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## THE BUREAU OF LAND MANAGEMENT AND MINERAL DEVELOPMENT

H. BYRON MOCK\*

The Bureau of Land Management was recently reorganized to bring the hour of decision closer to the problems in the field. The new area organization which includes Wyoming is headquartered at Denver, under Westel Wallace, who sends his regards to you today. His area covers Colorado, Wyoming, Montana, New Mexico, and BLM activities in the States immediately to the East. There is a State unit responsible for everything that BLM handles in Wyoming, under State Supervisor Ray Best. He has on his staff outstanding men, such as Joe Conrace in charge of lands and minerals, a lawyer, who is here with us today.

In Washington the National Director is Ed Woosley, a man who is very much interested in seeing that the State problems are handled locally. My area is the four States of Idaho, Utah, Nevada, and Arizona, with headquarters in Salt Lake City, and with State supervisors in charge of each State. The third area includes the three Coast States, with headquarters at Portland.

The delegation of authority to act on land and cases handled by the Bureau of Land Management puts responsibility here where you can talk to the men who make the decisions. The obvious opportunity for lawyers in the West to handle western problems should be of interest to this group.

Mr. Senior's discussion of the Multiple Use Bill for Mineral Development calls for little added comment by me. Let me give you a little background on how the situation developed that led to this bill. The Nation went through several phases:

- First: The disposition of public lands in order to produce revenue.
- Secondly: The inducement to development by the grabbing of public lands to him who would develop.
- Thirdly: The conservation of uniquely national resources—such as national parks, national forests, water sheds, and other national use reservations—comes under the conservation era.

All of them coexist, and yet each had its own particular emphasis at varying times. At present we are in a period of reconciliation to utilize all of the resources for the maximum benefit without impeding any other

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Address delivered at Wyoming Bar Association, Rock Springs, Wyoming, on September 16, 1954.

development by its exclusion. How we will arrive at that is the problem we face today.

The public land problem to the West is exceedingly important. The amount of public lands within the boundaries of Western States still federally owned is great. It includes 72 per cent of Utah, 85 per cent of Nevada, 70 per cent of Arizona, 68 per cent of Idaho, 52 per cent of Wyoming, 45 per cent of New Mexico, 38 per cent of Colorado, 37 per cent of Montana—a total of some 310,000,000 acres of the gross acreage of 550,000,000 in those eight western States.

The early mining law of 1872 is relatively unchanged in its fundamentals. The Mineral Leasing Act of 1920 excluded a large group of minerals from the location system and put them under a leasing system. By early interpretation, lands subject to leasing were excluded from mineral location. That led to the conflict which eventually forced an adjustment in order to allow oil and gas, as well as uranium development on the same lands, the recently enacted Multiple Mineral Use bill discussed by Mr. Senior.

The mining laws generally work in this way:

1. A locator of a claim, with discovery, has a right superior to any other claimant so long as he is in possession and diligently proceeding with mining. (*Wilbur v. Krushnic* (1930), 280 U.S. 306, 74 L. Ed. 445.)

2. A miner is required to locate his claim, but it has been held in some cases that if there is no provision for recordation, his location is good nevertheless.

3. The locations are recorded with county recorders under State law, and formerly under some mining district regulations, as provided by the Mining Law of 1872. No record, with certain exceptions, is filed with any Federal agency. Two exceptions are the requirements that mining claims in the Oregon and California Revested Lands and the Coos Bay Wagon Reconveyed Lands be recorded with the Bureau of Land Management (Act of April 8, 1948, 61 Stat. 162); and claims on the Papago Indian Reservation in Arizona be recorded with the Indian Agency Superintendent (Act of June 18, 1934, 1934, 48 Stat. 984; 25 U. S. C. sec. 461, et seq.).

4. A location implies discovery, and without discovery the location is not good against the United States. (*Union Oil Company v. Smith* (1919) 249 U.S. 337.) The location will be good against another miner if the locator is in possession and seeking ore. However, if another miner makes a discovery without fraudulent or clandestine action and files a location, his claim becomes superior to the locator without a discovery. (*Cole v. Ralph* (1920), 252 U.S. 286, 64 L. Ed. 567; *Duffield v. San Francisco Chemical Company* (1913 Idaho), 205 F. 480, 485.)

