STATE OF WASHINGTON

CLARENCE D. MARTIN, GOVERNOR

Department of Conservation and Development

JOHN BROOKE FINK, DIRECTOR

DIVISION OF MINES AND MINING

THOS. B. HILL, SUPERVISOR

J. W. MELROSE, GEOLOGIST

# AN OUTLINE

OF

# MINING LAWS

OF THE

# STATE OF WASHINGTON

Compiled and Annotated by

M. H. VAN NUYS

OF THE SEATTLE BAR

JULY 1, 1940

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M. H. VAN NUYS
Mining Lawyer

August 12th, 1940

Mr. John Brooke Fink, Director
Department of Conservation and Development
Olympia, Washington

Dear Mr. Fink:

I am pleased to furnish you with this Outline of Mining Laws of Washington. It has been ten or more years since I commenced preparing such a work. Since 1914, when Lindley published the last edition of his great text book, little has been published on mining law. But in recent years, with the revival of the mineral industry in our State there has come a popular demand for simple, direct, and modernized information. As a result the Division of Mines and Mining in your department is being called upon constantly by individual prospectors and miners for information as to the mining laws of this State. You have been endeavoring to meet this popular demand by providing a summary of the Federal and State mining laws, but you have found this summary is not sufficient. Public librarians throughout the State are having the same experience. To aid you in meeting this need I have prepared this Outline.

This Outline is intended for practical use by prospectors and mining men in general. As there is always one proper way and an endless number of irregular ways for doing an act, this Outline makes little attempt to discuss the effect of irregularities; for example, the effect of failure to record a location notice or the effect of omitting to mark one corner post of a location. For irregularities and details, lawyers should be consulted. But the Outline does attempt to explain in simple language how to locate a lode or placer claim properly; what the general rights and duties are as between co-owners of a claim; and in general, to cover those matters to which the usual popular inquiries are directed.

For encouraging me in this undertaking I thank you and your Thomas B. Hill, Supervisor of the Division of Mines and Mining; also George Jamme, James Griffith Stephens and P. C. Stoess. To the West Coast Mineral Association, of Seattle, I am indebted for much practical information gathered by me at its weekly luncheon addresses and discussions over a period of years.

Respectfully yours,
M. H. VAN NUYS.

## TABLE OF CONTENTS

**REFERENCES**

W. .....Washington Reports (Supreme Court)
P. .....Pacific Reports
U. S. .....United States Reports (Supreme Court)
Fed. .....Federal Reports
L. D. .....Land Decisions, Department of the Interior. End with Vol. 52
I. D. .....Interior Department Decisions. Begin with Vol. 53
Rem. .....Remington's Revised Statutes of the State of Washington
Laws .....Washington Session Laws
U. S. C. .....United States Code
Stat. L. .....United States Statutes at Large
Reg. .....Regulations
Instr. .....Instructions
Lindley .....Lindley on Mines (3rd Edition)
C. J. .....Corpus Juris (an encyclopoedia of law)
Id. .....Idem (same)

# MINING LAWS OF THE STATE OF WASHINGTON

## LANDS OPEN TO LOCATION

This outline of laws applies principally to metals—gold, silver, copper, lead, zinc, cinnabar, manganese, molybdenum, tungsten, chrome, antimony, arsenic, nickel, iron, etc.; and to non-metals—magnesite, talc, clays, marble, limestone, gypsum, bauxite, feldspar, specially valuable sand, gravel and building stone, etc. Coal, oil, oil shale, phosphate, sodium, potassium, sulphur in Louisiana, and potash are governed by the United States Leasing Acts. See Index, U. S. Leasing Act, and State-owned lands.

The United States general mining laws govern as to the metallic and non-metallic minerals first above listed. These laws are supreme as to United States public lands in the western mining states; but the legislatures of these states, under authority from Congress,① have supplemented such laws as to the manner of locating and recording mining claims and as to annual assessment work. Accordingly, the present outline is principally of the United States general mining laws as supplemented by the mining laws of the State of Washington, and is limited to the State of Washington. The mining laws of the other western states are in most respects substantially the same as those of Washington. Special state laws govern as to state-owned lands. See Index, State-owned lands.

The word "open" used herein means open to prospecting, location and patenting of mining claims, lode and placer. If "open," it is immaterial whether or not the land has been surveyed by the Federal government or classified as mineral or non-mineral,② and no permit or license is required for prospecting or for locating a claim.③ A small fee for recording location is required.

LANDS "OPEN" TO MINING. The following are "open" or not as indicated below.

(1) **United States Public Domain** is "open."④ This includes all unreserved and unappropriated United States public lands. "Unreserved" means other than government reserves of every kind and lands which have not been withdrawn by the government for special purposes. In the early history of the West nearly all land was public domain. But now (April 30, 1939) there are only 522,569 acres of public domain lands left in Washington.

(2) **National Forests.** These are "open," subject to general regulations of the Secretary of Agriculture.⑤ These regulations relate mostly to timber, roads, trails, and the like in National forests. But a few relate to, and the Secretary has jurisdiction over, non-mineral use of lands, including unpatented mining claims located after the creation of the National forest wherein situated.⑥ See Index, Locations, surface rights. The Secretary of Agriculture, through the "Forest Service" division, has charge of National forests,

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① Sec. 26, Title 30, U. S. C.
*Florence Rae Copper Co. v. Kimbel*, 85 W. p. 170 (1915).
② 1 Lindley, Sec. 106.
③ *U. S. v. Rizzinelli*, 182 Fed. 675 (1910).
*Johnston v. Harrington*, 5 W. 73 (1892).
④ Sec. 22, Title 30, U. S. C.
*Armstrong v. Lower*, 6 Col. 393 (1882).
⑤ Secs. 478 and 482, Title 16, U. S. C.
55 I. D. 235 (Cir., 1935).
⑥ *U. S. v. Rizzinelli*, 182 Fed. 675 (1910).

except that the Secretary of the Department of the Interior has charge of surveying, prospecting, locating and patenting of lands in National forests.⑦

There are (July 1, 1940) 8,942,003 acres within National forests in Washington, exclusive of patented areas therein. This includes seven full National forests and parts of two others.

To preserve exceptionally rugged scenery the Forest Service has from time to time set aside "primitive areas" in National forests. There are three such in Washington—the Olympic, North Cascade, and Goat Rock. It has also set aside a number of "recreation areas" (for camp sites, etc.), and the Mather Memorial Park Way (one-half mile each side of Chinook Pass Highway). Recreation areas,⑧ primitive areas, and memorial park ways, are "open." However, the Forest Service will contest any mining claim located therein if the area appears more valuable for non-mineral uses. It is also the policy of the Forest Service to keep roads out of primitive areas.

As to game reserves, state and Federal, within National forests, see Index, Game. Such reserves are "open," both Federal⑨ and state. Occasionally the President withdraws certain areas of public lands, within as well as outside of National forests, for special uses; for example, a fire lookout station. Such areas are "open" to metalliferous mining only. See "Temporary Withdrawals," hereafter.

During part or all of the fire hazard season, large areas of National forests are closed by the Forest Service to prospectors and others, but as a rule anyone having an existing location or mine may obtain a permit to enter.

Within National forests, particularly in the Cascade Mountains, there are numerous patented sections and areas owned by the Northern Pacific Railway Company (and subsidiaries), timber companies and others, aggregating 1,502,852 acres of patented lands (July 1, 1940). Such patented lands are not "open." See Index, Northern Pacific. Further, much of such private land has been deeded to others, with minerals reserved. Further, National forests from time to time are enlarged by private lands being deeded to the government; but such deeds may reserve minerals.⑩ Reserved minerals are not "open" if owned by private owners. See Index, Mineral reservations.

National forests, being reserves (viz., not public domain) did not come under Executive Order No. 6964 of February 5, 1935, hereafter discussed.⑪

In Washington there are (July 1, 1940) no National forest areas acquired under the Weeks Act, which authorizes the Secretary of Agriculture to permit prospecting and mining therein for such periods and on such terms as he deems best.⑫

To date (July 1, 1940) 136,816 acres have been added to National forests in Washington, by exchange, purchase and donation.

In Mt. Hood National Forest, Oregon, ⑬ and in the Prescott water shed of the Prescott National Forest, Arizona,⑭ the government reserves non-mineral surface rights to unpatented mining claims and title to the surface in mining patents.

The Pickett Act prohibits any new National forest or additions in Washington and other Western States except by Act of Congress.⑮

See Index, National forests.

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⑦ Sec. 472, Title 16, U. S. C. (1905).
⑧ *U. S. v. Lillibridge*, 4 Fed. Suppl. 204 (1932).
⑨ Sec. 694, Title 16, U. S. C. (1934).
⑩ Secs. 485 and 486, Title 16, U. S. C.
⑪ 55 I. D. 247 (Cir., 1935).
⑫ Secs. 516 to 521, Title 16, U. S. C. (1911, 1917).
⑬ Secs. 482-b, 482-c, Title 16, U. S. C. (1934).
⑭ Sec. 482-a, Title 16, U. S. C. (1933).
⑮ Sec. 142, Title 43, U. S. C. (1912).

By Act of May 3, 1891,⑭a the President is authorized to create and fix the boundaries of National forest reserves on United States public lands containing timber or undergrowth, by proclamation. This Act was amended June 25, 1910, whereby any future creation or enlarging of any National forest reserve in Washington, Oregon, Idaho, Montana, Colorado or Wyoming (California added in 1912) is prohibited except by act of Congress.⑭b By act of June 4, 1897, the President is authorized to revoke or modify any such proclamation, and "by such modification he may reduce the area or change the boundary lines or may vacate altogether any order creating a National forest."⑭c In Washington all the National forests now existing (1940) 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 exchange, purchase or donation).

(3) **National Parks and National Monuments.** These are not "open," unless expressly so authorized by Congress.⑮ Mt. Rainier National Park⑯ (241,782 acres), Olympic National Park⑰ (835,411 acres, July 1, 1940), and Whitman National Monument,⑱ are not "open." However, the Olympic National Park Act expressly leaves open a small part of the northwest corner and a thin slice off the east side of the Park for five years (until July 29, 1943). A mining claim located therein during this period will continue valid thereafter if mining laws are complied with. Valid mining locations existing at the time of creation of a National park or monument, being vested property, are protected by the courts; Mt. Rainier and Olympic Acts, above, expressly protect such locations. National Parks and monuments are under the charge of the Secretary of the Interior (Park Service).

Olympic National Park Act authorizes the President to enlarge the Park, total area not to exceed 898,292 acres, including original area.

Mt. McKinley National Park, Alaska, is "open," subject to general regulations of Secretary of the Interior as to surface use of "mineral land locations"; and the Secretary may require prospectors and miners to register.⑲

Crater Lake National Park, Oregon, is "open," subject to general regulations of said Secretary as to "the location of mining claims and the working of the same."⑳

In Grand Canyon National Park, Arizona, said Secretary may permit "the prospecting, development, and utilization of the mineral resources" of the Park on such terms and for such specified periods as he deems best.㉑

Death Valley National Monument, California,㉒ and Glacier Bay National Monument, Alaska,㉓a are "open," subject to general regulations of said Secretary as to surface use of mining locations and patents.

The WPA Appropriation Act of April 8, 1935, Section 5, empowers the President, in carrying out the Act, "to acquire, by purchase or by the power of eminent domain, any real property" and to develop, sell or dispose of same. Under this Act the President through the Secretary of the Interior is now taking steps to condemn a corridor from the west side of the Olympic National Park west about 13 miles to the Pacific coast and thence north along the coast about 50 miles, embracing about 51,914 acres, so as to extend the Park.

(4) **Indian Reservations** and lands allotted to Indians, are not "open."㉔ But unallotted lands in any Indian reservation, or lands owned by any Indian tribe under Federal jurisdiction, may be leased, under general regulations of the Secretary of the Interior.㉕ This Act and regulations provide in substance

⑭a. Sec. 471, Title 16, U. S. C.
⑭b. Id.
⑭c. Sec. 473, Title 16, U. S. C.
⑮ *Cameron v. U. S.*, 252 U. S. 450 (1920).
⑯ Sec. 94, Title 16, U. S. C. (1908).
⑰ Sec. —, Title 16, U. S. C. (June 29, 1938).
⑱ Sec. 433-k, Title 16, U. S. C. (1936).
⑲ Sec. 350 (1917) and 350-a (1931), Title 16, U. S. C.
⑳ Sec. 123, Title 16, U. S. C. (1902).
㉑ Sec. 226, Title 16, U. S. C. (1919).
㉒ Sec. —, Title 16, U. S. C. (1933).
㉓a. 56 I. D. 437 (1936).
㉔ *Kendall v. San Juan Silver M. Co.*, 144 U. S. 658 (1892).
㉕ Sec. —, Title 25, U. S. C. (May 11, 1938).

as follows:

> Application for a lease to be made to the local Indian agent. Lease period, "not to exceed ten years and as long thereafter as minerals are produced in paying quantities"; no provision for renewal. Area to be compact; maximum 640 acres for lode mining, and 960 acres for placer mining. Surety bond is required, ranging from $1,000 to $8,000 for lode and to $12,000 for placer, depending on area. Annual development work required, at $5.00 per acre for lode, and $100.00 per 160 acres or fraction for placer. Annual rental payable in advance, 25 cents per acre for first year, 50 cents per acre for second and third years, $1.00 per acre for each remaining year. Royalty, ten per cent gross production, less rentals paid. Lessee may remove his machinery at termination of lease and have bond released, providing the Secretary or deputy finds mine workings left in good condition. Lessee may surrender lease at any time, with approval of the Secretary.
>
> The north half of the Colville Indian Reservation in 1892 was restored to the public domain, [48] and is "open";[49] but a large part is now in the Colville National Forest (See National forests, above).
>
> 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."[50] In 1934 this south half was by order of the Department of the Interior temporarily closed to mining and other entries,[51] but is now subject to above Indian leasing act and regulations.

(5) **Power Sites.** United States water power reserves are not "open."[52] However, the Federal Power Commission has discretionary authority to restore to the public domain, viz., open to mining, etc., any portions not needed for power uses but subject to the right in the government and licensees to retake such portion whenever thereafter needed for power uses and without payment of damages except for improvement.[53]

(6) **Irrigation Projects.** United States irrigation reserves are not "open."[54] However, the Secretary of the Interior has discretionary authority to open any portion to mining, reserving to the government all necessary easements for safeguarding irrigation purposes.[55]

(7) **Temporary Withdrawals.** The President has authority at any time to withdraw temporarily any United States public lands and reserve same "for water-power sites, irrigation, classification of lands, and other public purposes to be specified in the orders of withdrawal," and such withdrawals remain in force until revoked by him or by Congress.[56] During the time such withdrawals remain in force such lands are not "open" except for metalliferous mining [57] (whether lode or placer).

> By Executive Order No. 6964, of February 5, 1935, President Roosevelt made a temporary withdrawal of all unappropriated, unreserved U. S. public lands (viz., public domain) in Washington and certain other states.[58] However, as just mentioned, this order did not affect metalliferous mining at all.[57] Further, this Order was revoked by Congress June 26, 1936, as to all mining.[59] So that now such lands

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[48] 27 Stat. L. 62.
[49] 29 Stat. L. 9.
[50] 30 Stat. L. 571.
[51] 54 I. D. 559 (Instr., 1934).
[52] Sec. 818, Title 16, U. S. C.
55 I. D. p. 239 (Cir., 1935).
[53] Sec. 818, Title 16, U. S. C.
Coeur d'Alene C. M. Co., 53 I. D. 531 (1931).
[54] *Colomokas G. M. Co.*, 28 L. D. 172 (1899).
[55] Sec. 154, Title 43, U. S. C. (1932).
53 I. D. 706 (Instr., 1932).
[56] Sec. 141, Title 43, U. S. C. (June 25, 1910, Pickett Act).
[57] Sec. 142, Title 43, U. S. C. (Aug. 24, 1912, same Act).
[58] 55 I. D. 188 and 247.
[57] 55 I. D. 239 (Cir., 1935).
[59] Taylor Grazing Act, as amended 1936, Sec. 315-f, Title 43, U. S. C

are "open" the same as before the Order; in other words the public domain is "open" again.

By Executive Order No. 7693, August 19, 1937, the President likewise withdrew about 102,000 acres in Stevens and Pend Oreille Counties (N. E. Washington Project, Farm Security Adm.); but this order expressly revoked Order No. 6964 and made the land "open."

(8) **Reserves in General.** No kind of United States reserves is "open" unless authorized by Congress.[59] Thus United States military reserves are not "open."[60]

The Taylor Grazing Act authorizes the Secretary of the Interior to establish grazing districts (viz., reserves) not exceeding in aggregate 142,000,000 acres, on the public domain and other United States public lands, exclusive of Alaska, and not within any National forest, National park or monument or Indian reservation.[61] But such grazing districts are "open," being expressly so provided in the Act.[62]

(9) **Minerals Excepted From Non-mineral Land Patents.** Congress in granting lands to

(a) The early transcontinental railroad companies, including the **Northern Pacific Railroad Company;**[63]

(b) Agricultural **homesteaders**, under the **Homestead Act** as amended in 1866;[64]

(c) Purchasers, for irrigation and agriculture, of **desert lands**, under the **Desert Land Entry Act**, 1877;[65]

(d) Purchasers of **timber and stone lands**, under the **Timber and Stone Act**, 1878;[66]

(e) Purchasers of town lots, under the **Townsite Act** as amended in 1865 and 1867;[67]

excepted mineral lands; the Northern Pacific Railway grant excepted minerals but not coal and iron. In these Acts the government intended to dispose of only non-mineral lands for non-mineral uses. But the courts in construing the mineral exception in these Acts have settled the law as follows: Before patent such lands are "open," but after patent they are not "open," based on the following principles:

That the act of issuing a patent by the government through its Land Office is an official and final adjudication that the land so patented is non-mineral; that even though there was inserted in the patent a clause excepting minerals (customary in railroad patents until 1903) such insertion was without authority and void; that the patent can be questioned or set aside by suit brought only by United States and upon its proving fraud or inadvertence or that at time of patent the land was known to be mineral; that unless and until the patent is thus set aside, the land, including minerals of every kind, is the private property of the patentee (or assigns), and that consequently the land is absolutely closed to prospecting or mining by the public; that if valuable mineral is discovered after the patent, it belongs to the patentee (or assigns).[68]

Land may be "known" to be mineral without any actual "discovery."[69]

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[59] *Gibson v. Anderson*, 131 Fed. 39 (1904).
[60] *Scott v. Carew*, 196 U. S. 100 (1905).
[61] Sec. 315, Title 43, U. S. C. (1936).
[62] Sec. 315-e, Title 43, U. S. C. (1934).
[63] 13 Stat. L. 365 (1864) and 567 (1865). 16 Stat. L. 378 (1870).
[64] Sec. 201, Title 43, U. S. C.
[65] Sec. 322, Title 43, U. S. C.
[66] Sec. 311, Title 43, U. S. C.
[67] Secs. 717 and 722, Title 43, U. S. C.
[68] *Burke v. So. Pac. R. R. Co.*, 234 U. S. 669 (1914).
[69] *Standard Oil Co. of Cal. v. U. S.*, 107 Fed. (2) 402 (1940).

