

December 2019

Multiple Mineral Development on the Public Domain

Harold S. Bloomenthal

Follow this and additional works at: <https://scholarship.law.uwyo.edu/wlj>

Recommended Citation

Harold S. Bloomenthal, *Multiple Mineral Development on the Public Domain*, 9 Wyo. L.J. 139 (1955)
Available at: <https://scholarship.law.uwyo.edu/wlj/vol9/iss3/2>

This Article is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Journal by an authorized editor of Law Archive of Wyoming Scholarship.

MULTIPLE MINERAL DEVELOPMENT ON THE PUBLIC DOMAIN

BY HAROLD S. BLOOMENTHAL*

INTRODUCTION

The enactment by the 83rd Congress of Public Law 585,¹ popularly known as the Multiple Use Law, permits for the first time since 1920 the development of oil and gas (and other leasing act minerals) and non-leasing act minerals on the same public domain lands.² No rational system relating to the development of our resources could long tolerate a situation under which the value or prospective value of a particular area for one type of mineral could preclude its development for other minerals. The basic problem arose from the fact that we have two systems for the development of mineral resources on the public domain—(1) a leasing system relating generally to non-metalliferous minerals and (2) a location system relating generally to metalliferous minerals.³ The Department of the Interior construed the two basic statutes as mutually exclusive; the multiple mineral development statute is an attempt to make them compatible. The legislation adopted to achieve this objective represents a compromise between the mining industry⁴ and the oil and gas industry and its provisions have a significant impact on both industries. The nature of the problems involved and the means adopted to solve them are best understood through an examination of the historical background.

The miners on the public domain prior to 1866 were trespassers whose rights were first recognized by Congress in that year. The original mining law (hereinafter referred to as the general mining law of 1872) as adopted by Congress in 1866 and amended in 1872 is the basic statutory provision relating to the location of mining claims today.⁵ This law permits any citizen of the United States who makes a valuable discovery of minerals on the unappropriated public domain to obtain exclusive possessory rights⁶ to the claim in question by following a prescribed procedure which is a combination of federal and local state requirements.⁷ Assuming a valid location these exclusive possessory rights can be asserted against anyone (including the government) other than a subsequent mining claimant

*Formerly Assistant Professor of Law, University of Wyoming.

1. 68 STAT. 708 (1954), 30 U.S.C.A. Sec. 521.

2. With the exception of the SE $\frac{1}{4}$ of Sec. 4, T. 43 N., R. 82 W, State of Wyoming with respect to which Congress in 1931 passed a special statute permitting multiple development (46 STAT. 1470 (1931) and with the exception of deposits occurring in fissure veins that are in conflict with potash leases for which Congress adopted a provision permitting multiple development (44 STAT. 1058 (1927)).

3. This distinction is not entirely accurate in that some non-metalliferous metals are subject to location under the general mining laws.

4. See testimony of Robert S. Palmer, Executive Vice President, Colorado Mining Association, *Hearings before Committee on Interior and Insular Affairs* on H.R. 8892 and H.R. 8896, 83rd Cong., 2nd Sess. 90 (1954).

5. 17 STAT. 91 (1872), 30 U.S.C.A. Sec. 21.

6. 17 STAT. 91 (1872), 30 U.S.C.A. Sec. 26.

7. See Note, *Location of Mining Claims in Wyoming*, *infra* p. 220.

and against the later by performing \$100 of labor or improvements annually.⁸ Upon completion of \$500 of labor and improvements and compliance with other statutory requirements, the mining claimant can apply for⁹ and receive from the Department of Interior a fee simple patent to both the surface rights and to the mineral rights.¹⁰

Until 1920 this procedure of locating mining claims was the exclusive method provided for the development of mineral resources on the public domain and this method applied to all resources that could qualify as a mineral. To eliminate any question that oil was a "mineral" within the meaning of that term as used in the general mining law of 1872, Congress in 1897 enacted the "Oil Placer Act"¹¹ providing for the location of oil and gas claims on the public domain by following the requirements of the general mining law relating to the location of placer claims.

The location system proved unsatisfactory with respect to oil and gas and certain other minerals, and in 1920 Congress enacted the Federal Mineral Leasing Act¹² (hereafter referred to as the Leasing Act) withdrawing oil, gas, oil shale, coal, phosphate, potassium and sodium (hereafter referred to as leasing act minerals) from entry under the general mining law of 1872. In 1926 the Leasing Act was extended to sulphur lands located in Louisiana and New Mexico but not as to sulphur located in other states,¹³ and in 1927 the Leasing Act was extended to potash.¹⁴ Thereafter leasing act minerals could be developed on the public domain only in accordance with the provisions of the Mineral Leasing Act and regulations adopted pursuant thereto. The Mineral Leasing Act, particularly with respect to the development of oil and gas properties, has been amended on a number of occasions and today provides generally for either the issuance of a prospecting permit which can be converted into a lease in the event of discovery or, as in the case of oil and gas, for the issuance of a lease both before and after discovery.¹⁵

PART I. MINING CLAIMS

THE PROBLEM: CONFLICT BETWEEN MINING CLAIMS AND OIL AND GAS LEASES

The Mineral Leasing Act of 1920, as construed by the Department of the Interior, precluded the location of minerals under the general mining laws of 1872 with respect to land which at the time the location

8. See Note, *The Assessment Work Requirements*, *infra* p. 231.

9. See Note, *Mining Patent Application Procedure*, *infra* p. 240.

10. The mining claimant will not, of course, receive title to the surface with respect to lands previously patented under an appropriate statute reserving the minerals to the United States.

11. 29 STAT. 526 (1897), 30 U.S.C.A. Sec. 101.

12. 41 STAT. 437 (1920), 30 U.S.C.A. Sec. 181.

13. 44 STAT. 301 (1926), 30 U.S.C.A. Sec. 271.

14. 44 STAT. 1057 (1927), 30 U.S.C.A. Sec. 281.

15. 30 U.S.C.A. Sec. 181 *et seq.*

was made was covered by a lease or permit, or application¹⁶ for same, under the Mineral Leasing Act,¹⁷ or if the land was known to be prospectively valuable for leasing act minerals.¹⁸ The existence of a lease or permit or application therefor under the Mineral Leasing Act or the known prospective value of the tract for leasing act minerals (hereafter referred to as segregated leasing act lands) had the effect of segregating such lands and withdrawing the lands from mineral entry. This construction is one of long standing¹⁹ and has been consistently followed by the Department.²⁰ However, general awareness of the problem is of recent origin in that for the most part leasing act minerals do not occur in the same area in which minerals subject to location under the general mining laws are found. However, the secondary types of uranium ores found in the western states, particularly on the so-called Colorado Plateau, are found in sedimentary beds which are also source beds for oil and gas. Substantial portions of the areas potentially valuable for uranium production are subject to federal oil and gas leases, or applications therefor, or known to be prospectively valuable for oil and gas development.²¹ Accordingly, a large part of potentially valuable uranium lands had been effectively withdrawn from mineral entry.²²

Nonetheless a large number of mining locations based on the discovery of uranium were made on such acreage and substantial amounts of uranium were produced from properties which were not open to mineral entry. The continued prospecting, exploration, development and operation of such areas, despite their unavailability for entry, was in fact encouraged by the Atomic Energy Commission.²³ The Leasing Act as construed by the Department of the Interior placed all such claims in jeopardy. The further development of our uranium resources was seriously handicapped because of the resulting title uncertainties relating to mining locations made in areas subject to oil and gas leases or known to be valuable for leasing act

-
16. Technically with respect to federal oil and gas leases the application is an "offer to lease" by the applicant. The multiple-mineral development statute is phrased so as to cover the "offer to lease" as well as applications; however, for purposes of simplifying the discussion an "offer to lease" is considered herein as an application to lease and all references herein to applications to lease include offers to lease.
 17. Joseph E. McClory *et. al.*, 50 L.D. 623 (1923); *Filtrol Company v. Brittan and Echert*, 51 L.D. 649 (1926).
 18. *Jebson v. Spencer and Woodward*, Department of Interior, A-26596 (June 11, 1953); *United States v. United States Borax Co.*, 58 I.D. 426 (1943).
 19. Joseph E. McClory *et. al.*, 50 L.D. 623 (1923).
 20. *Jebson v. Spencer and Woodward*, Department of Interior, A-26596 (June 11, 1953). Although the decisions all involve placer claims, the rationale of the decisions applies to lode claims as well.
 21. Actually most of the acreage in Utah on which oil and gas leases had been issued consisted of unproven acreage. See testimony of Charles Steen, *Hearings Before Committee on Interior and Insular Affairs* on S.1397, 83rd Cong., 1st Sess. 292 (1953) (unpublished transcript).
 22. Between 50 and 60 million acres of land were covered by federal oil and gas leases in 1954. See testimony of Elmer F. Bennett, Legislative Counsel, Department of Interior, *Hearings Before Committee on Interior and Insular Affairs* on H.R. 8892 and H.R. 8896, 83rd Cong., 2nd Sess. 98 (1954).
 23. Although as noted at *infra* p. 143 as soon as the A.E.C. appreciated the magnitude of the problem it attempted to find an administrative solution.

minerals.²⁴ Although this conflict could have existed and in a few instances did exist with respect to leasing act minerals other than oil and gas and non-leasing act minerals other than uranium, the conflict between the uranium locator and the oil and gas lessee dramatized the situation and made apparent the necessity of providing for multiple mineral development on the public domain.

