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LOCATION OF MINING CLAIMS IN WYOMING

The location of a valid mineral claim upon the Federal Public Domain situate within the State of Wyoming requires full compliance with the Federal Statutes¹ and the appropriate Wyoming Statutes.² The Federal Statute expressly provides, in part, that "... all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase . . . according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States."³ The foregoing is deemed to include state statutes except to the extent that they may be inconsistent with the federal law.⁴

Discussion of this topic requires the definition of certain words in order to clarify basic mining terms. A "location," as used in mining laws, refers to the act of appropriating a mining claim according to certain established rules,⁵ it also refers to the parcel of land marked out on the ground.⁶ The terms "vein," "lode" or "ledge," may be defined as a body of mineral or mineral bearing rock within defined boundaries in the earth's crust; any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock.⁷ If mineral is present in appreciable quantities, it is a mineral bearing vein or lode, even though the boundaries have not been ascertained.⁸ A "lode claim" may be described as a claim that embraces one or more continuous veins, lodes, or ledges of mineral lying within well defined seams or fissures in the surrounding rock.⁹ A "placer claim" is one wherein the valuable mineral is found not in veins, lodes, or ledges within the rock, but is in a loose condition in the softer materials that cover the surface of the earth.¹⁰

The ultimate objective of locating a claim is to obtain a patent which will entitle the patentee to fee ownership of all minerals contained therein and all surface rights. The rights of the owner of an unpatented, valid,

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1. 41 Stat. 437 (1921), 30 U.S.C. Sec. 22 (1940); *Erhardt v. Boaro*, 113 U.S. 527, 5 S.Ct. 560, 28 L.Ed. 1113 (1885); *Northmore v. Simmons*, 97 F. 386 (9th Cir. 1899); *Nelson v. Smith*, 42 Nev. 302, 176 Pac. 261 (1918); *Slothower v. Hunter*, 15 Wyo. 189, 88 Pac. 36 (1906); *Creede & Cripple Creek Min. etc., Co. v. Uinta Tunnel, etc., Co.*, 196 U.S. 337, 25 S.Ct. 266, 49 L.Ed. 501 (1905), holding that such provisions of state and territorial law as are not inconsistent with the laws of the United States are applicable to the location of mining claims and the recording thereof.
 2. Wyo. Comp. Stat., 1945, Secs. 57-901 to 57-938.
 3. 41 Stat. 437 (1921), 30 U.S.C. Sec. 22.
 4. *Ibid.*
 5. *St. Louis Smelting & Refining Co. v. Kemp*, 104 U.S. 636, 14 S.Ct. 636, 26 L.Ed. 875 (1881); *Del Monte Min. & Mill. Co. v. Last Chance Min. & Mill. Co.*, 171 U.S. 55, 18 S.Ct. 895, 43 L.Ed. 72 (1898).
 6. *Ibid.*
 7. *Inyo Marble Co. v. Loundagin*, 120 Cal.App. 298, 7 P.2d 1067 (1932); *Whiting v. Straup*, 17 Wyo. 1, 95 Pac. 849 (1908).
 8. *Iron Silver Min. Co. Cheesman*, 116 U.S. 529, 6 S.Ct. 481, 29 L.Ed. 712 (1886); *Beals v. Cone*, 27 Colo. 473, 62 Pac. 948, 953 (1900).
 9. *Ibid.*; *Butte & Boston Mining Co. v. Societe Anonyme des Mines de Lexington*, 23 Mont. 177, 58 Pac. 111 (1899).
 10. *United States v. Iron Silver Min. Co.*, 128 U.S. 673, 9 S.Ct. 195, 198, 32 L.Ed. 571 (1888).

mining claim prior to the issuance of a patent include the right to sell, lease, rent, devise or otherwise convey his interest in the claim, and form a part of the estate of a deceased claimant to the extent that there is continued compliance with local and federal statutes.¹¹

The discovery of a valuable mineral deposit is the first prerequisite to the location of a valid lode or placer claim.¹² The question of what constitutes a valuable mineral deposit is generally considered a question of fact requiring knowledge that a mineralized vein, lode or placer deposit exists within the limits of a location, and that there exists adequate justification for development. Also, there are many decisions holding that a mere indication of minerals, however strong, is not sufficient to support the location of a lode or placer claim.¹³ The following criterion of what constitutes a discovery of mineral has been adopted in several cases, "The finding of ore or mineral in paying quantities is not a necessary incident to discovery, but mineral of such character and quantity must be found to the extent that a reasonably prudent man, not necessarily a skilled miner, would be justified in expending time and money developing it, with the reasonable expectation of finding minerals in paying quantities."¹⁴