If at the time of the patent there was an existing valid mining location, such location is protected by the courts, being vested property.[49]

Above rules apply fully to all lands, including lieu lands, granted by the government to the Northern Pacific Railroad (now Railway) Company. Accordingly, **before** any particular section or part is patented, viz., until the actual issuance of the patent by the United States to the Company the land is "open"[50]; but *after* patent, not "open."[51]

The original Act of Congress[52] incorporated and authorized the Northern Pacific Railroad Company to build its main line from a point near Lake Superior to Puget Sound and a branch down the Columbia River to or near Portland, and granted to the Company every odd-numbered section of land within 20 miles on each side its line in territories (including Washington Territory) and 10 miles on each side in states; and wherever any land had been disposed of or was reserved by the government or was mineral the Company was granted in lieu thereof odd numbered sections within 10 miles on each side of the first zone. In 1870,[53a] Congress changed the main line to Puget Sound so as to be via the valley of the Columbia River and authorized a branch line across the Cascade Mountains to Puget Sound, and widened the lieu zones 10 miles more on each side throughout all the lines. By Act of Sept. 29, 1890[53b] Congress forfeited back to United States all granted lands opposite any part of the lines "not now completed, and in operation." This forfeiture did not apply to the Northern Pacific line from Portland and Kalama to Tacoma[53c] nor to the branch line from Pasco to Tacoma, these being completed and in operation before 1890. But the line from Wallula, Washington, down the Columbia River to Portland or Kalama was never built by the Company, so that the lands opposite this route were forfeited back to United States by this Act of 1890.[53d] When Mt. Rainier National Park was established in 1899, the Company was given substitute lands in any state or territory through which its railroad ran.[53e]

Unless a railroad company files application for lieu lands within a National forest before the National forest is created, it thereafter has no right to such lands therein.[53f]

By Act of 1929[54] Congress directed the government to bring suit(s) against the Northern Pacific Railway Company. This Act cancels all rights of the Company to select or receive patent to any indemnity (or lieu) lands within National forests or other United States reserves, cancels all indemnity (or lieu) selection rights in general, directs no more patents to be issued to the Company until the suit is finally determined, the purpose of the suit to be to determine the rights of United States and the Company in lands claimed to be unearned and recover for any lands patented through fraud or mistake, also to determine compensation due Company for lands earned. A suit was brought in Spokane; an appeal to United States Supreme Court is now pending. Only a small amount, if any, of patented lands in Washington claimed to be mineral is involved. This Act of 1929 does not bar locating and patenting mining claims on unpatented Northern Pacific lands.[54a] In 1937 (Feb. 18) there were 1,116,000 acres of Northern Pacific lands, patented and unpatented, in Washington on the tax rolls, and likewise 116,700 acres of its subsidiary, Northwestern Improvement Company.

In selling lands the Northern Pacific Railway Company usually reserves minerals. See (16) and (17) hereinafter.

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[49] *Van Ness v. Rooney*, 116 Pac. 392 (Cal., 1911).
[50] *Barden v. N. P. R. R. Co.*, 154 U. S. 288 (1894).
55 I. D. 236 (Cir., 1935).
*N. P. Ry. Co.*, 56 I. D. 201 (1937).
As to other classes of patents (e. g., homesteads) the lands cease to be "open" as soon as final certificate for patent is issued. I Lindley, Secs. 207 and 208.
[51] *Burke* case, above.
Roberts, 55 I. D. 430 (1935).
[52] 13 Stat. L. 365 (July 2, 1864).
[53a] 16 Stat. L. 378 (May 31, 1870).
[53b] 26 Stat. L. 496.
[53c] *N. P. Ry. Co. v. Balthazer*, 82 Fed. 270 (1897).
[53d] *N. P. Ry. Co. v. Miller*, 21 W. 20 (1898). 48 W. p. 478.
[53e] Sec. 93, Title 16, U. S. C. (1899).
[53f] 28 L. D. 281 (1899); 39 L. D. 343 (1910).
[54] Secs. 921 to 929, Title 43, U. S. C.
54 I. D. 588 (Opin., 1934).
[54a] *N. P. Ry. Co.*, 56 I. D. 201 (1937).

As to townsite patents, above rules apply, except that if the townsite were initiated by an incorporated town or city the patents to the lots would include and carry all minerals even though valuable and known at time of patent, unless (as above mentioned) there were an existing valid mining location outstanding.[59] For further discussion see (16) hereafter.

(10) **School Lands,** viz. lands granted by United States to the State for the support of public schools. School lands are not "open." See Index, State-owned lands.

The mineral exception in the school land grants[60] was abolished by Congress in 1927, except as to lieu lands.[61] But even as to patented lieu lands only the government may sue to claim the land mineral. See [60] above. The original school grant included Sections 16 and 36 in every township.[62]

(11) **Mineral Reservations in United States Land Patents.** There are several special United States laws which reserve to the United States minerals in general from non-mineral patents. The only important one was the Stock-Raising Homestead Act of 1916,[63] which reserved "all coal and other minerals;" it is now superseded by the Taylor Grazing Act.[63a] The Taylor Grazing Act[64] and a National Forest Act[65] each authorizes exchange of United States unreserved public lands for private and State lands, with reservation of "minerals." In general, the various Acts reserving minerals to the United States allow any qualified person to enter and mine, occupying necessary surface area after first compensating the surface owner for damage to surface and improvements. Subject to these modifications, such reserved mineral deposits, it appears, may be located and patented.[66] More commonly, coal, oil, gas, phosphate, nitrate and asphaltic minerals are reserved from United States non-mineral patents.[67] For more details see (16) hereafter.

(12) **Mining Claims** (lode or placer). If located validly, these are not "open."[68a] See "Relocations."

The locater, A, of a placer claim acquires no right to any vein therein (unless he locates the vein also). B may therefore enter and locate the vein, if he can do so peacefully.[69] But B cannot enter to prospect for an unknown or uncertain vein.[70] If A patents his placer claim without expressly including and paying for the vein, the vein is excluded from the patent, but not if at time of patent it was unknown or not known to be valuable.[71]

(13) **State-owned Lands.** Not "open." See Index.

(14) **Streams, Lakes, Tidelands.** A non-navigable stream or lake, if on United States public land that is "open," is also "open,"[72] usually for placer

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[59] 52 L. D. 126 (1927).
Clark, 52 L. D. 426 (1928).
[60] Sec. 18, Enabling Act for Wash. (1889).
[61] Secs. 870 and 871, Title 43, U. S. C.
52 L. D. 273 (Instr., 1928).
[62] Sec. 10, Enabling Act for Wash. (1889).
[63] Sec. 299, Title 43, U. S. C.
[63a] 56 I. D. 347 (1938).
[64] Sec. 315-g, Title 43, U. S. C. (1936).
55 I. D. 192, 582 (1935-6).
[65] Secs. 485 and 486, Title 16, U. S. C. (1922, 1925)
[66] *Dean v. Lusk Roy. Co.*, 50 L. D. 192 (1923).
[67] Secs. 81 to 90, 121 to 123, Title 30, U. S. C.
[68a] *Armstrong v. Lower*, 6 Col. 393 (1882).
[69] *Campbell v. McIntyre*, 295 Fed. 45 (1924).
[70] Id.
[71] Sec. 37, Title 30, U. S. C.
*McKay v. Mesch*, 274 Fed. 867 (1921).
55 I. D. p. 239 (Cir., 1935).
[72] Cataract G. M. Co., 43 L. D. 248 (1914); Sec. 931, Title 43, U. S. C

locations. If on privately-owned land, not "open." The owner of land bordering on one side of a non-navigable stream or lake owns to the middle of the bed; if both sides, then all the bed between.[68] The beds and shorelands of navigable rivers and lakes up to line of ordinary high water mark, and tidelands up to line of ordinary high tide, belong to the State (unless already sold), and are therefore not "open,"[69] but are subject to lease by the State. See Index, State-owned lands. "Navigable" means navigable commercially for trade or travel. Thus Yakima River is not navigable.[70] And a river or lake suitable only for small pleasure boats is not navigable.[71] A river suitable only for floating down saw logs is navigable for that special purpose, but in all other respects is non-navigable.[72] Government meander lines are merely for calculating area,[73] and have nothing to do with navigability,[74] or with boundary lines.[75] See Index, Waters.

(15) **Lands Covered by United States Leasing Act.** After February 25, 1920, the right to prospect for and mine coal, oil, oil shale, gas, sodium, phosphate and potassium, on United States public lands, including National forests, could and can now be exercised only by taking out a prospecting permit or a lease from the United States government (through the Secretary of the Interior) under the United States Leasing Act.[76] See Index, U. S. Leasing Act. Likewise as to sulphur (in Louisiana) after April 17, 1926, [77] and potash after February 7, 1927. [78] Hence, any United States lands on which there is an existing application, permit or lease under said Act, are not "open" to lode or placer locations (for example, gold),[79] except for valuable minerals found "in fissure veins" on potash lands.[80] However, any valid lode or placer location of any mineral (for example, gold) existing at above respective dates remains valid if thereafter maintained.[81]

(16) **Privately-owned Lands,** although wild, are not "open."[82] After patent from the government, lands become private property. Thus the lands of the Weyerhaeuser Timber Company are not "open."

**How to Know Whether the United States Patent to Land Now Privately-owned Excepted or Reserved Minerals.** The more important class of United States land patents from which Congress intended to except and **did except** minerals, has been discussed hereinbefore; see (9) above. As there explained, the practical effect of a patent, as construed by the courts, was to convey full title (surface, minerals and all). Hence, for all practical purposes if the present title is derived from a homestead or railroad (etc.) patent, the

[68] *St. ex rel. Davis v. Super. Ct.*, 84 W. 252 (1915).
Sec. 931, Title 43, U. S. C.
[69] Sec. 1, Art. 17, Wash. Const.
Sec. 931, Title 43, U. S. C.
Cunningham, 55 I. D. 1 (1934).
*Borax Consol. Ltd. v. Los Angeles*, 296 U. S. 10 (1935).
Argillite O. S. Co., 29 L. D. 585 (1900).
[70] *Lawrence v. Southard*, 192 W. 287 (1937).
[71] *Lefevre v. Wash. Mon., etc., Co.*, 195 W. 537.
[72] *Watkins v. Dorris*, 24 W. 636 (1901).
[73] *Harper v. Holston*, 119 W. 436 (1922).
[74] *Borax Consol. Ltd.*, above.
Spillane, 55 I. D. 310 (1935).
[75] *Lefevre* case, above.
[76] Secs. 181 and 193, Title 30, U. S. C.
[77] Sec. 275, Title 30, U. S. C.
[78] Sec. 285, Title 30, U. S. C.
[79] McClory, 50 L. D. 623 (1924).
51 L. D. 653 (1926).
[80] Sec. 284, Title 30, U. S. C.
[81] Sec. 193, Title 30, U. S. C.
[82] *Shaw v. Kellogg*, 170 U. S. 312 (1898).
*Henshaw v. Clark*, 14 Cal. 461 (1859).

land is not "open." Anyone entering to prospect or locate a mining claim or to mine, is a trespasser, unless with consent of owner.

The other class of lands from which minerals were not excepted but were **reserved** from United States land patents, has also been briefly discussed. See (11) above. The only important mineral reservations relate to:

(a) Lands classified or withdrawn as coal lands and patented thereafter under non-mineral land laws subsequent to March 3, 1909,[58] or under homestead or desert-entry land laws subsequent to June 22, 1910.[59]

(b) Lands classified or withdrawn as phosphate, nitrate, potash, oil, gas or asphaltic mineral lands and thereafter patented under non-mineral land laws (for example, homesteads) subsequent to July 17, 1914.[60]

These three Acts require such patents on their face to reserve such (non-metallic) minerals. "Reserved" minerals are protected by the courts. However, before anyone may prospect or mine he must compensate the surface owner for damage; see (11) above.

(17) **Mineral Reservations 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 minerals nor surface are "open." The Northern Pacific Railway Company and many others sell, reserving minerals. A (owner of the minerals, for example Northern Pacific Railway Company, heirs and assigns) has the right at any time to enter on the land and explore, excavate, mine and remove the minerals and to use as much of the surface for excavations, buildings, structures and roads as reasonably necessary; A owes no duty to compensate B (surface owner) except for injury to B's permanent improvements; and ordinarily lapse of time before entering, however long, does not impair A's right to enter and mine.[61]

Example: In a Massachusetts case, approved by our State Supreme Court, [62] Michah Mudge in 1763 conveyed a farm, reserving minerals; 40 years later Mudge's heir entered and mined iron against protest of surface owner, who sued; court held heir had title to the minerals and had right to mine.

A sold land in Snohomish County to B, reserving "minerals." Later B sued A for removing from this land sand and gravel. There was no evidence introduced as to whether the sand and gravel was specially valuable. Held, the meaning of "minerals" in the contract of sale must be determined not by scientific or geological definitions but by the intent of the grantor as gathered from the language of the entire contract or deed and from the surrounding circumstances. The court held in effect that ordinary sand and gravel is not "mineral" in its legal sense.[63]

Of course if A in his deed reserves only certain minerals, for example, coal, full title to all other kinds of minerals passes to B, the grantee; and B, heirs and assigns, have right to mine any such other minerals.

Before locating a mining claim make certain that the land is "open." A mining location made on land not "open" is void and remains void, even though subsequently the government throws the land open to mining locations.[64] If in doubt, consult the local Forest Service office, the county engineer and assessor, the State Division of Mines and Mining at Olympia, the State Public Land Commissioner, the Northern Pacific Railway Company (land department), also as to patented lands or pending patents, the United States Land Office at Spokane.

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[58] Sec. 81, Title 30, U. S. C. (March 3, 1909.)
[59] Secs. 83 to 85, Title 30, U. S. C. (June 22, 1910).
[60] Secs. 121 to 123, Title 30, U. S. C. (July 17, 1914).
[61] 40 C. J. 983-985.
[62] *Netherlands Am. Mtg. Bank v. Eastern R., Etc., Co.*, 142 W. 204 (1927).
[63] *Puget Mill Co. v. Duecy*, 1 W. (2nd) 421 (Nov. 1939).
[64] Roberts, 55 I. D. 430 (1935).

## LOCATIONS AND CLAIMS

WHO QUALIFIED TO LOCATE. Any United States citizen or person who in good faith has declared his intention of becoming a citizen may locate mining claims, lode or placer, either alone or jointly with other qualified persons, and regardless of age (if of discretion), sex or residence.① One may locate for another in the latter's name. Powers of attorney to locate mining claims, and grubstake agreements, need not be in writing in Washington;② otherwise in Alaska. A mining corporation incorporated under the laws of the United States or of any state or territory of the United States is also qualified.③

The State Constitution permits aliens and alien corporations to own lands (viz., patented or private lands) containing valuable minerals.④
See Index, Corporations and Aliens.

NUMBER OF LOCATIONS. There is no limit to the number of locations, lode or placer, that a qualified person or corporation may make anywhere in Washington, for himself or with others or as agent, and whether or not on the same vein.⑤ In Alaska, the number of placer locations is limited.

"LOCATION," "CLAIM." "Location" and "claim" usually mean the same thing. A single location is called a location or a claim; it is a legal unit. But a group of locations, contiguous and owned in common, is also called a claim, but not a location. An "association placer claim" is a single location, of more than 20 but not to exceed 160 acres, located jointly by several persons, viz., by an association of persons; it requires only one discovery and $100.00 annual assessment work.⑥ A single individual may, of course, locate separately several contiguous 20-acre placer locations, regardless of total acreage; this would be a group but not an association claim. Each location in a group, lode or placer must be located separately, although all may be located at the same time. Thus if one attempts to locate 3,000 by 600 feet (equivalent to two lode locations) as one lode location, it would be void.⑦ The law permits group assessment work but not a unit group location.

"VEIN," "PLACER," "MINERAL." A vein is mineralized rock, usually quartz, lying in place; that is, between or merging into uncommercial rock (country rock) on each side. A vein must have sufficient mineral showing for a "discovery." See Index, Discovery. The mineral may be metallic or non-metallic; a vein may be of any shape or width, a narrow fissure or an irregular zone several hundred feet wide. Its origin is unimportant. It may be part of the original magma or from subsequent intrusions or solutions from below or above.⑧ It may be composed of breccia.⑨ It may lie flat.⑩ Although faulted and moved from its original position by some force of nature, it is in place and a vein.⑪

Placer is mineralized rock or mineral detached by nature; hence usually found in sand, gravel and ancient buried stream beds with no upper or hang-

① 55 I. D. 235 (Reg., 1935).
*West v. U. S. ex rel. Alling*, (1929) 30 Fed. (2) 739 (minor).
*Atchley v. Varner*, (Okla, 1929) 280 P. 616 (married woman).
*Book v. Justice M. Co.*, (1893) 58 Fed. 106 (non-resident of state).
② *Raymond v. Johnson* 17 W. 232 (1897), 39 W. 196.
③ 51 L. D. 62 (Instr., 1925).
55 I. D. 235 (Reg., 1935).
④ Sec. 33, Art. 2.
⑤ *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 p. 109.
⑥ *Reeder v. Mills*, 217 P. 562 (Cal. 1923).
⑦ See Index, Locations.
⑧ *McMullin v. Magnuson*, 78 P. (2) 964 (Col., 1938).
⑨ *Jones v. Prospect Mt. Tunnel Co.*, 31 P. 642 (Nev., 1892).
⑩ 1 Lindley, Sec. 293.
⑪ *State v. Praul*, 57 W. 198 (1910).

ing wall of solid rock. According to the Department of the Interior and a few courts, a sedimentary rock, for example limestone, or a sedimentary deposit, for example an auriferous gravel bed, if in place between solid walls, is in place and hence a vein and not placer.[12] But in California an auriferous gravel bed cemented between hardpan below and a very thick lava blanket above, and with a dip of 8 degrees from horizontal, was held placer.[13] A vein located as a placer, or a placer located as a vein, is void.[14]

"Mineral" means a deposit of any kind of mineral, metallic or nonmetallic.[15] A tunnel or shaft does not make a "mine" until a workable vein or deposit is reached and work started on it.[16]

"Vein," "lode," and "ledge" mean the same thing in mining law.

