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The Description of a Mining Claim

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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 statute[37] 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.

this event, the federal statutes do set forth certain requirements that are applicable to descriptions of record. The primary provision requires that all records of mining claims must contain "such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim."[3] There is a further provision to the effect that lode claims upon surveyed lands must be described with reference to the lines of the public survey.[4] The requirements of the law of Wyoming differ somewhat from the federal requirements, and some additional factors are required. The Wyoming statute requires the following:

> "4. The length of the claim along the vein measured each way from the center of the discovery shaft, and the general course of the vein as far as it is known;
>
> 5. The amount of surface ground claimed on either side of the center of the discovery shaft or discovery workings;
>
> 6. 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."[5]

The primary purpose for requiring a location certificate of record for a mining claim is that it serves as constructive notice to any subsequent locator that the tract of land described therein has already been located as a mining claim. A secondary purpose for requiring such a record is that it preserves a memorial of the ground appropriated, as between the claimant and the government.[6] The constructive notice feature of the location certificate is particularly important at the present time when it is not uncommon to find that large parcels of land have been located as uranium claims in a relatively short period of time. If the locator's description of his claim is inadequate he may lose the right to possession of a valuable uranium claim to a subsequent locator because the constructive notice purpose of his location certificate has been frustrated.[7]

It is important to note that the requirements relating to descriptions of mining claims are creatures of statute, and the locator should become familiar with the requirements of the particular jurisdiction in which his claim is situated as well as the requirements of the federal statutes. In all of the mining states except New Mexico there are additional requirements, similar to those of Wyoming set forth above, for the description of a mining claim. In general state statutes require a statement of the length each way from the point of discovery, the width on each side of the vein or lode, and the general course of the lode. In some states these additional factors

3. Rev. Stat. Sec. 2324 (1875), as amended, 30 U.S.C. Sec. 28 (1946).
4. Rev. Stat. Sec. 2327 (1875), as amended, 30 U.S.C. Sec. 34 (1946).
5. Wyo. Comp. Stat., 1945, Sec. 57-914.
6. 58 C.J.S. 103.
7. E.g., in Faxon v. Barnard et al., 4 Fed. 702 (C.C.D.Colo. 1880) a mining locator lost a part of his claim to the subsequent locator of an overlapping claim because his description in his certificate of location was inadequate.

must be included in both the discovery notice and the location certificate;[8] others require them only in the location certificate;[9] and in still other jurisdictions there are different requirements for the location certificate and the discovery notice.[10] In those states that have separate requirements for placer claims, the additional requirement is usually the number of feet or acres claimed.[11]

In addition to requiring a location certificate of record, all of the mining states require a discovery or location notice to be posted on the claim, itself.[12] There are two general types of discovery notice; in one group of states only a memorandum notice is required,[13] while in a second group of states a substantial copy of the discovery notice must be recorded.[14] This latter type of provision necessarily requires that the description in the discovery notice be sufficient to meet the requirements of both the federal and state statues relating to recorded descriptions.[15]

The adequacy of a description of a mining claim can be placed in issue in any action brought to try the possessory right to the claim. Such action can be in ejectment, a suit in the nature of a quiet title action,[16] or it can result from the institution of an adverse claim in a patent proceeding.[67] Since the locator is regarded as having the title in fee as against everyone except the United States, these actions are the same in this context as they are in the usual area of property law.[18] As noted above, the primary purpose of a location certificate is to give constructive notice, and, therefore, a subsequent locator who has actual notice of the location of the claim cannot rely on deficiencies in the description of a prior locator.[19]

8. Ariz. Code, 1939, Secs. 65-102 and 65-103; Pub. Resc. Code Ann. (Cal.) Secs. 2301 and 2313; Ida. Code, 1947, Secs. 47-602 and 47-604; Nev. Comp. Laws Supp. 1941 Secs. 4120 and 4122; Ore. Comp. Laws, 1940, Secs. 108-301 and 108-302; and Utah Code Ann., 1953, Secs. 40-1-2 and 40-1-4.
9. Colo. Stat. Ann., 1935, c. 110, Sec. 170; Rev. Code of Wash., 1951, Sec. 78.08.050; and Wyo. Comp. Stat., 1945, Sec. 57-914.
10. Rev. Code of Mont., 1947, Secs. 57-701 and 50-702; N. D. Rev. Code, 1943, Secs. 38-0203 and 38-0204; and S. D. Code, 1934, Secs. 42.0103 and 42.0107.
11. Ariz. Code, 1939, Sec. 65-107; Pub. Resc. Code Ann. (Cal.) Sec. 2303; Colo. Stat. Ann., 1935, c. 110, Sec. 179; Ida. Code, 1947, Sec. 47-617; Rev. Code of Mont., 1947, Sec. 50-702; Nev. Comp. Laws Supp., 1941, Sec. 4133; N. Mex. Stat.., 1941, Sec. 67-214; Utah Code Ann., 1953, Sec. 40-1-2; and Wyo. Comp. Stat., 1945, Sec. 57-921.
12. See Walton v. Wild Goose Mining & Trading Co., 123 Fed. 209 (9th Cir. 1903), cert. denied 194 U.S. 631, and Haws v. Victoria Copper Mining Co., 160 U.S. 303, 16 S.Ct. 282, 40 L.Ed. 436 (1895) to the effect that the posting of a discovery or location notice is not necessary under the federal statutes.
13. Colo. Stat. Ann., 1935, c. 110, Sec. 173; Rev. Code of Mont., 1947, Sec. 50-701; Nev. Comp. Laws Supp., 1941, Sec. 4120; N. D. Rev. Code, 1943, Sec. 38-0204; S. D. Code, 1934, Sec. 42.0107; Rev. Code of Wash., 1951, Sec. 78.08.060; and Wyo. Comp. Stat., 1945, Sec. 57-916.
14 Ariz. Code, 1939, Sec. 65-102; Pub. Resc. Code Ann. (Cal.) Sec. 2301; Ida. Code, 1947, Ses. 47-602; N. Mex. Stat., 1941, Sec 67-201; Ore. Comp. Laws, 1940, Sec. 108-301; and Utah Code Ann., 1953, Sec. 40-1-2.
15. Deeney et al. v. Mineral Creek Milling Co., 11 N. Mex. 279, 67 Pac. 724 (1902).
16. Costigan, Handbook on American Mining Law 512 (West Publishing Co., 1908).
17. Costigan, op. cit. supra note 16, at 374.
18. Mt. Rosa Mining, Milling & Land Co. v. Palmer, 26 Colo. 56, 56 Pac. 176 (1899); Fulkerson v. Chrisna Min. & Imp. Co., 122 Fed. 782, 58 C.C.A. 582 (1903).
19. Thompson v. Underwood, 138 Ark. 323, 211 S.W. 164 (1919); Ninemire v. Nelson, 140 Wash. 511, 249 Pac. 990 (1926); Heilman v. Loughrin, 57 Mont. 380, 188 Pac. 370 (1920); and Bismark Mountain Gold Min. Co. v. North Sunbeam Gold Co., 14 Ida. 516, 95 P. 14 (1908).