It will be readily recognized that the above test will be difficult to apply. Bearing in mind that the ultimate objective is the acquisition of title in fee simple to the parcel of land including ownership of all minerals contained therein, the final determination as to an adequate discovery of minerals will rest in the Department of Interior. In *United States v. Dawson*¹⁵ it was held that to establish a valid mining claim under the mining laws, it is necessary to show that the land will be more valuable for the production and sale of mineral than for any other purposes. Also, as to the location of a claim in a national forest which includes areas suitable for recreation, the discovery of mineral must be clear and unequivocal.¹⁶

Assuming a discovery of valuable minerals in the public domain in Wyoming, the following steps should be taken in order to establish a valid lode claim: (1) The setting of a discovery monument or stake and the

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11. Wyo. Comp. Stat., 1945, Sec. 57-919.
 12. *United States v. C. E. Strauss et al.*, 59 I.D. 129, 137 (1945), citing *Cameron v. United States*, 252 U.S. 450, 459, 40 S.Ct. 410, 64 L.Ed. 659 (1920); *United States v. Southern Pacific Co.*, 251 U.S. 1, 13, 14, 40 S.Ct. 47, 64 L.Ed. 97 (1919); *Chrisman v. Miller*, 197 U.S. 313, 322, 25 S.Ct. 468, 49 L.Ed. 770 (1905); *United States v. Iron Silver Min. Co.*, 128 U.S. 673, 684, 9 S.Ct. 195, 32 L.Ed. 571 (1888).
 13. 17 Stat. 91, 30 U.S.C. Sec. 23; *Iron Silver Min. Co. v. Mike & Starr, etc., Min. Co.*, 143 U.S. 394, 12 S.Ct. 543, 36 L.Ed. 201 (1892); *Chrisman v. Miller*, 197 U.S. 313, 25 S.Ct. 468, 49 L.Ed. 770 (1905); *Whiting v. Straup*, 17 Wyo. 1, 95 Pac. 849 (1908); *Noyes v. Clifford*, 37 Mont. 138, 152, 94 Pac. 842 (1908); *Cleary v. Skiffich*, 28 Colo. 362, 65 Pac. 59 (1901).
 14. *United States v. Pan-American Petroleum Co.*, 45 F.2d 821 (9th Cir. 1930); *United States v. Mobley*, 45 F.Supp. 407 (194)2; *United v. Standard Oil Co. of California*, 20 F.Supp. 427 (1937); *Kramer v. Sanguinetti*, 33 Cal.App.2d 303, 91 P.2d 604 (1939); *Kramer v. Fladding, McBean & Co.*, 30 Cal.App.2d 98, 85 P.2d 552 (1938); *Pitcher v. Jones*, 71 Utah 453, 267 Pac. 184, 186 (1928); Rev. Stat. Sec. 2320, 17 Stat. 91, 30 U.S.C. Sec. 23 (1940).
 15. *United States v. Dawson*, 58 I.D. 671 (1944).
 16. *Ibid.*

posting of a location notice thereon consisting of a plain sign or notice containing the following information: (a) name of the lode or claim, (b) the name of the discoverer or locator, (c) the date of discovery.¹⁷ (2) Marking of the boundaries of the location with six substantial monuments of stone or posts hued or marked on the sides which face in towards the claim, and sunk in the ground, one at each corner and one at the center of each side line.¹⁸ (3) The sinking of a shaft upon the discovery lode or fissure to the depth of ten feet measured from the lowest part of the rim of such shaft at the surface, or the drilling of a hole or holes aggregating at least fifty feet in depth, or the digging of an open cut or tunnel. An open cut or tunnel on the vein or lode constitutes an adequate substitute for the discovery shaft or the drilling of a hole or holes. The open cut must measure at least ten feet in length and expose at least ten feet of the vein at the face thereof. The cross-cut tunnel or tunnel on the vein must be at least ten feet in length and cut the vein ten feet below the surface, measured from the bottom of the tunnel.¹⁹ The drill hole or holes, now permitted in lieu of a discovery shaft, open cut or tunnel, must be not less than one and one-half inches in diameter. The depth of said hole or holes shall aggregate at least fifty feet and no one hole shall be less than ten feet in depth. In the event that more than one hole is drilled, one such hole shall be designated as the discovery hole which shall expose deposits of valuable minerals sufficient to meet the standard discussed elsewhere in this symposium.^{19a} In the event that the drill cuts a water bearing stratum, the same must be plugged back to a point immediately above such stratum. The fact of discovery of the water bearing stratum, its depth, and the fact that it was plugged must be included in the certificate of location or in a separate affidavit setting forth the facts mentioned.^{19b} In the case of a shaft, the statute²⁰ does not specify the other dimensions, which in the absence thereof should be of a dimension following the general practice within the state or vicinity.²¹ The foregoing requirements are prerequisites to the filing, for recording, of the location notice in the office of the county clerk, which should be filed at the earliest possible time and in no case later than sixty days from the date of discovery²².