DISCOVERY. No lode or placer location is valid unless and until a "discovery" is made; it dates from discovery.[17] However, where A is in possession diligently seeking a discovery he is protected as against B who enters and locates during A's temporary absence,[18] also as against a trespasser who simply seizes possession.[19] The discovery must be made inside the location whether the lines of the location are laid out before or after. It may be made on the surface or deep in the earth. In lode (vein) locations the vein must apex inside the location.[20]

Regardless of rich mines in adjoining claims, a vein or placer deposit must actually be found in the location.[21] But the finding of a vein with a trace of mineral does not necessarily constitute a lode discovery;[22] nor the finding of some float or a few fine colors, a placer discovery.[23] On the other hand, it is not necessary to find pay ore[24] or a pay streak.[25] The test is that the vein or placer deposit, when exposed or tested, must show sufficient mineralization "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" with a reasonable expectation of a profitable mine,[26] notwithstanding the land is also valuable for non-mineral uses (water power, timber, agriculture, hotel site, etc.).[27] In this connection, "a man of ordinary prudence" (above) means an expert geologist or an experienced prospector or miner.[28] A narrow stringer with no pay ore in sight but in a certain formation and district, may be sufficient.[29] In contests between mineral claimants to the

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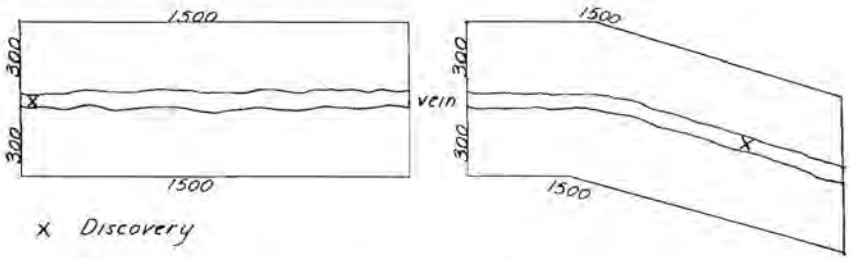
[12] 1 Lindley, Sec. 301.
*Big Pine M. Co.*, 53 I. D. 410 (1931).
[13] *Gregory v. Pershbaker*, 14 P. 401 (Cal., 1887).
[14] 53 I. D. 410, above.
See 77 P. (2) 418 (Ore., 1938); 52 L. D., p. 469.
[15] *St. ex rel. Atkinson v. Evans*, 46 W. 219 (1907).
See Index, Mineral Reservations.
[16] *Hemmingson v. Carbon Hill Coal Co.*, 62 W. 28 (1911).
[17] *Jupiter M. Co. v. Bodie C. M. Co.*, 11 Fed. 666 (1881).
[18] *Campbell v. McIntyre*, 295 Fed. 45 (1924).
[19] *Davis v. Dennis*, 43 W. 54 (1906).
[20] Sec. 26, Title 30, U. S. C.
*Iron Silver M. Co. v. Murphy*, 3 Fed. 368 (1880).
[21] East Titanic C. M. Clm., 40 L. D. 271 (1911).
*Cole v. Ralph*, 252 U. S. 286 (1920).
[22] *Kramer v. U. S. Mchry. Co.*, 76 P. (2d) 540 (Cal., 1938).
[23] *U. S. v. El Portal M. Co.*, 55 I. D. 348 (1935).
*Helen v. Wells*, 54 I. D. 306 (1933).
[24] *McShane v. Kenkle*, 44 P. 979 (Mont., 1896).
*Book v. Justice M. Co.*, 58 Fed. 106 (1893).
*Bevis v. Markland*, 130 Fed. 226 (1904).
[25] *Cascaden v. Bortolis*, 162 Fed. 267 (1908).
[26] *Chrisman v. Miller*, 197 U. S. 313 (1905).
*Cameron v. U. S.*, 252 U. S. 450 (1920).
[27] *U. S. v. Iron Silver M. Co.*, 128 U. S. 673 (1888).
Cataract G. M. Co., 43 L. D. 248 (1914).
[28] *U. S. v. St. of Cal.*, 55 I. D. 121, 180 (1935), 532.
[29] *McShane*, (No. 8) above.

same ground, each conceding the land to be mineral, the law is liberal; discovery, as above explained, is sufficient.[89] But in contests between the government and a mineral claimant (as in patent proceedings) or between a mineral and a non-mineral claimant, the mineral claimant has the burden of proving not only a technical discovery (above) but also that his mineral deposit is valuable, but not necessarily pay ore or mineral, and that it is more valuable as mineral than for its non-mineral uses (water power, timber, agriculture, hotel site, etc.);[90] also that the claim can be mined at a probable profit.[91] Thus a discovery sufficient as against another mineral claimant may be insufficient in patent proceedings or as against the government.[92] In all cases good faith is essential.[93]

May one discovery exposure on a vein be bisected and two end-to-end lode claims located thereon? This question is unsettled. It would be safer to make the discovery shaft of double width, or in absence of a shaft, to expose the vein the equivalent space of two shafts.

A group of locations, lode or placer, based on only one actual discovery, is void, except the location containing the discovery.[94]

HOW TO LOCATE A LODE CLAIM.[95] See also hereafter "Summary of steps for locating, holding and patenting mining claims." A full sized lode claim is 1,500 feet long and 600 feet wide—20.66 acres. Measurements, lode or placer, are made horizontally.




The proper order of locating a lode claim is:

Make a discovery; post location notice; stake boundary lines; dig discovery shaft; record location certificate. The order is not important, but the law requires all steps to be completed within 90 days (in case of intervening right of others.)[96]

After discovery immediately post a conspicuous notice (on paper, or wood, etc.), stating the date of discovery (use date of actual posting), the name of the lode claim, and the name of locator(s). It must be posted inside the

[89] *Allen v. Laudahn*, 81 P. (2d) 734 (Ida., 1938).
*Chrisman v. Miller*, 197 U. S. 313 (1905).
[90] *U. S. v. Lavenson*, 206 Fed. 755 (1913), aff'd 4 Fed. Suppl. 206.
*Austin v. Mann*, 56 I. D. 85 (1937).
[91] *U. S. v. Bullington*, 51 L. D. 604 (1926).
Big Pine M. Corp., 53 I. D. 410 (1931).
[92] Clipper M. Co., 33 L. D. 660, 34 L. D. 401 (1906). See 21 L. D. 442.
[93] *Spokane Portland Cement Co. v. Larson*, 71 W. 301 (1912).
[94] 2 Lindley, Sec. 337.
[95] Rem., Secs. 8616 to 8624. Note: The Courts require only a substantial compliance with the legal requirements for locating lode or placer claims, and are liberal, as ordinarily prospectors are neither lawyers nor surveyors and locate claims in mountainous areas. *Steele v. Preble*, 77 P. (2) 418 (Ore., 1938).
[96] *Dwinnell v. Dyer*, 78 P. 247 (Cal., 1904).

claim, on the surface, at the discovery spot.[38] If discovery is in a shaft or tunnel, the notice may be posted at the rim or mouth.[39] The notice is usually posted on a post, called "discovery post."

After ascertaining course of vein, mark the exterior boundary lines of the claim on the ground. If unable to trace vein, nevertheless mark the lines, and later amend. See "Amending Locations." End lines must not be more than 1,500 feet apart, measured along vein. The end lines of a full location, which makes a turn, would be 1,500 feet apart along the vein although actually less than 1,500 feet apart. To secure full extralateral rights, the two end lines must be parallel and each must cross the vein. The side lines need not be straight or parallel but should follow course of vein and be not more than 300 feet from center line of vein.[40] Small or fractional claims are allowed; they are often necessary to avoid overlapping neighboring claims. At each of the four corners of claim, also at each angle of side lines (and if desired, at middle of each end line) erect firmly a substantial post—a tree or stump would do—or a stone monument, each post or monument at least three feet above ground, and each post at least four inches in diameter; each post or monument must be marked with date of location (same date as in posted notice) and name of lode claim; also, it is recommended, name of locator(s) and designation of corner ("N. W. cor." or etc.). Witness posts may be used to indicate inaccessible corners. In timber the lines must be blazed; and brush along lines cut. Regardless of the country the lines between corners must be marked in some way, so as to be readily traceable by a stranger.[41] The law does not require the notice and markings to be maintained;[42] but to avoid litigation, they should be renewed if destroyed or obliterated. In National forests, if a lode or placer claim has the appearance of an abandoned claim, the Forest Service has power to dispose of the timber thereon.[43]

A shaft called "discovery shaft" must be dug at least 10 feet deep from lowest part of the rim at surface,[44] even though it penetrates the vein within much less than the 10 feet; or if a tunnel, at least 10 feet along floor and 10 feet below surface. It must actually expose the vein, and be extended until it does.[45] If an abandoned shaft or tunnel is used as the discovery shaft, it must be extended at least 10 more feet. West of the summit of the Cascade Mountains, a discovery shaft (or tunnel) is not required.[46]

Lastly, before end of the 90 days (from date in posted notice), record in the auditor's office of the county where the claim is situated, a written notice or certificate, stating name of locator(s), date of location (same date as in posted notice), number of feet in length of vein claimed on each side of the discovery, the general direction of the vein, and a description of the claim by reference (giving approximate direction and distance from the discovery post or some corner of claim or some other object in the claim) to some natural object (for example, junction of two certain streams, a well known peak, mouth of a well known canyon, etc.) or to some permanent monument (for example, a cabin, a road, a well known mine, etc.) in the vicinity, as will identify the where-

[38] *Buckeye M. Co. v. Powers*, 257 P. 833 (Ida., 1927).
[39] *Campbell v. Ellett*, 167 U. S. 116 (1897).
[40] *Quilp Gold M. Co. v. Republic M. Corp.*, 96 W. 439 (1917).
*Jim Butler T. M. Co. v. West End C. M. Co.*, 247 U. S. 450 (1918).
[41] *Ledoux v. Forester*, 94 Fed. 600 (1899).
[42] 7 L. R. A., N. S., 864 (1906).
[43] Reg., Nat. Forests (1928).
[44] *Paragon M. & Dev. Co. v. Stevens Co. Expl. Co.*, 45 W. 59 (1906).
[45] *McMillen v. Ferrum M. Co.*, 74 P. 461 (Col., 1902).
[46] Rem., Sec. 8630.
*Nat. M. & M. Co. v. Piccolo*, 57 W. 572 (1910).

abouts of the claim. It is recommended also to refer to the survey section or corner, if practicable. Describe the whereabouts fully and definitely, so that a stranger, familiar with the country, after reading the recorded notice, could go and after reasonable search find the claim, and then from the markings on the ground could trace the lines.[14]

HOW TO LOCATE A PLACER CLAIM.[15a] See hereafter "Summary of steps for locating, etc." A placer claim must not exceed 20 acres if located by one person, nor 40 acres if by two persons, nor 60 acres if by three persons, etc., the maximum area of a placer claim being 160 acres located by eight or more persons.[16] A corporation counts as one person only.[17] In other words, the limit is 20 acres per person up to 160 acres for a single placer claim. Whether the claim contains 20 or 160 acres, only one discovery within it is required, and only $100.00 annual assessment work is required.[18] (Alaska laws require $100.00 per each 20 acres.) One or more locators may locate as many separate placer claims, whether isolated or adjoining, as they desire. See "Location, claim"; "Vein, placer," hereinbefore.

As soon as he makes a placer discovery, the locator should immediately post in a conspicuous place at the discovery a location notice, stating name of the placer claim, name of locator(s), date of the discovery and posting of the notice, and a description of the claim by the United States section subdivisions embracing the claim, or if on land not covered by a United States survey, then by reference to some natural objects or permanent monuments as will clearly identify the whereabouts of the claim.

Within 30 days after the date of the discovery, the locator(s) must mark the exterior boundaries on the ground, whether or not the land is covered by a United States survey, in the same manner as in lode locations, viz., by posts or monuments, blazing, etc., so that the lines on the ground can be readily traced.

Within the same 30 days, he must also record a copy of the posted notice in the county auditor's office where the claim is situated.

Within 60 days after date of discovery, he must do upon the ground development work equivalent to $10 per each 20 or fraction acres. And within a reasonably short time thereafter he must make and record in same office an

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[14] Example: This claim is situated in King County, Washington, in the Buena Vista Mining District, in the Snoqualmie National Forest, and in Section 4, Township 25 North, Range 10 east, W. M., about 1½ miles southeast of McClain Peaks, about 4 miles (by trail) northeast of junction of the North Fork of the Snoqualmie River and Lennox Creek, and about 3,000 feet north of said North Fork; the S. W. corner of the claim marked on the ground by a post bearing "S. W. cor. Monte Carlo Lode June 1, 1940" being about ½ mile north of and about 200 feet east of a new cabin marked "Monte Carlo" on the trail on north side of the river. The claim lies on the side of a fairly steep and heavily wooded mountain facing south, and lies lengthwise in, along and on both sides of a V-shaped canyon running up the mountain, down which canyon flows a small stream, the bottom of the canyon being bare rock for about 25 feet across. The discovery is at the center of the claim and in the bottom of the canyon a few feet west of the stream and at the entrance of a 338-foot tunnel. The claim adjoins the Black Bear Lode on the north and the White Bear Lode on the south.

Example of too indefinite and hence void description: This claim is situated in San Bernardino County, California, in the Goldstone Mining District, commencing at the discovery post, thence, (etc.) *Storrs v. Belmont Gold M. Co.*, 76 P. (2) 197 (Cal., 1938).

However, in an open or barren featureless locality, a post plainly visible, properly marked, and referred to in the notice, may sufficiently supplement a reference, in the notice to natural objects or permanent monuments that by themselves would be too indefinite a guide as to the whereabouts of the claim. *Riley v. Sakow*, 110 Fed. (2) 345 (1940).

[15a] Rem. 8631; Sec. 35 and 36, Title 30, U. S. C.

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

[17] 2 Lindley, Sec. 449.

[18] *Reeder v. Mills*, 217 P. 562 (Cal., 1923).

affidavit showing performance of such work and its nature and kind. This is location and not assessment work.

On lands already covered by a United States survey the placer location boundary lines must conform to the legal survey section rectangular subdivisions made up of one or more 10-acre squares, and must be staked and described accordingly;[51] for illustration, "S½ of SW¼ of NW¼, Section 4, Twp. 14 N., Range 24 E., W. M., Kittitas County, Washington." But as often happens the locator cannot find a Government section corner or is uncertain. In this case he should, as far as practicable, stake the claim in the form of a 10-acre square (660' x 660') or rectangle (660' x 1320') or 10-acre squares adjoining, and, except for some good reason otherwise, run the lines north and south and east and west, and in the notice describe its shape and identify its whereabouts by reference to natural objects or permanent monuments in the vicinity. Errors and imperfections in the shape, boundaries or description may be corrected later.[52] See "Amending locations." Unless he is positive that his stakes and description conform strictly to the Government survey subdivisions described by him, it is by all means advisable that he supplement his description by referring to natural objects or permanent monuments in the vicinity with as much particularity as in lode locations; for if the subdivision description is erroneous, the error may yet be cured by the supplemental description.[53] On lands not covered by a United States survey the law nevertheless requires the staking and description to follow the same rectangular block system and also requires the description to contain reference to natural objects or permanent monuments as in lode locations; and it is recommended the lines be run north and south and east and west.[54] However, a locator is not required to survey his placer claim whether on surveyed or unsurveyed Government land.[55] On the theory that it would be impracticable to conform to any rectangular subdivision or block shape, the Department of the Interior and courts have allowed an exception in the case of placer locations made in and along narrow gulches with non-mineral sides, providing the acreage limit is not exceeded and the claim is not unduly long.[56] Another exception is that the shape may be irregular where necessary to prevent overlapping upon adjoining claims, private or other non-locatable lands.[57] But if at all practicable, the 10-acre blocks (660' x 660') or rectangles (660' x 1320') should be used, even in narrow gulches.[58] A placer claim should not be located in a rectangle 600 by 1,500 feet. In proceedings for a patent, the Government will reject any 10-acre subdivision found to be wholly non-mineral,[59] even though the claim embraces 160 acres.[60]

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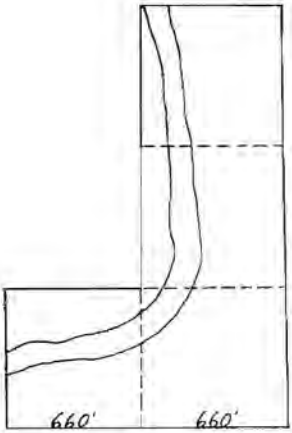
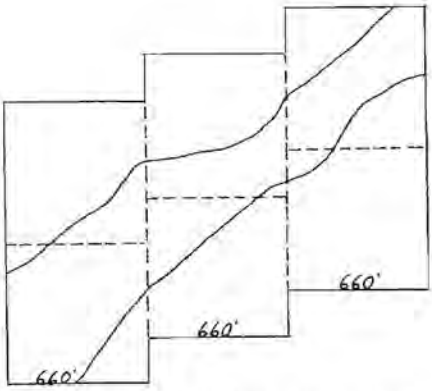
[51] Ventura Coast Oil Co., 42 L. D. 453 (1913).
St. of Ariz., 53 I. D. 149 (1930).
[52] Ortman, 52 L. D. 467 (1928).
[53] *Wheeler v. Smith*, 5 W. 704 (1893).
[54] Snowflake Fr. Placer, 37 L. D. 250 (1908).
[55] *Dripps v. Allison's M. Co.*, 187 P. 448 (Cal., 1919).
[56] Carr, 53 I. D. 431 (1931).
*Steele v. Preble*, 77 P. (2) 418 (Ore., 1938).
[57] Snowflake Fr. Placer, 37 L. D. 250 (1908).
[58] Ortman, 52 L. D. 467 (1928).
*Young v. Papst*, 37 P. (2) 359 (Ore., 1934).
[59] *C. P. Ry. Co. v. Mullin*, 52 L. D. 573 (1929).
[60] Am. Smelt. & R. Co., 39 L. D. 299 (1910).




