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## MINING CLAIMS:

### THE NEMESIS OF FEDERAL LAND MANAGEMENT

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It has been a basic policy of Congress throughout the past ninety years to maintain the public domain lands of the United States open to exploration for valuable minerals. The successful explorer has been rewarded with the right to extract and appropriate to his own use the mineral wealth he has discovered, and to purchase the land lying within the limits of his mining claim for a nominal consideration. A recognized incident of the right to extract minerals has been the right to possess the surface of the claim to the exclusion of all others,<sup>1</sup> including the United States.<sup>2</sup> Over a period of time vast numbers of mining claims have been established in areas chiefly valuable for non-mineral resources. As a result federal agencies responsible for the management of these lands have not been able to exercise dominion over valuable timber stands, watersheds, grazing areas and recreation sites. Oftentimes these mining claims are not established for mining purposes but to obtain exclusive possession of these federally owned surface resources.

To help solve these problems Congress recently enacted legislation<sup>3</sup> which is designed to deprive a mining claimant of the power to exclude the federal government from the surface of his claim.

While the general mining law affects lands lying within a limited number of states,<sup>4</sup> nevertheless it is of national concern that federal

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<sup>1</sup>Rev. Stat. (1875) § 2322, 30 U. S. C. § 26 (1946).

<sup>2</sup>United States v. Deasy, 24 F. (2d) 108 (D. C. Idaho 1928).

<sup>3</sup>Pub. L. 167, 84th Cong., 1st Sess. (July 23, 1955).

<sup>4</sup>The right to appropriate mineral lands has always been limited to the public lands of the national government. In the thirteen original states the federal government owned no public land and in many other states the public domain was disposed of by sale and special provisions for leasing. Therefore, for all practical purposes mining claims are found only in the precious metal bearing states and

lands be managed to obtain maximum revenues at minimum cost while at the same time preserving and developing the scenic and recreational values inherent in these areas. Consequently, the general mining law merits examination in order that the problems it has produced may be appreciated and the corrective legislation chosen by Congress may be evaluated.

### ORIGIN OF THE GENERAL MINING LAW

The discovery of gold in California caused a vast influx of prospectors to explore for and extract minerals from federally owned lands. Congress failed to enact legislation authorizing this appropriation of federal land, but the Supreme Court of the United States inferred acquiescence from this legislative silence and observed: "Not only without interference by the national government, but under its implied sanction, vast mining interests have grown up, employing many millions of capital, and contributing largely to the prosperity and improvement of the whole country."<sup>5</sup> The miners in the various mining districts established rules and customs governing the appropriation of federal land and the possessory rights of the claimant. These rules were enforced by the courts in controversies between adverse claimants.<sup>6</sup>

The first general disposition of the nation's minerals was made in the Mining Act of 1866,<sup>7</sup> which ratified the mode of appropriation of federal lands developed by the miners and previously sanctioned by the courts. The Act further provided that mining claimants should comply with the local customs and rules of miners insofar as these were not in conflict with specific federal legislation.

Within a few years Congress enacted the more comprehensive Mining Act of 1872,<sup>8</sup> which preserved the basic policy that the discoverer of mineral in unappropriated public lands was entitled to develop and eventually purchase the land in which his discovery was made. This Act has remained substantially unchanged to the present time. Under the terminology of this law, a mining claim which has not

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territories consisting of Alaska, Arizona, Arkansas, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. See Note (1907) 7 L. R. A. (N. S.) 763 at 767.

<sup>5</sup>*Sparrow v. Strong*, 3 Wall. 97, 104, 18 L. ed. 49, 50 (1866).

<sup>6</sup>*Del Monte Mining & Milling Co. v. Last Chance Mining & Milling Co.*, 171 U. S. 55, 18 S. Ct. 895, 43 L. ed. 72 (1898); *Erhardt v. Boaro*, 113 U. S. 527, 5 S. Ct. 560, 28 L. ed. 1113 (1885); *Jennison v. Kirk*, 98 U. S. 453, 25 L. ed. 240 (1878).

<sup>7</sup>14 Stat. 251 (1866).

<sup>8</sup>17 Stat. 91 (1872).

yet been patented is referred to as a "location" and the claimant as a "locator." Furthermore, the term "location" is sometimes used to describe the collective steps necessary to establish a valid mining claim.

