction, and a nominal fee for the lease or permit itself. The area may not exceed 80 acres for any one such permit, and must be in legal subdivisions of the United States survey. Such lease or permit is for two years. The prospecting lessee or permittee may not remove more than 5 tons of ore for assaying or testing. During the 2 years, he is required to perform work or make improvements on the premises worth not less than $50.00 for each 40 acres, and to file an affidavit thereof with the Commissioner when applying for a renewal of the lease or permit. He has a preference right of renewal on the same terms as before, provided he files the renewal application within 60 days prior to expiration of the original lease or permit.

At any time prior to expiration of the prospecting lease the holder has the right to file with the Commissioner an application for a "mining contract" (long term mining lease), upon payment of a small fee. The Commissioner is then required to investigate and determine whether the land warrants mining. A "mining contract" must not exceed 20 years. The holder has the right to develop, mine, and ship minerals, and to construct all necessary buildings, roads, mills, power plants, and smelters. He is required annually to perform labor or make improvements on the premises worth not less than $100.00 for each 20 acres, and to file with the Commissioner an affidavit stating the nature and extent of work. There is provision for a 90-day forfeiture notice in case such work or improvements are not done. He has the right at any time to surrender the mining contract after a 60-day notice, all arrears and other sums due to be paid by him.

The holder of a "mining contract" is required to pay semiannually to the State a royalty from production at the rate of not less than 1 percent nor more than 4 percent, as determined by the Commissioner,⑧ of all moneys received from the sale of the ore or minerals, after first deducting the cost of transporting the ore or minerals from the mine to market or to a smelter or other place of sale, and also

⑦ Rem. Sec. 7797-155 to 7797-162a, RCW 78.20.010 to 78.20.100.

⑧ It is the practice of the Commissioner to fix the royalty at 4 percent. There is a movement to change the royalty basis for such minerals as require little or no treatment.

after deducting the cost of milling, smelting, and refining incurred prior to sale; the cost "normal to mining" not to be deducted.⑨ In addition to royalty he is required to pay to the State an annual rental of $10.00 for each 40 acres or fraction. The "mining contract" is also to contain such further terms as the Commissioner and lessee mutually agree on. Application for renewal of such contract is to be made within 90 days prior to expiration of the contract; in which case the Commissioner investigates, and if he finds the contract has in good faith been complied with he is required to renew it on the same terms as before. Two or more mining contracts may be consolidated under a common management for large-scale work, subject to the approval of the Commissioner.

Compensating of the surface lessee

Where the State has already leased the surface for nonmineral purpose, reserving the minerals, and the surface lessee and the prospecting permittee can not agree as to the amount of damage to the surface resulting from the future prospecting operations, the Commissioner, after a hearing, determines the amount. Likewise, where the holder of a "mining contract" and the surface lessee can not agree as to the amount of damage to the surface from the future mining operations, the Commissioner, after a hearing, determines the amount. (The omission to include surface owners was probably due to oversight.)

Timber

The prospecting permittee and the "mining contract" holder, respectively, have the right to cut and use timber on the premises, for fuel, buildings, drains, tramways, and mine supports, strictly necessary for his prospecting or mining operations. For rights of way over state lands for roads, see page 113.

⑨ In *State v. Northwest Magnesite Co.*, 28 Wash. (2) 1 (1947) the magnesite company leased from the State certain school lands, agreeing to pay a 4 percent royalty as above. The magnesite deposit was mined by open pit mining (quarrying). The court held:

"Mining" includes open pit mining.

"Valuable minerals" includes nonmetallic as well as metallic minerals worth exploiting.

Under the above statute the royalty is based on the money received from the smelter or actual purchaser, after first deducting the cost of "treatment" and the cost of "transportation." Blasting, reblasting, and handling of ore and waste, is not "treatment," but is part of the cost of mining, hence, not deductible. "Treatment" is not mining but is a manufacturing process, and includes crushing, sorting, and mechanical concentration; viz., milling, including flotation; hence, deductible. In this case there was no metallurgical treatment, which usually takes place after sale to a smelter and consists of treating the concentrates with chemicals, with or without heat.

The Public Land Commissioner has no authority to modify a mining lease so as to allow part of the mine operating cost to be deducted in calculating royalty.

Outline of Act[10] for Leasing State-Owned Lands Containing Oil and Gas

Prospecting oil and gas permits are issued by the Commissioner of Public Lands only for unproven territory. "Proven territory" means land so situated with reference to producing wells as to establish a general belief that it contains oil or gas. Prospecting permits and (long term) leases are allowed only to citizens of the United States, or those who have declared their intention to become such, and to corporations organized under the laws of a state or territory and authorized to do business in this State. Prospecting permits are for 3 years. The area for any one permit is not to exceed 3 sections, or 1,920 acres. The permittee is required to pay to the State an annual rental of 40 cents per acre. Before commencing work he is required to compensate "the owners of private rights" (surface owners and lessees) and also the State for (future) damage to their respective surface rights, in accordance with regulations adopted by the Commissioner. The permittee is required to commence geological, geophysical, or core drilling operations within one year, to commence drilling operations within two years after issuance of the permit, and to operate continuously except for causes beyond his control. A permit continues good if at its expiration the permittee is diligently working and so continues until he makes a discovery in commercial quantity. A permittee becomes entitled to a long-term lease (20 years) when he makes a discovery in commercial quantity; and such lease must not exceed 1 section, or 640 acres to be selected by him out of the total covered by the permit. The permittee may at any time surrender his permit, but is liable for physical damage to the premises.

Oil and gas leases are issued without a prior prospecting permit only on land classified as "proven territory" by the Commissioner, at public auction to the qualified bidders paying the highest bonus for such leases. Permits and leases are subject to regulations of the Commissioner. Leases, with or without a prior permit, are for 20 years; the area is not to exceed 1 section or 640 acres, for any one lease. The lessee must pay to the State a royalty of 12½ percent of the gross value of all oil or gas produced, payable in kind; or, at the election of the Commissioner, in lieu of oil delivered the lessee may purchase the oil at its market value at the well when produced. In addition to royalty, the lessee must pay to the State an annual rental of $1.00 per acre. A lease may be renewed if oil or gas "can be produced," on the same terms as before except that the annual rental must not exceed $5.00 per acre.

[10] Rem. Sec. 7797-175 to 7797-185o, RCW 78.28.010 to 78.28.270.

The lessee is required to operate in an efficient manner, and under such terms as the Commissioner deems proper for the protection of the State and all parties concerned; the Commissioner is required to make and publish regulations for carrying out the Act. Further, offset wells are required. And co-operative unit operation agreements are authorized for permittees and lessees, and may be required by the Commissioner.[11]

The Commissioner, after a 30-day notice, may cancel any permit or lease for breach of any covenant or for failure to pay any royalty when due. Oil and gas permits and leases are assignable if the assignment is recorded with the Commissioner. But permits are not assignable in part; and leases are not assignable in part without the approval of the Commissioner. The Commissioner is given power to withhold any tract of land and to refuse to issue any permit or lease thereon.

Oil and gas permittees and lessees are allowed a right of way over State-owned public lands when necessary for drilling, recovering, saving, and marketing oil and gas. But the timber within such right of way and also the timber on the land or site wanted for drilling operations must be appraised by the Commissioner and paid for by the permittee or lessee. (This appears to be the only provision in the Act as to cutting and using timber for oil and gas operations.)

The Act contains special provisions for leasing of tidelands, river beds, and shorelands for oil or gas.

Outline of Act[12] for Leasing State-Owned Lands Containing Coal

Prospecting permits, called "option contracts" in the Act, are required for State-owned lands not known to contain workable coal. A citizen of the United States believing coal exists upon such land may apply to the Commissioner of Public Lands for an "option contract." The Commissioner is then required to investigate the land, and if he deems it for the best interests of the State he must issue an option contract. An option contract is for 1 year and for not to exceed 1 section, or 640 acres. The fee for issuing such contract is $1.00 per acre, but in no case less than $50.00. If the State has sold or leased the land, reserving minerals, and the parties cannot agree, the applicant for an option contract or lease is required to bring suit to determine the amount of damage to the surface owner or lessee that will accrue from the prospecting or mining of coal as the case may be. Under an option contract no coal may be re-

[11] The State Oil and Gas Conservation Act (1951) impliedly repeals and supersedes this State land oil and gas leasing Act, wherever inconsistent or covering the same scope.
See Index: State Oil and Gas Conservation Act.

[12] Rem. Sec. 7797-163 to 7797-174, RCW 78.24.010 to 78.24.120.

moved except for samples and testing. The option contract holder may use timber on the premises necessary for steam purposes and timbering in prospecting, but the State is not required to withhold from selling to others any such timber. At the expiration of his option contract the holder must fill, cover, or fence all prospect holes, and file with the Commissioner a report of his prospecting.

At any time during the life of the option contract the holder may apply for a lease.[13] As to State-owned lands known to contain workable coal, the Commissioner may issue a lease directly without any prior option contract. Leases are not to exceed 20 years. A lessee is required to pay to the State a royalty of from 10 to 20 cents a ton (2,240 pounds) depending on the grade of coal; the minimum royalty must not be less than $1.00 nor more than $10.00 per acre, to be paid in advance annually. The lessee is required to file with the Commissioner periodic reports of coal extracted, and to pay the excess over and above the minimum royalty for the current year. The Commissioner has the right to inspect the mine and the lessee's account records. The Commissioner may cancel a lease, after a 30-day notice, on account of 6 months' suspension of work, except for strikes or inability to mine at a profit, or 12 months' suspension regardless of cause. A lessee may surrender his lease after giving a 30-day notice and after paying all royalty due. Upon termination of the lease a lessee must leave the mine in good order and must remove his equipment and personal property. At the expiration of the lease the Commissioner may, in his discretion, renew the lease to the lessee, but at such royalty within the above limits as he deems best; the lessee to be given preference in case he has in good faith developed the property. The State reserves the right to sell and dispose of timber and other materials on the leased land to others, but without interfering with the lessee's operations. A lessee may purchase from the State enough timber on the land for his mining operations at a price fixed by the Commissioner.

Rights of Way Over State-Owned Lands in Favor of Timber Purchasers and Mining Lessees From the State

Subject to certain regulations, purchasers of timber on State-owned lands and mining lessees are allowed to acquire rights of way over State-owned lands for logging railroads, private railroads, skid roads, flumes, canals, etc., to be used in transporting machinery and supplies as well as products of their operations.[14]

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[13] The Act implies that workable coal must be found before the option contract holder becomes entitled to a lease.

[14] Rem. Sec. 8107-1 to 8107-8, RCW 79.36.230 to 79.36.290.

Coal Mining Code

An Act called the "Coal Mining Code" contains elaborate safety regulations, applying to all coal mines in the state on private or public land.[15]

Materials on State-Owned Lands

Timber, fallen timber, sand, gravel, and stone (other than building and ornamental stone) on State-owned lands, including tidelands, navigable waters, and shorelands, may be sold by the Commissioner of Public Lands at his discretion separately from the land or as part of the land itself, at appraised value. If sold separately from the land they must be sold at public auction for cash; but timber appraised at $250.00 or less may be sold direct without an auction.[16]

All land acquired or designated by the State Forestry Board "shall be forever reserved from sale, but the timber and other products thereon may be sold or the land may be leased in the same manner and for the same purposes as authorized for state granted land"; but no sale of timber or products and no lease of the land shall be made without the approval of the board.[17]

COUNTY MINING LANDS LEASING ACT

Mining claims, reserved mineral rights, or any other County-owned or tax-acquired mineral land owned by a County may be leased through its county commissioners for prospecting and mining of materials, oil, and gas, for such time and on such terms as the commissioners fix, and with or without an option to the lessee to purchase at a price fixed by the commissioners. In case the lease covers reserved mineral rights in land previously sold by the County, the lessee has the right to use as much of the surface as necessary for mining, but he must first pay the surface owner for damages to the surface. But Counties are prohibited from leasing the surface rights of tax-acquired property. Further, a petroleum lessee may surrender his lease at any time.[18]

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[15] Rem. Secs. 8636 to 8856-7; RCW Chap. 78.32, 78.34, 78.36, 78.38.