Conforming to Government Survey.




Conforming as nearly as practicable to Government Survey.

Each block represents 10 acres.

AMENDING LOCATIONS.[61] The law is very liberal in allowing locations and relocations, lode and placer,[62] to be amended, so long as rights of other persons are not injured. Thus a location or relocation may be amended for any of the following purposes: To make a description more definite;[63] to correct clerical and technical errors; to add name of co-locator omitted by mistake; to correct fatal errors and omissions (and thereby make valid a location or relocation originally void);[64] to make end lines parallel; to draw in side lines; to cast off excess ground; to swing a location (so as to conform to the vein);[65] to add new ground;[66] to cast off an overlap on neighbor's claim; to claim and designate a new discovery where original discovery void or doubtful;[67] and other purposes. However, where it is proper to "relocate," it is insufficient to "amend."

If the error or omission is not fatal and no new ground is taken in, the amendment relates back to date of original location (or relocation as the case may be), regardless of rights of others intervening.[68] But if the location (or relocation) is void or the amendment takes in new ground, rights of others intervening prior to the amendment are superior.[69] In the absence of intervening rights, a valid amended location (or relocation) is protected.[70]

If the defect or omission is in the posted notice, the location is properly amended by making and posting a new, complete and corrected notice; if in the recorded notice, by making and recording a new, complete and corrected notice.[71] If a boundary line is to be changed, new ground taken in, or a new discovery selected, the new line should be staked on the ground as in original locations, or a new discovery post set, as the case may be, and the recorded

[61] Rem., Sec. 8626.
[62] Ortman, 52 L. D. 467 (1928).
[63] *Olympic Manganese M. Co. v. Downing*, 156 W. 686 (1930).
[64] *Kirkpatrick v. Curtiss*, 138 W. 333 (1926), affd. 156 W. 690.
[65] *Karnes v. Flint*, 153 W. 225 (1929).
[66] Ortman, 52 L. D. 467 (1928).
[67] *McMillan v. Ferrum M. Co.*, 74 P. 461 (Col., 1902).
[68] *Doe v. Waterloo M. Co.*, 70 Fed. 455 (1895).
[69] *Karnes v. Flint*, 153 W. 225 (1929).
[70] *Olympic Manganese M. Co. v. Downing*, 156 W. 686 (1930).
[71] *Butte C. M. Co. v. Barker*, 89 P. 302, 90 P. 177 (Mont., 1907).

notice "amended" as above, also the posted notice if necessary to fit the facts.[67] A corrected notice is called an "amended" notice.

ACTUAL KNOWLEDGE OF CLAIM. Where B (jumper) actually knows A's boundaries on the ground or intended boundaries, it is then immaterial whether A's staking or the description in A's location notice is defective.[68] Likewise where B knows where a substantial portion of A's claim lies on the ground, but without knowing the exact boundaries of the claim, A is protected at least as to that portion.[69]

JUMPING CLAIM FORCIBLY, ETC. Where A is in actual possession and working his claim, whether his claim be valid or invalid, B has no right to enter and locate or relocate forcibly, clandestinely, or fraudulently, even while A is absent temporarily from his claim.[70]

OVERSIZED CLAIMS. Where A in good faith happens to stake on the grounds the boundary lines of his claim longer than the legal limits, his claim is valid except as to the excess area.[71] But where A's lines as staked on the ground are so long as to indicate bad faith or ignorance, A's entire claim is void.[72]

OVERLAPPING ANOTHER'S CLAIM. In locating his claim, if B overlaps a part of A's existing valid claim, B's overlap portion is void; and is not validated by A's subsequent default in assessment work.[73] To acquire such overlap after A's default B should "relocate," not "amend."

To make his end lines parallel (for extralateral rights), it is often necessary for B to overlap part of A's existing claim, patented or unpatented, but to do so B has no right to stake on A's ground without his consent or acquiesence; but if A does consent or acquiesce, B secures extralateral rights but without affecting A's rights (including extralateral rights).[74]

## ASSESSMENT WORK

ANNUAL ASSESSMENT WORK.[1] Between "the date of location" and the following July 1, noon, no assessment work is required.[2] In Washington the date of location is the date of the posted notice,[3] whether the location is completed before or after the July 1 just mentioned. Between this July 1, noon, and the next July 1, noon, and during each corresponding year thereafter, work must be done or improvements made on each mining claim, lode or placer,[4] of at least $100 in value. Example: $100 work done between July 1, 1935, noon, and July 1, 1936, noon, would protect against relocators (jumpers)

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[67] *Tonopah & S. L. M. Co. v. Tonopah M. Co.*, 125 Fed. 389 (1903).
[68] *Nat. Milling & M. Co. v. Piccolo*, 54 W. 617 (1909).
*Ninemire v. Nelson*, 140 W. 511 (1926).
[69] *Ehrhart v. Bowling*, 97 P. (2) 1010 (Cal., 1940).
[70] *Davis v. Dennis*, 43 W. 54 (1906).
*Nev. Sierra Oil Co. v. Home Oil Co.*, 98 Fed. 673 (1899).
*Brown v. Murphy*, 97 P. (2) 281 (Cal., 1939), by fraud.
[71] *Ehrhart* case, above.
[72] *Madeira v. Snonoma Magnesite Co.*, 130 P. 175 (Cal., 1912).
*Ledoux v. Forester*, 94 Fed. 600 (1899).
[73] *Swanson v. Sears*, 224 U. S. 180 (1909).
[74] 2 Lindley, Sec. 363.
[1] Sec. 28, Title 30, U. S. C.
Rem., Sec.. 8618.
[2] Sec. 28, Title 30, U. S. C. (as amended 1921).
[3] *Florence Rae Copper Co. v. Kimbel*, 85 W. 162 (1915).
[4] 40 C. J. 828 (1926).
In 1921 Congress changed the period, Jan. 1 to Jan. 1, to July 1, 12 o'clock noon, to July 1, 12 o'clock noon. 42 Stat. L., 186. This repeals period in Rem. 8618.

until July 1, 1937, noon.[5] As used hereinafter the word "work" means assessment work or improvements.

Work done prior to discovery or in locating a claim, or prior to July 1, noon, following date of location, may not be counted as assessment work.[6] Work in excess of $100 per claim may not be credited on future assessment years.[7] After patent, no assessment work is required; but it is during patent proceedings.[8]

Work done, but not paid for, is good;[9] but if paid for, and not done, insufficient.[10] The work may be done all at one time or piecemeal during the assessment year.[11] It may be done on the surface or underground. It is usually done inside a location, but may be done outside. Usually an owner or co-owners hold a group of contiguous locations—a "group." Work may be and often is done inside one or more of the locations in a group, for example, in driving a tunnel; or outside the group, for example, constructing a road, trail, flume, tramway to or from the group. But such work must aggregate $100 per location, for example, $600 total for a group of six, and must reasonably tend to benefit each location but not necessarily to the extent of $100.[12]

Illustrations of proper assessment work:[13]

Prospecting work:[14] Open cuts; prospecting tunnel; diamond drillings; shafts; etc.

Developing work:[15] Mine timbering; shaft or tunnel following vein; blocking out ore; etc.

Mining:[16] Stoping; removing ore from mine or to mill; etc.

Miscellaneous: Trails and roads;[17] tramways;[18] mine rails, candles, fuse, powder used;[19] mine machinery, including transportation and installation, if for permanent use;[20] powder house, tool house, blacksmith shop, ore bins, etc.[21]

A State law, 1899, authorizes organized mining districts to build roads and apply same as assessment work. But this law does not apply to unorganized districts; and there are few, if any, organized mining districts left in the State.[22] Road building and repairs intended specially for certain mining claims is good assessment work.[23]

Illustrations of work not allowed as assessment work:

Buildings not strictly necessary for development or mining; such as a miner's cabin, bunk house, boarding house, etc.[24]

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⑤ *Mesmer v. Geith*, 22 Fed. (2) 690 (1927).
*Yarwood v. Johnson*, 29 W. 643 (1902).
⑥ *Cole v. Ralph*, 252 U. S. 286 (1920).
⑦ 2 Lindley, Sec. 632.
⑧ *McKnight v. El Paso Brick Co.*, 120 P. 694 (N. M., 1911).
⑨ *Lockhart v. Rollins*, 21 P. 413 (Ida., 1889).
⑩ *Protective M. Co. v. Forest City M. Co.*, 51 W. 643 (1909).
⑪ *Belk v. Meagher*, 104 U. S. 279 (1881).
⑫ Carretto, 35 L. D. 361 (1907), 36 L. D. p. 553.
*Karnes v. Flint*, 153 W. 225 (1929).
⑬ 14 A. L. R., 1463, note (1921).
⑭ McCornick, 40 L. D. 498 (1912).
52 L. D. 334 (Instr., 1928).
⑮ Chichagoff Extension M. Co., 53 I. D. 669 (1932).
⑯ *Wailes v. Davies*, 158 Fed. 667 (1907).
⑰ *Florence Rae Copper Co. v. Kimbel*, 85 W. 162 (1915).
*Sexton v. Wash. M. & M. Co.*, 55 W. 380 (1909).
⑱ *U. S. v. El Portal M. Co.*, 55 I. D. 348 (1935).
⑲ *Fredricks v. Klauser*, 96 P. 679 (Ore., 1908).
⑳ *Florence Rae Copper Co.*, above.
㉑ Min. Reg., 49 L. D. 91 (1922).
*Pac. Gas & E. Co.*, 50 L. D. 599 (1924).
㉒ *Sexton v. Wash. M. & M. Co.*, 55 W. 380 (1909).
㉓ Id.
㉔ Dawson, 40 L. D. 17 (1911); Min. Reg., 49 L. D. 91 (1922).
*Remington v. Bendit*, 9 P. 819 (Mont., 1886).

Tools and other loose equipment;[87] but their current rental value may be counted.[88]

A mill or smelter, and repairing same;[89] ore crushing and treatment being a manufacturing process.

Traveling;[90] services of engineer or geologist;[91] gathering samples and assaying;[92] all being too remote.

Assessment work benefiting a group of claims in common cannot be apportioned according to actual benefit to each claim but only pro rata.[93] Assume a group of three claims, Nos. 1, 2 and 3, and that owner does work on No. 1 for benefit of all three, but a relocator proves work worth only $200. Effect not decided in this State, but courts of other states disagree. Do not be caught in this trap; do the full value.

AFFIDAVIT OF ASSESSMENT WORK. The Washington law requires an affidavit of assessment work to be recorded within 30 days after close of the assessment year,[94] viz., between July 1, noon, and July 31, inclusive. However, it is also proper to record the affidavit at any time after completing the work and before July 1.[95] Failure to record in time or at all casts upon the owner the burden of proving the work was actually done and its value.[96] The affidavit may be made by the owner or anyone in his behalf who knows the facts. One affidavit for group work is allowed.[97] The affidavit is recorded in the auditor's office of the county where the claim is situated. The affidavit must state "the exact amount and kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvement allowed by law."[98]

SUSPENSION OF ASSESSMENT WORK. In 1932, 1933, 1934, 1935, 1936, 1937 and 1938, respectively, the necessity for assessment work was suspended by Congress, as follows: The Acts of 1933, 1934, 1935, 1936, 1937 and 1938 applied only to claim owners exempt from United States income tax for the preceding calendar year and required each owner to record a statement not only expressing his desire to hold under the Act, but also stating his exemption from income tax. Acts of 1934, 1935, 1936, 1937 and 1938, further restricted the privilege to six lode claims and six placer claims (not over 120 acres in all) for each individual, and to twelve lode claims and twelve placer claims (not over 240 acres in all) for each corporation. (Acts of 1935, 1936 and 1937 omitted Alaska.) Failure to file such statement for record opened the claim to relocation by others.[99] The Act of June 30, 1939, provides that as to assessment work for the year ending July 1, 1939, it shall be sufficient if such work is commenced on or before September 1, 1939, noon, and thereafter completed with reasonable diligence. There is no Act suspending or extending time for assessment work for year ending July 1, 1940.

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[87] *Fredricks v. Klauser*, 96 P. 679 (Ore., 1908).
[88] Id.
[89] *Golden Giant M. Co. v. Hill*, 198 P. 276 (N. M., 1921).
[90] *Du Prat v. James*, 4 P. 562 (Cal., 1884).
[91] *Kirkpatrick v. Curtiss*, 138 W. 333 (1926).
*Lewis v. Carr*, 246 P. 695 (Nev., 1926).
[92] *Bishop v. Baisley*, 41 P. 936 (Ore., 1895).
[93] Carretto, 35 L. D. 361 (1907), 36 L. D. p. 553.
[94] Rem., Sec. 8627.
[95] *McGinnis v. Egbert*, 15 Morrison M. R. 329 (Col., 1884).
[96] *Pidgeon v. Lamb*, 24 P. (2) 206 (Cal., 1933).
[97] *McGinnis* case, above.
[98] Rem., Sec. 8627.
[99] *Kramer v. Gladding, McBean & Co.*, 85 P. (2) 552 (Cal., 1938).

CO-OWNER FAILING TO SHARE IN ASSESSMENT WORK. Assume for example that A and B are co-owners of a mining claim or group of claims and that A bears and performs all the assessment work for any year. Under United States Mining Act, 1872, A has the right to demand of B his proportionate share (one-half, one-third or etc., as the case may be, depending on B's interest) of the total work, viz., $100 per location, either by A (or agent) serving B personally with written notice of the demand or by publishing the notice in a newspaper nearest the claim once a week for 90 days, viz., at least 13 weeks; and if within the 90 days after receipt of the notice, or in case of publication, within 90 days after date of last publication, B fails to contribute his share, B's interest in the claim or group becomes forfeited to and vested in A at expiration of the 90 days.[38] Mailing the notice is held insufficient.[39] As proof, it is the practice for A to record in the county where the claim is located a copy of the notice with affidavit of service, or if published, affidavit of publisher, and A's affidavit of B's failure to comply.

B may fail or refuse to bear his part of assessment work for many years; this however does not create an abandonment or forfeiture of his interest;[40] and A's relocation in his own name would not forfeit B's interest,[41] except through B's laches.[42] A's only remedy is to proceed as in above Act.[43] However, if B intentionally abandons his interest it vests in A, who becomes sole owner.[44]

RESUMPTION OF WORK. After failure to do assessment work on an unpatented lode or placer claim for one or more years, however long (providing there has been no intended abandonment of the claim), if, before any relocator (jumper) enters and posts a proper relocation notice, the owner (or agent) actually resumes work (assessment work) and continues same with reasonable diligence until $100 worth is completed, or $100 per location for a group, he thereby protects against relocators from the moment he resumed work,[45] and all past and delinquent years are cured.[46]

> Examples: A resumes work, say June 29, 1935 (viz., before July 1, noon), and completes the $100 worth after July 1, noon; here claim is protected from June 29, 1935, to July 1, 1936, noon.[47] If he resumes work after July 1, noon, say July 15, 1935, and does the $100 worth, here claim is protected from July 15, 1935, to July 1, 1937, noon.[48] But going on the claim each year and doing a little work, or even continuous possession without performing the full amount each year, is insufficient.[49]

RELOCATING A CLAIM. Where the owner A has (intentionally) abandoned his claim,[50] lode or placer, or has failed to do the assessment work for one or more years,[51] B (if qualified to make a location) has the right to relocate part or all of the same ground, providing A does not "resume work" before B initiates his relocation (by posting proper relocation notice). A relocation made upon a prior claim which at the time is neither abandoned

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[38] Sec. 28, Title 30, U. S. C.
[39] *Haynes v. Briscoe*, 67 P. 156 (Col., 1901).
[40] Alaska-Dano M. Co., 52 L. D. 550 (1929).
[41] *Yarwood v. Johnson*, 29 W. 643 (1902).
[42] *Teeter v. Brown*, 130 W. 506 (1924).
[43] Alaska-Dano, above.
[44] *Crane v. French*, 104 P. (2) 53 (Cal., 1940).
[45] *Karnes v. Flint*, 153 W. 225 (1929).
[46] *Richen v. Davis*, 148 P. 1130 (Ore., 1915).
[47] *Belk v. Meagher*, 104 U. S. 279 (1881).
[48] *Karnes v. Flint*, above.
[49] Shale Oil Co., 53 I. D. 572 (1931).
[50] *Farrell v. Lockhart*, 210 U. S. 142 (1908).
[51] *Olympic Manganese M. Co. v. Downing*, 156 W. 686 (1930).

nor in default of assessment work, is void.[52] Failure to do assessment work, however long, does not of itself forfeit a claim; only if and when B relocates part or all of it does the claim or portion relocated become forfeited.[53] But failure by B to complete and record his relocation as required by law is fatal.[54] Failure to record assessment work, actually done, does not open the claim to relocation, but merely casts the burden of proof upon A, as before explained.