A COMPLICATION—THE RESERVATION OF FISSIONABLE SOURCE MATERIALS

The position of the mining claimant attempting to locate uranium claims under the general mining laws of 1872 was further complicated by the fact that the Atomic Energy Act of 1946²⁵ expressly reserved to the United States all fissionable source materials on the public domain and required all future patents to contain a reservation of all fissionable source material to the United States. In 1947 a decision of the Department of Interior held that in view of this provision no valid mineral location could be made based on a discovery of uranium or other fissionable source material.²⁶ The Atomic Energy Commission, on the other hand, always took the position that this provision did not preclude the location of a mining claim based upon a discovery of uranium²⁷ and the Department of Interior subsequently concurred administratively in this view despite their prior decision to the contrary.²⁸ Further the language of the Atomic Energy Act of 1946 gave some support to the conclusion that despite the possible inability of a locator obtaining a patent based on the discovery of a fissionable source material, a patent could be obtained based on the discovery of a non-fissionable mineral and that such patentee would have the right to mine and sell uranium despite the reservation of fissionable source materials to the United States.²⁹ Accordingly in some areas a number of "claim jumpers" made locations based on discovery of non-fissionable minerals on top of uranium locations. As a result, it has been said,

-
24. One informed observer has estimated that 75% of all the uranium claims on the Colorado Plateau were in jeopardy. See testimony of William G. Waldeck, *Hearings Before Committee on Interior and Insular Affairs* on S. 1397, 83rd Cong., 1st Sess. 165 (1953) (unpublished manuscript). It appears that the Department of Interior was in the process of instituting proceedings to have such claims declared null and void until certain Senators persuaded the Department to refrain from such action until Congress had an opportunity to consider remedial legislation. See testimony of Lewis E. Hoffman, Chief, Division of Minerals, Bureau of Land Management, *Hearings Before Committee on Interior and Insular Affairs* on S. 1397, 83rd Cong., 1st Sess. 95 (1953) (unpublished manuscript).
25. 60 STAT. 760 (1946), 42 U.S.C.A. Sec. 1805 (b) (7).
26. Jesse C. Clark, Department of Interior, A-24521 (January 14, 1947).
27. PROSPECTING FOR URANIUM 53 (U.S. Atomic Energy Commission and U.S. Geological Survey 1951).
28. See testimony of Elmer F. Bennett, Legislative Counsel, Department of Interior, *Hearings Before Committee on Interior and Insular Affairs* on H.R. 8892 and H.R. 8896, 83rd Cong., 2nd Sess. 98 (1954).
29. This provision provided in effect that if land was patented or otherwise disposed of subject to the reservation, the holder thereof could remove fissionable source materials that thereupon became the property of the A.E.C., but if the A.E.C. required the delivery of such materials to it the A.E.C. had to pay such person such sums, including profits, as the Commission deemed fair and reasonable. 42 U.S.C.A. Sec. 1805 (b) (7).

many uranium areas become armed camps with claim holders sitting on their claims armed and prepared to defend them.³⁰

TEMPORARY SOLUTIONS—PUBLIC LAW 250 AND CIRCULAR 7 LEASES

In 1953 a stop-gap measure was adopted by Congress designed to validate claims with respect to which titles were in question because the claim was located in an area withdrawn from mineral entry under the general mining laws under the foregoing construction of the Mineral Leasing Act. This statute, popularly known as Public Law 250, provided a procedure to validate such mining claims if located subsequent to July 31, 1939 and prior to January 1, 1953.³¹ However, Public Law 250 did not provide a procedure for making segregated leasing act lands available for uranium development in the future. Further, the troublesome reservation of all fissionable source materials contained in the Atomic Energy Act of 1946 was expressly carried forward in Public Law 250.³²

In an effort to solve these problems on an administrative level the Atomic Energy Commission had been issuing uranium mining leases on the public domain even prior to the enactment of Public Law 250, but had not adopted any formal procedures or regulations for the issuance of such leases.³³ After the adoption of Public Law 250 the Atomic Energy Commission on February 10, 1954 by regulation established a procedure for obtaining so-called Circular 7 uranium leases on those parts of the public domain effectively withdrawn from mineral entry by the Leasing Act.³⁴ Although Circular 7 provided for a leasing system an effort was made to make the appropriate procedure conform in many respects with the location procedure of the general mining laws.³⁵ However, in some

30. See testimony of Stephen L. R. McNichols, Counsel for the Uranium Ore Producers Association, *Hearings, supra* note 28 at 67-68.

31. 67 STAT. 539 (1953), 30 U.S.C.A. Sec. 501. Inasmuch as the validating provisions of P.L. 250 were incorporated into P.L. 585 such provisions are discussed in connection with the discussion of P.L. 585 at *infra* pp. 145-148.

32. 30 U.S.C.A. Sec. 503.

33. See testimony of William Mitchell, General Counsel Atomic Energy Commission, *Hearings Before Committee on Interior and Insular Affairs* on S. 1397, 83rd Cong., 1st Sess. 22-33 (1953). The lease designated as Mining Lease No. AT (05-1) OG generally provided that it should continue in effect for as so long as the lessee complied with the lease terms. However, in some instances such leases were for a definite term, with provision for renewal and with provision for cancellation upon notice at the election of the Commission for failure to comply with the lease terms. Under the AT(05-1)-OG lease, the lessee agreed to commence operations prior to a specified date and throughout the life of the lease to sustain with reasonable diligence a program of development and mining of uranium deposits or a program of prospecting and exploration for such deposits. No royalty was payable to the government under this type of lease. *Id.* at 30.

34. 10 CODE FED. REGS. Sec. 60.7 (1949 ed.), 19 FED. REG. 764 (February 10, 1954).

35. Under Circular 7 the lease had to relate to one or more tracts each of which could not exceed 1,500 feet in length by 600 ft. in width (the maximum dimension of a lode claim) and which had to be distinctly identified and marked on the ground by suitable monuments. The applicant had to post at one of the corner monuments a conspicuous "Notice of Lease Application" containing certain specified information. The "Notice of Lease Application" had to be filed within thirty days with the recorder of the appropriate county and with the A.E.C. within sixty days after such recordation. Lands covered by a lease had to be in a reasonably compact body and a lease ordinarily could not cover in excess of 100 tracts. No royalty was

important respects the regulations departed from the usual location procedures in an apparent effort to improve the location system.³⁶

The Circular 7 lease represented an administrative attempt at finding a solution to the problems discussed. However, it failed to take care of the mining claimant who filed a claim on segregated leasing act lands after December 31, 1952 and prior to February 10, 1954, and the Atomic Energy Commission's authority to grant leases broad enough to cover vanadium and other non-fissionable materials frequently associated with uranium was extremely dubious.³⁷ The mining industry is and has been for some time opposed to a leasing system as contrasted to the location system;³⁸ although, as noted, the Circular 7 lease combined elements of both, the mining industry moved for the adoption of a statutory solution that would permit the location of uranium claims under the general mining laws of 1872 on lands segregated under the Leasing Act. The adoption of Circular 7 imposed a considerable and unwanted administrative burden upon the Atomic Energy Commission not only in passing on lease applications but in resolving conflicting claims as well.³⁹ As discussed below⁴⁰ the oil and gas industry had a real interest in seeking a procedure designed to eliminate the title problems resulting from dormant mining claims and supported the multiple mineral development statute in return for the mining industry's acquiescence to changes in the general mining laws designed to achieve this purpose. The resulting legislation (Public Law 585) represented the cooperative efforts of the mining industry, oil and gas industry, officials of the Atomic Energy Commission and the Department of the Interior.⁴¹

THE ANSWER—PUBLIC LAW 585—PROSPECTIVE APPLICATION

In order to reconcile prospectively the general mining laws and the Mineral Leasing Act, Congress provided that mining claims⁴² may hereafter

payable to the United States but a rental of \$10 per annum was charged for each tract. In addition the lessee had to perform \$100 worth of labor or improvements per annum with respect to each tract.

36. Some of the important respects in which such leases differed from mining claims are as follows: (1) The lease issued for a period of five years, renewable for not more than 5 additional periods of three years each. (2) The Notice of Lease Application had to contain a satisfactory map and description. (3) The lease was subject to cancellation for failure to comply with the terms and conditions thereof. (4) Leases could be assigned only with the approval of the Commission. (5) A copy of the "Notice of Lease Application" had to be filed with a federal agency (the A.E.C.).
37. See testimony of William Waldeck, *Hearings, supra* note 24 at 158-159. The officials of the A.E.C. initially took the position that they could operate under a leasing system. See testimony of William Mitchell, General Counsel, Atomic Energy Commission, *Hearings, supra* note 24 at 23.
38. See testimony of Robert Palmer, Executive Vice President of the Colorado Mining Association, *Hearings, supra* note 24 at 368-369.
39. See testimony of Jesse C. Johnson, Director, Division of Raw Materials, Atomic Energy Commission, *Hearings, supra* note 28 at 18.
40. See *infra* at 154.
41. Extensive hearings were held by both the House and Senate Committees on Interior and Insular Affairs in 1953 and 1954 which hearings played a constructive role in the adoption of this legislation.
42. The Act contains a similar provision for mill sites; all subsequent references to mining claims in connection with P.L. 585 include mill sites unless the context indicates otherwise.

be located under the mining laws of the United States despite the fact that such lands are at the time of location covered by a leasing act lease or permit, or application therefor, or known to be prospectively valuable for leasing act minerals.⁴³ If, however, at the time of the issuance of a patent relating to a mining claim located after August 13, 1954, the lands are subject to a leasing act lease or permit, or application therefore, or known to be prospectively valuable for leasing act minerals, the patent must contain a reservation to the United States of the leasing act minerals.⁴⁴ Congress thereby with respect to mining locations made after the enactment of the Act opened land previously segregated under the Leasing Act to entry for uranium and other minerals subject to disposition under the general mining laws. As noted in more detail below,⁴⁵ Congress at the same time removed unpatented mining claims located subsequent to August 13, 1954 as obstacles to the development of leasing act minerals.

PUBLIC LAW 585—VALIDATING PROVISIONS

Public Law 585 re-enacts the validating provisions of Public Law 250. The statute also provides a procedure for the validation of mining claims previously made on lands withdrawn from mineral entry by the Leasing Act and not validated by Public Law 250, and attempts to protect the equities of individuals relying on Circular 7. In this regard the statute also attempts to provide for a system of priorities among the conflicting equities that resulted from the confused status of the law and various efforts to deal with the problem. Although the period in which the validating steps had to be taken has since elapsed, these provisions are and will continue for some time to be significant in connection with the examination of mining titles.

Public Law 585 re-enacts the validating provisions of Public Law 250. conflicting with Leasing Act dispositions under circumstances heretofore described located after July 31, 1939 and prior to January 1, 1953.⁴⁶ In order to obtain the benefits of this law the mining claimant had to post on his claim and file for record in the appropriate county office prior to December 11, 1953 an amended notice of the location of such claim stating that such amended notice was filed pursuant to the provisions of Public Law

43. 30 U.S.C.A. Sec. 525.

44. 30 U.S.C.A. Sec. 524.

45. See *infra* 159.

46. 30 U.S.C.A. Sec. 501. Query what constitutes a location for the purpose of determining whether a claim was located during this period? Is an actual discovery of valuable involved in the location procedure (posting, marking boundaries, filing of steps involved in the location procedure (posting, marking boundaries, filing of location certificate) have been taken within the specified period? For an interesting exchange of ideas between Mr. Waldeck and Representative Young concerning the necessity of a discovery in order to constitute a location for this purpose see *Hearing, supra* note at 82185. The July 31, 1939 date was chosen for the purpose of permitting the validation of many vanadium claims located during the war years which were in conflict with oil and gas leases. Strangely enough it was in many instances over ten years before anyone raised any question concerning the validity of such claims. See testimony of Mitchell Meleich, *Hearings, supra* note 24 at 278.