The location certificate requires information in addition to that outlined in (1) (a), (b), and (c), above, as follows: (1) The length of the

17. Wyo. Comp. Stat., 1945, Sec. 57-916.

18. *Ibid*; *Scoggin et al. v. Miller et al.*, 64 Wyo. 206, 189 P.2d 677, 688 (1948), ("Tim-ners 4 inches square and 20 to 30 inches long sunk in the ground 10 to 12 inches, used to designate surface boundaries of placer claim, were 'substantial' posts within the statutory requirement.")

19. Wyo. Comp. Stat., 1945, Sec. 57-917.

19a. Wyo. Comp. Stat., Sec. 57-917 as amended by Wyo. Sess. Laws 1955, c. 88.

19b. *Ibid*.

20. *Ibid*.

21. 42 Stat. 186, 30 U.S.C. Sec. 28 (1921); Wyo. Comp. Stat., 1945, Sec. 57-901; *Del Monte Min. & Mill Co. v. Last Chance Min. & Mill. Co.*, 171 U.S. 55, 18 S.Ct. 895, 43 L.Ed. 42 (1898); *Creede & Cripple Creek, etc., Min. Co. v. Uinta Tunnel, etc., Co.*, 196 U.S. 337, 25 S.Ct. 266, 49 L.Ed. 501 (1905); *Gillis v. Downey*, 85 F. 483 (8th Cir. 1898).

22. Wyo. Comp. Stat., 1945, Sec. 57-916.

claim along the vein or lode measured each way from the center of the discovery shaft, and the direction of the general course of the vein or lode as far as it is known. (1) The amount of surface ground claimed on either side of the center of the discovery shaft or discovery workings. (3) A description of the claim by such designation of natural or fixed objects, or if upon ground surveyed by the United States system of land survey, by reference to section or quarter section corners, as shall identify the claim beyond question.²³ Locations should be described as accurately as possible;²⁴ however, exactness is not required in notices posted on a mining claim, and slight mistakes and inaccuracies as to the true course and direction of a vein or lode will not invalidate a notice.²⁵ The failure to record a location certificate within sixty days from date of location does not vitiate the certificate or render it void. The effect of failure to record a certificate of location within the statutory time limit is that it cannot affect intervening rights.²⁶

The Federal statutes²⁷ fix the maximum size of a lode claim located on the public domain at one thousand five hundred (1500) feet in length along the vein or lode, and six hundred (600) feet in width, measured so that the claim shall not extend more than three hundred (300) feet from each side of the middle of the vein or lode at the surface. No claim may be limited to less than twenty-five (25) feet on each side of a vein or lode at the surface by any mining regulation or state statute.²⁸ The Wyoming statutes²⁹ fix the minimum length to which local mining regulations may limit the length of a lode claim at one thousand five hundred (1500) feet, and the minimum width at three hundred (300) feet, measured one hundred fifty (150) feet from each side of the discovery shaft.³⁰ The maximum size of a lode claim is fixed to coincide with the maximum fixed by the federal statutes.³¹

As already noted, a discovery of valuable minerals is a prerequisite to the location of a placer claim.³² The discoverer of valuable mineral in a placer deposit has ninety days after date of discovery in which to record his claim in the office of the county clerk of the county in which the dis-

23. *Slothower v. Hunter*, 15 Wyo. 189, 199, 88 Pac. 36 (1906), held: "... that certificate of mining location shall contain a description of the claim if upon ground surveyed by the United States system, by reference to section or quarter section corners ... as shall identify the claim. ..."

24. *Whiting v. Straup*, 17 Wyo. 1, 19, 95 Pac. 849, 853 (1908); *Pitcher v. Jones*, 71 Utah 453, 267 Pac. 184 (1928); also see, *Morrison, Mining Rights on the Public Domain* 28 (*Bender-Moss Company*, 1936), "If a location be made before discovery, but is followed by a discovery in the discovery shaft, before any adverse rights intervene, such subsequent discovery cures the original defect and the claim is valid."