[16] Rem. Sec. 7797-31, 7797-33, 7797-50, 7797-58; RCW 79.12.100, 79.12.120, 79.12.340, 79.12.420; (see 7797-33a); 7797-42a, RCW 79.12.220 (timber damaged by storm or disease).

[17] Chap. 21, 1953 Wash. Laws, p. 24.

[18] Rem. Secs. 11312 to 11314-4, RCW 78.16.010 to 78.16.070.
No auction or bidding is here required.
There appears nothing in this Act prohibiting ordinary sale of mining claims and properties by Counties.

UNITED STATES MINERAL LEASING ACT

The principal Act covering coal, oil, oil shale, sodium, and phosphate was enacted by Congress on February 25, 1920. Potash and potassium were added to the Act by Act of February 7, 1927. (Sulphur was added in 1926, but was and is restricted to Louisiana and New Mexico.) The following is an outline of the general provisions covering in common all such minerals (except sulphur), followed by special provisions which apply only to certain of these minerals. The original Act as supplemented and amended up to the present time is known as the United States Mineral Leasing Act.

General Provisions of the Leasing Act

Lands covered by the Act

United States public lands containing coal, oil, oil shale, gas, sodium, phosphate, and potash and potassium (and compounds thereof), including national forests (containing such minerals), but excluding national parks and monuments, national oil reserves, and incorporated towns, are subject to lease by the United States to any United States citizen or association of citizens or any corporation organized under the laws of the United States or of any state or territory.[19] The Act also covers the minerals just named which have been reserved by and to the United States in surface title patents issued by the United States.[20] There is a special Act relating to coal lands in Alaska.

Area limits

No person, association, or corporation shall take or hold directly or by assignment or otherwise, including his or its interest as a stockholder or member of a corporation or association, one or more prospecting permits or one or more leases from the United States in any one state at any one time exceeding the following aggregate areas: coal or sodium prospecting permits or leases, 5,120 acres; oil and gas leases, 15,360 acres; phosphate permits or leases, 5,120 acres in any one state, and 10,240 acres in the United States.[21] No area limit is provided for potash and potassium compounds.

Assignments

No lease may be assigned or sublease made without the consent of the Secretary of the Interior.[22]

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[19] Sec. 181, Title 30, U.S.C. (as amended 1946).
[20] Sec. 182, Title 30, U.S.C.
[21] Sec. 184, Title 30, U.S.C. (as am. 1948).
[22] Sec. 187, Title 30, U.S.C.; Sec. 187a and 187b, Title 30 (1946). Continental Oil Co., A-24574, Nov. 22, 1948.

Work

Reasonable diligence in work, care, safety, and prevention of waste, is required in every lease.[23] And the Secretary of the Interior may make general regulations for administering the act.[24]

Act exclusive

The above list of minerals (coal, oil, gas, etc.) is subject to disposition only under the Act, except as to valid mining claims and other claims existing on February 25, 1920 and thereafter maintained.[25]

Suspending royalty payments, etc.

The Secretary of the Interior may in his discretion suspend or reduce production, royalties, and rentals.[26]

Special Leasing Provisions

Coal

The Secretary of the Interior is authorized to divide coal lands (except in Alaska) into leasing tracts, each of 40 acres or a multiple thereof, but not exceeding 2,560 acres in any one lease. And he may award leases on competitive bidding or in such other manner as he by general regulations may prescribe. If the land is in an undeveloped area and prospecting is necessary, he may issue coal prospecting permits, not to exceed 2,560 acres in any permit, for a 2-year period, which may be extended 2 years for cause. But the permittee does not become entitled to a lease unless he shows to the Secretary that the land contains coal in commercial quantities.[27] In any lease the coal royalty must be not less than 5 cents a ton, plus an annual rental of not less than 25 cents per acre for the first year, and not less than 50 cents per acre for the second, third, fourth, and fifth years each, and thereafter not less than $1.00 per acre each year. Rental payments are to be credited on royalties. Coal leases are to be for an indeterminate period, and require continuous work, except for strikes and other causes beyond the lessee's control. Terms are to be adjusted every 20 years. In lieu of continuous operation the Secretary may substitute a minimum royalty. He may permit suspension of operation for not to exceed 6 months in case a lease cannot be operated at a profit on account of market conditions.[28]

Oil and gas

The original Act of 1920 provided for oil and gas prospecting permits. These were abolished by Congress in 1935 and 1939, whereby

[23] Sec. 187, Title 30, U.S.C.
[24] Sec. 189, Title 30, U.S.C.
[25] Sec. 193, Title 30, U.S.C. (as am. 1927).
[26] Sec. 209, Title 30, U.S.C. (as am. 1948).
[27] Sec. 201, Title 30, U.S.C. (as am. 1948).
[28] Sec. 207, Title 30, U.S.C.

all then existing oil and gas prospecting permits and extensions expired not later than December 31, 1939.[29]

The following is an outline of oil and gas lease provisions as of the present time (1953): Oil and gas leases shall provide for drainage, waste, water hazard, etc.[30] Lands which are known or believed to contain oil and gas deposits may be leased by the Secretary of the Interior. If the land to be leased is within a known geological structure of a producing oil or gas field, it may be leased to the highest responsible bidder under the Secretary's general regulations, in units of not to exceed 640 acres, in as compact form as possible, upon payment by the lessee of a bonus accepted by the Secretary. Royalty to the United States must be not less than 12½ percent, in amount or value of production. But if the land to be leased is not within a known geological structure of a producing oil or gas field, competitive bidding is not necessary; and such leases shall bear a royalty to the United States of 12½ percent in amount or value of production. Leases of either kind are to be for 5 years or so long thereafter as oil or gas is produced in paying quantities, subject to certain conditions. Leases are not to terminate when production ceases if diligent drilling operation is in progress. In addition to royalty there is to be an annual rental to the United States of not less than 25 cents per acre. But from and after discovery of oil or gas in paying quantities there is to be a minimum royalty of $1.00 per acre each year, in lieu of rentals.[31] Co-operative pooling unit development and production by several lessees is allowed if approved by the Secretary.[32]

Sodium,[33] potash and potassium compounds,[34] and phosphates[35]

If the land is not known to contain a valuable deposit of any of these three classes of minerals, a prospecting permit is required, except for phosphates. Such permit is for a term not to exceed 2 years. The area is not to exceed 2,560 acres, in compact form, in any permit. If the permittee makes a discovery, he becomes entitled to a lease, as below. But if the land is known to contain a valuable deposit it may be leased by the Secretary of the Interior without any prospecting permit, through competitive bidding or in such other manner as the Secretary may provide in his general regulations.

Leases, with or without prior permit, are to be for 20 years, or so long thereafter as the lessee complies with the conditions of the lease. The area limit is 2,560 acres, in United States survey sub-

[29] Secs. 221-222i, Title 30, U.S.C. (as am. 1939).
[30] Sec. 225, Title 30, U.S.C. (as am. 1946).
[31] Sec. 226, Title 30, U.S.C. (as am. 1946).
[32] Sec. 226e, Title 30, U.S.C. (as am. 1946).
[33] Secs. 261 and 262, Title 30, U.S.C.
[34] Secs. 281, 282, 283, 284, and 285, Title 30, U.S.C.
[35] Secs. 211 and 212, Title 30, U.S.C.

divisions. If the land is unsurveyed, the lessee is to bear the expense of a survey, under regulations. Leases for potash (or potassium) and sodium require payment to the United States of a royalty not less than 2 percent of quantity or gross value of output. Royalty for phosphate leases is to be not less than 5 percent of gross value of the output. In addition, in all three classes, there is to be a rental to the United States of 25 cents per acre for the first calendar year, 50 cents per acre for each year from the second to the fifth, and thereafter $1.00 per acre annually. Rentals are to be credited on royalties. In potash (or potassium) and phosphate leases there must be a minimum annual production or a minimum royalty, except when strikes and the like interfere; but work may be suspended by the Secretary when market conditions cause loss. There are provisions for renewals of all three classes of leases. Under a potash (or potassium) lease, if any sodium compounds are found as associated minerals, such sodium compounds may be included in the lease and mined and sold. Also, if under a potash (or potassium) lease a valuable fissure vein of any mineral governed by the general mining laws is found, such vein deposit is not included in the lease but remains locatable under the general mining laws.

Notes on the U. S. Mineral Leasing Act

The Leasing Act of 1920 created an entirely new policy as to United States lands containing coal, oil, gas, phosphates, etc.; such lands since February 25, 1920 have not been and are not open to mining location or patent, but are governed exclusively by the Leasing Act.[36]

Fissionable source minerals (uranium, etc.) on United States public lands are owned and reserved by the United States under the Atomic Energy Act, under which they may be located and the ore or concentrates sold exclusively to the United States. (See Index: Uranium.)

Coal, oil, gas, phosphates, etc. reserved by the United States in surface title patents issued by the United States may be leased, subject to compensation of the surface owner in certain respects. (See Index: Reserved minerals: in U. S. land patents.)

U. S. lands withdrawn or classified as coal, oil, gas, phosphate, etc. are subject to the Leasing Act.[37] But lands withdrawn for general purposes or for purposes other than for mineral leasing are not subject to the Leasing Act.[38]

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[36] *West v. Work*, 11 Fed. (2) 828 (1926).
"Mining laws of the United States" do not include the U. S. Leasing Act. 58 I.D. 21 (1942).

[37] McFayden, 51 L.D. 436 (1926).

[38] Morgan, A-25519, May 19, 1949.
Bourdieu v. Pac. Oil Co., 299 U.S. 65 (1936).

Tidelands and inland navigable waters (rivers and lakes) belong to the state where situated, and hence are not subject to lease by the United States.[39]

Lands heretofore or hereafter acquired by the United States which contain coal, oil, gas, phosphates, etc. are made subject to the Leasing Act, subject to approval by the bureau or department having jurisdiction of the land.[40]

The Leasing Act expressly excludes national parks and monuments, naval oil reserves, and incorporated towns. But other United States lands reserved for other particular purposes, for example, Indian reservations, are impliedly excluded from the Act.[41] Thus the Act covers national forests and the public domain.