250 and for the purpose of obtaining the benefits thereof.⁴⁷ Public Law 585 provided an identical procedure for validating mining claims located after December 31, 1952 and prior to February 10, 1954 (date of adoption of Circular 7), the required amended notice having to be posted and filed prior to December 12, 1954.⁴⁸

The mining claimant relying on Public Law 585 who had located a claim between January 1, 1953 and February 10, 1954 and who had also applied for or received a uranium lease in addition to the validating procedure described in the preceding paragraph had to file with the Atomic Energy Commission a withdrawal of his lease application or release of his lease, as the case may be, and record a notice of the filing of such withdrawal or release in the appropriate county office.⁴⁹ The applicant for a uranium lease or the recipient of a uranium lease who had not also located a mining claim prior to February 10, 1954 was given until December 12, 1954 to locate mining claims upon the lands covered by the application or lease.⁵⁰ In addition the uranium lease applicant or lessee relying on the provisions of this Act had to file a withdrawal of his application or a release of his lease with the Atomic Energy Commission and record a notice of the filing of such withdrawal or release in the appropriate county office within 30 days after the filing for record of the notice of certificate of location. In order to protect the applicant or lessee in his right to convert his lease to a mining claim the Act provided, subject to the qualification discussed below, that "no mining claim hereafter located shall be valid as to any lands which at the time of such location were covered by a uranium lease application or a uranium lease."⁵¹

At the time of the enactment of Public Law 585 there were three types of A.E.C. uranium leases in existence. First, Mining Lease No. AT (05-1) - OG which represented the Commission's initial attempt to administratively solve the problem resulting from conflicts between the mining locator and the federal oil and gas lessee.⁵² Second, Circular 7 leases relating to the same conflict and with respect to the issuance of which formal rules and regulations had been adopted.⁵³ Third, leases issued by the A.E.C. relating to lands withdrawn from public entry.⁵⁴ Although the statute merely refers to "uranium leases," it is clear that the provisions relating to the conversion of such leases or applications to lease into mining claims is limited to the first two types of leases in that the statute specifically

47. 30 U.S.C.A. Sec. 501.

48. 30 U.S.C.A. Sec. 521.

49. 30 U.S.C.A. Sec. 521.

50. 30 U.S.C.A. Sec. 523.

51. 30 U.S.C.A. Sec. 523 (c). The regulation terminating Circular 7 specifically provided that all Circular 7 lease applications pending on December 12, 1954 will be considered rejected as of that date. 19 FED. REG. 7365 (November 16, 1954). Accordingly, after that date if no lease has been issued, the existence of an unwithdrawn lease application cannot preclude subsequent mineral locations.

52. See note 33 for discussion of the provisions of this type of lease.

53. See notes 35 and 36 for discussion of the provisions of this type of lease.

54. For discussion of this type of lease see *Hearings, supra* note 24 at 155.

defines "uranium lease" and "uranium lease application" so as to limit such reference to leases issued or applied for relating to segregated leasing act lands.⁵⁵

The foregoing provisions relating to uranium lease application or uranium leases provided in effect a means whereby the applicant or lessee could convert his application or lease into a valid mining claim and with respect to the applicant or lessee who had also made a mining claim prior to February 10, 1954 a means whereby the claim could be validated. Presumably the uranium lease applicant had to avail himself of the procedures provided for by Public Law 585 in that the Atomic Energy Commission has ceased to grant uranium leases for this purpose.⁵⁶ However, those who had already received uranium leases presumably could continue to rely on such leases and operate under such leases until terminated. Assuming the validity of such leases it is apparent that Congress could not, even if it so desired, have required the lessee to exchange his lease for a mining claim.⁵⁷ The lessee under an A.E.C. AT (05-1) -OG lease which under its provisions continues so long as the lease terms are complied with may have elected to continue under the existing lease. However, lessees under an AT (05-1) -OG lease with a definite term presumably found it advisable to convert the lease into a mining claim.⁵⁸ In the case of the no term AT (05-1) -OG lease not converted into a mining claim, the question of whether failure to comply with the terms of the lease resulted in automatic termination will be extremely important in that such acreage is not open to mining location by others until such lease terminates. In the event the definite term lease containing a cancellation provision is not converted into a mining claim, subsequent mineral locators presumably will have to go to the records of the A.E.C. to determine whether notice of cancellation was given prior to the expiration of the lease term. Lessees under Circular 7 undoubtedly elected to convert their leases into mining claims in that such leases were issued for a period of five years. Although Circular 7 leases are renewable for five additional periods of three years each, the regulations expressly reserved the right to refuse to renew in the event the leased land became open to entry under the United States mining laws.⁵⁹

All mining claims validated by Public Law 250 and Public Law 585 and all mining claims established in accordance with the provisions of Public Law 585 are subject to a reservation to the United States of all Leasing Act minerals, if at the time of the issuance of patent the lands are subject to a lease or permit, or application therefor, under the mineral leasing laws or are known to be valuable for leasing act minerals.⁶⁰

55. 30 U.S.C.A. Sec. 530.

56. See discussion at note 51.

57. 16 C.J.S. 1212.

58. See discussion at note 33.

59. 10 CODE FED. REGS. Sec. 60.7(j) (1949 ed.), 19 FED. REG. 765 (February 10, 1954). The regulation terminating Circular 7 preserves such leases at least for their original term in that it provides that the termination is without prejudice to the rights of leaseholders established under existing Circular 7 leases. Presumably, however, these leases will not be renewed at the end of the original term.

60. 30 U.S.C.A. Sec. 524.

PUBLIC LAW 585—PRIORITIES AND TITLE PROBLEMS

The system of priorities established among conflicting claims and leases involves the competing rights of individuals falling within the following categories:

(1) Locator of a mining claim subsequent to July 31, 1939 and prior to January 1, 1953 who relies on the validating procedures prescribed by Public Law 250.

(2) Locator of a claim subsequent to December 31, 1952 and prior to February 10, 1954 who relies on the validating procedures prescribed by Public Law 585.

(3) The applicant for or recipient of an Atomic Energy Commission uranium lease.

(4) Locator of a claim subsequent to February 9, 1954 and prior to August 13, 1954.

(5) Locator of a claim subsequent to August 13, 1954.

With respect to the mining claims falling within category (1) if the amended location notice and other requirements of Public Law 250 were complied with on or before December 11, 1952, such locator has priority over any subsequent locator.⁶¹ If, however, he did not make the appropriate filing and posting, his claim is subject to a prior right in any subsequent locator provided the claim of the subsequent locator, if made prior to August 13, 1954, has been validated by Public Law 585. Mining claims falling within category (2) have priority over subsequent locations (category 5), if the validating procedures of Public Law 585 are followed.⁶² With respect to the individual falling in category (3), to the extent that he converts his lease or application for lease into a mining claim it is subject to any mining claim categories (1) and (2) located prior to February 10, 1954 and validated by Public Law 250 or 585.⁶³ Accordingly, a lessee in this situation probably should have continued to rely on the lease to the extent that he is able to do so⁶⁴ rather than convert it into a mining claim, for as noted it is doubtful whether mining claims (assuming their invalidity) could be given preference over a valid and existing lease. A conflict of this nature between a non-converting lessee and a mining claimant could raise all the issues that led to P.L. 585 and which were never litigated beyond the Department of the Interior.⁶⁵

Mining claims located on or after February 10, 1954 and prior to the enactment of Public Law 585 (category 4) are completely ineffective unless the claimant also applied for or received a uranium lease from the A.E.C. in that except for such applicants or lessees no validating procedure is provided for with respect to claims located during this period. This assumes, however, that such locations were made on segregated leasing lands; again

61. 30 U.S.C.A. Sec. 522.

62. 30 U.S.C.A. Sec. 522.

63. 30 U.S.C.A. Sec. 523(b).

64. See *supra* p. 146.

65. See *supra* p. 141.

this conflict could raise the very issues Congress attempted to resolve by the enactment of Public Law 585. Inasmuch as the entire question of priorities and necessity to validate under Public Laws 250 and 585 depend on whether the claim in question was located on segregated leasing lands, the title examiner will in many instances⁶⁶ have to resolve this question. A determination of this question will necessitate an examination of the records of the Bureau of Land Management to determine the existence of a federal lease, or application therefor, on the appropriate date and in some instances a determination as to whether the lands on the appropriate date were known to be valuable for leasing act minerals.⁶⁷

It is interesting to note that the Act accords priority to those who took the A. E. C. leasing route on or after February 10, 1954 (effective date of Circular 7), but, on the other hand, accords priority to those who relied on mining locations rather than A.E.C. leases prior to February 10, 1954.⁶⁸ Apparently Congress adopted the attitude that those who relied on the A. E. C. after the adoption of Circular 7 should be protected, whereas those relying on the A. E. C. prior to the adoption of Circular 7 are not entitled to similar protection. However, the pre-Circular 7 lessee may not need such protection in that if he continued to rely on his lease rather than convert it to a mining claim his interest would appear to be paramount to that of a mining claimant who located on what was then segregated leasing act lands.

The Act is not explicit with respect to conflicting claims made during the relevant periods in question. Assuming that the prior locator validates his claim, it would appear clear that his claim would have priority over any adverse locator locating during the same period and also validating.⁶⁹ If, however, the prior locator failed to validate and the subsequent locator did, a question would arise as to whether the subsequent locator thereby acquired a valid claim. Assume, for example, that on January 10, 1953 A located a mining claim on land already subject to a federal oil and gas lease and that on June 10, 1953 B locates a claim on the same land. Assume further that A fails to validate under Public Law 585 and B does. Presumably B has a valid claim (although he would not have had if A had validated) although there are some decisions to the effect that if one locator institutes a location which has not been completed that a subsequent locator cannot acquire any rights during the period in which the original locator has to perfect his rights even though the original locator in fact never does

66. If, e.g., the title examiner finds that a uranium claim was located prior to February 10, 1954 and the validating procedures of P.L. 250 or 585 were not followed, the validity of the mining claim will depend upon whether on the appropriate date the land was subject to a federal lease or permit, or application therefor, or known to be prospectively valuable for leasing act mineral. See *supra* p. 141.