25. *Bergquist v. West Virginia-Wyoming Copper Co.*, 18 Wyo. 234, 106 Pac. 673 (1910); *Hagerman v. Thompson*, 68 Wyo. 515, 235 P.2d 750, 758 (1951); Wyo. Comp. Stat., 194, Sec. 57-921.

26. *Slothower v. Hunter*, 15 Wyo. 189, 88 Pac. 36, 40 (1906).

27. Rev. Stat. Sec. 2320, 17 Stat. 91, 30 U.S.C. Sec. 23 (1940).

28. *Ibid.*

29. Wyo. Comp. Stat., 1945, Secs. 57-912 to 57-913.

30. Wyo. Comp. Stat., 1945, Sec. 7-913.

31. See note 27, *supra*.

32. Wyo. Comp. Stat., 1945, Sec. 57-921.

covery is made.³³ The location certificate must contain the following information: (1) Name of the claim, designating it a placer claim. (2) Name or names of the locator or locators thereof. (3) The date of location. (4) The number of feet or acres thus claimed. (5) A description of the claim beyond question.³⁴ Before filing such location certificate the discoverer should locate his claim by securely fixing upon such claim a notice in plain printed or written letters containing the five prerequisites listed above, and by designating surface boundaries with substantial posts or stone monuments located at each corner of the claim.³⁵ The maximum size of a placer claim is limited to twenty acres for each individual claimant.³⁶ The statute³⁷ permits an association of eight persons to locate a single claim of one hundred sixty acres based on one discovery. Such locations must conform to United States surveys.³⁸

In addition to the right to locate lode and placer claims as mentioned above,³⁹ the "Tunnel Site Act"⁴⁰ accords prospectors the right to explore the subsurface of the public mining lands by means of a tunnel; and, in the event of a valuable discovery, it allows the discoverer to appropriate to his own use all veins or lodes within three thousand feet of the face of such tunnel, on the line thereof, not previously known to exist, to the extent as if discovered from the surface. And his right with respect to any veins encountered therein relate back to the date of location of the tunnel. Of course, a tunnel owner's rights are not unlimited. He has no authority to drive his tunnel underneath a valid prior location, and he acquires no rights with respect to veins previously discovered from the surface.⁴¹

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THE DESCRIPTION OF A MINING CLAIM

The federal statutes relating to the location of mining claims do not require the locator to make any record of his claim.¹ However, all of the mining states do require the filing of a location certificate of record.² In

33. Wyo. Comp. Stat., 1945, Sec. 57-921.

34. *Ibid.*

35. *Ibid.*

36. Rev. Stat. Secs. 2329, 2331 (1891); 26 Stat. 1097, 30 U.S.C. Sec. 35 (1940).

37. Rev. Stat. Sec. 2330 (1891); 26 Stat. 1097, 30 U.S.C. Sec. 36.

38. *Ibid.*

39. See note 27, *supra*.

40. 27 Stat. 92, 30 U.S.C. Sec. 27 (1940).

41. Act May 10, 1872, c. 152, Sec. 4, 17 Stat. 92, 30 U.S.C. Sec. 27 (1940); *Campbell v. Ellet*, 167 U.S. 116, 17 S.Ct. 765, 42 L.Ed. 101 (1897); *Enterprise Min. Co. v. Rico-Espen Consol. Min. Co.*, 167 U.S. 108, 17 S.Ct. 762, 42 L.Ed. 96 (1897); *Calhoun Gold Min. Co. v. Ajax Gold Min. Co.*, 182 U.S. 499, 21 S.Ct. 885, 45 L.Ed. 1200 (1901).

1. *Jupiter Co. v. Bodie Co.*, 7 Sawy. 114, 11 Fed. 666 (C.C.D.Cal. 1881); *Zerres v. Vanina*, 134 Fed. 610 (C.C.D.Nev. 1905).

2. Ariz. Code, 1939, Sec. 65-103; Pub. Resc. Code Ann. (Cal.), Sec. 2313; Colo. Stat. Ann., 1935, c. 110, Secs 170 and 179; Ida. Code, 1947, Sec. 47-604; Rev. Code of Mont., 1947, Sec. 57-702; Nev. Comp. Laws Supp., 1941, Secs. 4122 and 4133; N. Mex. Stat., 1941, Sec. 67-201; N. D. Rev. Code, 1943, Sec. 38-0203; Ore. Comp. Laws, 1940, Sec. 108-302; S. D. Code, 1934, Sec. 42.0103; Utah Code Ann., 1953, Sec. 40-1-4; Rev. Code of Wash., 1951, Secs. 78.08.050 and 78.08.100; Wyo. Comp. Stat., 1945, Secs. 57-914 and 57-921.