The Washington law requires the "relocation certificate" to contain a **statement** to the effect that "the whole or any part of the new location is located as abandoned property."[55] The omission of such statement or one substantially to same effect renders the relocation void.[56]

Thus if B omits such statement, whether through ignorance or otherwise, he is not a relocator; he is not permitted to show A's failure to do assessment work or A's abandonment of the claim,[57] but B is treated as making an original location and he may show that A's location is void for lack of discovery or for some fatal error or omission in locating.[58] But by inserting the above statement in his notice, B declares himself a relocator; he may show that A failed to do assessment work or abandoned the claim[59] (which B must prove by clear and convincing evidence),[60] but B may not show lack of discovery or any error or omission in A's location.[61] Our State Supreme Court has not made clear whether the statement must be made in both relocation notices, viz., the posted and the recorded notice.[62] It is safer to insert the statement in both. The court construes the above words "abandoned property" to mean either abandoned or subject to forfeiture through failure to do assessment work.[63]

Relocations are made in substantially the same manner as original locations.[64] Thus there must be (in case of a lode relocation):

(a) A discovery. But A's discovery or any abandoned discovery may be specifically adopted;[65]

(b) Posting of notice, containing same requisites as an original location notice, plus above statement; advisable to give claim a new name;

(c) Staking boundary lines, in same manner as original locations, except that existing posts and stakes may be used if they still conform to law and fit the facts; but advisable not to disturb A's stakes or notice, as B can easily stake new line within a few feet of and along A's line;

(d) Discovery shaft (or tunnel). A new one must be dug, or any old one may be used by extending it 10 feet more.[66] If a portion is solidly caved in, reopening same would be applied on the ten feet. West of the summit of the Cascade Mountains no discovery shaft (or tunnel) is required for relocations;[67]

(e) Recording notice, containing same requisites as a recorded original location notice, plus above statement. It must be recorded within 90 days after date of the posted relocation notice, as against intervening rights.[68]

(f) In relocating a group each location must be relocated separately.[69]

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[52] *Yarwood v. Johnson*, 29 W. 643 (1902).
[53] *Florence Rae Copper Co. v. Kimbel*, 85 W. 162 (1915).
*Karnes v. Flint*, 153 W. 225 (1929).
*Shale Oil Co.*, 55 I. D. 287 (1935).
[54] *Knutson v. Fredlund*, 56 W. 634 (1910).
[55] Rem., Sec. 8629.
[56] *Karnes v. Flint*, above.
[57] *Gold Creek Antimony M. & S. Co. v. Perry*, 94 W. 624 (1917).
[58] *Paragon M. & D. Co. v. Stevens Co. Expl. Co.*, 45 W. 59 (1906).
[59] *Kirkpatrick v. Curtiss*, 138 W. 333 (1926).
*Olympic Manganese M. Co. v. Downing*, 156 W. 686 (1930).
[60] *Florence Rae Copper Co. v. Kimbel*, 85 W. 162 (1915), affd. 153 W. 239.
[61] *Karnes v. Flint*, 153 W. 225 (1929).
*Betsch v. Umphrey*, 252 Fed. 573 (1918).
[62] *Florence Rae Copper Co. v. Kimbel*, 85 W. 162 (1915).
*Kirkpatrick v. Curtiss*, 138 W. 333 (1926).
[63] *Florence Rae* case, above.
[64] Rem., Sec. 8629.
[65] *Hayes v. Lavagnino*, 53 P. 1029 (Utah, 1898).
*Kramer v. Gladding, McBean & Co.*, 85 P. (2) 552 (Cal., 1938).
[66] *McMillen v. Ferrum M. Co.*, 74 P. 461 (Col., 1902).
[67] *Nat. M. & M. Co. v. Piccolo*, 57 W. 572 (1910), affd. 85 W. 169.
[68] *Olympic Manganese M. Co. v. Downing*, 156 W. 686 (1930).
[69] *Olympic Manganese* case above.

If any ground or portion has ever before been covered by a valid location and has been abandoned, and B knows these facts or has reason to know them or there is sufficient visible evidence on the ground to indicate a former location, B should "relocate," instead of attempting to locate in the manner of an original location; otherwise B may locate as an original location.[70]

RELOCATION BY OWNER. May an owner of an unpatented lode or placer claim, after default in assessment work, relocate his own claim? Our State Supreme Court has upheld a fish trap relocation by a delinquent owner.[71] The courts of other states generally uphold relocations of mining claims by owners. It is recommended the safer and simpler course is to "resume work," instead of attempting to relocate one's own claim, unless in default for so many years as to indicate abandonment. If in attempting to relocate his own claim he omits in his notice the statement hereinbefore discussed, his relocation is void, but if he also actually "resumes work," his claim would be protected by such resumption.[72] If he inserts the statement but for some reason fails to make and complete a valid relocation, he does not waive his prior location;[73] but if he does make a valid relocation it is submitted he waives his prior location.[74] The owner who has intentionally abandoned his claim cannot save it by resumption of work; he should relocate.[75]

RELOCATION BY CO-OWNER. Where a mining claim is held by co-owners, say A and B, and while it is in default of assessment work A relocates it in his own name or that of a conspirator, the relocation claim is held in trust for B's benefit to the extent of B's interest.[76]

## EXTRALATERAL RIGHTS

The locator (heirs and assigns) of the discovery vein having its apex inside the claim is entitled to the entire vein between the two parallel end lines of the claim in its downward course or dip not only within the claim but also beyond and outside the claim sidelines extended down vertically.[1] But he must prove by clear and convincing evidence that the apex is on his own claim and that the vein dips into his neighbor's property.[2] The end lines, but not the side lines, of the claim must always be parallel.[3] However, it is sufficient if the end lines are substantially parallel, particularly if they converge in direction of the dip of the vein.[4] He may never go beyond the end lines.[5] If the vein happens to cross two sidelines or one end line and one sideline, he is entitled to partial extralateral rights only. In exercising extralateral rights beyond his own sidelines he must follow the vein on its dip; he has no right to crosscut through his neighbor's country rock to

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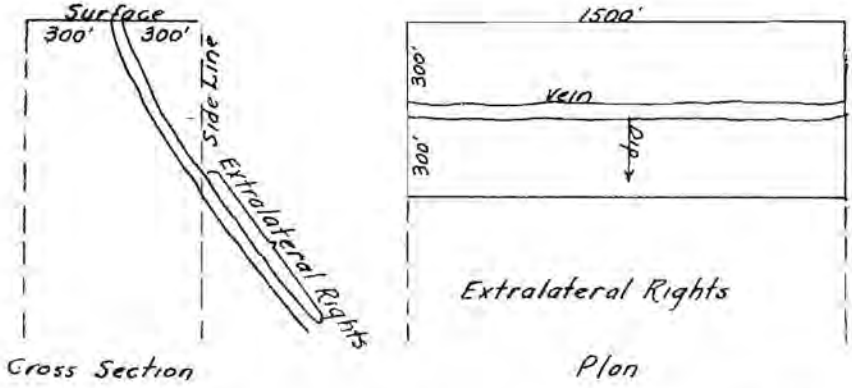
[70] *Ninemire v. Nelson*, 140 W. 511 (1926).
[71] *Legoe v. Chicago Fishing Co.*, 24 W. 175 (1901).
[72] *Peachy v. Gaddis*, 127 P. 739 (Ariz., 1912).
[73] *Hartman Gold M. Co. v. Warning*, 11 P. (2) 854 (Ariz., 1932).
[74] *Star M. Co. v. Fed. M. & S. Co.*, 265 Fed. 881 (1920).
[75] *Hartman Gold M. Co.*, above.
[76] *Yarwood v. Johnson*, 29 W. 643 (1902).
*Kittilsby v. Velveltad*, 103 W. 126 (1918).
[1] *Cedar Canyon C. M. Co. v. Yarwood*, 27 W. 271, 278 (1902).
Sec. 26, Title 30, U. S. C.
[2] *Brugger v. Lee Yim*, 55 P. (2) 564 (Cal., 1936).
[3] *Quilp Gold M. Co. v. Republic M. Corp.*, 96 W. 439 (1917).
[4] *Grant v. Pilgrim*, 95 Fed. (2) 562 (Alaska, 1938).
[5] *Quilp Gold M. Co.* case, above (No. 3).

reach or mine the vein.[6] But in following the vein on its dip he need not literally follow its curves.[7] He may follow a faulted vein.[8]

Apex means the top edge of a vein; a vein may thus apex on its outcrop or deep below the surface.[9] Where there are only surface workings the practical way to determine the strike of the vein is to follow the natural outcrops and the workings exposing the vein and draw a horizontal line between the two extremities although at different elevations; the dip is always at right angles to the strike.[10]




Only lode claims, patented or unpatented, have extralateral rights. Placer claims even with veins do not,[11] nor coal lands, nor lands patented as non-mineral but containing veins.[12]

Generally a lode or placer claim, patented or unpatented, is subject to extralateral rights of a neighboring lode claim whether prior or subsequently located. But non-mineral land, for example, a homestead ranch, patented prior to the location of a lode claim, is not subject to extralateral rights of the latter.[13]

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.[14] If the veins instead of crossing unite on their dip into one vein, the prior locator owns the ore in the intersection space and all the vein below that.[15]

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[6] *St. Louis M. & M. Co. v. Mont. M. Co.*, 194 U. S. 235 (1904).
[7] *Twenty-One M. Co. v. Orig. 16 to 1 Mine*, 265 Fed. 547 (1920).
[8] *Iron Silver M. Co. v. Murphy*, 3 Fed. 368 (1880).
[9] *Jim Butler Tonopah M. Co. v. West End C. M. Co.*, 247 U. S. 450 (1918).
[10] *Brugger v. Lee Yim*, No. 2, above.
[11] *Woods v. Holden*, 26 L. D. 198 (1898).
[12] Costigan, Min. L. 409.
[13] *Reeves v. Ore. Expl. Co.*, 273 P. 389 (Ore., 1929).
[14] Sec. 41, Title 30, U. S. C.
[15] Sec. 41, Title 30, U. S. C.

## MILL SITES[1]

A "mill site" may be located on any "open" United States public lands, by a qualified locator.[2] It must be located on non-mineral ground;[3] but if the ground contains a vein not worth developing it is non-mineral.[4] The ground must not exceed 5 acres,[5] and should be compact, usually a square or rectangle. It may be at a distance from the owner's lode claim(s) or adjoin same.[6] Mill sites are not allowed for placer claims.[7] Only one mill site or as few as sufficient to serve the owner's lode claims or mine are permitted.[8] The law does not prescribe how mill sites are to be located; they may properly be located in the same manner as lode locations so far as applicable.[9] Merely locating a mill site is insufficient. It must also be actually used or occupied for either of two purposes, (a) for a mill,[10] or (b) for mining purposes in aid of the owner's lode claim(s) or mine,[11] for example, a miners' cabin, bunk house, boarding house, mine office, powder house, blacksmith shop, ore bins, house for storing tools or machinery, dumping ore or tailings. But if once so used, it is not lost by non-use, unless abandoned.[12] If used for a mill, it is not necessary that the locator have any mine or claims of his own.[13] Assessment work is not required of mill sites.[14]

## TUNNEL SITE LOCATIONS[1]

A prospector may without making any kind of a location drive a prospecting tunnel on "open" ground in search of hidden veins. If he finds a vein in the tunnel and makes a discovery he may then, of course, make on the surface an ordinary lode location. However, he is likely to misjudge the dip and locate off the apex. Again, if his tunnel is to serve as a discovery shaft, where discovery shafts are required, its entrance[2] as well as the actual discovery, the discovery post and the apex must all lie inside the location. Further, another prospector may happen to make the first discovery, at or near surface.

United States Mining Act, 1872, provides in effect, that where a prospector while driving a tunnel in search of hidden veins not apparent on the surface makes a discovery in the tunnel within 3000 feet of the tunnel entrance on the line of the tunnel, he is entitled to claim the vein to the same extent as though discovered on the surface, and that any intervening surface location made while he is diligently prosecuting the tunnel is invalid, but that suspension of the tunnel work for six months constitutes an abandonment of his rights to undiscovered veins in the tunnel.[3] The United States Mining Regu-

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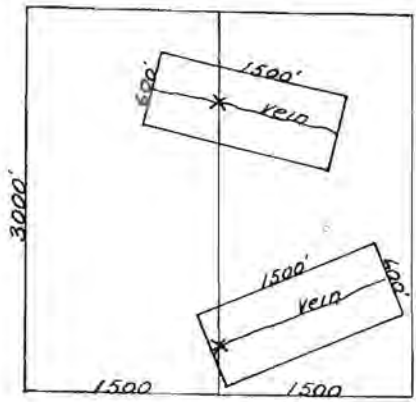
Mill Sites:
[1] Sec. 42, Title 30, U. S. C.
[2] Nicol (1915), 44 L. D. 197 (in national forest).
[3] *Dalton v. Clark*, 18 P. (2d) 752 (Cal., 1933).
[4] *Cleary v. Skiffich*, 65 P. 59 (Col., 1901).
[5] Sec. 42, Title 30, U. S. C.
[6] Yankee M. Site, 37 L. D. 674 (1909).
[7] See Alaska Copper Co., 32 L. D. 128 (1903).
[8] Alaska Copper Co., 32 L. D. 128 (1903).
[9] Eagle Peak Copper M. Co., 54 L. D. 251 (1933).
[10] Brodie Gold R. Co., 29 L. D. 143 (1899).
[11] Hard Cash M. Sites, 34 L. D. 325 (1905). Eagle Peak Co., above.
[12] *Valcalda v. Silver Peak M.*, 86 Fed. 90 (1898).
[13] Brodie case, above.
[14] *Golden Giant M. Co. v. Hill*, 198 P. 276 (N. M., 1921).

Tunnel Site Locations:
[1] Sec. 27, Title 30, U. S. C.
[2] *Butte Consol. M. Co. v. Barker*, 89 P. 302 (Mont., 1907).
[3] Sec. 27, Title 30, U. S. C.

lations prescribe how tunnel sites may be located under this law:④ post notice; stake on surface double straight lines,⑤ as far apart as width of tunnel, 3000 feet long representing the line of the proposed tunnel; record notice and affidavit. This protects a 3000 feet square from date of posting.⑥ There is no objection to staking also the lines of this square. The tunnel locator, A, is entitled to 1500 feet of every vein discovered on said straight line in the tunnel, following discovery.⑦ A may locate the vein either by making (a) a subsurface location, by identifying and claiming in his notice, posted at tunnel entrance and recorded, the vein and 1500 feet thereof;⑧ or (b) a surface location in same manner as an ordinary lode location,⑨ the more practical way. A may post his discovery notice on the surface at a point perpendicular above his actual discovery;⑩ but what extralateral rights, if any, he would have is undecided. It appears he has the right to locate so as to include the apex on the surface within the 3000 feet square.⑪ However, if before he, A, makes his tunnel site location, B has an existing valid mining location, patented or unpatented, wholly or partly inside said square, A has no right to drive his tunnel into or through B's claim.⑫




X Discovery

## SURFACE RIGHTS IN GENERAL

The holder of an unpatented mining claim has a right to use it only for developing and mining it. If he uses it principally for any non-mineral purpose the government may cancel the claim and eject him, after a hearing,① and, if in a National forest, also prosecute him for violating regulations of the Secretary of Agriculture.②

④ 49 L. D. p. 60 (1922).
⑤ 2 Lindley, Sec. 475.
⑥ *Creede & Cripple Creek M. & M. Co. v. Uinta T. M. & T. Co.*, 196 U. S. 337 (1905).
⑦ *Enterprise M. Co. v. Rico-Aspen C. M. Co.*, 167 U. S. 108 (1897).
⑧ *Campbell v. Ellet*, 167 U. S. 116 (1897).
⑨ Id.
⑩ Id.
⑪ *Jones v. Prospect Mt. Tunnel Co.*, 31 P. 642 (Nev. 1892).
⑫ *Calhoun G. M. Co. v. Ajax G. M. Co.*, 182 U. S. 499 (1901).
① *Cameron v. U. S.*, 252 U. S. 450 (1920).
② Sec. 551, Title 16; Sec. 104, Title 18, U. S. C.
*U. S. v. Rizzinelli* (1910), 182 Fed. 675 (saloon).

## GRUBSTAKES

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, this is a "grubstake" agreement; it is not a partnership, and hence A is not personally liable for debts incurred by B, nor is A's loose equipment furnished B subject to liens.① Such agreements need not be in writing; see Index. But after B locates a claim A and B then become co-owners; or if B sells to A an interest in an existing claim held by B they become co-owners. See below.

## CO-OWNERS

Where a claim or mine, patented or unpatented, is owned by A and B, A has the right to work it without B's consent, whether A has a majority or minority interest, providing he does not exclude B from also working it;① and B's interest is not subject to liens incurred by A.② A alone is liable for and must bear all expense and loss, and share with B any net profits.③ But from the moment A and B actually start working the property together they become partners (each liable), and the majority interest controls the management.④ See Index, Relocation by co-owner.

## PATENTS①

A single location, lode or placer, or a group of contiguous locations owned by same owner(s), may be included in one patent.② At least $500 worth of labor or improvements, of same kind as assessment work, must be done or made on or per each location,③ and clearly proven to the satisfaction of the government.④ It may consist of several years' assessment work or may be done all at once.⑤ The fact that assessment work has been or is in default is unimportant so far as patenting is concerned.⑥ See Index, Assessment Work. See Index, Discovery.

The first step in patent proceedings is to have an official survey. Often old corners have to be searched for and stakes reset and the locations amended, thus adding to expense. The next step is the formal application for the patent. The purchase price to the government for the land is $5 per acre for lode claims, mill sites and lodes within placers, and $2.50 per acre for placer claims.⑦ Excluding the fees of the surveyor and the attorney, these being matters of private agreement, but including the purchase price, the usual total cost of a patent for one lode location is about $300 and for one placer location $250, with some added costs for each additional location. See hereafter "Steps for patenting lode and placer claims."

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Grubstakes:
① *Mattocks v. G. N. Ry. Co.*, 94 W. 44 (1916).
Co-Owners:
① *Madar v. Norman*, 92 P. 572 (Ida., 1907).
Ricketts' Am. M. Law, Sec. 1158.
② *Rico R. & M. Co. v. Musgrave*, 23 P. 458 (Col., 1890).
③ Ricketts' Am. M. Law, Sec. 1160, 1161.
④ *Dougherty v. Creary*, 30 Cal. 291 (1866).
Patents:
① Sec. 29, Title 30, U. S. C.
② *Carson City G. & S. M. Co. v. North Star M. Co.*, 83 Fed. 658 (1897).
③ Sec. 29, Title 30, U. S. C.
49 L. D. 71 (Reg., 1922).
④ 49 L. D. 72, 91 (Reg.).
⑤ 49 L. D. 92 (Reg.).
⑥ Shale Oil Co., 55 I. D. 287 (1935). But see "Assessment Work."
⑦ Sec. 29, Title 30, U. S. C.