67. See *supra* p. 141.

68. Representative Young took issue with the advisability of giving the mining claimant a priority over the lessee under these circumstances. See *Hearings, supra* note 28 at 91.

69. This assumes that the locator has made a valid discovery in which event the usual principle applied with respect to mining claims—first in time first in right—would appear to apply. *Cole v. Ralph*, 252 U.S. 286, 40 S. Ct. 321 (1920).

perfect his rights.⁷⁰ This doctrine as an original proposition leaves much to be desired and probably will not be extended to cover this analagous but distinguishable situation.⁷¹

Public Law 585 also provides for a system of priorities among A. E. C. lease applicants and lessees.⁷² With respect to conflicts between an A. E. C. lease and a pending A. E. C. uranium lease application priority is, as would be expected, given to the lessee.⁷³ With respect to conflicting lease applications, priority is established by the time of posting on the tract in question of a notice of lease application as required in accordance with paragraph (c) of A. E. C.'s Circular 7, provided there shall have been timely compliance with the other provisions of paragraph (c).⁷⁴ If there has not been timely compliance with the provisions of paragraph (c) of Circular 7, priority is determined among conflicting lease applications by the date of the filing of the lease application with the Atomic Energy Commission.

Under existing and established precedent, questions arising under Public Law 585 involving conflicting rights of mining claimants relying on Public Law 585 will be resolved in the courts rather than within the Department of the Interior.⁷⁵ The proposed regulations for implementation of Public Law 585 expressly provide in this regard that all questions between mining claimants asserting conflicting rights of possession under mining claims, must be adjudicated in the courts.⁷⁶ If the conflict is between a mining claimant and an A. E. C. lessee it may be necessary to make the United States a party to the proceeding in which event, unless the United States consents to being joined, it may be impossible to obtain a judicial determination of the matters in issue.⁷⁷

PUBLIC LAW 585—MULTIPLE USE PROVISIONS

Public Law 585 expressly makes the courts the arbitrators of problems arising out of the multiple use of a particular tract of land by the mining locator and the lessee or permittee under the Federal Leasing Act. The

70. *Sierra Blanca Mining & Reduction Co. v. Winchell*, 35 Colo. 13, 83 P. 528 (1905).

71. For a criticism of the *Sierra Blanca* case see Morrison, *MINING RIGHTS* 96 (16th ed. 1936). Also unanswered by P.L. 585 is the extent to which claims validated under its provisions or those of P.L. 250 were subject to the assessment requirements prior to validation. Assume, e.g., a claim located in 1950 and a conflicting claim located in 1952 after the prior locator failed to perform the assessment work. Assume further that an attempt is made to validate both claims under the provisions of P.L. 250. Presumably the usual assessment requirements are applicable in which event the subsequent locator would prevail. P.L. 585 (30 U.S.C.A. Sec. 521 (b)) specifically provides with respect to claims validated under its provisions or those of P.L. 250 that assessment work performed thereon shall be recognized to the same extent as if the validity of the claim did not depend upon the validating procedures of P.L. 585 and 250. The negative inference would appear to be that failure to perform such assessment work is not cured by the validating procedures of these two statutes.

72. 30 U.S.C.A. Sec. 523 (b).

73. *Ibid.*

74. *Ibid.* See discussion at note 35 for posting requirements of Circular 7.

75. See Note, *Mining Patent Application Procedure*, *infra* at p. 240.

76. 20 FED. REG. 1402 (March 9, 1955).

77. *Cf. Monolith Portland Cement Company v. J. R. Gillezerg*, (Cal. App. 1954) 277 P.2d 30.

statute in this regard provides generally for the protection of existing improvements, workings, or facilities and gives priority of use to such existing facilities. Generally, neither the mining locator nor the leasing act operator can conduct operations so as to endanger or materially interfere with any existing improvements, workings or facilities of the other. If, however, a particular use cannot be reasonably and properly conducted without endangering or materially interfering with existing facilities, a court of competent jurisdiction can authorize such use if it finds that the necessity for permitting such use outweighs the damage provided the interfering party pays, or furnishes security for payment, to the injured party an amount fixed by the court as fair compensation.⁷⁹ Although the statute is not explicit in this regard presumably if such permission is not obtained the injured party could bring an action to restrain the interference or for damages.⁸⁰

The statute also provides that leasing act operations will be conducted in a manner so far as reasonably practicable to avoid damage to any known deposit of non-leasing act minerals and that mining operations will be conducted in a manner so far as reasonably practicable to avoid damage to any known deposit of leasing act minerals.⁸¹ Presumably, therefore, either can cause damage without liability to the other to the extent that it is not reasonably practicable to avoid such damage, provided no damage is caused to existing improvements, workings or facilities. This provision presumably is enforceable by restraining order or by an action for damages.⁸² If, however, no unpatented mining claim has been located at the time leasing act operations result in damage to known deposits of non-leasing act minerals, there appears to be no one with a sufficient interest to enforce the liability. If mining operations result in damage to leasing act minerals prior to the issuance of a lease or prospecting permit under the leasing act, only the United States would be in a position to enforce this obligation.⁸³

The provisions regulating multiple use apply to any patented claim containing a reservation of leasing act minerals and to any unpatented claim which will be subject to a reservation to the United States of leasing act minerals.⁸⁴ Inasmuch as with respect to locations made after the enactment of Public Law 585, the reservation of leasing act minerals will depend on the situation as it exists at the time a patent is applied for, it is in fact impossible to definitely ascertain until that time whether or not the land will be subject to such a reservation. Presumably, however, to protect existing facilities of the leasing act operator this provision will be construed to relate to unpatented mining claims that would be subject to such

78. 30 U.S.C.A. Sec. 526 (d).

79. *Ibid.*

80. With respect to the right to recover damages compare *Kardon v. National Gypsum Co.*, 73 F. Supp. 798, 83 F. Supp. 613 (E.D. Pa. 1947).

81. 30 U.S.C.A. Sec. 526 (b) and (c).

82. See note 80.

83. *Cf. United States v. State of Wyoming*, 331 U.S. 440, 67 Sup. Ct. 1319 (1947).

84. 30 U.S.C.A. Sec. 526 (b).

a reservation in the event a patent was presently applied for. Further, assuming possible liability of the locator to the government for damage to any encountered leasing act deposit, all unpatented mining claimants would have to assume that the land would be subject to such reservation even if there were no outstanding federal lease or permit.

The Act contains a provision requiring the party having the existing facilities, workings or improvements to furnish the other party, upon request and at the requesting party's expense, any available information relating to the location of his improvements, workings or facilities and to permit him access at reasonable times to such facilities for the purpose of surveying and otherwise examining the location of such improvements.⁸⁵ If the party with the existing improvements refuses to furnish such information or denies access, the requesting party is relieved of any liability for the damage or interference resulting by reason of such failure or denial.⁸⁶ Further, the requesting party can recover the court and attorney costs incurred in an action brought to require this information to be furnished.⁸⁷

PUBLIC LAW 585—WITHDRAWALS AND A.E.C. LEASES

An important provision of Public Law 585 in effect validates locations made subsequent to July 1, 1939 and prior to February 10, 1954 ab initio for the purpose of determining whether such claim is subject to a withdrawal or reservation of lands made after the original location.⁸⁸ Substantial areas of the public domain have been withdrawn from mineral location by the A.E.C. and other government agencies for various governmental purposes and the effect of this provision is to preserve the rights of the locator whose location was made prior to the withdrawal and whose location would be invalid except for the validating provisions of Public Laws 250 and 585. Apparently, however, this provision will not have the effect of validating claims located prior to the withdrawal, but with respect to which a discovery was not made until after the withdrawal.⁸⁹

Public Law 585 also eliminated the problem previously noted relating to the validity of mining claims based on the discovery of fissionable source material. The Act in effect validated all such previous discoveries insofar as they may have conflicted with the Atomic Energy Act of 1946 by providing that notwithstanding the provisions of the Atomic Energy Act of 1946 any claim heretofore located under the mining laws of the United States based upon the discovery of a fissionable source material shall be valid in all respects to the same extent if based on the discovery of a non-fissionable

85. 30 U.S.C.A. Sec. 526 (e). The information that has to be furnished is limited to that presently available; nor is the party furnishing such information responsible for its accuracy. *Ibid.*

86. *Ibid.*

87. *Ibid.*

88. 30 U.S.C.A. Sec. 521 (c).

89. The Department of Interior has held that location without a valid discovery prior to a withdrawal confers no rights under the mining laws prior to the restoration of the lands from the withdrawal. Clinton D. Ray, 59 I.D. 466 (1947).

source material.⁹⁰ The Atomic Energy Act of 1946 was further amended by deleting therefrom the provision reserving to the United States all fissionable source material, thus eliminating this problem prospectively.⁹¹

Public Law 585 expressly authorized the Atomic Energy Commission to issue leases or prospecting permits for uranium and other fissionable source materials on the public domain.⁹² The Atomic Energy Commission could, therefore, if it so desired institute a leasing system to complement the location system with respect to the exploration and development of uranium deposits. However, it is clear from the legislative history⁹³ that the Atomic Energy Commission requested this leasing authority only for the purpose of permitting it to enter into leases with respect to that part of the public domain withdrawn from mineral location by the Commission and on which uranium has been discovered through the efforts of the Commission or the United States Geological Survey. The Atomic Energy Commission has from time to time and presumably will continue to withdraw areas of the public domain for exploration and such areas are usually core drilled by the Atomic Energy Commission or an associated agency. If uranium is discovered the Commission has in the past entered into privately negotiated leases for the development of the lands; if uranium is not discovered or the area does not appear promising the land is restored to the public domain.⁹⁴ That the Atomic Energy Commission intends to use its leasing power primarily for this purpose is indicated by the fact that on December 12, 1954 the provisions of Circular 7 were terminated.⁹⁵ With respect to leases granted pursuant to this statutory authority it is encouraging to note that the Commission apparently is considering the adoption of formal procedures to replace the present system of privately negotiated leases.⁹⁶

The Commission is also authorized to issue leases or prospecting permits for uranium for lands administered for national park, monument and wildlife purposes which otherwise are not generally subject to mineral location.⁹⁷ However, such leases or permits can be issued only when the President by executive order finds and declares that such action is necessary

90. 42 U.S.C.A. Sec. 2098 (c).

91. 68 STAT. 934 (1954). The proposed rules to implement P.L. 585 contain a provision whereunder a person who previously received a patent or lease subject to a reservation to the United States of fissionable source materials can have the reservation eliminated. 20 FED. REG. 1404 (March 9, 1955). The statute expressly authorized such procedure. 42 U.S.C.A. Sec. 2098 (b).