Conflict Between the Leasing Act and the General Mining Laws

The fact that the Department of the Interior classifies certain U. S. public land as valuable for any certain minerals named in the Leasing Act is no legal bar to locating and patenting a mining claim thereon. But the Department has ruled that if at the time of locating based on a valid discovery (for example, placer gold) it was known the land was valuable for a Leasing Act mineral (for example, oil or phosphate), the mining location is void, even though at the hearing it is shown the land is more valuable for the gold, etc. than for coal or oil, etc.; in other words, the Department ruled that such land is governed exclusively by the Leasing Act and is not open to location and patent under the general mining laws.[42] The Department further ruled that land is "known" to be valuable for a Leasing Act mineral if, as of the time of such location, the geological conditions were known to be such as to engender the belief that the quality and quantity of such mineral was sufficient to render it being mined profitably and to justify expenditures to that end, and that accordingly an actual discovery of such Leasing Act mineral was and is unnecessary.[43] These rules have the practical effect of repealing the general mining laws as to any public land which the Department of the Interior believes (supported by some substantial evidence) contains any Leasing Act mineral of commercial value. The Supreme Court of the United States appears not to have decided this point. However, this court has decided that where the issue is whether or not certain land is "mineral" a discovery is not necessary, and that question may be determined by

[39] See Index: Navigable waters.
[40] Secs. 351 to 359, Title 30, U.S.C. (1947).
[41] 34 Opin. Atty. Gen., 171 (1924).
West v. Work, above.
[42] 50 L.D. 650 (Opin. 1924).
McFayden, 51 L.D. 436 (1926).
Rowley, 58 I.D. 550 (1943).
Foster v. Hess, 50 L.D. 276 (1924)—Homestead.
[43] *U. S. v. U. S. Borax Co.*, 58 I.D. 426 (1944).

general geological formation and surface indications.[44] But if the Department determines or classifies the land as having no prospect of containing any valuable Leasing Act mineral, the land is not subject to the Leasing Act.[45] Land already covered by an existing prospecting permit under the Leasing Act is not open to location under the general mining laws.[46]

An applicant for a prospecting permit or for a lease under the Leasing Act has no property or vested rights or valid claim.[47]

The Leasing Act gives the Secretary of the Interior wide discretionary power. Thus he may in his discretion withdraw United States public lands from all prospecting or mining under the Leasing Act.[48] He may in his discretion reject any application or bid for a lease.[49] Further, he may refuse to issue a prospecting permit or a lease if he in his wisdom believes the applicant cannot mine at a profit because of market prices or of lack of demand for the particular mineral, although the applicant believes he can succeed.[50] The Secretary is authorized to prohibit assignment or subleasing of any lease, his consent for assignment or subleasing being necessary.[51]

The coal leasing Act for Alaska is in Secs. 432 to 452, Title 30, U.S.C. (October 20, 1914), and amendments.

LIENS

The State law relating to liens for mine labor and material is part of the general mechanics' lien law.①

Where a mining lease, contract, or option from A to B authorizes B to mine and obligates him to pay to A a royalty on the minerals mined, A's title or interest in the mining claim or land is subject to liens incurred by B for labor and material and also for the State workmen's compensation premiums.② Likewise, where in case of forfeiture of the lease or contract A is to be entitled to permanent improvements made by B.③ But where B is not obligated to mine and

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[44] *U. S. v. So. Pac. Co.*, 251 U.S. 1 (1919)—Oil.
Diamond Coal & Coke Co. v. U. S., 233 U.S. 236 (1914).
[45] Scharf, "N" Sacramento, 035421, Nov. 12, 1948.
[46] *U. S. v. U. S. Borax Co.*, above.
[47] *Wilbur v. U. S. ex rel. Barton*, 46 Fed. (2) 217 (1930).
Work v. Braffet, 276 U.S. 560.
[48] 52 L.D. 578 (Instr., 1929).
[49] *U. S. ex rel. McLennan v. Wilbur*, 283 U.S. 414 (1931).
[50] Jenkins, 55 I.D. 13 (1934)—Application for coal permit, Utah.
McCormick, 56 I.D. 293 (1938)—Application for oil and gas lease in Calif.
Rienau, A-25125, Feb. 4, 1949—Application for coal lease in Colo.
Stoll, A-24487, Feb. 24, 1949—Application for coal lease in Alaska.
[51] Secs. 187, 187a, Title 30, U.S.C. (1920, 1946).

① Rem. Secs. 1129, 1130; RCW 60.04.010, 60.04.030.
② *Finos v. Netherlands Am. Mtg. Bank*, 147 Wash. 86 (1928).
Dahlman v. Thomas, 88 Wash. 653 (1915).
A is personally liable for such premiums—*Finos* case.
③ *Dahlman* case, above.

A is not to be entitled to any benefit in case B does mine, the reverse is true.④ A lien may be waived by express agreement if supported by an adequate consideration.⑤

The posting and recording of notice (of nonliability of his title against liens) by A, the owner of the mining claim or land, is no longer law in Washington and is of no effect.⑥ Most of the western mining states have such a law for the protection of the owner.

Where a group of mining claims is worked as one mine by the same party, a lien is good against all the claims.⑦

So long as A and B are not partners, liens incurred by B do not attach to machinery or equipment (personal property) belonging to A although used by B in the work.⑧

LABOR LAWS

There is no state law especially regulating safety or sanitation in mining, other than coal mining. There are the following state laws:

Coal Mining Code,① with statutory regulations and requiring inspection by the state

Safety and sanitation law for underground working, except mining②

Law requiring reasonably safe place to work and safety devices for machinery, in extra-hazardous employments, including mines, and inspection by the state;③ and a similar law for factories and mills④

The state Workmen's Compensation Act⑤ applies to extra-hazardous employments, including mining, quarrying, milling, and smelting, and is administered by the state Department of Labor and Industries. It requires employers to pay to the state quarterly a fixed rate for the Accident Fund and for the Medical Aid Fund, which rates are changed from time to time. At present (1953) a mining employer (other than in coal mines or quarries) pays 9½ cents per workman hour for the Accident Fund, and 3½ cents per hour for the

④ *Finos* case, above.
Newell v. Vervaeke, 189 Wash. 144 (1937).
Bunn v. Bates, 31 Wash. (2) 315 (1948)—Store; improvements at B's expense.
⑤ 40 C.J. 314.
Holm v. Chicago etc. Ry., 59 Wash., p. 298 (1910).
Lofthus v. Cummings, 198 Wash. 115 (1939).
⑥ *Dahlman* case, above.
⑦ *Sly v. Palo Alto G. M. Co.,* 28 Wash. 485 (1902).
⑧ *Mattocks v. G. N. Ry. Co.,* 94 Wash. 44 (1916)—Grubstake.
See Index: Co-owners.

① Rem. Secs. 8636 to 8856-7, RCW 78.32.010 to 78.38.890.
② Rem. Sec. 7666-9 and 7666-39, RCW 49.24.080 and 49.24.370.
③ Rem. Secs. 7730 and 7788, RCW 49.16.030 and 49.16.130.
④ Rem. Secs. 7658 and 7659, RCW 49.20.010 and 49.20.020.
⑤ Rem. Secs. 7673 to 7697-1, RCW 51.04.010 to 51.52.150.

Medical Aid Fund, but he may deduct from wages half of his Medical Aid payments. If he fails to pay, the state has a prior lien against the mine and equipment. The Act prohibits suits against the employer on account of injury or death to an employee, regardless whether the employer was at fault in causing the injury or death. Before starting work, mine employers should contact the Department.

A state law requires employers in manufacturing, mining, etc. to pay wages in money or by checks or tokens cashable on presentation—thus prohibiting payment in shares of stock—and makes it a misdemeanor to delay or evade payment or to compel employees to buy from a company store.⑥

MINING CORPORATIONS

Washington mining corporations are incorporated and governed by the state Uniform Business Corporation Act of 1937 and amendments.① Shareholders are liable only for the unpaid price or balance agreed on in their subscriptions. Par value stock must be sold at not less than par. The value of property or services given for stock may be fixed by the shareholders or directors.

Mining claims situated in the State of Washington or any interest therein may be transferred or deeded by the owners to a company incorporated under the laws of this state in full payment of stock therein, without the necessity of any formal or written subscription for such stock, provided the corporation was formed to take over such claim and the stock taken therefor is a majority stock of the corporation.② The owner of 1,000 or more shares of stock of a mining corporation doing business in the state has the right to inspect the mining property of the corporation, surface and underground.③ For prohibition against paying mine labor in stock, see section on labor laws, above.

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⑥ Rem. Sec. 7594, RCW 49.48.010.
Hatcher v. Ida. Gold etc. Co., 106 Wash. 108 (1919).

① Rem. Sec. 3803-1 *et seq.*, RCW 23.04.010 *et seq.*
Incorporation and annual license fees, Rem. 3836-1 *et seq.*, RCW 23.28.010 *et seq.*

② Rem. Sec. 8611, RCW 78.04.030.

③ Rem. Secs. 8612 to 8614, RCW 78.04.040 to 78.04.050.

MISCELLANEOUS

MINING SECURITIES ACTS—BLUE SKY LAWS AS RELATED TO STOCKS

Of the state mining securities Acts the most important is the "Metalliferous Mining Securities Act,"① relating to metal mining corporations, domestic and foreign, selling their stock to residents of the state of Washington, whether their mines are situated in or outside the state. Before offering its stock for sale within the state a corporation must first procure a license by filing with the state Department of Licenses a "statutory statement" of information; the fee is $10.00. However, no license is required of those persons who sign the Articles of Incorporation and subscribe for stock, provided they do not exceed 15 signers. It is unlawful for the corporation to issue stock to anyone with the understanding that he will resell to nonresidents of the state for the benefit of the corporation.

Individuals and nonmetalliferous mining corporations are governed by the general state blue sky law,② which law also formerly required a state license for selling preorganization stock; viz., stock sold prior to incorporating.③ There is a special state Act governing the selling of oil, gas, and mining leases and interests therein.④ All the state laws are administered by the Department of Licenses, and require licenses before selling stock.

The Federal "Securities Act"⑤ of May 27, 1953 governs exclusively all stock sales in interstate commerce. It is administered by the Securities Exchange Commission. For convenience herein this Act is referred to as the SEC Act, and the Commission as the SEC.

The following are a few practical cautions:

A domestic (Washington) corporation is exempt from the SEC Act even though it uses the mails, provided it offers and sells its stock only to residents of the state and within the state. It must, however, get its local license.

Under Regulation-A as recently amended, a corporation may be permitted to sell its stock (or securities) not to exceed $300,000.00 in the aggregate, after first filing with the SEC Regional Office certain detailed information and financial reports. And under Regulation-D (new), Canadian corporations may likewise be permitted to sell their stock (or securities) up to $300,000.00 in the United States after substantially the same procedure, but

① Rem. Sec. 5853-31 to 5853-41, RCW 21.08.010 to 21.08.120, 1951 Laws, Chap. 64.
② Rem. Sec. 5853-2 to 5853-19, RCW 21.04.010 to 21.04.220.
③ This preorganization stock law was repealed in 1947.
④ Rem. Sec. 5853-51 to 5853-58, RCW 21.12.010 to 21.12.080.
⑤ Sec. 77a to 77aa, Title 15, U.S.C.

such information and reports must be filed with the head office at Washington, D. C.

If a corporation, without having SEC permission to sell stock in other states, sells stock even to one nonresident of the state, it violates the SEC Act. It is recommended that in stock sales within the state all stock subscription blanks be signed by the subscriber and recite that he is a resident of the state.

The state Metalliferous Act does not require a prospectus, but if one is desired a copy must first be filed with the Department of Licenses and have attached to it a condensed summary of the company's Statutory Statement satisfactory to the Department.

Where under the state Metalliferous Act promoters' stock is held in escrow pending the promotion of the company, it is unlawful for the owner of any part of such stock to give an option for its sale, to take effect when the escrow is terminated.⑥

The state Metalliferous Act requires every broker or agent, whether or not a director or officer of the company, who plans to sell stock for the company, first to take out a personal license.