The benefits of a patent are: Assessment work is no longer required; danger of "jumping" is over; boundaries are fixed; absolute title[8] to the land and minerals is acquired (except vein in placer not applied for). And this title relates back to date of original location.[9] A patented mining claim is real estate and private property.[10]

B locates over part or all of A's existing claim and later applies for and obtains a patent. A having no actual knowledge of the patent proceedings fails to adverse within the 60 days published and posted notice. Here B acquires title to the overlap.[11] If A's claim had been patented this could not happen.

## SUMMARY OF STEPS FOR LOCATING, HOLDING AND PATENTING MINING CLAIMS

For general discussion, see Index, Locations.

### Steps for Locating a Lode Claim

Discovery. Make a "discovery" of a vein on open United States land.

Posting notice. "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." Rem. Sec. 8623.

Note: "The name of the lode" means the name of the lode claim; for example in the notice state "The name of this claim is the Black Bear."

Sections 8623 and 8631 imply "date of discovery," "date of location" and "date of posting" to mean one and the same date. If, for example, discovery is made August 2, but the notice is not posted until September 3, the law intends the notice to state September 3 as the date of discovery, location and posting. The courts allow one to adopt any abandoned discovery he finds; hence he may adopt his own discovery made earlier.

Staking lines. Within 90 days from "the date of discovery" and before recording notice, "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 be not 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 substantial manner. If any such claim be located on ground 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 claim to indicate the location of such lines." Rem. Sec. 8623.

"The location must be distinctly marked on the ground so that its boundaries can be readily traced." Sec. 28, Title 30, U. S. C.

Discovery shaft. Within the 90 days from "date of discovery" and before recording notice, "sink a discovery shaft upon the lode, to the depth of ten (10) feet from the lowest part of the rim of such shaft at the surface." Rem. Sec. 8623.

"Any open cut or tunnel having a length of ten (10) feet, which shall cut a lode at the depth of ten (10) feet below the surface, shall hold such lode the same as if a discovery shaft were sunk thereon, and shall be equivalent thereto." Rem. Sec. 8624.

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[8] 1 Lindley, Sec. 22.
[9] *Frey v. Garibaldi*, 72 P. (2) 554 (Cal., 1937).
[10] 40 C. J., 870.
[11] *Golden Reward M. Co. v. Buxton M. Co.*, 79 Fed. 868 (1897).

"The term 'lode' as used in this act shall be construed to mean ledge, vein or deposit." Rem. Sec. 8625.

"The provision herein, relating to discovery shafts, shall not apply to any mining location west of the summit of the Cascade Mountains." Rem. Sec. 8630.

Recording notice. "Within ninety (90) days from the date of discovery, record in the office of the auditor of the county in which such lode is found, a notice containing 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." Rem. Sec. 8622.

For general discussion, see Index: Discovery; Lands, whether open; Locations, how to locate a lode claim; Veins.

**Steps for Locating a Placer Claim**

Discovery. Make a placer "discovery" on open United States lands.

Posting notice. "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." Rem. Sec. 8631. See note to Section 8623, above.

Staking lines. "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. * * * Within thirty (30) days from the date of such discovery he must * * * so distinctly mark his location on the ground that its boundaries may be readily traced." Rem. 8631.

Note: The words "as other locations" may refer to lode locations or only to placer locations on unsurveyed ground. It is believed the former is intended; see Rem. Sec. 8633 below.

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." Rem. Sec. 8631.

Note: A duplicate of the posted notice is to be recorded.

Location development 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. 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." Rem. Sec. 8631.

Note: This is location work, and can not be applied as assessment work. A "discovery shaft" is not required for placer locations.

"All locations of quartz or placer formations or deposits hereafter made shall conform to the requirements of this act in so far as the same are respectively applicable thereto." Rem. Sec. 8633.

For general discussion, see Index: Discovery; Lands, whether open; Locations, how to locate a placer claim; Placer claims.

Amending locations. "If at any time the locator of any quartz or lode mining claim heretofore or hereafter located, or his assigns, shall learn that his original certificate was defective or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries or of taking in any additional ground which is subject to location—such locator or his assigns may file an amended certificate of location, subject to the provisions of this act, regarding the making of new locations."

Note: This section applies also to placer claims. See Sec. 8633, above; Costigan Min. L. p. 260.

For general discussion, see Index, Amending locations.

Relocations. "The relocation of a forfeited or abandoned quartz or lode claim shall only be made by sinking a new discovery shaft and fixing new boundaries in the same manner and to the same extent as is required in making a new location, or the relocator may sink the original discovery shaft ten feet deeper than it was at the date of commencement of such relocation, and shall erect new, or make the old monuments the same as originally required; in either case a new location monument shall be erected and the location certificate shall state if the whole or any part of the new location is located as abandoned property." Rem. Sec. 8629.

Note: Section 8629 means that a relocation shall be made in substantially the same manner as required for original locations. Nat. Milling & M. Co. v. Piccolo, 57 W. 572 (1910). Sec. 8629 applies also to placer claims. See Sec. 8633, above.

For general discussion, see Index, Relocations; Annual assessment work.

**Steps for Holding Mining Locations**

Assessment work. "In order to hold the possessory right to a location of a mine not less than one hundred dollars' worth of work must be performed or improvements made thereon annually." Rem. Sec. 8618.

"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. * * * The period within which the work required to be done annually on all unpatented mineral claims * * * shall commence at 12 o'clock meridian on the 1st day of July succeeding the date of location of such claim." Sec. 28, Title 30, U. S. C.

"Within thirty (30) days after the expiration of the period of time for the performance of annual labor or the making of improvements upon any quartz or lode mining claims or premises, the person in whose behalf such work or improvement was made or some person for him knowing the facts, shall make and record in the office of the county auditor of the county wherein such claims are situate an affidavit or oath of labor performed on such claim. Such affidavit shall state the exact amount and kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law or by rules of mining districts made thereon." Rem. Sec. 8627.

"Such affidavit so recorded or a certified copy of the record shall be prima facie evidence." Rem. Sec. 8628.

Note: Sec. 8627 and 8628 apply also to placer claims. See Sec. 8633, above. Above United States law requires assessment work for placer claims as well as lode claims, 40 C. J. 828.

So long as a mining claim is maintained by annual assessment work the exclusive right to hold possesion and to mine it is vested property, and there is no legal necessity ever to patent the claim. *Roos v. Altman*, 54 I. D. 47 (1932). However, due to trend toward National parks and government mineral leasing laws, the better security is to patent one's claims.

For general discussion, see Index, Annual assessment work.

**Steps for Patenting Lode and Placer Claims**

Mining Regulations, 49 L. D. 64 (1922). For general discussion see Index, Patents; Patenting.

Applicant (or grantors) should first do $500 worth of work or improvements, in the nature of assessment work, on each location or per location in a group.

Before requesting an official survey it is usually advisable to engage a Federal mineral surveyor to make a private survey, and therefrom to correct errors and record amended locations.

Before applying to the United States General Land Office for a patent, the first step is to make written request to the local United States Public Survey Office (Cadastral Engineer in charge)—in Washington State, at Olympia—for an official survey; inclose a certified copy of each recorded location notice and amended notice; name the Federal mineral surveyor you desire; request estimate of sum to be deposited for platting and other office work by said Office; and pay same. The present (1940) rates are: for one location, $30; for two, $50; for three, $60; for four or more, $15 each. No request, survey, field notes or plat is required for placer locations on United States surveyed ground conforming strictly to legal subdivisions.

The Cadastral Engineer then assigns an official survey number, No. — A for the location (or group), and B for any mill site (or group) included. He appoints the surveyor and orders the survey made. The surveyor is prohibited from rendering attorney services.

The surveyor makes the survey; and makes and files with the Cadastral Engineer the following: field notes; preliminary plat; report as to work and improvements, and values; in case of placer claims, a general description, corroborated by affidavit of two witnesses.

The Cadastral Engineer revises the field notes and endorses approval thereon. He prepares therefrom a final plat, to which he attaches his certificate as to the $500 work and improvements (if he so finds). He forwards this plat to the General Land Office, Washington, D. C. That Office makes photolithographic copies of the plat (and certificate, as part thereof) and returns the original and the copies to the Cadastral Engineer. He furnishes one of these copies to the local United States Land Office register, and furnishes to applicant or attorney the requisite number of the copies (for posting, etc.); also a transcript of field notes (also called "approved field notes").

Applicant prepares and signs a notice of application for patent. He (or agent) posts a copy thereof, together with one of the copies of the plat, on the claim (or group) and a separate copy on the mill site (or group), in the pres-

ence of two witnesses, who properly (for identification) should sign the notice(s). These witnesses sign an affidavit as to the act of posting; and a copy of the notice is attached to the affidavit as part thereof. The notice and plat must remain posted for the 60 days hereafter mentioned.

Applicant now prepares his formal application for patent, signed by him under oath, and files with the local United States Land Office register—in Washington State, at Spokane—the following first set of papers, all properly at the same time:

—The application for patent, with the copy of approved field notes attached
—A copy of the plat
—A certified copy of each recorded location notice, original and amended
—Abstract of title, certified; a supplemental abstract to be filed later (so as to include date of filing application) before publication of notice
—Affidavit by applicant as to citizenship. If a corporation, a certified copy of articles of incorporation or a certificate of incorporation
—Power of attorney to a representative, if applicant a non-resident of the United States land district. If applicant a corporation and desires some representative, a power of attorney and a certified copy of directors' resolution
—The affidavit of the two witnesses of above posting
—Publisher's agreement to publish notice and to hold applicant alone responsible for cost
—Unsigned copies of the notice of application for patent, to be signed and numbered by the register: one for posting by him, one for publisher, one for Forest Service (if claim in National forest)
—Affidavit of mineral character of the land, if classified on government records as non-mineral
—Non-mineral affidavit by disinterested witnesses, if mill site; also affidavit by applicant and two disinterested witnesses as to uses made of mill site
—$10 filing fee

The register designates date of the beginning of the posting and publication of the notice of application for patent. He posts one copy of the notice at his office and turns another copy over to the publisher (or to applicant's attorney for publisher), also one copy to the Forest Service (if land in National forest).

After expiration of the 60 days, applicant files with the register the following second set of papers, properly all at same time:

—Affidavit by applicant (or authorized agent under power of attorney) that the notice and plat remained posted on claim for the 60 days
Applicant or agent may base his knowledge partly on personal observation and partly on reliable hearsay. 9 L. D. 503, 538 (1889)
—Publisher's affidavit of publishing the notice for the 60 days—if daily 61 times, if weekly 9 times
—Application to purchase
—Affidavit by applicant of official charges paid (to Cadastral Engineer, surveyor, publisher, register, and price of land)
—Inclose full purchase price—$5 per acre for lode or mill site, $2.50 per acre for placer

The register files his own certificate of posting notice and of its remaining posted the 60 days.

If no adverse claim is filed within the 60 days, the register issues a "final certificate of entry" entitling applicant to a patent upon surrender of this certificate. The patent is issued later. If before patent is actually issued a meritorious "protest" (for irregularities) is filed, the Department may delay or refuse the patent.

The following is an estimate of expense for patenting a group of five lode locations:

| | | |
|---|---|---|
| Cadastral Engineer | | $ 75 |
| Federal mineral surveyor, exclusive of traveling expense | $ 400 to | 500 |
| Attorney | 175 to | 225 |
| Abstract of title | | 35 |
| Certified copies of location notices | | 5 |
| Register, filing fee | | 10 |
| Publication (Rem. Sec. 253-4; 50 L. D. 80) | | 75 |
| Price of land, 103.30 acres | | 520 |
| | $1295 to | $1445 |
| Average per location | $ 259 to | $ 289 |

Accessibility for surveying, preliminary surveying, number of amended locations and of transfers, length of descriptions, actual amount of office work of Cadastral Engineer, will, of course, cause above figures to vary. The cost of patenting a single location will be greater than for the average in a group.

## TAXATION

Before patent the locator's possessory rights are taxable,[1] although usually not taxed;[2] whereas after patent the land, including mineral deposits, is taxed.[3] The state constitution authorizes mineral deposits and mines to be taxed on their value or yield or both.[4] As yet (1940) there is no yield or production tax on minerals mined, except an "occupation tax" of one-fourth of one per cent of the gross value of all mineral and ore extracted.[5] Mines and minerals are taxed as part of the real estate at their fair cash value.[6] An unproven, undeveloped prospect is taxable at its fair cash value as determined by the tax assessor.[7] Mine improvements, equipment and other mine personal property are valued and assessed separately.[8]

## TIMBER

The holder of an **unpatented mining claim**, lode or placer, has exclusive right to all timber thereon and may cut and use same,[1] but only for his mining needs.[2] He may cut timber on one claim of a group for use on another claim in same group providing it will benefit the claim from which cut. He has no right to cut or take any timber on United States lands outside his claim without a permit or authority from the proper official.

**In National forests** the Forest Service (in Department of Agriculture) has jurisdiction over the cutting and use of timber.[3] The Secretary of Agriculture is authorized in his discretion to permit, subject to his general regulations, free cutting and use of timber by prospectors and miners needed for fire-wood, fencing, buildings and mining on their properties or prospects within the state

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① *Forbes v. Grace*, 94 U. S. 762 (1876).
② See *Eureka Dist. Gold M. Co. v. Ferry County*, 28 W. p. 260 (1902).
③ *Eureka* case, above.
④ Amendm. 14.
⑤ Rem. Sec. 8370-4 (1939).
⑥ *Eureka* case, above.
⑦ *Wash. Union Coal Co. v. Thurston County*, 105 W. 208 (1919).
⑧ Rem. Sec. 11135 (1939).

Timber:
① *U. S. v. Deasy*, 24 Fed. (2) 108 (1928).
② *Teller v. U. S.*, 113 Fed. 273 (1901).
③ Mecum, 43 L. D. 465 (1914).

where cut.④ Accordingly, individual prospectors and miners may cut timber outside their claims after getting permit from the Forest Service, which designates the area or trees. It is the policy of the Forest Service to refuse free-use permits to corporations and producing mines. The Secretary is also authorized to sell dead or matured timber at not less than appraised value after advertising sale; if no sale is made or completed, the sale then may be private in quantities to suit the purchasers; he may also sell, without advertisement or solicitation, timber and wood not exceeding in value $500 to any one party (where he has reason to believe there would be no competitive bidding); all timber to be sold must first be marked or designated by the Forest Service and cut and removed under its supervision.⑤ Sales may be made to anyone, whether an individual, corporation or paying mine. However, it is the policy of the Forest Service to limit free use usually to dead or defective timber or thinnings, and sales of commercial timber preferably to small quantities, except over-matured timber, the aim being primarily not to commercialize the timber, but to maintain the forest on a sustained yield basis, and to benefit the community or public as far as possible instead of a few dealers.

**On the public domain,** permits for free cutting of matured timber may be granted by the Department of the Interior to residents of the state and to corporations incorporated in the United States and authorized to do business in the state, for their own needs.⑥ Dead and damaged timber may be sold.⑦

United States Timber and Stone Act, 1878,⑧ authorizes sale of timber lands, outside of National forests or other reserves, of not over 160 acres and at appraised value of not less than $2.50 an acre, and not more than one sale to same purchaser.

**On State-owned Lands.** Timber on state-owned lands is sold by the public land commissioner only at public auction at not less than its appraised value.⑨ Exceptions: The commissioner is authorized to sell timber of not over $250 appraised value at private sale after publishing notice;⑩ also to sell windfalls or timber damaged by disease or insects, in any manner he deems best after fixing minimum price per 1,000 feet;⑪ also to sell timber in Townships 24 to 28 N., Ranges 10 to 14 W., W. M., under a reforestation plan, on a stumpage basis, on sealed bids, after publishing notice.⑫ See "State-owned Lands" hereinafter.

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④ Sec. 477, Title 16, U. S. C.
⑤ Sec. 476, Title 16, U. S. C.
⑥ Sec. 604, 607, 612, Title 16, U. S. C.
54 I. D. 26 (Reg., 1932).
24 L. D. 167 (Instr., 1897).
*Gallagher v. Gray*, 35 L. D. 90 (1906).
⑦ Sec. 614, Title 16, U. S. C.
51 L. D. 574 (Reg., 1926).
52 L. D. 42 (Instr., 1927).
⑧ Secs. 311-313, Title 43, U. S. C.
51 L. D. 365 (Reg., 1926).
⑨ Rem., Sec. 7797-50 (1933), Sec. 7797-31 (1929).
⑩ Rem., Sec. 7797-50 (1933).
⑪ Rem., Sec. 7797-42b (1937).
⑫ Rem., Secs. 7879-1 to 6 (1933).