92. 42 U.S.C.A. Sec. 2097.

93. See testimony of Jesse Johnson, Director, Raw Materials Division, Atomic Energy Commission, *Hearings Before the Committee on Interior and Insular Affairs* on S. 3344, 83rd Cong., 2nd Sess. 23-24 (1954).

94. See testimony of Rafford L. Faulkner, Acting Director, Division of Raw Materials, Atomic Energy Commission, *Hearings, supra* note 24, at 79-83.

95. 19 FED. REG. 7365 (November 16, 1954).

96. The Commission held hearings on March 29, 30 and 31, 1955 at Grand Junction, Colorado, for the purpose of obtaining the views of all interested persons with respect to procedures and methods for awarding leases for the mining of uranium on federal lands under the control of A.E.C. 20 FED. REG. 1227 (February 26, 1955).

97. 42 U.S.C.A. Sec. 2097.

in the interests of national defense. Presumably, when and if the President exercises this power he will not do so with respect to individual lease applications.

Public Law 585 also opens to mineral location lands previously withdrawn from the public domain as helium reserves.⁹⁸ However, such lands do not become open to location until such time as the Secretary of the Interior first determines that operation under the mining laws will not result in the loss or waste of helium-bearing gas and the Secretary of the Interior designates their availability for this purpose in the Federal Register. The Secretary is given authority to condition continued mineral operations on the taking of such measures as he deems necessary to prevent the loss or waste of the helium-bearing gas. The Secretary of the Interior as of May 1, 1955 had not designated any part of these reserves as available for mineral location; the proposed regulations for the implementation of Public Law 585 provide that mining locations made prior to the required publication in the Federal Register of notice of availability will confer no rights on the locator.⁹⁹ The Secretary of the Interior in opening such lands to mining location will be faced with the problem of providing for orderly procedures.¹⁰⁰

PART II. FEDERAL OIL AND GAS LEASES

THE PROBLEM: CONFLICT BETWEEN A FEDERAL OIL AND GAS LEASE AND A PRIOR MINING CLAIM

The dual system relating to the development of our mineral resources not only posed serious and difficult problems to the mining industry, but to the oil and gas industry as well. There are on the public domain a large number of dormant unpatented mining claims some of which go back to locations made several years previously and many of which are not valid because of a failure to make a valuable discovery of minerals or otherwise comply with the appropriate mining laws.¹⁰¹ Frequently the mining locator has not performed the annual assessment work, but the failure to perform such work merely opens the land to location by other mining claimants and does not in itself constitute a forfeiture and is not grounds for the

98. 30 U.S.C.A. Sec. 529. The same helium reserves can be opened by the Secretary of interior for mineral leasing act purposes. See *infra* 168.

99. 20 FED. REG. 1404 (March 9, 1955).

100. The proposed opening of a previously withdrawn area in Campbell County, Wyoming had to be rescinded at least temporarily because of concern over possible violence. See *Denver Post*, April 29, 1955.

101. The only available statistics relating to dormant mining claims are limited to claims located in the national forests. As of January 1, 1952 it has been estimated that there were 84,050 unpatented mining claims located in the national forests covering approximately 2,163,900 acres of which number 2% were producing minerals in commercial quantities and an estimated 40% were valid. *Hearings, Before the Committee on Agriculture on H.R. 5358, 83rd Cong., 1st Sess. 6 (1953)*. There is no time period in which the holder of an unpatented mining claim must apply for patent. *Clipper Mining Co. v. Eli Mining Co.*, 194 U.S. 220 (1904).

United States or a lessee under the leasing act to assert a forfeiture.¹⁰² Accordingly, the federal oil and gas lessee acquires no rights with respect to lands covered by an unpatented mining claim located prior to enactment of Public Law 585 unless he can establish that the claim has been abandoned or is not valid. The Bureau of Land Management in fact will refuse to issue an oil and gas lease if the existence of a valid unpatented mining claim located prior to the enactment of Public Law 585 on the land in question is called to its attention.¹⁰³

The problem is further complicated by the fact that certificates of unpatented mining locations are recorded at the local county recorder's office for the county in which the mining claim is located and are not reflected in the records of the field or other offices of the Bureau of Land Management. The Bureau of Land Management ordinarily has no record of the existence of unpatented mining claims until the claimant files an application for patent and as noted elsewhere in this symposium only a very small percentage of mining claimants file for patent.¹⁰⁴ The oil and gas operator in determining the availability of land for leasing under the Federal Leasing Act ordinarily relies on the records of the field office of the Bureau of Land Management which are conveniently located at the same office for the entire state. The plat and tract books maintained by the field offices provide a relatively efficient means of determining the availability for leasing of such lands. Inasmuch as the records of the Bureau of Land Management do not reflect the existence of mining locations, federal leases are frequently issued despite the fact that they conflict with existing mining locations.

The oil and gas operator if engaged in federal leasing on a large scale ordinarily finds the cost of obtaining abstracts of the county records relating to each federal lease or lease application prohibitive, and accordingly ordinarily confines himself to examining abstracts of such records only after the lease has been issued and only with respect to federal oil and gas leases scheduled for development. However, even assuming that an abstract of the county records is obtained, such abstract may or may not reflect the existence of conflicting unpatented mining claims. With the exception of placer claims filed on surveyed land which have to be described in terms of a legal subdivision conforming to the public survey, mining claims are generally described by metes and bounds.¹⁰⁵ Only by platting all such descriptions could one determine whether such claims conflicted with the

102. See Note, *The Assessment Work Requirements*, *infra* p. 231. Further, with respect to lands that had become valuable for oil or gas or other leasing act minerals, the mining locator who had made his discovery prior to the segregation of the lands under the Leasing Act was protected against subsequent mining locators even in the event he failed to perform his annual assessment work in that the land thereafter was not open to mineral entry by others. One of the incidental consequences of the enactment of P.L. 585 is to restore the assessment requirements to such mining claims.

103. *Jebson v. Spencer and Woodward*, Department of Interior, A-26596 (June 11, 1953).

104. See Note, *Mining Patent Application Procedure*, *infra* p. 240.

105. See Note, *The Description of a Mining Claim*, *infra* p. 244.

area covered by the federal oil and gas lease and with respect to an area in which a large number of mining claims had been filed over a period of years this not only is financially prohibitive but time-consuming and impracticable because of the necessity for speed and close scheduling in oil and gas operations.¹⁰⁶ Further, with respect to mining claims located on the unsurveyed public domain, such claims frequently cannot be platted in that the beginning point may not be tied into the public survey.¹⁰⁷

Assuming that through an examination of an abstract existence of a mining claim is disclosed, the federal oil and gas lessee had (and to a certain extent continues to have) the difficult task of determining the validity of the claim and locating the present owner of the claim. The mining claims encountered fall into the following two broad categories both of which pose similar problems but with important variations: (1) claims based on discovery of oil or gas located under the Oil Placer Act of 1897 and preserved by the federal Mineral Leasing Act of 1920, and (2) claims located under the general mining laws and relating to a discovery of minerals other than leasing act minerals. Because of the variations in the problems posed, it will be convenient to discuss these two general types of claims separately.

The existence of claims located under the Oil Placer Act of 1897 ordinarily is disclosed by an abstract to the extent that such claims were located on surveyed land in that such claims had to be described by legal subdivisions conforming to the public land survey. All such claims to be valid must either (1) be based on a discovery of oil and gas made prior to February 25, 1920 or (2) the claimants must on February 25, 1920 have been diligently prosecuting work that led to the discovery of oil or gas.¹⁰⁸ Having determined the existence of such claim the usual title procedure is to have the land in question examined by a qualified person for evidence of the fact that an oil and gas well was actually drilled on the premises and in the event such evidence is found to make further inquiry to determine whether the drilling resulted in the discovery in valuable quantities of oil or gas. In view of the recent tendency of the Department of Interior to liberalize the conception of what constitutes a valuable discovery of oil or gas a substantial number of federal oil and gas leases are probably in jeopardy because of the existence of such claims.¹⁰⁹

The mining location based on the alleged discovery of minerals other

106. See Testimony of Jack M. Jessen, Representing the Western Oil & Gas Association and the Rocky Mountain Oil and Gas Association, *Hearings supra* note 33 at 92-97.
107. See Note, *The Description of a Mining Claim, infra* p. 224.
108. 41 STAT. 451 (1920), 30 U.S.C. Sec. 193. The critical date in many instances is actually prior to February 25, 1920 in that pursuant to the Pickett Act 36 STAT. 847 (1910), 43 U.S.C. Sec. 141, the President was authorized to and did withdraw certain lands from entry under the Oil Placer Act (See discussion at *supra* p. 140); the saving clause contained in the Pickett Act protected the person in occupation of oil or gas bearing lands and in the diligent prosecution of work leading to discovery as of the date of withdrawal. 43 U.S.C.A. Sec. 142.
109. See, *e.g.*, *United States v. The Ohio Oil Co., Department of the Interior, A-26479* (Oct. 15, 1953).

than those now covered by the Leasing Act is less likely to be disclosed by an abstract in that frequently such claims are lode claims with respect to which a metes and bounds description in the location certificate satisfies the statutory requirements. However, assuming the existence of such claims,¹¹⁰ they present a serious title obstacle regardless of when located if located prior to August 13, 1954. The usual title procedure with respect to such claims if their existence is determined by the federal oil and gas lessee is to make an examination for the purpose of determining whether the mining claimant has made a valuable discovery of minerals. In the event the mining claimant has made a valuable discovery of minerals and otherwise complied with the mining laws, the federal oil and gas lease is in effect a nullity unless it can be established that at the time of discovery, which is not necessarily the date of discovery shown on location notice, the land in question was subject to a lease or prospecting permit, or application therefor, under the Leasing Act or known to be valuable for leasing act minerals. The determination of whether the land was subject to a lease or prospecting permit, or application therefor, can be readily determined by the records of the Bureau of Land Management, but the determination of whether such lands were known to be prospectively valuable for leasing act minerals poses a difficult factual question.¹¹¹ In the event the discovery was made at a time the lands were segregated under the Leasing Act, as already noted in detail, such mining claim was invalid and remains invalid except to the extent that it can be and was validated in accordance with the procedures provided for by Public Laws 250 and 585.¹¹² If validated under either of these Acts, as already noted, the rights of the federal oil and gas lessee are protected by the provision that such mining claims are subject to a reservation to the United States of leasing act minerals.¹¹³

As can be readily observed from the foregoing the federal oil and gas lessee faced a difficult problem in determining the existence of unpatented mining claims and in the event of their existence determining such non-record facts as whether a valuable discovery of minerals had been made or whether at the time of the discovery the lands were known to be valuable for leasing act minerals. This was a determination that had to be made at the lessee's peril in that the government does not warrant its title.¹¹⁴

110. Conflicts of this nature are less likely to occur in that ordinarily lands potentially valuable for oil and gas are not also potentially valuable for other non-leasing act minerals. However, as already noted the conflict with uranium claims led to the adoption of P.L. 585 and in some areas of Wyoming potentially valuable oil and gas lands are subject to a large number of mining claims based on a discovery of bentonite. See, *Hearings*, *supra* note 24 at 490.