MINING ENGINEERS AND SURVEYORS

Mining engineers and surveyors are required to have an annual license from the state Department of Licenses; except that a nonresident of this state may practice not to exceed 60 days in any calendar year if his home state or country has a substantially equal standard of qualification.⑦

EXPLOSIVES

Anyone keeping or using explosives is required to obtain a permit from the state Department of Labor and Industries, and is subject to inspection by the Department and to certain restrictions as to where and how to store and use explosives.⑧

CRIMINAL OFFENSES

It is a misdemeanor to molest or destroy mining location notices, posts, and monuments;⑨ and a felony to "salt" a mine or use false samples or assays.⑩ Failure to fence or safeguard open shafts or pits, whether while working or after abandoning works, incurs civil and criminal liability.⑪ Failure to have and use an iron-bonneted

⑥ *Hederman v. George*, 135 Wash. (2) 333 (1949).
⑦ Rem. Sec. 8306-1 to 8306-16, RCW 18.43.010 to 18.43.130.
⑧ Rem. Sec. 5440-1 to 5440-22, RCW 70.74.010 to 70.74.210.
⑨ Rem. Sec. 2656, RCW 9.61.010.
⑩ Rem. Secs. 2711 to 2714, RCW 9.45.200 to 9.45.230.
⑪ Rem. Secs. 8857 to 8865, RCW 78.12.010 to 78.12.070.

safety cage in a vertical shaft over 150 feet deep is a misdemeanor and also incurs civil liability.[12]

Under United States Acts it is a misdemeanor to molest or destroy any government survey post or mark, and a felony to interfere with the surveying by a Federal mineral surveyor of a mining claim for patent.[13]

URANIUM—ATOMIC ENERGY COMMISSION ACT [14]

This Act, enacted August 1, 1946, relates to uranium, thorium, and other fissionable material, herein referred to as uranium. The Act protects mining claims (and privately owned lands) which were vested and existing on August 1, 1946; but the owner is required to get a license from the Atomic Energy Commission before he may sell or transfer the uranium ore after it is mined.

The Act reserves to the United States title and ownership of all commercial uranium deposits discovered, located, or acquired *after* August 1, 1946. However, to encourage discovery and mining of uranium, the Act allows any qualified person to locate mining claims on open United States public lands which contain uranium (whether known to exist then or thereafter). Any such claim owner (also anyone acquiring patent to United States land after August 1, 1946) is given by the Act the privilege to mine and sell commercial uranium ore from his claim or land to the Atomic Energy Commission at a guaranteed price for a specified period. Accordingly, the Commission's regulations fix the minimum quality at 10 percent uranium oxide (U_3O_8), and the guaranteed government price at $3.50 per pound, and the time limit until April 11, 1958. In case of sale to the Commission, a $10,000 bonus is donated for each new discovery and the production therefrom of the first 20 short tons of uranium ore or mechanical concentrate assaying 20 percent or more U_3O_8. The Act also allows sale of the ore to private persons and corporations in the United States. But no one may sell, buy, or transfer uranium ore (to the Commission or to a private party) unless he first procures a license from the Commission.

UNITED STATES GOLD RESERVE ACT, 1934 [15]

Under this Act the United States went off the gold standard, withdrew gold coins from circulation, and authorized the Secretary of the Treasury to make regulations governing the acquisition, hold-

[12] Rem. Sec. 8863, RCW 78.36.850; Rem. Sec. 8858, RCW 78.12.010 to 78.12.070 (duty to fence shafts).
[13] Secs. 111 and 112, Title 18, U.S.C.
56 I.D. 291 (Opin. 1938).
[14] Secs. 1801 to 1819, Title 42, U.S.C. (Aug. 1, 1946).
Full printed information may be obtained by writing to the Atomic Energy Commission.
[15] Secs. 440 to 446, and Sec. 734, Title 31, U.S.C. (Jan. 30, 1934).

ing, melting and treating, and the importing and exporting of gold. These regulations require special licenses from the Secretary for doing of any of the acts just enumerated. Such licenses are difficult to obtain. So far as the Act affects gold mining, an important exception relates to "gold in its natural state"; viz., "gold recovered from natural sources which has not been melted, smelted, or refined or otherwise treated by heating or by a chemical or electrical process." Such kind of gold may be "acquired, transported within the United States, imported, or held in custody for domestic account without the necessity of holding a license therefor." Accordingly, a miner (usually placer) who produces gold in such natural state may hold it, import it (if produced outside the United States), transport it within the United States, and sell it, without a license; and his purchaser and assigns may do likewise without a license. But no one, not even the miner, may export such gold or any gold without a license.

The regulations permit the miner, without a license, to make gold amalgam by heating the natural gold sufficiently to separate the mercury without melting the gold; the total retort sponge held by him at any one time is not to exceed 200 troy ounces. The miner may sell such sponge without a license, but only to a United States Mint or to a private party having a license. When the miner sells his natural gold or sponge to a private party, usually a bank or a dealer, or to a U. S. Mint, the miner must furnish the purchaser with a written certificate, Form TG-19, showing he (miner) mined it, etc.; and the purchaser (when he sells it) must likewise furnish his purchaser in turn with a certificate, Form TG-21, showing from whom he purchased, etc.

The U. S. Mints (in 1953) pay $35.00 for an ounce of fine gold, less ¼ of 1 percent and less Mint charges, subject to change by the Secretary. The U. S. Mint (Assay Office) at Seattle serves Washington, Idaho, Montana, Oregon, and Alaska. "United States Mint" means a United States Mint or Assay Office.

STATE OIL AND GAS CONSERVATION ACT[1]

The general purpose of this Act, enacted in 1951 by the state legislature, is to regulate the prospecting, production, and utilization of natural oil and gas in such a manner as to prevent waste, and also to assure maximum economic recovery, in such a manner as to be fair to all parties concerned. The Act applies to all oil and gas lands "in the State." Accordingly, it applies to privately owned lands;

[1] 1951 Laws of Wash., p. 381, Chap. 146. RCW 78.52.001 to 78.52.550. Although as this report goes to press there is lack of positive evidence that oil and gas can be produced in the State in commercial quantities, the Act was intended not merely to prevent waste, but also to furnish a set of rules and regulations which oil and gas companies hereafter attempting to drill may safely rely on for their own protection.

State-owned lands, including tidelands and navigable waters; and to United States public lands within the State insofar as not inconsistent with United States laws and particularly not inconsistent with the United States oil and gas leasing laws (which apply to the public domain and national forests).② The above state oil and gas conservation Act defines and prohibits waste in all forms, underground and above ground, and particularly the drowning of any oil and gas pool or well with water or pollution with salt water, improper locating, spacing, drilling, and operating of wells, unnecessary escape of oil or gas, improper storing, manufacture of carbon black where unnecessary, and overproduction of oil or gas.

The Act creates a committee consisting of the governor, public land commissioner, director of conservation and development, state auditor, and state treasurer. This committee administers the Act, and has power to make reasonable regulations and to investigate and prevent waste. Well logs; directional surveys; and reports on well location, drilling, and production, and also on such other matters as prescribed by the committee must be filed with the committee if so required; and records of production, sales, storing, transporting, and processing must be open to inspection by the committee. Whenever the committee requires the filing of well logs and other reports on wildcat wells, the reports shall be kept confidential by the committee for one year if the owner, lessee, or operator so requests, except when necessary to divulge same in a hearing or suit. The committee has the duty to determine well spacing areas and location of wells therein, also the authority to regulate drilling, production, plugging, and other operations for production, also to limit and prorate oil and gas produced in the state, so as to prevent overproduction. Owners and lessees may mutually agree on a combined unit plan of drilling, spacing, and production, if approved by the committee; and the committee may require such a plan after a public hearing.③ Any owner, lessee, or party adversely affected by any order of the committee has the right of a hearing before the committee, with the right to appeal to the courts, and the courts may vacate such order if unreasonable.

Before anyone may commence drilling a well in search of oil or gas, he must first notify the committee, giving certain advance information, and must before so commencing pay a fee of $100.00 to the state treasurer for a permit to drill.

If necessary, the committee may bring suit to enjoin violation of the Act. And any person violating the Act is guilty of a gross misdemeanor.

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② See Index: Mineral leasing Acts: (State) oil and gas, and State laws, jurisdiction over U. S. public lands.

③ The Act expressly authorizes the committee to compel the owners to adopt a unit plan of operation only after the pool or field has declined in production to a point where secondary recovery is advisable or necessary.

THE STATE DIVISION OF MINES AND GEOLOGY

In the State of Washington, at Olympia, there is a Division of Mines and Geology, being one of the branches or "divisions" of the state Department of Conservation and Development. The head, or Supervisor, of the Division of Mines and Geology is appointed by the Director of said Department, and is required to be a mining engineer or geologist. Originally, 1901 until 1921, the work now carried on by the Division was carried on by a State Geologist.

The fundamental objectives of the Division of Mines and Geology are the acquisition of information on the geology and mineral resources of the state and the dissemination of such information to the public. Basic geologic work is done on the structure and stratigraphy of the state. The mineral occurrences of various areas are studied and evaluated as to their economic importance. Investigations of specific minerals, both metallic and nonmetallic, are made on a state-wide basis. Particular attention is paid to the progress of oil and gas exploration and to the collection of data pertinent to such work. From time to time, as certain investigations are completed, the results are published and distributed as bulletins, reports, or circulars. The acquired data, accumulated through more than 50 years of continuous operation, are also drawn upon in field and office conferences and in answering inquiries regarding the availability and development of mineral resources and their utilization by industry.

Free advice is given to prospectors and small-mine operators so as to further mineral develpment; but in this service written reports are not made for individuals, and care is taken not to encroach on the proper field of consulting geologists and engineers.

A laboratory is maintained by the Division where samples of rocks and minerals are studied in connection with investigations that are underway. The facilities of this laboratory are used for the benefit of the public in the identification, without charge, of rocks, minerals, and aggregates occurring in the state. No assays or chemical analyses are made, but anyone may submit samples for determination and for suggestions as to probable economic value and use. Collections of representative ores and minerals are on display at the office of the Division. A reference library is maintained, where the public has access to standard works on mining and geology, to the bulletins and reports of this and other states, also the publications of the U. S. Geological Survey, the U. S. Bureau of Mines, and corresponding Canadian agencies.

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State of Washington

ARTHUR B. LANGLIE, Governor

Department of Conservation and Development

W. A. GALBRAITH, Director

DIVISION OF MINES AND GEOLOGY

SHELDON L. GLOVER, Supervisor

Supplement No. 1

to

Bulletin No. 41

AN OUTLINE

OF

MINING LAWS

OF THE

STATE OF WASHINGTON

(PUBLISHED JULY 1, 1953)

Compiled and Annotated by

MORTON H. VAN NUYS

MINING LAWYER, SEATTLE

APRIL 15, 1956

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CONTENTS

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to

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AN OUTLINE OF MINING LAWS OF THE STATE OF WASHINGTON

Compiled and Annotated by
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INTRODUCTION

Since the publication on July 1, 1953, of an outline of the State and Federal laws that are of particular interest to prospectors, a considerable number of new laws and changes in existing laws or regulations have been enacted. These are set forth or discussed in the following pages. They are all supplemental to the material incorporated in Division of Mines and Geology Bulletin No. 41 and, in so far as applicable, should, by prospectors and the mining industry, be considered together with the data given in that bulletin. Also included in this supplemental material are many additional citations to court decisions. These, chiefly of interest to the legal profession, are given with reference to footnotes appearing in the original bulletin.

ELEMENTS OF DISCOVERY①

A recent decision of the Department of the Interior② lists a few important elements of discovery, outlined as follows:

The objective in discovery is not development work but exploration; hence it is unnecessary to do extensive development work for the purpose of acquiring exhaustive knowledge of the mineralization. This decision continues: "The size of the vein as far as disclosed, the quantity and quality of mineral it contains, its proximity to working mines and location in an established mining district, the geological conditions, the fact that similar veins in the particular locality have been explored with success, and other like facts, would all be considered by a prudent man in determining whether the vein or lode he has discovered warrants a further expenditure or not." Quoting from 2 Lindley on Mines (1914 ed., Sec. 336) the

① Div. Mines and Geology Bull. 41, pp. 32-36, 41.
② W. M. Mouat, A-26181, January 11, 1954.

decision concludes: "It is enough if the vein or deposit has a present or prospective commercial value. . . . No court has ever held that in order to entitle one to locate a mining claim, one of commercial value, in either quantity or quality, must be discovered. Such a theory would make most mining locations impossible." Otherwise, there would be no necessity for the improvement work required for patenting. Further, the law does not require the ground to yield any specific quantity of valuable metals. In the Mouat case, cited above, there was an immense deposit of olivine, a magnesium-bearing rock, in Montana, some of which had been used in manufacturing fertilizer in Washington and Tennessee. The Bureau of Land Management held that no discovery had been made because there was no market. But on appeal the Secretary of the Interior held that the discovery was good because the mineral had prospective commercial value.