## WATER AND DITCH RIGHTS

(See Index, Waters.) **Navigable Waters.** Water rights in navigable waters in the state are governed by state laws, subject to the paramount jurisdiction of the United States to regulate navigation or for National defense. Navigable waters and the beds under same belong to and are controlled by the state for the benefit of the public.① Hence the state may bar an abutting owner from access to or use of navigable waters.② The rules of prior appropriation and riparian rights, below, apply to navigable as well as non-navigable waters, except that no private party has the right to lower a navigable stream or lake below its ordinary low water mark.③

**Non-navigable Waters.** Water rights in non-navigable lakes and streams abutting on privately-owned (viz., patented) or state-owned lands are governed by state laws.④ If on United States unreserved public lands (public domain), by state laws, due to consent by Congress in several Acts.⑤ But if on United States reserves, then by United States laws.⑥ However, ditch and other rights of way over any United States public lands are governed exclusively by United States laws.⑦

**Prior Appropriation.** He who is the first to divert or use water from a stream or lake for agriculture, mining or manufacturing, is entitled to it, and the second, third, etc., appropriators are in their turn entitled to the remaining water, if any. This rule originated with the early Western settlers and miners and was recognized by Act of Congress, 1866.⑧ The rule applies as to streams and lakes on United States public lands,⑨ including unpatented mining claims.⑩ Example: A and B each has an unpatented ranch or mining claim; A is the first to use or divert all or part of the stream, necessary for his ranch or mine; here A has the prior right, and it is immaterial whether A's claim is on or off the stream.⑪ A subsequent patent to A carries with it A's water rights thus acquired.⑫

**Riparian Rights.** This is state law and applies in favor of riparian (viz., abutting on the water) owners of private (viz., patented) lands⑬ or state-owned lands,⑭ even as against United States lands.⑮ Example: A, B and C each own a patented mining claim or ranch on a non-navigable stream; D owns an unpatented claim or ranch also on the stream; E owns a claim or ranch off the stream (immaterial whether patented). Subject to any vested water or ditch right existing at time of their patents, also subject to the law of prescription (ten years adverse and continuous use of the water or ditch),

① Sec. 1, Art. 17, St. Const.
*Hill v. Newell*, 86 W. 227 (1915).
*U. S. v. Ore.*, 295 U. S. 1 (1934).
② *Eisenbach v. Hatfield*, 2 W. 236 (1891).
③ *Kalez v. Spokane L. & W. Co.*, 42 W. 43 (1906).
④ *Lawrence v. Southard*, 192 W. 287 (1937, irrig.).
⑤ *Colburn v. Winchell*, 93 W. 388 (1916).
*Ickes v. Fox*, 300 U. S. 82 (1937).
⑥ 55 I. D. 371, 378 (Opin.).
⑦ 55 I. D. 371 (Opin.).
⑧ Secs. 51 and 52, Title 30, U. S. C.
⑨ *Benton v. Johncox*, 17 W. 277 (1897, irrig.).
*Ickes v. Fox*, 300 U. S. 82 (1937, irrig.).
⑩ *Jennison v. Kirk*, 98 U. S. 453 (1878).
⑪ *Colburn v. Winchell*, 93 W. 388 (1916, irrig.).
⑫ *Kendall v. Joyce*, 48 W. 489 (1908, irrig.).
⑬ *Benton v. Johncox*, 17 W. 277 (1897); 53 I. D. 429 (Opin., 1931)
⑭ *Re Doan Creek*, 125 W. 14 (1923).
⑮ *U. S. v. Central Stockh. Corp.*, 43 Fed. (2) 977 (1930).

the courts work out an equitable distribution of the water: A, B, C and D each are entitled to his share in proportion to his actual mining or irrigation needs but not until and unless he actually uses or intends to use the water; immaterial which one was the first appropriator of the water or which one is up or down stream or whether one owns the source of the stream.[16] E being non-riparian is entitled only to the surplus water, if any.[17]

**State Water Code.**[17a] This law (statutory water regulations) applies to all waters in the State, navigable or non-navigable, except where United States has exclusive control.[18] This code abolished the old custom and law of posting and recording water right claims. Instead, before anyone, even on his own land, may divert or use any water, navigable or non-navigable, for his mine or ranch, **he must first obtain a permit from the State Hydraulic Supervisor.**[19] This officer administers the water code, conforming to the appropriate water laws, above and hereafter explained, subject to the right of any aggrieved party to appeal to the courts.[20]

**In National Forests.** Acts of Congress authorize the use of (non-navigable) waters in National forests for mining in accordance with United States laws and regulations and state laws.[21] Accordingly, in National forests any miner desiring to divert or use any such water must comply with the Forest Service regulations and also with the State Water Code.

## TAILINGS

Regardless of priority of use (except by prescription) a miner has no right to dump his tailings into a stream if it causes a substantial accumulation in the stream to the injury of other miners or land owners.[1] But at least as against miners below, he has such right, if the injury is not substantial, as where he muddies the water and the accumulation of debris is small.[2] No one has a right to pollute a stream.[3] See Index, Game Laws.

## ROADS, TRAMWAYS, DITCHES

(a) Upon United States "open" lands, including National forests,[1] prospectors and miners have free access, subject to Forest Service regulations. Upon the public domain, by United States Act, 1866,[2] roads may be established, without any permit, in accordance with state laws; hence formally by states and counties, or informally by ten years adverse continuous use by

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[16] *Hunter Land Co. v. Laugenour*, 140 W. 558 (1926).
*St. v. Am. Fruit Growers*, 135 W. 156 (1925).
*Miller v. Wheeler*, 54 W. 429 (1909).
[17] *Hunter Land Co.* case, above.
[17a] Rem., Secs. 7351 to 7400.
[18] *West Side Irrig. Co. v. Chase*, 115 W. 146 (1921).
*Re Crab Creek & Moses Lake*, 134 W. 7 (1925).
[19] *St. ex rel. Reseburg v. Mohar*, 169 W. 368 (1932)
*St. v. Lawrence*, 165 W. 508 (1931).
Rem., Sec. 7381 (1939).
[20] *Funk v. Bartholet*, 157 W. 584 (1930).
[21] Secs. 481 and 524, Title 16, U. S. C.
Walker M. Co., 47 L. D. 224 (1919).

Tailings:
[1] *Pac. Gas & Electr. Co. v. Scott*, 75 P. (2) 1054 (Cal., 1938).
[2] *Dripps v. Allison's M. Co.*, 187 P. 448 (Cal., 1919).
[3] *Packwood v. Mendota Coal & C. Co.*, (1915) 84 W. 47. (Creek through stock ranch polluted by washing coal.)

Roads, Tramways, Ditches:
[1] Sec. 478, Title 16, U. S. C.
[2] Sec. 932, Title 43, U. S. C.

the public (or 7 years if maintained at public expense).[3] A road is used by the public although it leads to the land of a single person only.[4]

**In National forests** the United States Forest Service (in Department of Agriculture) has jurisdiction over rights of way for roads and trails.[5] No road or trail may be made without a permit and supervision of a Forest Service officer. Fifty per cent, but not to exceed $3,000,000, of Congressional appropriations of any year, for survey, construction and maintenance of roads and trails in National forests must be expended under the supervision of the Secretary of Agriculture for "roads and trails of primary importance for the protection, administration and utilization of the national forests, or when necessary, for the use and development of the resources upon which communities within or adjacent to the National forests are dependent;" and the balance for "forest roads of primary importance to the State, counties or communities within, adjoining, or adjacent to the National forests."[6] Ten per cent of all money receipts from National forests of any year must be expended by the Secretary for roads and trails in National forests in the states where located; but the Secretary may secure the cooperation and aid of such states in furtherance of any highway system of which such roads may be made a part.[7] The policy of the Forest Service is to administer, protect and utilize all natural resources within National forests, including minerals, so as to be most beneficial to the public. It issues without charge special permits for roads and trails for public use, but usually regards the making of roads or 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, providing this will not interfere with some other forest use or need considered by it more important, but not at its own expense (viz., government expense); the miners, with or without state or county 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 it will have use for a mining road, for example forest fire protection, 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 forest road at its own expense leading to or near a mine, its primary purpose is usually to serve some need deemed public, such as forest fire protection or timber cutting. Roads and trails in National forests are open to public use. The policy of the Forest Service is not to charge any road toll. In "primitive areas" its policy is to bar road making. Twenty-five per cent of all money receipts from each National forest every year must be donated to the state where located, to be used as the state legislature may prescribe for the benefit of public schools and public roads of the counties in which the forest is located.[8] "Forest highways" (primary roads) are under the jurisdiction of the United States 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.

**In Indian reservations** and over lands allotted to individual Indians, the Secretary of the Interior may grant rights of way for public roads to states

[3] *Hamp v. Pend Oreille County*, (1918) 102 W. 184 (trail).
[4] *Leach v. Manhart*, 77 P. (2) 652 (Col., 1938).
[5] Secs. 478, 525, 472, Title 16, U. S. C.
[6] Sec. 23, Title 23, U. S. C.
[7] Sec. 501, Title 16, U. S. C.
[8] Sec. 500, Title 16, U. S. C.

and counties,[9] and the Secretary of Agriculture is authorized to cooperate in their construction.[10]

There appears to be no authority for rights of way for tramways in National forests, National parks and Indian reservations; but on the public domain they may be granted by the Secretary of the Interior.[11]

Upon the public domain, United States Act, 1866, allows rights of way for ditches, but requires payment of damages to settlers.[12]

United States Acts authorize the respective departments, and in certain cases the Federal Water Power Commission, to grant revocable[13] rights of way for ditches and other water conduits and for reservoirs and power lines over United States public lands, including National forests and other reserves, subject to regulations.[14]

**Over State-owned Lands.**[14a]

**Over Private Lands and Mining Claims.** A State law authorizes the owner or one entitled to beneficial use of land, to condemn a way across or through lands of others for a necessary private road, logging road, ditch or water conduit, tunnel, or tramway, for carrying timber, minerals and supplies; also for a private road as a necessary outlet.[15] Another State law, 1937, authorizes mining, milling or smelter corporations, incorporated in United States or any territory, to condemn for necessary (a) roads, railroads or tramways to their property, (b) ditches or water conduits or tunnels for carrying water to or water or tailings from their property, and (c) tunnels or shafts for better working of their property.[16] United States Act, 1866, authorizes state legislatures to make laws for easements, drains and other necessary means for the complete development of mines.[17] Thus, for example, A, whether individual or corporation, owner or long term lessee of a patented or unpatented mining claim, can condemn a way through B's ranch or mining claim, patented or unpatented, for a road, tunnel or tramway.[18]

Has an individual the right to condemn for a ditch or other water conduit for carrying water to or from his mine for such uses as drainage, placer mining or generating power? It appears he has, but this question is unsettled in this state.

In Washington an alien or a company incorporated under the laws of a foreign country, or a corporation, the majority stock of which is owned by aliens, has no right to condemn.[19]

**Mines-to-Market Road Act.**[20] This law enacted by the 1939 legislature, creates a Mines-to-Market Road Commission consisting of the Director of

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[9] Sec. 311, Title 25, U. S. C.
[10] Sec. 3-a, Title 23, U. S. C. (1931).
[11] Sec. 956, Title 43, U. S. C.
53 I. D. 300 (1931, Reg.).
[12] Sec. 51, Title 30, U. S. C.
*Colburn v. Winchell*, 93 W. 388 (1916).
[13] 53 I. D. 297 (Reg., 1931).
Secs. 797 to 799, Title 16, U. S. C. (1920 & 1935).
[14] Secs. 959 and 961, Title 43, U. S. C.
Sec. 524, Title 16, U. S. C.
Secs. 791 to 823, Title 16, U. S. C. (1920 & 1935).
53 I. D. 295 (Reg., 1931).
[14a] Rem. 7797-78 to 7797-104 (1927); 8078 to 8107-8.
[15] Rem., Secs. 6746 to 6749.
[16] 1937 Laws, p. 132 (Rem., Sec. 8608).
[17] Sec. 43, Title 30, U. S. C.
[18] *St. ex rel. Wheeler v. Super. Ct.*, (1929) 154 W. 117, (coal land ½ mile from highway).
*Bailley v. Larson*, (1905) 138 Fed. 177, 152 Fed. 93 (mining tunnel).
[19] *St. ex rel. Morrell v. Superior Ct.*, 33 W. 542 (1903).
[20] 1939 Laws, p. 530.

Conservation and Development, the Director of Highways and the Executive Officer of the State Planning Council. The commission is given discretionary power, after investigation, to authorize the construction of any mines-to-market road, viz., a road providing access to any existing or potential mineral area in the state, but only on written petition of five or more interested citizens. The Director of Highways is given charge of actual construction and expending money. Funds for this purpose are such as the State may specially appropriate, but State funds may not be used unless the county through which the road is to run contributes an equal amount. Funds contributed by the Federal government or by individuals or corporations may be used. Any such road when completed is a county public road, to be maintained by the county. The Act appropriated $100,000 for the biennium.

## LIENS

The State law relating to liens for mine labor and material are part of the general mechanics lien laws.

Where a mining lease, contract or option from A to B authorizes B to mine and obligates him to pay A a royalty on the mineral mined, A's title or interest in the land is subject to liens incurred by B for labor and material and for State workmen's compensation premiums, ① and A is also personally liable for such premiums.② Likewise where in case of forfeiture of the lease, etc., A is to be entitled to improvements made by B.③ But where B is not obligated to mine and A is not entitled to any benefit in case B does mine, the reverse is true.④ The posting and recording of notice (of non-liability of his title against liens) by A, the owner, is no longer law in Washington and of no effect.⑤ Where a group of claims is worked as one mine by same party, a lien is good against all the claims.⑥ A lien may be waived by express agreement if supported by an adequate consideration.⑦ See also Index, Co-owners, Grubstakes.

## STATE-OWNED LANDS AND LEASING SYSTEM

State-owned lands include school lands, university lands, tide lands, shore lands (between high and low water mark) and beds of navigable waters, belonging to the State. State-owned lands, if mineral, are not subject to sale but may be leased from the State. In all lands sold or deeded by the State since the Act of March 20, 1907, the State has reserved and reserves all minerals. These reserved deposits may be leased, but the prospecting permittee or mining lessee is expressly required by the various State Leasing Acts to compensate the surface owner for probable damage; and until then he may not lawfully enter.① The State Public Land Commissioner has charge of the sale and leasing of State-owned lands, with power to make general regulations.

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① *Finos v. Netherlands Am. Mtg. Bank*, 147 W. 86 (1928).
*Dahlman v. Thomas*, 88 W. 653 (1915).
② *Finos* case, above.
③ *Dahlman* case, above.
④ *Finos* case, above.
*Newell v. Vervaeke*, 189 W. 144 (1937).
⑤ *Dahlman* case, above.
⑥ *Sly v. Palo Alto G. M. Co.*, 28 W. 486 (1902).
⑦ 40 C. J. 314.
*Holm v. Chicago, etc., Ry.*, 59 W. p. 298 (1910).

State-Owned Lands and Leasing System:
① *St. ex rel. Hall v. Savidge*, 93 W. 676 (1916).

The following is an outline of the State Act for leasing of State-owned lands for "gold, silver, copper, lead, cinnabar and other valuable minerals"[2] (other than coal, gas and oil):

The Commissioner of public lands is authorized to lease State-owned lands to any United States citizen or to any mining corporation organized in any state or territory of United States authorized to do business in Washington, finding such minerals thereon. Before a mining lease may be had, one must first apply for a prospecting lease: area, not to exceed 80 acres in United States survey subdivisions; term, not to exceed two years, with renewal privilege; application fee to State, $5 per 40 acres or fraction; not more than five tons removable, for assaying. Within 60 days before expiration of prospecting lease, the holder is entitled to a mining lease of all or part of the same land, providing the Commissioner finds that the land is worth mining; term, not to exceed twenty years; annual rental to State $10 per 40 acres or fraction; also a royalty to State, to be fixed by the Commissioner in each lease at not less than one per cent nor more than four per cent of gross proceeds from production after first deducting cost of transporting the mineral to smelter or place of treatment and smelter or other treatment charges; annual performance and affidavit of $100 worth of labor or improvements per each 20 acres; and such further conditions as may be agreed on. Fee for issuing each kind of lease, $2. The holder of each kind of lease has right to cut necessary timber on leased area, and to construct roads and necessary improvements thereon, also upon payment of damages, a right of way over neighboring State-owned lands and over State lands sold since Act of 1911.

The following is an outline of State land leases for oil and gas:[3]

For State lands not classified as proven, three-year prospecting permits are authorized, and may be issued by the Commissioner to any citizen or person who in good faith has declared his intention to become one, or any corporation organized under the laws of any state or territory of United States and authorized to do business in the State. Area for any one permit cannot exceed three sections of land. Rent is 40 cents per acre a year. Drilling must be continuous except for causes beyond permittee's control. Upon discovery permittee is entitled to a lease (on same terms as for leases to proven lands) covering one section of the land, selected by him. Permittee may surrender permit at any time. Permit remains good at end of the three years if permittee is diligently drilling and so continues until discovery.

For state lands classified as proven territory, leases (but not prospecting permits) are authorized to same qualified parties as above described, subject to general regulations of the Commissioner. Leases are sold at public auction to the highest bidder for cash. Term is twenty years, renewable on certain conditions. Area cannot exceed one section. Royalty is 12½ per cent gross product or value, plus rent of $1 per acre annually. Offset wells are required. Cooperative agreements are authorized, and may be required by Commissioner. Lessee may purchase necessary timber on the land, under regulations. Lessee may surrender lease at any time and remove his improvements. Permits and leases assignable if recorded with Commissioner. Commissioner may withhold from permit or leasing any tract.

The Commissioner's oil and gas regulations of October 1, 1937, require copy of driller's log and right of inspection of all cores by him or deputy; require drilling in accord with best prevailing practice.

An outline of the State Coal Leasing Act[4] is as follows: For State lands not known to contain workable coal, any United States citizen may apply to the Commissioner for "an option contract" (viz., a prospecting permit) to not over 640 acres. Fee is $1 per acre, but in no case less than $50. After investigation the Commissioner may issue such permit, for one year, no coal to be removed except for samples and testing. Permittee may use necessary timber on the land. During permit period permittee may apply for a lease to all or part of the land. Leases are for not more than twenty years. Royalty is from 10 to 20 cents a ton (2240 lbs.), depending on grade of coal; minimum annual royalty is not less than

[2] Rem. Sec. 7797-155 to 7797-162 (1927).
[3] Rem. 7797-175 to 7797-185-s (1937).
[4] Rem. Sec. 7797-163 to 7797-172 (1927)

$1 nor more than $10 per acre. Lessee pays for timber used. Commissioner may cancel lease on account of six months suspension of work except for good cause or twelve months suspension regardless of cause. Lessee may surrender lease after notice and payment of royalty due. As to lands known to contain workable coal, Commissioner may issue coal leases direct, without a prospecting permit, on same lease terms as above.

The Coal Mining Code⑤ contains elaborate safety regulations and applies to all coal mines in the state.

There are (March 22, 1940) outstanding the following number of State land mining leases: 56 oil and gas leases under former law; 17 permits under 1937 law; 13 coal leases; 68 "mineral" prospecting leases, and 83 "mineral" leases.

Timber, sand, gravel and stone on State lands may be obtained only by purchase from the State (through the Land Commissioner), separate or as part of the land.⑥ As to sale of timber on state land, see Index, Timber.

As to rights of way over state lands, see Index, Rights of way.