111. In order for lands to be segregated under the Leasing Act because known to be valuable for leasing act minerals, it is not necessary to establish that such leasing act minerals have actually been discovered on the lands in question. *United States v. United States Borax Co.*, 58 I.D. 426 (1943). Compare the more stringent requirements that the mining locator must meet in order to establish a "valuable discovery." See Note, *Valuable Discovery of Minerals*, *infra* p. 214.

112. *Supra* at 141.

113. *Supra* at 147.

114. For usual title examination procedures with respect to this problem see *infra* at 167.

The government has always had available a method of challenging the validity of unpatented mining claims by a proceeding to declare them null and void brought within the Department of Interior,¹¹⁵ but generally did not institute such contests unless the land in question was needed for a particular governmental purpose.¹¹⁶ The holder of an unpatented mining claim also had a procedure available within the Department of Interior to contest the granting of an application for a federal oil and gas lease.¹¹⁷ However, the oil and gas lessee had no tribunal in which he could initiate proceedings to determine the validity of such mining claims in that such issues were determinable within the Department of Interior only if the mining claimant filed for a patent or if the mining claimant contested the issuance of an oil and gas lease.¹¹⁸ Nor could the oil and gas lessee institute a quiet title action for the determination of these issues because the United States was probably an indispensable party to such proceedings and ordinarily would not consent to being joined.¹¹⁹

QUEST FOR A SOLUTION

The oil and gas industry in seeking a legislative solution to these problems over a period of years has sought legislation designed to (1) require the recording of unpatented mining claims with the Bureau of Land Management,¹²⁰ (2) either a period of limitations¹²¹ in which existing unpatented mining claims must be brought to patent or a procedure for determining at the instance of an oil and gas lessee or applicant therefor the validity of existing unpatented mining claims, and (3) avoidance of this conflict with respect to claims located in the future. The multiple mineral development statute represents the first concrete accomplishment in this direction by adopting legislation that will avoid the problems outlined with respect to mining claims located after August 13, 1954 and by providing a procedure within the Department of the Interior pursuant to which the oil and gas lessee or applicant can have determined the validity of mining claims located prior to August 13, 1954.¹²² The multiple-mineral development statute does not, however, require the recording of unpatented mining claims with the Bureau of Land Management and

115. *United States v. C. E. Strauss*, 58 I.D. 567 (1943).

116. See testimony of George R. Bradshaw, Assistant Chief Counsel, Department of the Interior, *Hearings, supra* note 101 at 127. It appears that at the instance of one oil and gas unit operator the Bureau of Land Management at the prodding of its Regional Office agreed to institute proceedings for the purpose of determining the validity of a large number of mining claims that burdened unit operations. See testimony of Jack M. Jessen, *Hearings, supra* note 24 at pp. 543-544.

117. *Jebson v. Spencer and Woodward*, Department of Interior, A-26596 (June 11, 1953).

118. *United States v. Claude Allen et al.*, Department of Interior, A-26587 (Oct. 16, 1953).

119. *Monolith Portland Cement Co. v. J. R. Gilleberg*, (Cal. App. 1954) 277 P.2d 20.

120. A provision of this type would facilitate the determination of the existence of possible conflicting mining claims, but would not entirely avoid the problems arising from the inadequacies of the descriptions used in connection with mining claims. See Note, *The Description of a Mining Claim, infra* p. 224.

121. A task force of the first Hoover Committee in fact made a recommendation of this nature. See Note, *The Assessment Work Requirements, infra* p. 231.

122. P.L. 585 is equally applicable to other leasing act minerals; although the subsequent discussion relates primarily to oil and gas leasing it is also applicable to comparable situations involving other leasing act minerals.

does not require the locator of an unpatented mining claim to file an application for patent within any statutory period.

THE PUBLIC LAW 585 SOLUTION—PROSPECTIVE APPLICATION

The problem is taken care of prospectively by providing that all mining claims located after August 13, 1954 shall be subject to a reservation to the United States of all leasing act minerals if at the time of issuance of patent the land in question is covered by a lease or prospecting permit, or application therefor, or is known to be prospectively valuable for leasing act minerals.¹²³ Accordingly, it is clear that the existence of a valid unpatented mining claim located after August 13, 1954 does not preclude the issuance of a federal oil and gas lease. The bill as originally drafted would have subjected all future mining locations to a reservation of leasing act minerals;¹²⁴ however, as amended, such mining claimant can continue to obtain a fee patent including leasing act minerals if at the time of issuance of patent the lands are not within one of the foregoing Leasing Act categories. Presumably this provision will influence the mining claimant to a certain extent in determining when or whether to apply for a patent. If the lands are not within any of the foregoing Leasing Act categories, the holder of a mining claim will be encouraged to apply promptly for a patent to assure himself of ownership of leasing act minerals including oil and gas if the area should subsequently become valuable for such minerals. On the other hand, if at the time of location of the claim the lands are subject to a lease or permit, or application therefor, the mining claimant may prefer to wait until such lease or permit is permitted to terminate, as they frequently are, before applying for a patent.¹²⁵

PUBLIC LAW 585—SECTION 7 PROCEEDING

Section 7 of Public Law 585 prescribes an *in rem* administrative adjudication for the determination of the existence of or validity of a prior unpatented mining claim. Under the prescribed procedure the applicant for a federal oil and gas lease or the lessee must file for record in the county office of record for the county in which the lands are situated a notice of the fact that a lease has been applied for or issued.¹²⁶ This notice under the proposed rules¹²⁷ will have to conform to Form No. 1 and No. 1-A and set forth the following information:¹²⁸

-
- 123. 30 U.S.C.A. Sec. 524 (2).
 - 124. S. 3344, 83rd Cong., 2nd Sess. (1954) The amendment was added in the House of Representatives. 100 Cong. Rec. 10349 (July 19, 1954).
 - 125. The fact that a lease was previously outstanding does not necessarily establish that the land is prospectively valuable for leasing act minerals. *Jebson v. Spencer and Woodward*, Department of Interior, A-26596 (June 11, 1953).
 - 126. 30 U.S.C.A. Sec. 527 (a).
 - 127. The discussion herein relating to Section 7 proceedings assumes that the proposed rules will be adopted in the form proposed. While some changes undoubtedly will be made after the Department of Interior receives comments from interested parties, the substance of the proposed rules will probably be adopted since they follow very closely the statutory requirements and wording.
 - 128. 20 FED. REG. 1402 (March 9, 1955). If adopted as proposed, this section will appear as 43 CODE FED. REG. Sec. 186.8.

- a. The date of application for or issuance of the lease.
- b. The name and address of the applicant or lessee.
- c. Description of lands covered by the application or lease in terms of the public land survey or if unsurveyed either the probable section number when surveyed or tied by courses and distances to an approved United States mineral monument.

After the foregoing notice has been on record for ninety days an applicant for a lease or an oil or gas lessee can request the Bureau of Land Management to publish the notice required by the statute. This request under the proposed rules must conform to Form No. 2 and will have to be filed at the Land Office of the Bureau of Land Management for the Land District in which the lands are situated¹²⁹ or with respect to states having no Land Offices with the Director of the Bureau of Land Management.¹³⁰ Under the proposed rules no request for publication may include lands in more than one Land District¹³¹ although presumably publication can be had with respect to lands covered by more than one mining claim. The filing of request for publication under the proposed rules must be accompanied by the following:¹³²

a. A certified copy of the notice of application or lease filed with the local county recorder and setting forth the date of recordation.

b. An affidavit or affidavits of persons over 21 years of age setting forth the fact that the affiant examined the lands in question and made a reasonable effort to determine whether anyone was in actual possession or engaged in working the lands in question. In the event no such person is found the affiant shall so state; if the affiant finds any such persons, the affidavit shall state the names and addresses of such persons to the extent reasonably ascertainable. If the affiant is unable to ascertain the names and addresses of such persons he must set forth fully the nature and results of the inquiries he made for this purpose.

c. A certificate, conforming to Form 3¹³³ of a title company, abstract company, title abstractor or of an attorney¹³⁴ based upon an examination of the records relating to the land in question on record in the appropriate county recorder's office¹³⁵ setting forth the name of any person disclosed by such instruments to have an interest in an unpatented mining claim

129. The land office for Wyoming is located at Cheyenne; for Colorado at Denver; for Utah at Salt Lake City; for New Mexico at Santa Fe; for Montana at Billings; for North Dakota and South Dakota at Billings, Montana; for Nebraska and Kansas at Cheyenne, Wyoming; and for Oklahoma at Santa Fe, New Mexico.

130. 20 FED. REG. 1402 (March 9, 1955). If adopted as proposed, this section will appear as 43 CODE FED. REG. Sec. 186.9. The address of the Director is Bureau of Land Management, Department of the Interior, Washington 25, D. C.

131. *Ibid.*

132. *Ibid.*

133. *Id.* at 1403.

134. *Ibid.* Presumably nothing prevents a Company from using the certificate of its own attorney.

135. *Ibid.* Neither the statute nor the regulations are specific as to the records that have to be examined. If the examination is limited to the index of the records, in many states it will be a fruitless one in that in several mining states mining claims are indexed by name of the claim.

relating to the lands in question and the address of such person if disclosed by the records.

If a proper request for publication has been filed, the Bureau of Land Management will then cause at the expense of the requesting person¹³⁶ the publication of such notice in a newspaper of general circulation in the county in which the lands involved are situated on the day prescribed by statute once a week for nine consecutive weeks.¹³⁷ The published notice under the proposed regulations must conform to Form 4 and contain the following:¹³⁸

a. A statement to the effect that if any person claiming or asserting any right to leasing act minerals as the result of an unpatented mining claim fails to file with the Manager of the Land Office who caused publication of the notice within 150 days from the date of the first publication of such notice a verified statement containing certain information which must be specifically set forth in the notice and which is discussed below, such failure shall be conclusively deemed to constitute a waiver of all right to leasing act minerals and a consent to a reservation in any patent subsequently issued to the mining claimant of leasing act minerals.

b. The date of first publication of the required notice.

c. The office in which such verified statement must be filed, being the Land Office of the Bureau of Land Management in which the lands are situated, or, if none, the office of the Director of the Bureau of Land Management.