DISCOVERY SHAFT IN LOCATIONS OF LODE CLAIMS③

CHAPTER 357, LAWS OF 1955 (34TH LEGISLATURE)
AMENDING RCW 78.08.070 AND REPEALING RCW 78.08.130

EFFECTIVE DATE, JUNE 9, 1955

A history of the "discovery shaft" law is set forth in Bulletin 41, pages 47-48, as to lode claims located prior to June 9, 1955. In 1955 the state legislature amended this law, RCW 78.08.070, so as to read:

> Any open cut, excavation or tunnel which cuts or exposes a lode and from which a total of two hundred cubic feet of material has been removed or in lieu thereof a test hole drilled on the lode to a minimum depth of twenty feet from the collar, shall hold the lode the same as if a discovery shaft were sunk thereon, and shall be equivalent thereto.

This amendment took effect June 9, 1955. At the same time and as part of this same amendment, the legislature repealed RCW 78.08.130 by extending the 1955 discovery shaft law to the entire state, thus abolishing the old law which was limited to eastern Washington. Accordingly, after June 9, 1955, the above quotation applies to western Washington as well as to eastern Washington.

In this new amendment (quoted above) the following provisions should be considered: The discovery shaft, tunnel, or other excavation may be dug at any depth, length, or width, provided the minimum of 200 cubic feet of material is removed. The locator may do any kind of excavation work, provided it is done at the same place and at least 200 cubic feet of material is actually removed.

③ Div. Mines and Geology Bull. 41, pp. 47-48.

In the amendment quoted there is no requirement that discovery be at least 10 feet below the surface or at any fixed depth. In lieu of tunnel or shaft construction, the locator may clean out an old caved shaft or tunnel provided he does the equivalent work (in Washington, removing the 200 cubic feet of material).④

As mentioned in Bulletin 41, page 33, a discovery must be physical and must expose a vein in lode claims. Hence, the drilled test hole mentioned in the amendment quoted above must yield a core or sample of rock or ore encountered. To make a discovery, several holes more than 20 feet in depth may be found necessary.

Location work, unlike assessment work, must be done inside each claim separately. Location work all inside one claim or part of the claims in a group for the benefit of the other claims is not allowed.

Location or relocation work can not count as assessment work; there must first be a valid completed claim before there can be such a thing as assessment work. Thus, where there is no discovery, work done annually, however much or expensive, can not count as assessment work.⑤

Where the locator digs his discovery shaft to the required amount, or more, but encounters no discovery therein, he has the right to make a discovery (usually called a "subsequent discovery") at any other place within his lode claim, without the necessity of digging any additional discovery shaft; such a discovery validates the claim as of date of such actual discovery.⑥ This rule should apply equally well where in lieu of a discovery shaft the locator digs, for example, a trench, excavating 200 cubic feet, without making a discovery there.

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④ *Murray v. Osborne*, 111 Pac. 31 (Nev. 1910).

⑤ *Union Oil Co. of Calif. v. Smith*, 249 U.S. 337 (1919).
Cole v. Ralph, 252 U.S. 286 (1920).
Ebner Gold M. Co. v. Alaska Juneau Co., 210 Fed. 599 (1904).

⑥ *Harrington v. Chambers*, 1 Pac. 362 (Utah 1882) affirmed in 111 U.S. 350, without discussion.
Gibson v. Hjul, 108 Pac. 759 (Nev. 1910).
Tonopah Ralston M. Co. v. Mt. Oddie U. Co., 248 Pac. 833 (Nev. 1926).
O'Donnell v. Glenn, 19 Pac. 302 (Mont. 1888).
See Subsequent Discovery, in Div. Mines and Geology Bull. 41, p. 34, footnote 15.
Montana cases hold that discovery must be made in a discovery shaft, whether it be the original or a new shaft.
Beals v. Cone, 62 Pac. 948. (Colo. 1900).
Van Zandt v. Argentine M. Co., 8 Fed. 725 (Colo. 1881).
McMillen v. Ferrum M. Co., 74 Pac. 461 (Colo. 1902).
The McMillen case holds that the locator must record a new or amended location notice, and that such a notice causes abandonment of his original discovery shaft.

DISCOVERY SHAFT IN RELOCATIONS OF LODE CLAIMS⑦

CHAPTER 357, LAWS OF 1955 (34TH LEGISLATURE)
RCW 78.08.090 (REPEALING RCW 78.08.130)

EFFECTIVE DATE, JUNE 9, 1955

A history of the "discovery shaft" law governing relocations of lode claims located prior to June 9, 1955, is stated in Bulletin 41 on page 83. In 1955 the state legislature repealed RCW 78.08.130. This repeal requires all lode claims relocated after June 9, 1955 (date of repeal), whether situated in eastern or western Washington, to comply with RCW 78.08.090.

RCW 78.08.090 requires relocators of lode claims situated in either eastern or western Washington, after June 9, 1955, to dig a 10-foot discovery shaft or tunnel, or to extend it 10 feet, or to perform an equal amount of "development work" within the claim. Miners frequently speak of "development work" as including prospecting work. In mining there are technically three stages: prospecting, development work (such as driving a tunnel to reach a known vein), and stoping (extracting) the ore.

Instead of extending an old shaft or tunnel 10 feet, the relocator may clean out a caved shaft or tunnel, removing the same amount of material as would be necessary in extending such shaft or tunnel.⑧

The question has been raised whether, instead of digging or extending the 10-foot discovery shaft required in relocations (RCW 78.08.090), the relocator may drill a minimum 20-foot test hole, as is allowed in original locations.⑨

WHAT CONSTITUTES A RELOCATION⑩

RELOCATING ABANDONED CLAIM
RCW 78.08.090

As explained in Division of Mines and Geology Bulletin 41, page 82, the Washington law required location notices to contain a certain "statement," which requirement was repealed June 8, 1949. In connection with relocations the following rules should be considered:

⑦ Div. Mines and Geology Bull. 41, p. 83.
⑧ *Murray v. Osborne*, 111 Pac. 31 (Nev. 1910).
⑨ It is doubtful whether such a test drill hole would be permissible as a substitute for a 10-foot discovery shaft or tunnel required in relocations. See *National M. & M. Co. v. Piccolo*, 57 Wash. 572 (Wash. 1910), a confusing case.
⑩ Div. Mines and Geology Bull. 41, p. 82.

After June 8, 1949, if B, the subsequent claimant, in his location notice states or indicates that he claims as a relocator, or that the claim is on abandoned ground, or that A, the prior locator, is in default of assessment work, or words to that effect, he, B, is treated as a relocator and accordingly is entitled to show that A's claim is abandoned or in default of assessment work;[11] but B is not entitled to show that A's claim is invalid, for the reason that a relocator impliedly admits the validity of the former claim.[12]

If B's notice is in the form of an original location; viz., without reference to any relocation, abandonment, or default in assessment work, B is allowed to show that A's claim is invalid (for example, for lack of discovery, insufficient staking, description of whereabouts of claim too indefinite, etc.);[13] but B is not allowed to show abandonment or default in assessment work.[14]

One factor in the above rules is the fact that an invalid mining claim is not a mining claim but a legal nonentity. Before there can be such a thing as assessment work or an abandonment of a mining claim the claim itself must be valid. Thus, in the Paragon case cited, B posted a notice and put in only two corner posts, and left the country; the court held that A was allowed to attack B's claim as invalid and not as an abandoned claim. As to the law of possession, see Bulletin 41, pages 24-25.

In Florence-Rae Copper Co. v. Kimbel, 85 Wash. page 166, B at the trial attempted to show that A was in default of assessment work and also that A's claim was invalid (for failure to stake claim). The trial court required B to elect, on the ground that the two pleas were inconsistent. There appears to be a dearth of cases on this question in Washington and other states.

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[11] *Zerres v. Vanina*, 134 Fed. 610 (Nev. 1905).

[12] Div. Mines and Geology Bull. 41, p. 82, footnote 16.
Jackson v. Prior Hill M. Co., 104 N.W. 207 (S. Dak. 1905).
Heilman v. Loughrin, 188 Pac. 370 (Mont. 1920).
Betsch v. Umphrey, 252 Fed. 573 (Alaska 1918).
Rodgers v. Berger, 103 Pac. (2) 266 (Ariz. 1940)—Arizona repealed the "statement" mentioned above, but B incorporated the wording of the "statement" in his notice.

[13] *Paragon M. & D. Co. v. Stevens County Expl. Co.*, 45 Wash. 59 (1906).
Cunningham v. Pirrung, 80 Pac. 329 (Ariz. 1905).
Daggett v. Yreka M. & M. Co., 86 Pac. 968 (Calif. 1906).
Hickey v. Anaconda Copper M. Co., 81 Pac. 806 (Mont. 1905).
Murray v. Osborne, 111 Pac. 31 (Nev. 1910).

[14] *Clason v. Matko*, 223 U.S. 646 (Ariz. 1912).
Gold Creek A. M. & S. Co. v. Perry, 94 Wash. 624 (1917).

ANNUAL ASSESSMENT WORK—AFFIDAVIT①

CHAPTER 357, LAWS OF 1955 (34TH LEGISLATURE)
AMENDING RCW 78.08.081

EFFECTIVE DATE, JUNE 8, 1955

The 1955 state legislature amended RCW 78.08.081 (Rem. Code Sec. 8627), which relates to affidavits for annual assessment work performed, by adding the following sentence:

> Such affidavit shall contain the section, township and range in which such lode is located if the location be in a surveyed area.

GROUP ASSESSMENT WORK②

The owner of a group of contiguous claims may intentionally do assessment work for one or several contiguous claims in the group and thereby let the remaining unpatented claims go by default.③ Accordingly, if he owns a group of patented and unpatented claims, he should disregard the patented ones (as they are exempt from assessment work) and do all the work for the benefit of the unpatented ones. And it is permissible for him actually to do the work within the patented claims for the sole benefit of the unpatented claims, provided such work does benefit the unpatented ones.④ If he is financially unable to protect all his unpatented claims he should select the more valuable contiguous ones, on or for which he should concentrate his work, making no mention of the omitted claims in his affidavit of work.

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① Div. Mines and Geology Bull. 41, p. 63.

② Div. Mines and Geology Bull. 41, pp. 59-60, 88.

③ *McKirahan v. Gold King M. Co.*, 165 N.W. 542 (S. Dak. 1917).
As explained on pages 84-87 in Division of Mines and Geology Bulletin 41, a claim in default of assessment work is not forfeited or lost until and unless abandoned, or relocated by others; further, the claim is redeemed if the owner resumes assessment work before the rights of others intervene.

④ *Justice M. Co. v. Barclay*, 82 Fed. 554 (1897).
Hall v. Kearny, 33 Pac. 373 (Colo. 1893).

MULTIPLE SURFACE USES OF UNPATENTED MINING CLAIMS①

UNITED STATES PUBLIC LAW 167 (84TH CONGRESS)
SECS. 601 TO 615, TITLE 30, U.S.C.