The tide lands from mouth of Columbia River north along the coast of Pacific Ocean to Cape Flattery, except Gray's Harbor, are reserved by the State forever as a public highway; and no part of such tide lands may ever be sold or leased by the State except that oil and gas leases from the State are permitted north of the mouth of Queets River to Cape Flattery. 1901 Laws p. 217, 225; 1935 Laws p. 141.

Under the present state land mineral leasing laws no one is permitted to hold more than the maximum area designated in above state leasing laws whether by assignment from other lessees or otherwise.⑦

## COUNTY MINING LANDS

Mining claims or properties acquired by counties at tax sales, may thereafter be leased by the counties at public auction, with option to purchase.①

## MINING CORPORATIONS

Mining corporations are incorporated and governed by the State Uniform Business Corporation Act, 1937.① Three or more individuals, two thirds of whom are United States citizens (regardless of residence), may incorporate. There are the usual provisions for par value, non par, and preferred stock. Shareholders are not personally liable except for unpaid price agreed on in their subscriptions; but par value stock must be sold at not less than par. Value of property and services given for stock may be fixed by the shareholders or directors. A director is not required to be a shareholder or a resident of the state. Registered office in state is required. Shareholders' and directors' meetings may be held outside the state. Incorporation fees:

| Authorized Capital Stock | Incorporating Fee | Annual Corporation License Fee |
|---|---|---|
| Up to and including first $50,000 | $25.00 | $15.00 |
| Over $50,000 and up to $1,000,000 inclusive | 1/20 of 1 per cent | 1/40 of 1 per cent |
| Over $1,000,000 and up to $4,000,000 inclusive | 1/50 of 1 per cent | 1/100 of 1 per cent |
| Over $4,000,000 | 1/100 of 1 per cent | 1/200 of 1 per cent |
| In no event total fee to exceed | $2,500.00 | $1,250.00 |
| Example: On $2,000,000 capital stock | $700.00 | $352.50 |

A corporation (including mining corporations) incorporated under laws of another state, territory or foreign country, before engaging in business in

⑤ Rem. Sec. 8636 to 8856-7.
⑥ Rem. Sec. 7797-22 to 7797-55.
⑦ *Peninsula Dev. Co. v. Savidge*, 163 W. 36 (1931).

County Mining Lands:
① Rem. Sec. 11312 to 11314.
There appears nothing in this Act prohibiting ordinary sale of such claims and and properties by counties.

Mining Corporations:
① Rem. Sec. 3803-1 to 3803-68; 3836-1 to 3836-14, and 1939 amend.

this state, must file certified copy of articles, etc., and appointment of resident agent ($10 filing fee). Resident director is not required. Admission fees and annual corporation license fees are same as above listed, except proportioned as follows:[2]

$$\frac{\text{Cap. assets in or to be brought into state}}{\text{Total cap. assets, anywhere}} \times \text{Total authorized cap. stock.}$$

Owners may deed to a domestic mining corporation their interests in any mining claim in the state for all or majority stock, in full payment and without any actual subscription.[3] An owner of 1,000 or more shares in any mining corporation doing business in the state has right to examine the mine.[4]

## CORPORATIONS AND ALIENS

Any corporation, domestic or foreign, the majority stock of which is owned by aliens, is prohibited from owning land in the state, unless acquired in good faith under mortgage or execution for debt; except that such a corporation may lawfully own land containing valuable minerals of any kind.[1] This exception would apply to patented mining claims.[2] But an alien, whether individual or corporation, cannot obtain a mining patent from the United States government. Where an alien who has not declared his intention of becoming a citizen or a company incorporated under the laws of a foreign country, locates or acquires an unpatented mining claim, his or its rights are fully protected as against citizens;[3] only the United States government by direct proceedings can forfeit the claim, but not if title is transferred to a citizen before government attacks.[4] A corporation incorporated under the laws of any state or territory of the United States is treated as a citizen as to unpatented mining claims, although part or all of its shareholders are aliens.[5]

## SECURITIES ACTS

(a) **United States.** Mining corporations and partnerships selling or offering their stock or bonds to the public must comply with the United States Securities Act,[1] subject to a $30,000 exemption and to a $100,000 partial exemption.[2] A domestic corporation (viz., incorporated in Washington) is exempted from the Act if it sells or offers its stock or bonds only to residents of the state, with or without use of the mails.[3]

(b) **State.** Metalliferous mining corporations, domestic or foreign, before selling or offering their stock or bonds to the public, must file with the State

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[2] Rem. Sec. 3836-2, 3836-5 (1937).
[3] Rem. Sec. 8611 (1866, 1869, 1873).
*Borde v. Kingsley*, 76 W. 613 (1913).
*Davies v. Ball*, (1911) 64 W. 292 (Sec. 8611 does not apply to coal).
[4] Rem. Sec. 8612 to 8614.

Corporations and Aliens:
[1] Wash. Constitution, Art. 2, Sec. 33.
Rem. Sec. 3836-16 (1937).
*St. ex rel. Atkinson v. Evans*, 46 W. 219 (1907).
[2] I Lindley, Sec. 237.
[3] *Davis v. Dennis*, 43 W. 54 (1906).
[4] Ricketts' Am. M. Law, Sec. 776.
[5] I Lindley, Sec. 226.

Securities Acts:
[1] U. S. Securities Act, May 27, 1933, and amendments.
[2] U. S. S. E. C. Reg., Rules 200, 202, 210.
Under Rule 210, adopted April 22, 1938, by the Securities and Exchange Commission, a mining or other company may offer to the public in any state or territory its stock or bonds for raising $100,000 (or less), providing (a) it files with the Commission a "letter of notification" showing its name, address, amount to be offered, price, and list of states or territories where intended to be offered, and (b) files also copies of its prospectus (including mining reports), and (c) complies with the local blue sky law of each state or territory where it actually offers the stock or bonds. No filing fee to the Commission required. The Commission is meticulous as to the contents of the prospectus and mining reports.
[3] U. S. Securities Act, amend., June 6, 1934.

Director of Licenses (fee, $10), and file in the county of their principal office, a "statutory statement" containing certain information as to their organization, stock and finances; 65 per cent of the proceeds must go into mine development or equipment, except in the discretion of the Director "in exceptional cases"; promotors' stock must be pooled; and on or before February 15 of each year thereafter, such companies must file (fee, $5) with said Director an annual statement of financial condition and development work within the year.④ Nonmetalliferous mining corporations must comply with the general State Securities Act.⑤ Under a 1939 Act,⑥ any person(s) or corporation offering three or more mining "leases," conveying title to oil, gas, metalliferous or nonmetalliferous rights exclusive of title to the real estate, to residents of the state, must file with the State Director of Licenses (fee $25) a "statutory statement," showing price, commission, maps, full report signed by a "qualified" engineer, etc., and must furnish a prospectus containing only information set out in the statutory statement.

## WORKMEN'S COMPENSATION ACT AND LABOR LAWS

As yet there is no State law specially regulating mine labor and operation, except as to coal mines and State-land oil and gas leases. "State mine inspectors" inspect only coal mines.① However, the Workmen's Compensation Act② and other general State labor laws③ include mining. That Act requires employers to furnish a safe working place and safety devices. It is the duty of the Director of Labor and Industries to prescribe safety regulations, and at least once a year to inspect plants and mines (other than coal).④ Although changed from time to time, the present (July 1, 1940) basic premium rates payable to the State by employers, under the Workmen's Compensation Act, for lode and placer mines, other than quarries, coal, and oil and gas wells, are, per workman hour: 2.2 cents for Industrial Insurance Accident Fund; and 7 mills for Medical Aid Fund.⑤ The employer bears all the accident fund premiums but deducts from wages one-half the amount of medical aid premiums.⑤*a* The Act abolishes rights of civil action for injuries to workmen in extrahazardous employments, and includes mining as extrahazardous.⑤*b*

The Mines and Mining Act establishes a Division of Mines and Mining under the State Director of Conservation and Development for scientific and general information relating to mineral resources and mining industry.⑥

A State law requires employers in manufacturing, mining, etc., to pay wages in money or in 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 employee to buy from a company store.⑦

Failure to have and use an iron-bonneted safety cage in a vertical shaft over 150 feet deep, is a misdemeanor and incurs civil liability.⑧

④ Rem., Sec. 5853-31 to 5853-42 (1937).
⑤ Rem. Sec. 5853-1 to 5853-25 (1923, 1937, 1939).
⑥ 1939 Laws p. 314.

Workmen's Compensation Act and Labor Laws:
① Rem., Sec. 8641, 8643.
② Rem., Sec. 7673 to 7796-2, and 1937 and 1939 amend.
③ Rem., Sec. 7586 to 7672, and 1937 amend.
Rem., Sec. 7666-1 to 7666-8 (1937).
④ Rem., Sec. 7728 to 7788, 10838.
⑤ Rem., Sec. 7676 (1939).
⑤*a* Rem. Sec. 7676 (1939), 7713.
⑤*b* Rem. Sec. 7673, 7674 (1939), 7675 (1939).
⑥ Rem., Sec. 8614-1 to 4 (1935).
⑦ Rem., Sec. 7594 to 7596 and 1933 amend.
*Hatcher v. Ida. Gold, etc., Co.*, 106 W. 108 (1919).
⑧ Rem., Sec. 8863 to 8865.

## GAME LAWS

The State has exclusive title to and control over "game" (wild animals, birds and fish) within the state.① Congress has provided for game reserves within the United States public domain, National parks and National forests, but with the consent of the respective states, and in general prohibits hunting, trapping and fishing in such game reserves.② Under State law it is unlawful to hunt, carry firearms, or to trap in State game reserves (including closed areas); but fishing therein is allowed unless the stream or waters are declared closed by the State Game Commission. There are a large number of State game reserves, but as yet no Federal game reserves, within National forests in Washington.

The State Game Code and regulations provide for a closed season, varying with different classes of game, during which hunting, trapping and fishing is prohibited, and for an open season during which hunting, trapping and fishing is permitted but only to those persons having a game license.③ At the present time (June, 1940) the annual license fee is $3 for a statewide license, or $1.50 for the county where one resides.④ Special fees are required to hunt elk, deer, moose, mountain sheep and goats.⑤ The State Game Code applies not only to private and State-owned lands but also to the United States public domain and National forests. By United States laws and regulations hunting and trapping are prohibited in Indian lands and National parks.

Private landowners (which would include prospectors and miners within their mining claims, patented or unpatented) are subject to the same game laws within their own lands as the public,⑥ but are allowed to kill or trap predatory animals on their premises without a license,⑦ providing there is actual danger of damage to property or person.

The State Game Code makes it unlawful for anyone in manufacturing or otherwise to pollute any waters, public or private, with any substance injurious to fish life or propagation.⑧ The State Game Commission contends that hydraulic and other placer mining causes injurious effect on fish life, and hence pollutes streams. For contrary opinion see ⑨ below. However, it is recommended that the miner first consult with the State Game Commission and drain or dump his tailings, placer or lode, into an impounded water basin or artificial pond, if practicable.

## NATURE OF PROPERTY IN MINING CLAIMS

An unpatented mining claim is "property" in the full sense of that word; hence it may be sold, mortgaged, leased, etc.① It is the separate property of the **locator,** and not community property.② It is personal property according

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① *Cook v. State,* 192 W. 602 (1937).
*Geer v. Conn.,* 161 U. S. 519 (1896).
② Sec. 685 and 704, Title 16, U. S. C.
Sec. 665, 694 to 694-b, Title 16, U. S. C.
③ Rem., Sec. 5862 (1925), 5880 (1933), 5892 (1935).
④ Rem., Sec. 5897 and 5898 (1935).
⑤ Rem., Sec. 5915 to 5918; Sec. 5917-1 (1937).
⑥ *Cawsey v. Brickey,* 82 W. 653 (1914).
⑦ Rem., Sec. 5914 (1929), 5892 (1935).
⑧ Rem., Sec. 5941.
⑨ Am. Min. Congress Journal, Nov. 1938, p. 13.

Nature of Property in Mining Claims:
① *Phoenix M. Co. v. Scott,* 20 W. 48 (1898).
② Id., affd., 153 W., p. 233.

to our State Supreme Court.[3] Elsewhere it is held to be real estate.[4] See Index, Patents.

### CRIMINAL OFFENSES

It is a misdemeanor to molest or destroy mining location notices, posts and monuments,[1] also to fail to have iron-bonneted safety cage in shaft over 150 feet deep (before mentioned); a felony to salt a mine or use false samples or assays.[2] Failure to fence or safeguard open shafts or pits, whether while working or after abandoning works, incurs civil and criminal liability.[3]

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.[4]

### EJECTING JUMPERS AND TRESPASSERS BY FORCE

Where A, the rightful owner of a mining claim, patented or unpatented, (or any land), is in possession and on the property when B, a trespasser or jumper, enters and refuses to get off, A has the right to use all necessary force in ejecting B; but in so doing it is unlawful for A to use a dangerous weapon except in self defense.[1] If A finds B on the claim in actual possession and B refuses to get off, A, even though he is the owner, has no right to resort to violence; A's remedy is to eject B through an officer of the law.[2]

### JURISDICTION OF STATE LAWS OVER UNITED STATES LANDS

As a general rule, the civil and criminal laws of a state are in force over United States public domain or reserves (for example, National forests) where not inconsistent with the purposes of the public domain or reserves or with the United States laws and regulations; but a state has no jurisdiction over acquiring title or rights in such lands.[1]

### OIL AND GAS ON UNITED STATES LANDS

The United States Leasing Act of February 25, 1920,[1] applies to oil, oil shale, gas, coal, phosphate, sodium and potassium in United States including Alaska, except coal in Alaska. It also applies to sulphur in Louisiana. United States Leasing Potash Act of February 7, 1927,[2] applies to potash. There is a special coal leasing Act for Alaska.) The only lawful way one may now prospect for or mine any of these minerals on United States lands is by first procuring from the government a prospecting permit or a mining lease.[3] Any United States citizen or corporation organized under the laws of the United

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[3] *Huffman v. Ellen M. Co.*, 118 W. 546 (1922).
[4] Costigan M. Law, Sec. 137.
*Nygard v. Dickinson*, 97 Fed. (2) 53 (1938).
*St. v. Madill*, 53 I. D. 195 (1930).
*Crane v. French*, 104 P. (2) 53 (Cal., 1940).

Criminal Offenses:
[1] Rem., Sec. 2656.
[2] Rem., Sec. 2711 to 2714.
[3] Rem., Sec. 8857 to 8865.
[4] Sec. 111 and 112, Title 18, U. S. C.
56 I. D., 291 (1938).

Ejecting Jumpers and Trespassers by Force:
[1] 22 L. R. A., N. S., 724 note.
[2] Id., p. 728; *Hickey v. U. S.*, 168 Fed. 536 (1909).

Jurisdiction of State Laws Over United States Lands:
[1] Wash. Law Review, Jan., 1939, p. 1.

Oil and Gas on United States Lands.
[1] Sec. 181 to 287, Title 30, U. S. C.
[2] Sec. 281 to 286, Title 30.
[3] Sec. 193, Title 30, U. S. C.
*Work v. Braffet*, 276 U. S. 560 (1928).

States or of any state or territory is qualified. The Secretary of the Interior is given administration of these Acts and power to make regulations. These Acts apply to United States public lands, including National forests, but not National parks or military reserves. The Acts fix maximum areas which any person, association or corporation may hold; and require consent of the Secretary to any assignment of lease.

A brief outline of the oil and gas provisions is:

> Future prospecting permits abolished in 1935.④ Leases in a known structure, ten years; in unknown fields, five years; and in both cases "so long thereafter as oil or gas is produced in paying quantities."⑤ Maximum area for any one lease in a known structure, 640 acres; in unknown field, 2560 acres.⑥ Present regulations.⑦ fix royalty from 12½ per cent (minimum) up to 32 per cent for oil, and up to 16-⅔ for gas, depending on quantity produced; and fix annual rental (when paid to be credited on royalty) at 50 cents an acre for first year, 25 cents thereafter until discovery, and $1 per acre after discovery; and require a bond not less than $5,000. The Secretary has control over the rate of prospecting, development and production.⑧ Oil and gas leases in known structures, with royalty and rent fixed therein, are sold at public auction to highest bidder; in unknown fields, first applicant preferred.⑨

A brief outline of the coal provisions⑩ is:

> For unproven fields two-year coal prospecting permits are required; if commercial coal is discovered permittee is entitled to a lease. For lands believed to contain coal, the Secretary sells leases at public auction (as in oil and gas, above). Royalty is fixed by Secretary but not less than 5 cents a ton (minimum). Annual rent same as for oil and gas, above. Leases for twenty years, renewable on adjusted terms. Continuous operation required, but Secretary may accept a minimum annual royalty in lieu of work; and may permit suspension of work for six months. Regulations⑪ require $10,000 bond for minimum work during first three years, and $5,000 bond for faithful performance thereafter. Safety regulations.⑫

The potassium, sodium and potash (and compounds) provisions are substantially like the coal provisions, except minimum royalty is 2 per cent gross; and if land is unsurveyed, to be surveyed by government at applicant's expense.

The Secretary of the Interior has discretionary power to withdraw lands from all leasing,⑬ and to refuse to lease any particular land,⑭ and to reject any application or bid.⑮

> Outstanding June 30, 1939, 2353 oil and gas leases (2,285,701 acres), 369 coal leases (68,552 acres), potash leases 16 (40,882 acres).

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④ Sec. 221, Title 30, U. S. C. (1935).
⑤ Sec. 226, Title 30, U. S. C. (1935).
⑥ Id.
55 I. D. 502, 507 (Reg. 1936).
⑦ 55 I. D. 502 (1936).
⑧ 55 I. D. 515 (Reg. 1936).
⑨ 55 I. D. 502, 506.
⑩ Sec. 207, Title 30, U. S. C.
47 L. D. 489 (Reg. 1920).
⑪ 52 L. D. 650 (1929).
⑫ 56 I. D. 490 (1937).
⑬ 52 L. D. 578 (1929).
⑭ 56 I. D. 293 (1935).
⑮ *U. S. ex rel. McLennan v. Wilbur*, 283 U. S. 414 (1931).
55 I. D. 13 (1935).

# INDEX