### STEPS NECESSARY TO ACQUIRE A MINING CLAIM

1. *Discovery of Mineral.* Exploration for mineral must of necessity precede the location of the claim. So long as the explorer occupies land in diligent search for precious metals, his possession has been held valid against rival claimants.<sup>9</sup> However, no statutory rights accrue until mineral has been found since the Mining Act of 1872 provided in part: "No location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located."<sup>10</sup> The locator may claim lands lying within 300 feet on each side of the middle line of the vein or lode discovered for a distance not to exceed 1500 feet.<sup>11</sup> A normal mining claim will thus comprise approximately twenty acres; however, Congress has in no way restricted the number of claims which may be located by a single individual, association, or corporation.<sup>12</sup> Nevertheless, a "discovery" must be made within the limits of each claim located.<sup>13</sup>

It is frequently said that a "discovery" has been made whenever a prospector has found such "indications" of mineral that he is willing to expend further time and money in developing the claim.<sup>14</sup> However, there must be something beyond a mere guess on the part of the miner to authorize him to make a location.<sup>15</sup> Moreover, the federal govern-

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<sup>9</sup>Cole v. Ralph, 252 U. S. 286, 40 S. Ct. 321, 64 L. ed. 567 (1920).

<sup>10</sup>17 Stat. 91 (1872), re-enacted in Rev. Stat. (1875) § 2320, 30 U. S. C. § 23 (1946).

<sup>11</sup>Ibid. The provisions of this section deal with lode mining claims where the mineral is found within well defined seams or fissures in the surrounding rock. Rev. Stat. (1875) §§2329, 2331, as amended, 30 U. S. C. § 35 (1946) provide for the location of placer mining claims where mineral is found in a loose condition in softer materials covering the earth. These two types of claims are located in similar fashion except that by definition the placer claim will not be based upon a discovery of rock in place, since that mineral will be discovered in superficial deposits washed from veins or lodes down ancient rivers or valleys. See *Northern Pacific Railway Company v. Soderberg*, 188 U. S. 526 at 532, 23 S. Ct. 365 at 367, 47 L. ed. 575, at 582 (1903).

<sup>12</sup>*Last Chance Mining Co. v. Bunker Hill & Sullivan Mining and Concentrating Co.*, 131 Fed. 579 at 583 (C. C. A. 9th, 1904) cert. den., 200 U. S. 617, 26 S. Ct. 754, 50 L. ed. 622 (1906).

<sup>13</sup>*Gwillim v. Donnellan*, 115 U. S. 45 at 50, 5 S. Ct. 1110 at 1112, 29 L. ed. 348 (1884); *Larkin v. Upton*, 144 U. S. 19 at 23, 12 S. Ct. 614 at 615, 36 L. ed. 330 (1892).

<sup>14</sup>*Lindley, Mines* (3rd ed. 1914) 770. Cf. *Burke v. McDonald*, 2 Idaho 1022, 3 Idaho 296, 29 Pac. 98 at 101 (1892).

<sup>15</sup>See *Erhardt v. Boaro*, 113 U. S. 527 at 536, 5 S. Ct. 560 at 564, 28 L. ed. 1113 at 1116 (1885). It is the finding of the mineral in the rock in place as

ment will not issue a patent to a mining claim until "mineral is found and the evidence shows that a person of ordinary prudence would be justified in a further expenditure of his labor and means with a reasonable prospect of success."<sup>16</sup>

2. *Marking and Staking the Claim.* After a discovery of mineral has been made, "the location must be distinctly marked on the ground so that its boundaries can be readily traced."<sup>17</sup> Since variations in terrain and miners' customs made a uniform rule impractical, Congress permitted more specific marking requirements to be imposed by the states and the mining districts.<sup>18</sup> In consequence, the posting of notices, the erecting of corner monuments and the blazing of trees along boundary lines are often required in particular areas.<sup>19</sup>

3. *Compliance with State Recording Statutes.* State laws frequently require that a certificate of location be recorded with the proper county official as an instrument affecting real property.<sup>20</sup> Although recording is not required by federal law, Congress anticipated that this requirement might be imposed by the states and provided: "All records of mining claims made after May 10, 1872, shall contain the name or names of the locator, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim."<sup>21</sup>