EFFECTIVE DATE, JULY 23, 1955

Materials.—The Secretary of the Interior by this new law is given authority to dispose of "common varieties" of sand, stone, gravel, pumice, pumicite, cinders, and clay on United States public lands. The Act expressly prohibits the locating of mining claims on any such materials; these materials can be acquired only by purchase or lease from the Secretary, after July 23, 1955 (date of the Act). However, any valuable mineral associated with any of the seven materials mentioned above; for example, gold with sand and gravel, may be located as a mining claim. Further, if any deposit of the seven materials is not common but has a distinct and special value (including block pumice with one dimension of 2 inches or more), it may be located and patented under the general mining laws of the United States.②

Nonmineral uses.—"Any mining claims hereafter located under the mining laws of the United States shall not be used prior to the issuance of patent therefor, for any purpose other than prospecting, mining, or processing operations and uses reasonably incident thereto."③

Multiple surface use; timber; access—Sec. 4 (b) of Act.—Unpatented mining claims located *after* July 23, 1955, (date of the Act) shall be subject to the superior rights of the United States to manage and dispose of "vegetative surface resources" (viz., timber, forage, and other forest products)—resources other than mineral deposits locatable under the general mining laws of the United States. "Any such mining claims shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees and licen-

① Specific regulations applicable to this Act, to be used in its administration, can be obtained from the U. S. Bureau of Land Management, 209 Federal Building, Spokane 1, Washington, or P. O. Box 3861, Portland 8, Oregon.

② See Div. Mines and Geology Bull. 41, p. 28.

③ The Department of the Interior has and always has had authority, after due notice and a hearing, to cancel unpatented mining claims used for nonmineral purposes. Div. Mines and Geology Bull. 41, p. 88.

sees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land:④ *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining, or processing operations or uses reasonably incident thereto: *Provided further,* That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim."⑤

Cutting of timber by claim owner, Sec. 4 (c).—Subject to the superior right of the United States to manage, cut, remove, and dispose of timber at any time on an unpatented mining claim located after July 23, 1955, the owner of such claim is given the right, under this Act of July 23, 1955, to cut and use timber on his own claim for prospecting, mining, and processing operations, or for the construction of buildings and structures connected therewith, or to provide clearance for such operations. But in so doing he is required to comply with "sound principles of forest management," except in making such clearance (removing overburden for buildings and structures).

Clearing of adverse claims, Sec. 5 of Act.—The Act prescribes the procedure for clearing adverse claims to surface uses of mining claims. Such proceedings are instituted by a Federal department or agency, designated as A. Let B represent (a) the owners of unpatented mining claims located prior to the Act (prior to July 23, 1955) and situated within the area in question, or, (b) the owners of claims across which A desires a right of way (access to adjacent lands). Example: the Forest Service (A) desires to cut or sell timber on certain survey sections in the national forest, or desires a right of way across B's mining claim. A then investigates to learn names and addresses of all mining-claim owners situated within these sections, or of owners of claims across which A desires such

④ If such access means only by trails, timber and mining operations would be impracticable. It appears the Act gives to the United States and its licensees the right, without charge, to construct and use a road across any unpatented mining claim located after July 23, 1955, for cutting, removing, protecting, and reforesting timber on adjacent government land, and likewise gives to the owner of an unpatented mining claim the right to construct and use a road for his mining purposes across any neighboring unpatented claim located after July 23, 1955.

⑤ Assume the government owes a mining claim owner a timber refund, just described, and that later on he obtains a patent. It is doubtful whether such patentee would be entitled to the refund.

right of way. The Secretary of the Interior thereupon publishes a notice (summons) in a newspaper; and A causes all said defendants to be served with the notice personally or by registered mail. If any such defendant fails to appear (by filing with the Secretary a "verified statement" as to his mining claim) within 150 days following the first publication of the notice, he is conclusively deemed to be subject to the Act; viz., subject to all the surface use limitations and restrictions set out in Section 4 (b) above described. If, however, B appears within such time and contests, a hearing is held before the Secretary, who then decides whether B is subject to the Act.⑥

Effect on patents, Sec. 7.—The Act expressly does not apply to nor affect patented mining claims, whether issued before or after the Act, and whether the original claims were located before or after the Act. Thus the patentee absolutely owns all the timber on the claims as of the date of the patent.

ACT OPENING UNITED STATES LEASING ACT MINERAL LANDS TO MINING LOCATIONS⑦

UNITED STATES PUBLIC LAW 585 (83RD CONGRESS)
SECS. 521 TO 531, TITLE 30, U.S.C.

EFFECTIVE DATE, AUGUST 13, 1954

Situation prior to Act.—The United States Mineral Leasing Act was passed by Congress in 1920. It authorized the United States to lease its public lands within the United States and Alaska, including

⑥ The probable reason why the Act does not apply to mining claims located prior to the Act, is that Congress evidently was careful not to impair vested rights.

The probable reason why Congress prescribed a procedure which decides certain mining claims are subject to the restricted surface uses described in the Act, is that such procedure is likely to provoke less resistance than would proceedings to cancel mining claims outright.

Why does the Act direct the proceedings against only mining claims located prior to the Act, over which it appears the Act does not apply? The reason evidently is that proceedings are unnecessary against mining claims located subsequent to the Act, inasmuch as such claims are already expressly subject to the Act. On the other hand, if the Secretary finds that the owner claims a location prior to the Act but that it was in fact located after the Act, such mining claim would be subject to the Act. Again, if the Secretary finds that certain mining claims located prior to the Act have been abandoned or are invalid (by reason of lack of discovery, insufficient staking, indefinite description, etc.), the Secretary must decide that these mining claims, being void, are not mining claims and hence are unappropriated public land subject to the restricted uses set out in the Act, Section 4 (b).

The Act provides for filing a waiver of restricted surface rights; also, for filing requests to be made party defendants in the proceedings.

⑦ Specific regulations applicable to this Act, to be used in its administration, can be obtained from the U. S. Bureau of Land Management, 209 Federal Building, Spokane 1, Washington, or P. O. Box 3861, Portland 8, Oregon.

national forest lands, containing oil, oil shale, gas, sodium, phosphate, potash, and potassium, and compounds thereof. Coal in Alaska is governed by a prior Act. These eight minerals are known as "Leasing Act Minerals." The Mineral Leasing Act prohibited the locating of mining claims on Leasing Act mineral lands; these lands could only be leased from the government.[8] This Leasing Act of 1920 thus made the first basic change in the United States general mining laws of 1872. The new Act, generally known as Public Law 585, makes the second basic change.

It opens to mining location (and patent) about 60 million acres of United States public lands, including national forests, by permitting mining locations to be made on Leasing Act lands (mostly oil and gas lands). Under the Leasing Act of 1920 it was often difficult to determine whether certain land was Leasing Act land.[9] On August 12, 1953, Congress passed a temporary measure, Public Law 250 (Secs. 501 to 505, Title 30, U.S.C.), which conditionally validated on Leasing Act lands mining locations made between July 31, 1939, and January 1, 1953. On February 10, 1953, the Atomic Energy Commission made a regulation known as "Circular 7," which authorized short-term leases of uranium lands by the Commission; but about September 1, 1954, the Commission prohibited further uranium leases; and cancelled Circular 7 as of December 12, 1954.

Validating claims.—Public Law 585 provided a simple method for validating claims located prior to January 1, 1953, under Public Law 250, and claims located between December 31, 1952, and February 10, 1954, under Public Law 585. If anyone, having made a location, filed with the Commission a uranium lease application between August 13, 1954, and December 11, 1954, he was required to withdraw such application or lease. Public Law 585 also prohibits any mining location on land covered by an existing uranium lease or application.

The more important provisions of Public Law 585 are:

Sec. 524.—Mining claims, including mill sites, validated as above or located *subsequent* to August 13, 1954, (date of the Act) on United States Leasing Act lands, shall be subject to a reservation to the United States (its lessees, licensees, and assigns) of all Leasing Act minerals. Further, any patent to such mining claims or mill sites issued after August 13, 1954, shall contain a reservation as just mentioned, if at the time the patent is issued the land is (a) under a permit or lease issued under the Leasing Act law, or (b) under an application for a permit or lease, or (c) known to be valuable for any Leasing Act minerals.

[8] Div. Mines and Geology Bull. 41, pp. 7, 115-120.
[9] See Bulletin 41, page 119.

Sec. 525.—Mining claims and mill sites, after said August 13, 1954, may be located under the general mining laws on any public lands, (a) covered by a United States permit or lease, or by an application for a permit or lease issued under the Mineral Leasing laws, or (b) known to be valuable for any Leasing Act minerals. In short, *all such lands are now open to location and patent* under the general mining laws of the United States. However, this does not bar or impair the leasing of such lands under the Mineral Leasing law; the same land is opened to a multiple use; viz., by the lessee and by the locator. "Where the same lands are being utilized for mining operations, each such operation shall be conducted, so far as reasonably practicable, in a manner compatible with such multiple use." Where Leasing Act minerals are reserved to the United States in lands covered by a patented or unpatented mining claim or mill site, the claim owner shall conduct his operations so as not to damage such reserved deposit, also so as not to endanger existing surface or underground workings and improvements made under the Mineral Leasing law. And the Leasing Act lessee on his part shall conduct his operations so as not to endanger or materially interfere with the surface or underground workings and improvements of the patented or unpatented mining claim or mill site.

Sec. 527, Procedure.—Obviously, the lessee or applicant desires to clear his lease of all adverse claims by mining claim owners before he starts expensive prospecting or production. The Act, Public Law 585, prescribes the procedure, at the lessee's expense, briefly as follows: The lessee investigates to learn the names and addresses of all owners of unpatented mining claims located prior to the Act. The Secretary of the Interior then publishes a notice (summons) against such mining claim owners, requiring them to appear (by filing with the Secretary a verified statement as to their mining claims) within 150 days following the first publication of the notice. The lessee then causes all such claim owners to be served with the notice personally or by registered mail. If the owner of a mining claim located prior to the Act (prior to August 13, 1954) fails to appear within the 150 days, he is deemed to forfeit all interest or right in the Leasing Act minerals, and is deemed to consent to a reservation of Leasing Act minerals to the United States being inserted in any patent which he may thereafter obtain, as specified in Section 524 above. If, however, he appears and contests (claiming an interest in the Leasing Act minerals), a hearing is held before the Secretary, who decides the effectiveness and validity of his mining claim in such Leasing Act minerals; viz., whether the mining-claim owner has any rights in such Leasing Act minerals.⑩

⑩ The Act, Public Law 585, applies only to mining claims located after the Act took effect (after Aug. 13, 1954); whereas the proceedings provided for in the Act are directed against the owners of mining claims located before the Act took effect. To understand this situation, see United States Public Law 167 (84th Congress) of July 23, 1955, relating to multiple surface uses of unpatented mining claims; this law is discussed on pages 9-11 of this Supplement No. 1 to Bulletin 41.

The Act also provides for filing a waiver of right to such Leasing Act minerals, and for filing a request to be made a party to such proceedings.

The procedures to be followed in the multiple development of mineral deposits under this law are outlined in Circular 1920 of the Bureau of Land Management.

ACT OPENING FEDERAL POWER SITES TO MINING LOCATIONS[11]

UNITED STATES PUBLIC LAW 359 (84TH CONGRESS)

SECS. 621 TO 625, TITLE 30, U.S.C.

EFFECTIVE DATE, AUGUST 11, 1955

As to locating mining claims within power sites prior to August 11, 1955, see Division of Mines and Geology Bulletin 41, page 16. The new law states:

> All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: *Provided,* That all power rights to such lands shall be retained by the United States.[12]

The Act prohibits locating any mining claim within a Federal power site which at the time is being operated as a power project, or is being constructed under the Federal Power Act or any other Act of Congress, or is under examination by any prospective licensee of the Federal Power Commission. But if, at the time the claim is located, the power site does not come under any of these exceptions, the land is open as set forth in the above quotation. If the mining claim was located prior to August 11, 1955 (date of the Act), and herein called "old claim," the locator is required within one year from August 11, 1955, to file with the Bureau of Land Management (formerly the General Land Office) a copy of his location notice.[13]

[11] Specific regulations applicable to this Act, to be used in its administration, can be obtained from the U. S. Bureau of Land Management, 209 Federal Building, Spokane 1, Washington, or P. O. Box 3861, Portland 8, Oregon.