After the nine-week period for newspaper publication has expired the person requesting publication must obtain from the office of the newspaper a sworn statement that the notice was published at the time and in accordance with the requirements outlined above and file such statement in the Land Office where the request for publication was filed.

Within fifteen days after the date of first publication the person requesting publication must cause a copy of the published notice to be

136. *Id.* at 1403. If adopted, the regulation will appear at 43 CODE FED. REG. Sec. 186.10. Under the regulations the party requesting publication must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication. Since the furnishing of such agreement is a prerequisite to publication the requesting party, if possible, should attempt to anticipate the newspaper which the Manager will designate for publication and obtain the agreement from the publisher promptly.

137. The statute provides that if published in a daily paper it must be published in the Wednesday issue for nine consecutive weeks; if in a weekly it must be published in nine consecutive issues, or if in a semi-weekly or tri-weekly it must be published in the issue of the same day of each week for nine consecutive weeks. 30 U.S.C.A. Sec. 527 (a) (5). The provision for publication in a newspaper of general circulation in the county in which the lands are located as distinguished from a newspaper published in such county was deliberately chosen so as to permit certain urban papers with a large circulation throughout a particular state or area to be used for this purpose. See *Hearings, supra* note 28 at 39.

138. 20 FED. REG. 1403 (March 9, 1955). If adopted, the regulation will appear as 43 CODE FED. REG. Sec. 186.11 (5) (b).

personally delivered to or be mailed by registered mail to the following persons:¹³⁹

a. Each person whose name and address is set forth in the affidavit filed with the request for publication and described above.

b. Each person whose name and address is set forth in the certificate required to be filed with the request for publication described above. However, apparently, the requesting party has no duty to ascertain the address of persons disclosed to have an interest in an unpatented mining claim if not disclosed by the records. However, the cautious party undoubtedly will make a reasonable effort to ascertain the address of such persons and send them a copy of the notice.¹⁴⁰

c. Each person with an interest in a mining claim who on or before the first date of publication has filed for record in the local county recorder's office a request for notice in the manner described immediately below.

The owner of an unpatented mining claim or an interest therein desiring to receive notice of publication by an applicant or lessee relating to or affecting lands embraced in such mining claim can protect himself by filing for record in the county recorder's office a request that notice of publication be sent to him. Such request under the proposed rules must conform to Form No. 6 and contain the following information:¹⁴¹

a. Name and address of person requesting copies of the publication of notice.

b. The date of location for each claim.

c. The book and page of the recordation of the notice of certificate of location relating to each claim.

d. The section or sections which embrace each claim if surveyed; if unsurveyed the probable section or sections when surveyed or a tie by courses and distances to an approved United States mineral monument.¹⁴²

If the owner of an unpatented mining claim located prior to August 13, 1954, or an interest therein, desires to assert an interest to the leasing act minerals, he must file within 150 days from the first date of publication of the notice previously described a verified statement containing the same information relating to the unpatented mining claim required to be set forth in the request for a copy of the publication of notice described immediately above and the following additional information:¹⁴³

139. 30 U.S.C.A. Sec. 527 (a) (5). If personally delivered, it must be delivered within the fifteen days; if mailed, it merely has to be placed in the mails within the 15 days. *Ibid.*

140. Due process may, in fact, require a reasonable effort to determine the address of such individuals. *Cf. Mulane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652 (1950). The certificate of location filed in connection with a mining claim frequently does not show the address of the locator; because of this fact and the passage of time it frequently is extremely difficult to find the mining claimants. See *Hearings, supra* note 93 at 105.

141. 30 U.S.C.A. Sec. 527 (d), 20 FED. REG. 1404 (March 9, 1955).

142. 30 U.S.C.A. Sec. 527 (d) (3). The statute expressly provides that the recording of such request is not constructive notice for any other purpose. *Ibid.*

143. 30 U.S.C.A. Sec. 527 (a).

- a. Whether the claimant is a locator or purchaser under such location.
- b. The name and addresses so far as known to the claimant of any other person or persons claiming any interest in or under such unpatented mining claim.¹⁴⁴

If the mining claimant fails to file the verified statement within 150 days from the first date of publication of notice, the mining claimant is conclusively deemed to have waived any right to leasing act minerals and is precluded from asserting any interest therein.¹⁴⁵ If the mining claimant applies for a patent, his patent will be issued subject to a reservation of leasing act minerals.¹⁴⁶ However, as to any mining claimant entitled under the circumstances described above to personal delivery or mailing of a copy of the published notice, to whom such notice is not delivered or mailed, the publication of notice is completely ineffectual and the failure to file the verified statement does not preclude him from subsequently asserting rights in leasing act minerals.¹⁴⁷ A number of nice questions undoubtedly will arise in this regard concerning the conclusiveness of the affidavit filed by the party examining the lands in question and the conclusiveness of the title certificate filed. In this latter regard for reasons previously noted¹⁴⁸ a reasonably diligent search of the public records might fail to disclose the existence of a recorded mining claim. The mining claimant concerned as he properly should be with the possibility of losing valuable rights to leasing act minerals¹⁴⁹ should file with the local county recorder's office the request for notice of publication described above. The title examiner relying on Section 7 proceedings will undoubtedly scrutinize them carefully to determine compliance with the provisions of the statute and the regulations.

If the mining claimant files the verified statement within the prescribed 150 days, the Manager of the Land Office, or Director of the Bureau of Land Management when filed in Washington, must fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in leasing act minerals.¹⁵⁰ The hearing must be held in the county where the lands in question are located unless the mining claimant agrees otherwise.¹⁵¹ The hearing is held in accordance with the rules and regulations prescribed for other types of contests or protests within the Department of Interior.¹⁵² If the final

-
144. However, the statute does not expressly require the party who caused the publication or anyone else to thereupon give notice to the other persons named in the verified statement. However, once this information is received service by publication with respect to such individuals may not satisfy the due process requirements. *Cf. Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652 (1950).
 145. 30 U.S.C.A. Sec. 527 (d).
 146. *Ibid.*
 147. 30 U.S.C.A. Sec. 527 (e).
 148. *Supra* at 155-158.
 149. 30 U.S.C.A. Sec. 527 (d).
 150. 30 U.S.C.A. Sec. 527 (c).
 151. *Ibid.*
 152. *Ibid.* For rules relating to conduct of hearings in contests or protests see 40 CODE FED. REG. Sec. 221.1 *et seq.* (1949 ed.). The Department of Interior has under consideration at the present time a substantial revision of the rules relating to such contests or protests. 20 FED. REG. 1313 (March 3, 1955).

decision rendered in the matter is favorable to the mining claimant, no subsequent proceedings can be instituted under these provisions challenging such rights.¹⁵³ If the proceedings result in a final decision adverse to the mining claimant, presumably the determination is conclusive only with respect to the mining claimant's right to leasing act minerals and not determinative of his right to a patent or exclusive possession of the surface against other mining claimants.¹⁵⁴

The Act also prescribes a procedure pursuant to which the owner of any interest in a mining claim can relinquish all rights to oil and gas and other leasing act minerals without thereby conceding the invalidity of his mining claim. Under this procedure the execution and acknowledgement of a waiver and relinquishment and recordation thereof in the appropriate county recorder's office renders such mining claim thereafter subject to a reservation in the United States of leasing act minerals.¹⁵⁵ The applicant for a lease or oil and gas lessee who avails himself of a Section 7 proceeding can any time before hearing enter into a stipulation with the mining claimant who has filed a verified statement within the prescribed time recognizing the mining claimant's rights in leasing act minerals to the extent stipulated.¹⁵⁶

PUBLIC LAW 585—IMPACT ON TITLE EXAMINATION PRACTICES

The extent to which Section 7 proceedings are likely to be availed of requires some understanding of the manner in which most oil companies acquire federal oil and gas leases. While there are variations among companies and within the same company depending upon the particular situation, ordinarily oil companies acquire rights in federal oil and gas lands considerably in advance of actual development. To the extent possible such rights are usually acquired in the company's name or assigned to the company in its name, but because of the acreage limitations on the federal oil and gas leases one company or individual can hold in a particular state,¹⁵⁷ a large part of a company's interest in federal acreage will consist of three years non-renewal options¹⁵⁸ from other oil and gas lessees or applicants for oil and gas leases. These options may or may not be exercised depending upon the extent to which developing geological information indicates the likelihood of encountering oil or gas and the advisability of drilling such acreage. Ordinarily at the time of acquisition of the oil and

153. 30 U.S.C.A. Sec. 527 (c). Query, however, whether the United States could raise the same issues in a patent application contest?

154. 30 U.S.C.A. Sec. 527 (c). Query, however, whether collateral estoppel notions would make such determination res judicata in a patent application procedure? The resolution of this issue and that raised in note 153 presumably depends upon the extent to which the United States is in privity with its lessees.

155. 30 U.S.C.A. Sec. 528.

156. 30 U.S.C.A. Sec. 527 (c).

157. Under current limitations a Company or person can hold under federal lease a maximum of 46,080 acres in a particular state. 30 U.S.C.A. Sec. 184.

158. Under current limitations a company or person can hold three year non-renewable options relating to federal oil and gas leases on a maximum of 200,000 acres in a particular state. 30 U.S.C.A. Sec. 184.

gas lease or option only a superficial examination of title will be made for the purpose of determining availability of the lands for oil and gas leasing. When and if the company decides to develop the acreage in question or that in geological proximity, a detailed title examination will ordinarily then be made.

The foregoing suggests that an oil and gas company which intends to rely on Section 7 proceedings if conflicts with mining claims are subsequently disclosed, will probably file the required notice of application for or issuance of a lease in the local county recorder's office as a matter of course at the time it files an application for an oil and gas lease or at the time it takes an assignment to an oil and gas lease (provided its assignor has not already filed) in order to start the required 90 day period running. The oil and gas company will probably also insist that its optionors file such notice, and brokers who take leases which they intend to option to oil and gas companies will probably cause such notices to be filed at the time they apply for such leases.¹⁵⁹ If the foregoing procedure is followed, ordinarily the 90 day period will have run by the time the lessee is interested in developing the property.