The steps required to complete a location may be performed over an indefinite period of time so long as rights of others do not intervene. In a controversy between rival claimants, the first discoverer has a reasonable time in which to complete the location of his claim.<sup>22</sup>

distinguished from float rock that constitutes a valid discovery and it is immaterial that the earth or rock is rich or poor or assays high or low. See *Shoshone Mining Co. v. Rutter*, 87 Fed. 801 at 807 (C. C. A. 9th, 1898); *Book v. Justice Mining Co.*, 58 Fed. 106 at 120 (C. C. D. Nev. 1893); *VanZandt v. Argentine Mining Co.*, 8 Fed. 725 at 727 (C. C. D. Colo. 1881). However, the courts have been more liberal in controversies between two mineral claimants than in controversies between an agricultural entryman and a mineral claimant. See *Chrisman v. Miller*, 197 U. S. 313 at 323, 25 S. Ct. 468 at 471, 49 L. ed. 770 at 774 (1905).

<sup>16</sup>See 2 Lindley, *Mines* (3rd ed. 1914) 772.

<sup>17</sup>Rev. Stat. (1875) § 2324 (1875) as amended, 30 U. S. C. § 28 (1946).

<sup>18</sup>*Ibid.* And see 2 Lindley, *Mines* (3rd ed. 1914) § 373.

<sup>19</sup>See 2 Lindley, *Mines* (3rd ed. 1914) § 374 for a complete discussion of state laws relating to the marking of mining claims.

<sup>20</sup>See 2 Lindley, *Mines* (3rd ed. 1914) § 379.

<sup>21</sup>Rev. Stat. (1875) § 2324 (1875) as amended, 30 U. S. C. § 28 (1946). State laws frequently require additional or more detailed information. See 2 Lindley, *Mines* (3rd ed. 1914) § 380.

<sup>22</sup>*Doe v. Waterloo Mining Co.*, 70 Fed. 455 at 459 (C. C. A. 9th, 1895). Also see, *Marshall v. Harney Peak Tin Mining Co.*, 1 S. D. 350, 47 N. W. 290 at 293 (1890); *Union Mining & Milling Co. v. Leitch*, 24 Wash. 535, 64 Pac. 829 at 830 (1901). Compare *Pharis v. Muldoon*, 75 Cal. 284, 17 Pac. 70 (1888) and *Patterson v. Tar-*

### ACTS NECESSARY TO MAINTAIN A MINING CLAIM

Congress has provided that on each location there shall be \$100.00 worth of labor performed, or \$100.00 worth of improvements made, during each year until a patent has been issued to the claim.<sup>23</sup> Failure to perform this "assessment" work does not automatically invalidate the mining claim but merely makes it subject to loss in the event of relocation by an adverse claimant prior to the time work is resumed.<sup>24</sup> If such work is resumed prior to relocation the original location is as effective as if work had been performed annually from the date of discovery. Despite the wording of the statute, the courts have held that assessment work need not be performed within the limits of the claim so long as it is done for the benefit of the claim.<sup>25</sup>

Many state statutes provide for the filing of an affidavit reciting that improvements have been made or work performed during the particular year, and such an affidavit constitutes prima facie evidence of performance of assessment work.<sup>26</sup> But it has been held to be in conflict with federal law for a state to provide that failure to file such an affidavit constitutes an abandonment of the location.<sup>27</sup>

The assessment work requirement has not been particularly onerous because Congress has suspended the provision during many years from 1893 to 1950.<sup>28</sup>

### PROPERTY RIGHTS OF MINING LOCATORS

Congress has provided that mining locators "shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, . . ."<sup>29</sup>

The Supreme Court of the United States stated in *St. Louis Mining & Milling Company v. Montana Company, Ltd.*: "Where there is a valid location of a mining claim, the area becomes segregated from

bell, 26 Ore. 29, 37 Pac. 76 at 78 (1894) where it was held that claims were subject to relocation by adverse claimants any time after a discoverer of mineral ceased to be in actual physical possession of the claim.

<sup>23</sup>Rev. Stat. (1875) § 2324 (1875) as amended, 30 U. S. C. § 28 (1946).

<sup>24</sup>*Ickes v. Virginia-Colorado Development Corporation*, 295 U. S. 639, 55 S. Ct. 888, 79 L. ed. 1672 (1935).

<sup>25</sup>See *Chambers v. Harrington*, 111 U. S. 350, 4 S. Ct. 428, 28 L. ed. 452 (1884).

<sup>26</sup>See *B & B Sulphur Co. Ltd. v. Kelley*, 61 Cal. App. (2d) 3, 141 P. (2d) 908 (1943); 58 C. J. S. Mines and Minerals, § 75.