[12] It appears from the wording of the above quotation that this Act applies not only to lode and placer claims but also to mining of reserved minerals contained in U. S. nonmineral patents, also to U. S. mineral leasing Acts, etc., so far as these laws relate to Federal power sites.

[13] "Location notice" evidently refers to the recorded location notice. There appears to be nothing in this Act requiring a claim situated within an open Federal power site and located prior to the Act, to be located anew. All that the Act requires is that the owner of such claim (located prior to the Act) shall within one year from the date of the Act file with the Bureau of Land Management a copy of his old (recorded) location notice, and annually file in the same office proof of assessment work.

But if the mining claim is located after said date of the Act, herein called "new claim," the owner is required to file with the Bureau a copy of his (recorded) location notice within 60 days from the date of his location. Further, whether the claim be old or new, the owner is required to file in the same office proof of annual assessment work.

As to placer claims, the Act authorizes the Secretary of the Interior, within 60 days after a copy of the location notice has been filed with the Bureau, to call a public meeting, after notice to the owner, to determine whether the placer operations would substantially interfere with other uses in the claim area. The Act authorizes the Secretary of the Interior to make regulations as to placer claims within Federal power sites, and to require a bond as security that the owner will restore the original surface of the claim.

The Act expressly does not apply to or affect any mining claim located prior to the creation of the power site itself; also, it does not affect the rights of a prospector who at the creation of a future Federal power site is diligently seeking a discovery.

WITHDRAWALS OF UNITED STATES PUBLIC LANDS[14]

Withdrawals for military purposes.—At a hearing before a Congressional committee, January 4 to 6, 1956, to consider present-day withdrawals of public lands for military purposes, it was reported that 11,784,000 acres had been so withdrawn from the public domain; that 2,244,000 acres were held under temporary withdrawals; and that from 7 to 10 million acres were included in pending applications for military withdrawals.[15]

Withdrawals adjacent to State and Federal-Aid highways.—State and Federal-Aid highways which cross national forest lands may or may not be open to mineral entry. In many instances in Washington such highway rights of way have been withdrawn from mineral entry or location for widths from 200 feet to 500 feet on each side of the highway center line. In some instances the adjoining lands so withdrawn have been described by legal subdivision. Within the Snoqualmie Pass area, additional lands have been withdrawn for a winter sports area. Also, the U. S. Forest Service has requested the protective withdrawal of certain lands, having scenic, aesthetic, or recreational value, adjacent to some highways traversing national forests.

Therefore, mining prospectors and claim locators should obtain information on the status of lands on or adjacent to State and

[14] Div. Mines and Geology Bull. 41, pp. 20-21.

[15] Bulletin, Am. Min. Congress, Jan. 12, 1956.
The Bureau of Land Management reported on Jan. 23, 1956, that "There are a few such withdrawals in the State of Washington, those being principally the withdrawal of land for the Hanford Atomic Project and the Yakima Artillery and Gunnery Range."

Federal-Aid highways in national forests before doing much work in prospecting such places. Inquiry should be made of the U. S. Bureau of Land Management, Land Office, 209 Federal Building, Spokane 1, Washington, by specific reference to section, township, and range of the land in question.

UNITED STATES "ACQUIRED LANDS" LEASING ACT[16]

UNITED STATES PUBLIC LAW 382 (80TH CONGRESS)

SECS. 351 TO 359, TITLE 30, U.S.C.

EFFECTIVE DATE, AUGUST 7, 1947

This Act is a special mineral leasing act covering United States public lands situated in the United States and Alaska, heretofore acquired and now owned by or hereafter acquired by the United States,[17] containing coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulphur, to which the general mineral leasing laws have not been extended. Accordingly, the general leasing laws apply to certain kinds of "acquired lands" (including national forests), whereas this special Act applies only to the remaining kinds of "acquired lands." This special Act provides: that the Secretary of the Interior is authorized to lease the lands covered by the Act; that such leases shall contain the same conditions as are contained in the general leasing laws; that no such lease or permit shall be issued unless approved by the head of the Department or Federal agency having charge of such mineral deposits; that there shall be certain restrictions as to selling such lands; and that no such lease shall be allowed as to "acquired lands" situated within any incorporated town or city, military or naval reserve, tidelands, submerged lands, or the 3-mile offshore sea zone. The principal difference between the general laws and the special Act is that the special Act requires the consent of the Department or Federal agency above mentioned.[18]

"Acquired lands" belonging to the United States, are, in the absence of an act of Congress or departmental directions providing otherwise, presumed to have been acquired by the United States

[16] Specific regulations applicable to this Act, to be used in its administration, can be obtained from the U. S. Bureau of Land Management, 209 Federal Building, Spokane 1, Washington, or P. O. Box 3861, Portland 8, Oregon.

[17] "Acquired lands" means U. S. public lands acquired by the United States through exchange, purchase, donation, or condemnation, as distinguished from "public domain." See Div. Mines and Geology Bull. 41, p. 9.

[18] Without such consent, the Secretary of the Interior has no authority to issue any lease or permit. Berenice H. Merrill, A-26904, July 13, 1954.

for special purposes, such as for national forests, national parks, military reserves, and the like; for which reason such lands are held not to be "open" to mining location.[19]

SULPHUR[20]

Sulphur is subject to the United States Mineral Leasing Act of 1920 (and amendments) only within the states of Louisiana and New Mexico, but is expressly subject to the United States Acquired Mineral Lands Leasing Act of August 7, 1947[21] within the United States. Consequently, within the state of Washington sulphur land belonging to the United States may be located and patented under the general mining laws of the United States, except when the sulphur occurs on "acquired lands" of the United States.

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[19] *Rawson v. U. S.*, 225 Fed. (2) 855 (Oreg. 1955)—Cinder deposit within land which had once been patented but later was acquired again by the United States.

[20] Div. Mines and Geology Bull. 41, pp. 7, 115.

[21] Secs. 271 to 276 (1926, 1932), Title 30, U.S.C.; Sec. 352 (1947), Title 30, U.S.C. The Act of 1920 includes Alaska; and it is believed the Act of Aug. 7, 1947, likewise includes Alaska.

REVISED ATOMIC ENERGY ACT, 1954①

UNITED STATES PUBLIC LAW 703 (83RD CONGRESS)
SECS. 2011 TO 2281, TITLE 42, U.S.C.

EFFECTIVE DATE, AUGUST 30, 1954

The following is a bare outline of the new Act of 1954② so far as may be of practical importance to miners:

Unless authorized by a license issued by the Atomic Energy Commission, "no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature," except where in the opinion of the Commission the quantity involved is unimportant. The new Act authorizes and directs the Commission to purchase, condemn, or otherwise acquire supplies of source materials; and likewise to acquire interest in any real estate containing source material, or the right to enter upon any real estate deemed by the Commission to have possibilities of containing such material, in order to conduct prospecting and exploration. Just compensation must be paid therefor. The new Act defines "source material" as "(1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of Section 2091 of this title to be source material; or (2) ores containing one or more of the foregoing materials in such concentration as the Commission may by regulation determine from time to time." The new Act defines "special nuclear material" as "(1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of Section 2071 of this title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material."③ Both the old Act of 1946 and the new Act of 1954 expressly apply to the United States, including Alaska and United States possessions. As to minimum quality of

① Supplemental to, and in part replacing, "Uranium—Atomic Energy Commission Act," Bull. No. 41, p. 125.

② This Act superseded the original Atomic Energy Act of August 1, 1946, in its entirety.

③ Secs. 2091 and 2071, respectively, authorize the Commission to add other materials as source material (Sec. 2091) or as special nuclear material (Sec. 2071), provided the President and the Congressional Joint Committee on Atomic Energy approve. It would appear from the foregoing definitions that "source material" embraces radioactive material in its natural or concentrated state, while "special nuclear material" embraces radioactive material that is artificially enriched.

U_3O_8 acceptable to the government, see footnote below.④ The Act of 1954 authorizes the Commission to issue permits and leases for prospecting for, mining of, and removal of source material in lands belonging to the United States; but not in national parks and monuments, or wild life reserves, unless authorized by order of the President.

Section 2098 (c) of the 1954 Act provides that, notwithstanding the Atomic Energy Act of 1946 and amendments, "any mining claim, heretofore located under the mining laws of the United States, for or based upon a discovery of a mineral deposit which is a source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a source material."

WHAT CONSTITUTES A SUFFICIENT URANIUM DISCOVERY⑤

As yet it appears too early to find state or Federal decisions on the question of requirements for a uranium discovery based on geophysical discovery; for example, by means of Geiger or scintillation counters. However, there is an article entitled "Symposium on Uranium Law," Rocky Mountain Law Review, Vol. 27, No. 4, University of Colorado, June 1955, written by several learned law professors. It reviews a long list of cases showing trends in discovery decisions in general. The article concludes that it is not clear whether a uranium discovery must depend on an exposure of the ore body to the eye, or whether it may be based on the use of a scientific instrument.

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④ For uranium produced in the Colorado Plateau the government has fixed 0.1 percent U_3O_8 as the minimum quality of ore which it will accept under the guaranteed price schedule; but for uranium produced elsewhere (including Washington), 10 percent. Outside the Colorado Plateau a contract must be negotiated with the AEC in order to sell ores which assay less than 10 percent U_3O_8. The minimum acceptable grade under such contracts is 0.1 percent U_3O_8 (chemically determined).

See "Prospecting for Uranium," by AEC and U. S. Geological Survey, 1951 revision, pp. 83, 91.

⑤ Div. Mines and Geology Bull. 41, pp. 32-36, 41, 125.

ACT CONTROLLING SOURCE MATERIAL IN LIGNITE[6]

UNITED STATES PUBLIC LAW 357 (84TH CONGRESS)
SEC. 541 TO 541-i, TITLE 30, U.S.C.

EFFECTIVE DATE, AUGUST 11, 1955

As neither Public Law 585 or other United States mining and mineral leasing laws provide specific authority for the disposal of either source material or lignite where one is host to the other, Public Law 357, 84th Congress, 1st Session, was enacted.

This Act relates to "source material"[7] found in lignite seams in United States public lands, classified as or known to be valuable for coal under the United States mineral leasing laws,[8] such coal lands being open to location of mining claims under the Act of August 13, 1954, Public Law 585 (Secs. 521 to 531, Title 30, U.S.C.).[9] The new Act of August 11, 1955 under the general mining laws of the United States opens to location public lands of the United States valuable for source material found in lignite, provided such lands are not covered by existing mineral leases or permits. The locator is required to file in the local office of the U. S. Bureau of Land Management for the state in which the claim is situated a copy of his recorded location notice within 90 days from the date of location. He is also required to report annually to the Mining Supervisor of the U. S. Geological Survey the amount of lignite stripped or mined, and to pay him 10 cents a ton royalty. Any mining patent based on such location shall contain a reservation to the United States of all Leasing Act minerals other than lignite containing valuable source material and lignite required to be stripped or mined in the recovery of such material. The Act expires 20 years from August 11, 1955, or 30 years if so ordered by the President. The Act contains other details.

URANIUM ORE BONUS, PRICES, AND PREMIUMS[10]

Discovery bonus.—Under present (January 1956) Atomic Energy Commission regulations, a bonus will be paid for the discovery, pro-

[6] Specific regulations applicable to this Act, to be used in its administration, can be obtained from the U. S. Bureau of Land Management, 209 Federal Building, Spokane 1, Washington, or P. O. Box 3861, Portland 8, Oregon.

[7] "Source material" is defined as uranium, thorium, or other material determined by the Atomic Energy Commission to be "source material."

[8] Div. Mines and Geology Bull. 41, pp. 115-116.