5. Incidentally, although he could not get title to the land, a miner,

presumably even today, could extract minerals from open public land without filing a claim and the product would be his, even against the Government, in the absence of an adverse claim under the Mining Law of 1872. (*Zeiger v. Dowdy* (1911 Arizona), 114 P. 565; *O'Sullivan v. Schultz* (1899 Montana), 57 P. 279; *Forbes v. Gracey* (1877) 94 U.S. 762; and *Burns v. Clarks* (1901 California), 66 P. 12.) I do not think we need explore that point, since no miner in his right mind would run the risk if he realized what he did.

6. A location to be valid requires a discovery. However, when a location is recorded without prior discovery, the later discovery will validate the location if no adverse claim has intervened (*Cole v. Ralph*, supra). The question of what is a "discovery" could keep us busy the rest of the day, so we cannot answer it here.

NOTE: Today, we are faced with the necessity of reevaluating what constitutes a discovery. Is a core drill sufficient? seismographic investigation? geophysical work generally? That problem must be faced soon in order to reflect current demands and conditions.

7. Once a location with a discovery has been made, the claim is good against the United States (*Wilbur v. Krushnic*, supra; *Ickes v. Virginia-Colorado Development Company* (1935), 295 U.S. 639).

8. The United States cannot invalidate a valid claim (location with discovery) for failure to do assessment work (*Wilbur v. Krushnic*, supra; *Ickes v. Virginia-Colorado Development Company*, supra). The United States could invalidate for abandonment, but abandonment is a problem of intent and is difficult to prove.

NOTE: Now, however, we have the interim proceeding discussed by Mr. Senior in which a mining claim lying dormant may be limited in its applicability. Evidently, this remedy is no more available to the Government than was the right to invalidate a valid mining claim after the two Supreme Court decisions. The principle still is that he who will develop can supersede he who will not. The Government merely stands by. However, for the first time, a means does exist by which the oil shale lands of Colorado, Wyoming, and Utah may be thrown open to oil and gas development without the extremely difficult problem of clearing off prior valid mining claims that make it difficult to locate a deal with the owner in order to drill for oil. It also follows that one who wishes to lease the lands for oil shale development can by invoking the Multiple Mineral Use bill obtain the right to a lease even though a mining claim for oil shale has been on the land.

9. While the Government cannot invalidate a mining claim for failure to perform assessment work, a new locator can file on such land. The assessment work requirement is in part required by Federal statute (sec. 5, Act of May 10, 1872, 17 Stat. 92, as amended; 30 U. S. C. sec. 28), and, in part, by local law or mining district regulations. However, there have been numerous congressional deferments of the assessment work requirement, and the law provides that a claim cannot be relocated if the original locator has "resumed work upon the claim after failure and before such location." The elements of possession and actual mining to prevent relocations are important here as they are when no discovery has been made.

10. When a mining claim is located on land closed to mining entry, the mining claim does not vest without relocation after termination of the withdrawal. (*Swanson v. Sears* (1912), 224 U.S. 180; 56 L. Ed. 721.) There has, however, been some indication that the BLM can issue a patent to a mining claim located on withdrawn land that is later opened to mining entry, if no adverse claim intervened. (*Colomokas Gold Mining Company* (1899), 27 L. D. 172.)

11. One question still not conclusively ruled upon is whether a mining location without a discovery is terminated when the Federal Government withdraws such lands from mining entry prior to a discovery which is made later, with the miner diligently seeking the ore at all times. (See: *Behrends v. Goldsteen* (1902), 1 Alaska 518.) On the basis of reasoning on similar problems, it would seem the claim can not be perfected by discovery after the date the withdrawal becomes effective.

We of the Bureau of Land Management look forward to working closely with those of the West who wish to develop this country. We hope to help remove obstacles, difficult though they may be. We believe those obstacles can be reduced or eliminated, but the problem that faces the lawyers is a tremendous one and a challenge well worth our effort to meet.