<sup>27</sup>*Betsch v. Umphrey*, 270 Fed. 45 (C. C. A. 9th, 1921).

<sup>28</sup>For a compilation of the years in which assessment work was suspended and the statutes providing the suspension see 30 U. S. C. A. § 28 (a) (1942) and 30 U. S. C. A. § 28 (a) (Supp. 1955).

<sup>29</sup>Rev. Stat. (1875) § 2322, 30 U. S. C. § 26 (1946).

the public domain and the property of the locator. There is no inhibition in the mineral lands act against alienation, and he may sell it, mortgage it, or part with the whole or any portion of it as he may see fit."<sup>30</sup>

The estate of a mining locator has been compared to that of a copyholder at common law. He holds the right to possession and enjoyment which descends to his heirs upon his death and yet the fee remains in the lord.<sup>31</sup>

A mining locator's interest is subject to tax by the states<sup>32</sup> and may be levied upon and sold for the payment of delinquent taxes without affecting the underlying title of the United States.<sup>33</sup> A mining claim is subject to the lien of a docketed judgment just as any other real property.<sup>34</sup> However, a widow has no dower rights in her husband's mining claim.<sup>35</sup>

The courts have zealously protected the possession of a mining locator even to the exclusion of the United States. The Forest Service may not cut timber from the surface of a mining claim located in a national forest,<sup>36</sup> except where insect infested timber on the claim is a hazard to surrounding stands.<sup>37</sup> However, the rights of a mineral locator are lost where the government disposes of the surface of a mining claim during a year in which required assessment of work is not performed.<sup>38</sup>

On the other hand, the right to exclusive possession is not broad enough to permit the locator to use the surface of his claim to support a non-mining business enterprise,<sup>39</sup> nor may the locator use the non-mineral resources on his claim, except for mining purposes. He may use all timber necessary for fuel, shelter, and other mining purposes, but he has no right to sell timber from his claim or permit its cutting for any other purpose.<sup>40</sup>

<sup>30</sup>171 U. S. 650, 655, 19 S. Ct. 61, 63, 43 L. ed. 320, 322 (1898).

<sup>31</sup>2 Lindley, Mines (3rd ed. 1914) § 540.

<sup>32</sup>Forbes v. Gracey, 94 U. S. 762, 24 L. ed. 313 (1877).

<sup>33</sup>Elder v. Wood, 208 U. S. 226, 28 S. Ct. 263, 52 L. ed. 464 (1908).

<sup>34</sup>Bradford v. Morrison, 212 U. S. 389, 29 S. Ct. 349, 53 L. ed. 564 (1909). Cf. Phoenix Mining & Milling Co. v. Scott, 20 Wash. 48, 54 Pac. 777 (1898).

<sup>35</sup>Black v. Elkhorn Mining Co., 163 U. S. 445, 16 S. Ct. 1101, 41 L. ed. 221 (1896). Cf. Jacobson v. Bunker Hill & Sullivan Mining & Concentrating Co., 2 Idaho 863, 3 Idaho 126, 28 Pac. 396 (1891) holding that a mining claim located by a married man is community property.

<sup>36</sup>United States v. Deasy, 24 F. (2d) 108 (D. C. Idaho 1928).

<sup>37</sup>Lewis v. Garlock, 168 Fed. 153 (C. C. S. D. 1909).

<sup>38</sup>United States v. Mobley, 45 F. Supp. 407 (S. D. Cal. 1942).

<sup>39</sup>United States v. Rizzinelli, 182 Fed. 675 (D. C. Idaho 1910). In that case a mining locator had built and operated a saloon on the surface of his claim.

<sup>40</sup>Teller v. United States, 113 Fed. 273 (C. C. A. 8th, 1901).

## PROPERTY RIGHTS OF MINERAL PATENTEEES

When a patent is issued to a mining claim, the United States surrenders its title in fee simple and the patentee obtains the unrestricted right to deal as he wishes with all resources, mineral and non-mineral, lying within the limits of the claim.<sup>41</sup> A valid location may be patented as soon as \$500.00 worth of labor has been performed or improvements worth \$500.00 have been made to develop the mineral potential of the claim. An applicant need only follow the established statutory procedure and pay to the United States the purchase price of \$5.00 per acre.<sup>42</sup>

There is no requirement that a locator patent his claim; moreover, it has been long recognized by the courts that "Some of the richest mineral lands in the United States, which have been owned, occupied and developed by individuals and corporations for many years, have never been patented."<sup>43</sup> Furthermore, as the Supreme Court of the United States has observed, a patent adds little to the security of a locator in continuous possession of his mine.<sup>44</sup> Most assuredly this is true of a legitimate mining venture. A patent is chiefly valuable to those who wish to be relieved of the assessment work requirement or who wish to appropriate the claim or its resources to a non-mining use.