It is conceivable that some companies may as soon as the 90 day period has run immediately file as a matter of course the request for publication in order to start the 150 day period running. In many instances the mining claimant, (if one exists) will fail to file the required verified statement and after 150 days any mining claimant who fails to file the verified statement will be precluded from asserting rights to leasing act minerals.¹⁶⁰ This procedure could be followed by the oil and gas lessee regardless of whether the title examination disclosed the existence of a mining claim in order to bar the mining claim of record that is not discoverable by a reasonable examination of the records.¹⁶¹ If Section 7 proceedings are avoided of at all, however, the oil and gas lessee is more likely to file a request for publication of notice only with respect to claims disclosed by an examination of the record. To do so as a matter of course would require the oil and gas lessee to make his title search, at least to the extent necessary to determine the existence of mining claims, sooner than he ordinarily would and prior to development of the property. However, particularly in areas known to be covered by a large number of mining claims located prior to August 13, 1954, some companies conceivably may follow this procedure.¹⁶²

A substantial number of companies undoubtedly will find Section 7

159. There appears to be no statutory provision precluding an assignee to avail himself of the filing made by his (or its) assignor.

160. 30 U.S.C.A. Sec. 527 (b). In the event a mining claimant files the verified statement the oil and gas lessee could either contest the validity of the claim or could enter into a stipulation recognizing the rights of the particular mining claimant. 30 U.S.C.A. Sec. 527 (c).

161. *Supra* at 155-158.

162. In the event the lessee elects to follow this procedure, the title examination could be made after the filing of the required notice with the appropriate county clerk and while the 90 day period relating thereto is running.

proceeding too expensive and time consuming to be followed with respect to each lease, particularly inasmuch as it requires a title examination (at least sufficient to disclose mining claims) with respect to all such leases. A number of companies probably will make the 90 day filing as a matter of course, but do nothing beyond that point until they are ready to examine the title to the particular lease which as previously noted will ordinarily take place when they are about to develop the lease in question. Inasmuch as their own title examination will include an examination of an abstract of the records of the appropriate county recorder certified for the inclusion of mining claims prior to August 13, 1954, in the event such examination discloses the existence of a mining claim or mining claims, the attorney making the examination, whether a company employee or independent counsel, could then prepare the required certificate of title.¹⁶³ The required affidavit relating to parties in possession or working the claim could be prepared by a field employee and the lessee would then be prepared to file the request for publication in accordance with the procedure previously outlined.

The oil and gas lessee availing himself of Section 7 will, as previously discussed, have to send the required personal notice to the specified parties within fifteen days of the first publication of notice.¹⁶⁴ This will require on his part an examination of the records of the appropriate county for the purpose of determining the names and addresses of mining claimants requesting a copy of such notice and filed in accordance with the provisions of the Act previously discussed. Presumably requests for notice of publication will be disclosed by the abstract as of the date certified, but the abstract will have to be brought down to at least the date of first publication for this purpose. The Act is not explicit in this respect, but it would appear that the oil and gas lessee would have to determine the existence of such requests up to the date of the first publication and not beyond.¹⁶⁵

In the event a mining claimant files the verified statement, the oil and gas lessee can either stipulate with respect to this particular claim or prepare to contest the claim on the merits.¹⁶⁶ If the oil and gas lessee

163. Neither the statute nor proposed regulation require that the certificate be prepared by independent counsel.

164. *Supra* at 161-162.

165. 30 U.S.C.A. Sec. 527 (a) (b). The fifteen days which the lessee has to give the required notice presumably is a grace period in which to take the necessary steps to give the required notice.

166. 30 U.S.C.A. Sec. 527 (c). Ordinarily a federal oil and gas lease covers a minimum of 640 acres and can cover as many as 2,560 acres. 43 CODE FED. REG. R57 Sec. 192.42 (1949 ed.). The maximum area covered by a lode claim is 20.7 acres and the maximum area covered by a placer claim is 20 acres with the exception of association placer claims which can cover a maximum of 160 acres. Accordingly, if the Section

contests the claim, ordinarily he will do so on one of the factual grounds previously noted¹⁶⁷ which frequently will require considerable preparation and may result in a prolonged hearing.

In view of the cumbersome, costly and time consuming procedure requiring a minimum of five months after the expiration of the 90 day filing of notice in the county recorder's office¹⁶⁸ to conclusively determine the rights of mining claimants to leasing act minerals, Section 7 proceedings probably will be availed of infrequently. Many oil and gas lessees will continue to rely on the procedures they followed prior to the adoption of the multiple mineral development statute.¹⁶⁹ If convinced that the mining claim is not a valid one, they ordinarily will proceed under their oil and gas lease without entering into negotiations with the mining claimant. If, on the other hand, the mining claim appears to be valid the alternatives are (1) to pay double rentals and royalties as to area of conflict to the mining claimant and to the United States,¹⁷⁰ (2) obtain a waiver and relinquishment of rights to leasing act minerals from the oil and gas lessee in accordance with the Public Law 585 procedure previously described,¹⁷¹ or (3) obtain a "protection" lease from the mining claimant adapted to the mining claim situation. In view of the fact that ordinarily a mining claim will cover only a small part of the federal oil and gas lease the first alternative may in fact be cheaper than the others depending upon the bargaining skill and strength of the mining claimant. The "protection" lease which typically in this situation provides that the lessee has no obligation to pay the mining claimant rentals or royalties under the lease from the mining claimant until the lessor has obtained a patent from the United States¹⁷² is, of course, preferable if it can be obtained. However, since it imposes the burden on the mining claimant to apply for a patent—something he ordinarily would not do and at some expense—mining claimants with valid claims presumably will be reluctant to enter into this type of lease unless a substantial consideration is paid. Accordingly, in many instances, a waiver and relinquishment of rights to leasing act minerals could probably be obtained from the mining claimant for substantially the same consideration.¹⁷³

7 proceeding produces a mining claimant ready to litigate, the oil and gas lessee may find it advisable to enter into a stipulation and agreement with the mining claimant relating to the tract covered by the mining claim which is likely to conflict with only a small part of of the federal oil and gas lease.

167. *Supra* at 156-157.

168. Realistically the elapsed time will be greater in view of the delay between the request for publication and actual publication.

169. *Supra* at 155-158.

170. Assuming the existence of a valid placer claim based on the discovery of oil or gas, the oil and gas operator could rely exclusively on a lease from the mining claimant. However, in that event he now would have to police his lessor to assure the performance of the annual assessment requirements.

171. *Supra* at 164.

172. Producers 88 Special—UP Form published by Kintzel Blueprint Company of Casper, Wyoming, contains special provisions designed to accomplish this purpose.

173. The mining claimant might, in fact, prefer to relinquish his rights to the leasing act minerals rather than institute a patent application proceeding and run the risk of having his patent declared void because of lack of a valuable discovery or failure to comply with other essential requirements.

The multiple mineral development statute also permits the Secretary of the Interior to open up Helium Reserves No. 1 and No. 2¹⁷⁴ to development pursuant to the Leasing Act. The Secretary of the Interior must determine that operations under the Leasing Act will not result in the extraction or cause loss or waste of the helium-bearing gas and must designate the lands as available to leasing by an order published in the Federal Register.¹⁷⁵ In the event such lands are opened to leasing act operations there undoubtedly will be a number of simultaneous filings in which event leases will be awarded by the drawing of lots.¹⁷⁶ This procedure affords considerable opportunity for speculation with a minimum investment in that although applications must be accompanied by the filing fee of \$10 and the first years rental of 50c per acre,¹⁷⁷ ordinarily in this type of situation checks will not be cashed by the Bureau of Land Management until the leases are actually awarded and to the extent that the applicant was not awarded a lease his check or checks will be returned.

The multiple mineral development statute does not, as in the case of mineral entry,¹⁷⁸ permit beyond the extent already permitted the development under any circumstance of leasing act minerals in national parks, monuments or wildlife refuges. At the present time leases cannot be granted as to national parks or monuments, but can be granted under certain circumstances with respect to a wildlife refuge.¹⁷⁹

CONCLUSION

The multiple-mineral development statute has resolved with respect to future operations the conflict between the mining locator and the leasing act operator in a satisfactory manner. All mining claims located after August 13, 1954 will be subject to a reservation in the United States of leasing act minerals if at the time of issuance of patent the land is covered by lease or prospecting permit, or application therefor, or is known to be prospectively valuable for leasing act minerals. On the other hand, the existence of a lease or prospecting permit, or application therefor, or known prospective value of land for leasing act minerals will not preclude valid locations for non-leasing act minerals made after August 13, 1954. The statute also provided a procedure for validating mining claims made after July 1, 1939 and prior to February 10, 1954 conflicting with leasing act dispositions and means of protecting existing equities acquired under the AEC's administrative attempt to find a solution to this conflict. These provisions undoubtedly will pose many difficult problems for the title examiner some of which have been indicated in this article. The statute has also removed any doubt concerning the validity of a mining location

174. Helium Reserve No. 1 was created pursuant to Presidential Executive Orders dated March 21, 1924 and January 28, 1926, Helium Reserve No. 2 was created pursuant to Presidential Executive Order 6184 dated June 26, 1933.

175. 30 U.S.C.A. Sec. 529.

176. 43 CODE FED. REG. Sec. 295.8 (1949 ed.).

177. 43 CODE FED. REG. 192.42(e) (1949 ed.).

178. *Supra* at 154.

179. 30 U.S.C.A. Sec. 181, 43 CODE FED. REG. Sec. 192.9 (1949 ed.),

based on the discovery of uranium or other fissionable source materials.

The multiple mineral development statute opened certain helium reserves to both mineral entry and development under the Leasing Act and provided for the opening of national monuments and parks and wildlife refuges for development of uranium, but not for development of leasing act minerals, if the President finds it necessary in the interest of national defense to do so.

The Act provides an in rem procedure for conclusively determining at the instance of a leasing act operator the right of a mining claimant to leasing act minerals under a location made prior to August 13, 1954. The procedure provided leaves something to be desired in that it is cumbersome, time consuming and costly. Certain segments of the oil and gas industry can be expected to continue to press for a modification of the mining laws so as to require with respect to claims located prior to August 13, 1954 a statutory period in which the mining claimant must apply for a patent and diligently pursue his application to patent.¹⁸⁰

180. The Department of Agriculture has pressed for legislation which would require holders of existing unpatented claims located in a national forest to apply for a patent within five years of the enactment of the proposed legislation. See *Hearings, Before the Committee on Agriculture on H.R. 5358, 83rd Cong., 1st Sess. (1953)*.