[9] Discussed on pages 11-14 in this Supplement No. 1 to Bull. 41.

[10] Div. Mines and Geology Bull. 41, p. 125.

duction, and delivery to the Commission of high-grade uranium-bearing ores or mechanical concentrates from any single mining claim—lode or placer—which has not been worked previously for uranium (or in the case of production from lands not covered by such mining location, from an area comparable thereto). This bonus is in addition to the guaranteed minimum price and amounts to $10,000 for delivery to the Commission of the first 20 short tons assaying 20 percent or more U_3O_8 by weight. A notice of such discovery together with a 10-pound sample should be given to the Commission. Additional particulars may be obtained by writing to the U. S. Atomic Energy Commission, 1901 Constitution Avenue N.W., Washington 25, D. C.

Prices.—As indicated in footnote 4 on page 19 of this Supplement No. 1 to Bulletin 41, prices paid by the AEC for ores produced in the state of Washington are not guaranteed if the ore analyzes less than 10 percent U_3O_8. Individual contracts covering the prices that will be paid for such lower grade ore must be negotiated with the Commission by the prospective producer. However, the rates of payment which can be expected may be similar to the guaranteed rates applicable to Colorado Plateau ore. The rate of such guaranteed payments per pound of contained uranium accepted by the Commission ranges from $1.50 for ore containing 0.1 percent U_3O_8 up to $3.50 for ore containing 0.2 percent or more U_3O_8. On this premise, for example, the base price of 0.10 percent ore would be $3.00 per ton; 0.15 percent ore, $7.50 per ton; 0.20 percent ore, $14.00 per ton; and 0.40 percent ore, $28.00 per ton. No payment is made for ore containing less than 0.10 percent U_3O_8. Guaranteed prices remain in effect until March 31, 1962.

Premiums.—In addition to the above prices, a grade premium of 75 cents is paid on grades above 0.2 percent U_3O_8 for each pound of U_3O_8 above 4 pounds per ton, and an additional premium of 25 cents is paid on grades above 0.5 percent U_3O_8 for each pound of U_3O_8 above 10 pounds per ton. In addition, an additional production bonus is paid on the first 10,000 pounds of U_3O_8 at an amount equal to the base price per ton; and a mine development allowance, at the rate of 50 cents for each pound of U_3O_8 produced.

Weights are avoirdupois dry weight unless otherwise specifically provided.

CORRECTIONS APPLICABLE TO BULLETIN NO. 41

Page	*Line*	
6	22	Add: N.W.....Northwestern Reports (of the United States Supreme Court)
8	31	Delete "at the present time" and change "481,585 acres of public domain" to read "462,704 acres of public domain, as of October 1955."
9	23	Change "9,679,827 acres" to read "9,688,480 acres, as of October 1955."
	Footnote	
82	14	Change (Nev. 1915) to read (Nev. 1905).

ADDITIONS TO FOOTNOTES OF BULLETIN NO. 41

Page	*Footnote*	
8	5	Add: Frank M. Darrow, A-27053, Apr. 15, 1955.
11	17	Add: In recent years the Department of the Interior has initiated a policy of establishing public recreation areas within national forests. See *U. S. v. Crocker,* A-24666, Feb. 14, 1949.
12	29	Add: Mount Rainier National Park, 241,782 acres (Nov. 1955).
12	30	Add: Olympic National Park, 896,599.10 acres (Nov. 1, 1955).
14	36	Add: Sewell Thomas, A-27016, Dec. 22, 1954. Wm. E. Block, Jr., A-27080, Apr. 6, 1955.
15	38	Add: Sewell Thomas decision, above.
15	39	Add: Sewell Thomas decision, above. Everett Elvin Tibbetts, A-26908, Sept. 7, 1954.
15	41	Add: Same rule in substance applies also against non-mineral patents, particularly homestead patents. *Brown v. Luddy,* 9 Pac. (2) 326 (Calif. 1932). *Mesmer v. Geith,* 22 Fed. (2) 690 (Calif. 1927); or the mineral claimant may sue to hold patentee as trustee for him. *Herbert v. Bond,* 228 N.W. 185 (S. Dak. 1929). *Salmon v. Symond,* 30 Calif. 301 (1866). See *Burke v. So. Pac. Ry. Co.,* 234 U.S. page 692 (1914).
16	42	Add: It is illegal for a railroad company to sell its unpatented granted lands. *Booth-Kelly Lbr. Co. v. Oreg. & Calif. Ry. Co.,* 193 Pac. 463 (Oreg. 1920); *U. S. v. Central Pac. Ry. Co.,* 84 Fed. 218 (Calif. 1898); *Ander-*

son v. McKay, 211 Fed. (2) 798 (1954); see *Barden v. N. P. Ry. Co.*, 154 U.S. 288 (1894).

20 75 Add: *Rosemarie v. Keegan*, A-27082, Dec. 15, 1954.
Willis v. Lloyd, 58 I.D. 779 (1944).

22 91 Add: *Harris v. Swart Mtg. Co.*, 41 Wash (2) 354 (1952).

23 4 Add: As between an individual and the United States or a state, lands owned by the United States, a state, or county are not subject to adverse possession.
John Roberts, 55 I.D. 430 (1935)—U. S. land.
Willis J. Lloyd, 58 I.D. 779 (1944)—U. S. land.
O'Brien v. Wilson, 51 Wash. 52 (1908)—School land.
Gustaveson v. Dwyer, 83 Wash. 303 (1915)—County land.
N. P. Ry. Co. v. McDonald, 91 Wash. 113 (1916)—N. P. land, unpatented.
It is otherwise as between individuals and in mining patent proceedings.
Div. Mines and Geology Bull. 41, p. 66.
Sec. 38, Title 30, U.S.C.

25 14 Add: *Lauman v. Hoofer*, 37 Wash. 382 (1905).
Ware v. White, 108 S.W. 831 (Ark. 1907).

26 19 Add: Sec. 54, Title 30, U.S.C. (1949).
Secs. 291 and 299, Title 43, U.S.C. (1916).

28 5 Add: The Regan Bill was superseded in the Multiple Surface Use Act, Sec. 611, Title 30, U.S.C. (July 23, 1955).

30 5 Add: *Jones v. Prospect Mt. T. Co.*, 31 Pac. 642 (1892).

34 13 Add: *Nichols v. Williams*, 100 Pac. 969 (Mont. 1909).
There are a few decisions which refuse to recognize a bisected discovery, particularly Poplar Creek Quartz Mine, 16 L.D. 1 (1893). To avoid litigation, and particularly in a contest in patent proceedings, the author suggests that the very least excavation should be two discovery shafts touching one another, but it would be safer to dig the shafts 5 feet apart; viz., leaving a wall about 5 feet wide between the shafts; the cost in either instance would be about the same; further, in either instance at least the required 200 cubic feet of material should be removed from each shaft.

34 15 Add: *Tonopah Ralston Mining Co. v. Mt. Oddie U. Co.,* 248 Pac. 833 (Nev. 1926).

41 33 Add: *Paragon M. Co. v. Stevens County Expl. Co.,* 45 Wash. 59 (1906). A recital of discovery in the recorded location notice is not prima facie evidence of discovery.
Priestley M. & M. Co. v. Bratz, 40 Wash. (2) 525 (1952).

42 35 Add: Harry A. Schultz, A-26917, Dec. 18, 1953—The date of location is the date of posting the location notice after discovery, and is not the date of recording the location notice.

44 51 Add (at bottom of page):
"It is the settled law of this state that, if there is a discovery at any place on the claim before any rights are acquired to the same ground by another, such discovery relates back and validates the claim." *Tonopah Ralston Mining Co. v. Mt. Oddie U. Co.,* 248 Pac. 833 (Nev. 1926).
See Subsequent Discovery, Div. Mines and Geology Bull. 41, p. 34, footnote 15.

49 87 Add: *Flynn v. Vevelstad,* 119 Fed. Suppl. 93 (Alaska 1954).

50 88 Add: *Sampson v. Page,* 276 Pac. (2) 871 (Calif. 1954).

57 9 Add: *Sampson v. Page,* 276 Pac. (2) 871 (Calif. 1954) —Auger-drilled 3-foot holes, testing placer, G.

59 26 Add: Development work in the nature of public benefit done by the government under contract with the owner of unpatented mining claims, is good assessment work for the owner.
Simons v. Muir, 291 Pac. (2) 810 (Wyo. 1955).

60 35 Add: Am. Onyx & Marble Co., 42 L.D. 417 (1913)—Open-pit work on part of a group is good only for adjoining claims close to such work.

61 41 Add: *Nielson v. Champagne M. & M. Co.,* 29 L.D. 491 (1900).

77 3 Add: *St. Louis Smelting & R. Co. v. Kemp,* 104 U.S. 636 (1881) is cited in Hales & Symons, 51 L.D. 123 (1925), as holding that a mill site is not a mining claim. This St. Louis case merely explains the technical difference between a mining location and a mining claim; it does not mention the term "mill site."

81 5 Add: *Reynolds v. Pascoe*, 66 Pac. 1064 (Utah 1901).

82 15 Add: *Murray v. Osborne*, 111 Pac. 31 (Nev. 1910).

83 18 Add: Actual knowledge of a good discovery within a claim on the part of a locator (or relocator) is insufficient; he must affirmatively adopt it; for example, by referring to it in his recorded notice as the discovery for his claim.

McMillen v. Ferrum, 74 Pac. 461 (Colo. 1902). If A has a valid completed location, including a valid discovery, this discovery belongs to A, and B has no right to adopt it. *Reynolds v. Pascoe*, above.

88 1 Add: In patent proceedings, evidence that the claim bears timber, also evidence of a contract to sell the timber, are admissible as bearing upon applicant's good faith and credibility.

E. M. Palmer, 38 L.D. 294 (1909)—Patent denied.

88 3 Add: Where a mining claim or one of a group is denied a patent for lack of discovery, the owner may make a discovery thereafter and, if he desires, make a new application for patenting such claim or claims. *U. S. v. Josephine L. M. & D. Co.*, A-27090, May 11, 1955.

88 4 Add: *Wetsel v. Super. Court*, 260 Pac. (2) 242 (Calif. 1953).

89 9 Add: Marburg Lode Min. Claim, 30 L.D. 202 (1900).

89 16 Add: *Dalton v. Clark*, 18 Pac. (2) 752 (Calif. 1933).

St. Louis Smelting & R. Co. v. Kemp, 104 U.S. 636 (1881) is cited in Hales & Symons, 51 L.D. 123 (1925), as holding that a mill site is not a mining claim. This St. Louis case merely explains the technical difference between a mining location and a mining claim; it does not mention the term "mill site."

92 5 Add: Opinion Atty. Gen. State of Wash. No. 51-53-408, Sept. 24, 1952, holding that unpatented mining claims in this state are personal property; hence not subject to the 1951 county one percent sales tax on real estate.

92 6 Add: See also *Priestley M. & M. Co. v. Lenox M. & D. Co.*, 41 Wash. (2) 101 (1952)—Forcible detainer.

See also above Opin. Atty. Gen. State of Wash. No. 51-53-408 (1952).

94	9	Add:	If the land does not abut on the stream, there is no liability for polluting the stream. *Snavely v. Goldendale,* 19 Wash. (2) 741 (1943).
94	11	Add:	The Atomic Energy Commission is exempt from taxation by a state so long as the uranium remains the property of the Commission. *Colo. Uranium Mines Inc. v. Tax Commission of Utah,* 291 Pac. (2) 895 (Utah 1955).
97	13	Add:	See Regulations of the Bureau of Land Management, Circular No. 1921.
114	15	Add:	For the U. S. Coal Mining Safety Act, see Secs. 451 to 483, Title 30, U.S.C. (July 16, 1952).