## ABUSES OF THE MINING LAW

The location of mining claims for non-mining purposes is not a recent innovation. In *Clipper Mining Company v. Eli Mining & Land Company*,<sup>45</sup> it was alleged that a placer claim was located for the purpose of embracing a town site within the boundaries of the claim, and in *United States v. Rizzinelli*,<sup>46</sup> it was shown that the locator operated a saloon on his mining location.

Abuses of the mining law have been particularly prevalent in lands lying within the national forests. These lands have been open

<sup>41</sup>*Benson Mining & Smelting Company v. Alta Mining & Smelting Company*, 145 U. S. 428, 12 S. Ct. 877, 36 L. ed. 762 (1892).

<sup>42</sup>Rev. Stat. (1875) § 2325 as amended, 30 U. S. C. § 29 (1946).

<sup>43</sup>*Cosmos Exploration Co. v. Gray Eagle Oil Co.*, 112 Fed. 4, 16 (C. C. A. 9th, 1901). Also see *Clipper Mining Company v. Eli Mining & Land Company*, 194 U. S. 220 at 224, 24 S. Ct. 632 at 633, 48 L. ed. 944 at 949 (1904); *Forbes v. Gracey*, 94 U. S. 762, 24 L. ed. 313 (1877).

<sup>44</sup>*Chambers v. Harrington*, 111 U. S. 350, 4 S. Ct. 428, 28 L. ed. 452 (1884). However, a patent application does have the effect of forcing adverse claimants to litigate the validity of their claims at the hearing upon the patent application. See *Gwillim v. Donnellan*, 115 U. S. 45, 5 S. Ct. 1110, 29 L. ed. 348 (1884).

<sup>45</sup>194 U. S. 220, 24 S. Ct. 632, 48 L. ed. 944 (1904).

<sup>46</sup>182 Fed. 675 (D. C. Idaho 1910).

to mineral location and purchase since they were established in 1897.<sup>47</sup> Naturally these areas are chiefly valuable for timber and recreation; nevertheless, many pseudo-miners have located claims in order to enjoy exclusive possession of a portion of these reserved lands.

In 1937 a study of mineral locations and patents in the national forests of California was made by William H. Friedhoff, a mineral examiner with the U. S. Forest Service. He found that 125,428 acres of national forest land in California had been patented prior to 1937.<sup>48</sup> Only 9 per cent of these patented claims were in continuous production of mineral and more than 55 per cent of the mines had never been developed after a patent was obtained.<sup>49</sup> Furthermore, it was discovered that an additional 535,067 acres of United States forest land within that state were contained in mineral locations,<sup>50</sup> of which it was estimated 90 per cent had no potential mineral value.<sup>51</sup> Mr. Friedhoff concluded that 92 miles of California fishing streams were controlled by mineral patentees who had obtained patents between 1910 and 1937, and he estimated that an additional 900 to 1400 miles were controlled by mineral locators.<sup>52</sup>

In 1955 the Department of Agriculture reported to Congress: "As of January 1, 1952, there were 36,000 mining patents on the national forests, covering 918,500 acres. Only about 15 percent of these mining patents have been or are commercially successful mines. As of the same date, there were approximately 84,000 claims, covering 2.2 million acres. Only 2 percent of these claims were producing minerals in commercial quantities and probably not more than 40 percent could be considered valid under the requirements of the mining laws. Yet, on these national forest claims, there was tied up over 8 billion feet of commercial sawtimber, valued at about \$100 million which the Government could not sell without consent of the claimant. In other words, national forest timber exceeding in quantity and value that cut from all national forests in any one year is tied up on mining claims and cannot be sold by the Government."<sup>53</sup>

After reviewing the problem the House Committee on Interior and Insular Affairs reported: "The ingenuity of American citizens which

<sup>47</sup>30 Stat. 36 (1897), 16 U. S. C. § 478 (1946).

<sup>48</sup>Friedhoff, *The Mining Claim Problem in the National Forests of California* (1944) 5.

<sup>49</sup>*Ibid.* Plate III.

<sup>50</sup>*Ibid.* p. 27.

<sup>51</sup>*Ibid.* p. 40.

<sup>52</sup>*Ibid.* p. 42.

<sup>53</sup>Letter, May 17, 1955 to Honorable Clair Engle; 1955 U. S. Code Congressional and Administrative News 3392, 3393.

has made our Nation strong has also operated to develop new and better ways of abusing public land resources through obtaining color of title under the mining law.

"Some locators in reality, desire their mining claims for commercial enterprises such as filling stations, curio shops, cafes, or for residence or summer camp purposes. If application is made for residence or summer camp purposes under Federal law other than the mining laws, sites usually embrace small tracts, that is, 5-acre tracts; on the other hand, mining locations provide for control and utilization of approximately 20-acre tracts. Fraudulent locators prefer 20 acres to 5 acres.

"Under existing law, fishing and mining have sometimes been combined in another form of nonconforming use of the public lands: a group of fisherman-prospectors will locate a good stream, stake out successive mining claims flanking the stream, post their mining claims with "No trespassing" signs, and proceed to enjoy their own private fishing camp. So too, with hunter-prospectors, except that their blocked-out "mining claims" embrace wildlife habitats; posted, they constitute excellent hunting camps.

"The effect of nonmining activity under color of existing mining law should be clear to all: a waste of valuable resources of the surface on lands embraced within claims which might satisfy the basic requirement of mineral discovery, but which were, in fact, made for a purpose other than mining; for lands adjacent to such locations, timber, water, forage, fish and wildlife, and recreational values wasted or destroyed because of increased cost of management, difficulty of administration, or inaccessibility; the activities of a relatively few pseudominers reflecting unfairly on the legitimate mining industry."<sup>54</sup>

### CONGRESSIONAL SOLUTION TO MINING LAW ABUSES

To halt this widespread misuse of public land, Congress has recently enacted the most significant mining claim legislation since the Mining Act of 1872.<sup>55</sup> The Act of July 23, 1955,<sup>56</sup> provides that mining claims located after the effective date of the Act shall not be used for nonmining purposes,<sup>57</sup> and further provides that no vegetative or

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<sup>54</sup>H. R. Rep. 730, 84th Cong., 1st Sess., 1955 U. S. Code Congressional and Administrative News 3374, 3375.

<sup>55</sup>17 Stat. 91 (1872).

<sup>56</sup>Pub. L. 167, 84th Cong., 1st Sess. (July 23, 1955).

<sup>57</sup>Ibid. Sec. 4 (a) which provides: "Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto."

other surface resources on such claims shall be used except to the extent required for prospecting mining or processing the mineral from the claim or for the construction of buildings or clearance of lands incidental to mining operations.<sup>58</sup> These provisions merely reaffirm limitations previously placed on locators by the courts.<sup>59</sup>

The most significant provision of the Act is contained in Section 4 (b) which provides in part: "Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States)." This section adequately protects the rights of mineral locators by providing that the use of the surface by the United States, its permittees and licensees, shall not interfere with mining operations of the locator. Furthermore, if the United States disposes of timber from the claim which is thereafter needed by the mineral locator for mining purposes, he is entitled to be supplied free of charge with such timber from adjacent timber stands.

Congress recognized that these provisions would prevent future mineral locations from interfering with orderly public land management, but would not solve the problems created by existing locations. To permit the federal government to manage the surface of these claims Congress devised an ingenious administrative procedure for determining expeditiously title uncertainties resulting from the existence of abandoned, invalid, dormant, or unidentifiable mining claims located prior to July 23, 1955.<sup>60</sup> This procedure would be in the nature of a quiet title action initiated within the Department of Interior at the request of the federal department or agency having the responsi-

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<sup>58</sup>Ibid. Sec. 4 (c) which provides: "Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefore, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management."

<sup>59</sup>See *Teller v. United States*, 113 Fed. 273 (C. C. A. 8th, 1901); *United States v. Rizzinelli*, 182 Fed. 675 (D. C. Idaho 1910).

<sup>60</sup>See Pub. L. 167, § 5, 84th Cong., 1st Sess. (July 23, 1955).

bility for administering the surface of the given area to which the proceeding would apply. This agency would be responsible for accurately describing the area to which it desired "title quieted." That agency would further be required to examine the surface of the lands in question to determine the names and addresses of persons in possession and to examine county tract indexes, in counties where such records are kept, to determine the persons who had recorded certificates of location. (Apparently in counties where these certificates are not indexed by tract no search of the county records would be required.) The Secretary of the Interior would then publish notice in a newspaper of general circulation in the area and send individual notices to persons who had been found in possession of mining claims, whose certificates of location were discoverable by search of the tract index and to those who specifically requested individual notices as provided in the Act.

All notices would require mineral claimants to file verified statements reciting compliance with the mining law. Failure to file such a statement would not invalidate the location but would merely limit the surface rights of the locator to the same extent as though the claim were located after July 23, 1955.<sup>61</sup>

Where a verified statement is filed, a hearing will be held to determine the validity of the mining claim. If the claimant proves compliance with the requirements of discovery, marking, recording of notices, and current performance of assessment work his right to exclusive possession of the surface will be preserved. The hearings will follow the established general procedures and rules of practice of the Department of the Interior with respect to contests or protests affecting public lands. Moreover, a claimant who fails to prove compliance with the general mining laws will, nevertheless, retain the same rights as if his claim were located after the enactment of the 1955 Act.

These provisions insure that federally owned surface resources will no longer be withdrawn from federal management and protection by the location of mining claims. Moreover, vast areas of surface land previously appropriated to private use by prior locations of mining claims shall be restored to the federal domain. If the Forest Service is correct in its estimate that only 40 per cent of the mining claims in the national forests are valid, it would be possible for that agency through extensive use of the "quiet title" procedure provided for in the new legislation to recover nearly three and one-third billion

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<sup>61</sup>Ibid. § 5 (b).

board feet of merchantable timber now standing on the surface of these claims. At 1951 stumpage rates the timber on these invalid claims would be worth \$41,310,800.00, and stumpage values have risen steadily since 1951.

This preservation of the natural resources of the United States is indeed commendable. But what of the vast timber values contained within the more than 50,000 mining claims located within the national forests which the United States Forest Service estimates are valid? It is conceivable that timber on these claims, valued at more than \$60,000,000, may remain unharvested, for the 1955 Act provides no way in which this timber can be disposed of by the United States, and the mineral locator may not lawfully cut it except for mining purposes.<sup>62</sup> However, it is doubtful that this dilemma could be overcome. It was important that Congress preserve the vested property rights of claimants who located valid claims under prior law, and few would have suggested that Congress grant to such locators the additional right to harvest timber from their claims for nonmining purposes merely to assure full utilization of these national resources.

#### MINERAL PATENTS UNDER THE ACT OF JULY 23, 1955

The problem may be partially overcome by the issuance of patents to some of these valid mining claims; for the Act of July 23, 1955 in no way impairs the title of a mineral patentee. On the contrary the Act specifically provides: "... and nothing in this Act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim *heretofore or hereafter located*, of any reservation, limitation, or restriction not otherwise authorized by law. . . ."<sup>63</sup>

This provision demonstrates that Congress has not attempted by this legislation to correct the practice of patenting mining claims to obtain the valuable timber situated on them. That practice could have been effectively curtailed by legislation providing that future patents would convey only title to the minerals and the right to use the surface resources for mining purposes. In the past such legislation has been enacted to reduce the incentive to patent mining claims in certain areas of the national forests. These areas are included within the Coronado,<sup>64</sup> Conconino,<sup>65</sup> and Kaibab<sup>66</sup> National Forest in

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<sup>62</sup>Teller v. United States, 113 Fed. 273 (C. C. A. 8th, 1901).

<sup>63</sup>Pub. L. 167, § 7, 84th Cong., 1st Sess. (July 23, 1955) [italics supplied].

<sup>64</sup>60 Stat. 255 (1946), 16 U. S. C. A. § 482 h-2 (Supp. 1955).

<sup>65</sup>63 Stat. 75 (1949), 16 U. S. C. A. § 482 n-1 (Supp. 1955); and additional

Arizona and the Santa Fe<sup>67</sup> National Forest in New Mexico. It is understandable that Congress would not wish to extend these provisions to all national forests, because the basic policy underlying the general mining laws is still an important factor today. The legislative history of the 1955 Act clearly indicates it is a continuing policy of Congress to encourage exploration and purchase of valuable mineral lands lying within the public domain.<sup>68</sup> The existence of some non-mineral resources upon a mining claim might well provide the incentive necessary to encourage development of the mineral potential. Most mineral locators and patentees lack adequate capital. It is quite likely that proceeds from the sale of timber could provide sufficient funds to finance further mineral exploration.

### CONCLUSION

The Act of July 23, 1955 is significant legislation in many respects.<sup>69</sup> No longer will the location of a mine interfere with orderly manage-

Coconino National Forest areas restricted by 69 Stat. 50 (1955), 16 U. S. C. A. § 482 n-2 (Supp. 1955).

<sup>65</sup>65 Stat. 118 (1951), 16 U. S. C. A. § 482 p (Supp. 1955).

<sup>66</sup>63 Stat. 168 (1949), 16 U. S. C. A. § 482 k (Supp. 1955).

<sup>67</sup>H. R. Rep. 730, 84th Cong., 1st Sess. 1955 U. S. Code Congressional and Administrative News, 3374, 3380. There the House Committee on Interior and Insular Affairs pointed out the industry groups representing commercial mining and forestry interests agreed that federal legislation was needed to curtail the practice of locating mining claims for non-mining purposes. The committee further stated:

"With this agreement on the end sought to be achieved by remedial legislation there has not always been agreement on what means should be employed to achieve that end.

"There is, however, agreement that any corrective legislation providing for multiple use of the surface of the same tracts of public lands, compatible with *unhindered subsurface resource development*, must be aimed at—

First, prohibiting location of mining claims for any purpose other than prospecting, mining, processing, and related activities;

Second, providing for conservation and utilization of timber, forage, and other surface resources on mining claims, and on adjacent lands: and

Third, *accomplishing these desirable ends without materially changing the basic concepts and principles of the general mining laws.*

H. R. 5891 is, in the view of the Committee on Interior and Insular Affairs, responsive to the need for corrective action outlined," [italics supplied]

<sup>68</sup>In addition to the amendments to the mining law discussed in this article, Sections 1, 2, and 3 of Public Law 167 also:

"(1) Amend the Materials Act of 1947 to prohibit future location and removal, under the mining laws, of common varieties of sand, stone, gravel, pumice, pumicite, and cinders, by requiring disposition of these materials under the Materials Act.

"(2) Amend the Materials Act of 1947 to give the Secretary of Agriculture the same authority with respect to mineral materials (including, but not limited to, sand, stone, gravel, pumice, pumicite, cinders, and clay), and vegetative materials

ment of the public domain. Miners can pursue the development of the mineral values of the land while the United States protects the national interest in the surface resources. With respect to those locations made prior to the enactment of the law, systematic "quiet title" proceedings will restore the surface of invalid, dormant and abandoned claims to public management. At the same time an adequate inventory of valid mining claims will be obtained and the use made of those claims in the future will likely receive much closer scrutiny by federal government officials.

The laws relating to the rights of patentees remain unchanged; yet any appreciable increase in the practice of patenting mining claims for the purpose of disposing of its timber resources will likely be watched closely by future sessions of Congress. A joint subcommittee of the House and Senate investigating timber management problems devoted considerable attention to this situation at hearings held in Portland, Oregon in November, 1955. The report of this subcommittee is yet unpublished. However, it is likely to contain a recommendation that general legislation be enacted to restrict the surface rights conveyed to mineral patentees, or that additional national forest areas where the problem is most acute be dealt with by special legislation.

If further legislation is enacted, it will be the result of extensive consideration by Congress, for the representatives of the people must balance three great national policies: (1) the encouragement of exploration on public land to develop latent mineral resources, (2) the realization of maximum revenues from the management of federally-owned surface resources, and (3) the preservation of scenic and recreational values for the enjoyment of all the people.

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(including, but not limited to, yucca, manzanita, mesquite, cactus, and timber or other forest products) located on lands under his jurisdiction as that which the Secretary of the Interior has with respect to lands under the Interior's jurisdiction."

H. R. Rep. 730, 84th Cong., 1st Sess., 1955 U. S. Code Cong. and Admin. News 3374. These amendments will prevent mineral locations from tying up available supplies of road building materials situated within their boundaries. Fraudulent locators have been known to establish mining claims on known gravel pits in order to sell the gravel to the federal government or its contractors, who would otherwise have been able to obtain these materials without cost. This practice will also be corrected by these amendments.