In the cases which have been decided upon the point of actual notice the subsequent locator either knew of the prior location or had been told about it. This leaves in question what effect facts discovered in an examination of the premises would have. It is probable that the discovery of physical evidence of a prior location, such as a discovery shaft or a corner stake, would be sufficient to put the subsequent locator on inquiry notice, and he would then have the duty of investigating a possible prior location.

There is also a recent federal case which holds that the question of an insufficient description can only be raised by a subsequent locator.[20] While that case cites as authority for this proposition a case that was decided on the usual ground that the issue is not available to one who has actual notice,[21] logically the proposition seems to be good law. In view of the constructive notice purpose of the location certificate it would be anolamous to permit the senior locator to question the description of the junior locator.

As indicated above, there are three essential elements which must be included in a sufficient description: (1) a reference to a natural object or permanent monument, (2) a description relating to the natural object or permanent monument from which the beginning point can be ascertained, and (3) a description of the exterior boundaries of the claim by reciting length, width, and direction. If any one of these elements is completely absent the description will usually be declared insufficient as a matter of law.[22] The result will be same as to any element that is present, but which is obviously insufficient to fulfill its purpose.[23] When the description is apparently sufficient, its adequacy is a question of fact in any case in which its sufficiency is in issue.[24]

It has been the policy of the courts to be quite liberal in construing descriptions of mining claims.[25] In line with this policy many things have been held to be natural objects or permanent monuments within the meaning of the federal statutory requirement. The list includes a prominent post or stake,[26] a pile of rocks,[27] trees,[28], the confluence of streams,[29] ad-

20. Flynn v. Vevelstad, 119 F.Supp. 93 (D.C. Alaska 1st Div. 1954).
21. Sakow v. J. E. Riley Inv Co, 9 Alaska 427 (D.C.), aff'd 110 F.2d 345 (9th Cir. 1940).
22. Sharkey v. Candiani, 48 Ore. 112, 85 Pac. 219, 7 L.R.A.(N.S.) 791 (1906); Mutchmor v. McCarty, 149 Cal. 603, 87 Pac. 85 (1906); Slothower v. Hunter, 15 Wyo. 189, 88 Pac. 36 (1906); and Faxon v. Barnard, 4 Fed. 702 (C.C.D.Colo. 1880).
23. Darger et al v. Le Sieur, 8 Utah 160, 30 Pac. 363 (1892); Brown v. Levan, 4 Ida. 794, 46 Pac. 661 (1896).
24. J. E. Riley Inv. Co. et al. v. Sakow, 98 F.2d 8 (C.C.A. Alaska 1938); Denman v. Smith, 14 Cal.2d 752, 97 P.2d 451 (1939); Law v. Fowler, 45 Ida. I, 261 Pac. 667 (1927); Blake v. Cavins, 25 N. Mex. 574, 185 Pac. 374 (1919).
25. Bismark Mountain Gold Min. Co. v. North Sunbeam Gold Co., 14 Ida. 516 95 Pac. 14 (1908); Ninemire v. Nelson, 140 Wash. 511, 249 Pac. 990 (1926); Morrison v. Regan, 8 Ida. 291, 67 Pac. 955 (1902); Hagerman v. Thompson, 68 Wyo. 515, 235 P.2d 750 (1951).
26. North Noon Day Min. Co. v. Orient Min. Co., 1 Fed. 522 (C.C. Cal. 1880).
27. Talmidge v.. St. John, 129 Cal. 430, 62 Pac. 79 (1900).
28. Hansen v. Fletcher, 10 Utah 266, 37 Pac. 480 (1894).
29. See Londonderry Min. Co. v. United Gold Mines Co., 38 Colo. 480, 88 Pac. 455 (1907).

joining mining claims,[30] mountains,[31] canyons,[32] and a host of other items too numerous to mention here. Of course, it goes almost without saying that a section corner is adequate as a permanent monument.[33] This natural object or permanent monuments may be within the limits of the claim, or it may be outside the claim.[34] In general, the mention of almost any object or monument that could serve as a fairly precise starting point for finding the claim will be sufficient to save the description from being declared inadequate as a matter of law. It has also been the policy of the courts to be quite lenient in permitting the introduction of evidence when the sufficiency of the description involved a question of fact.

A reference to a particular section as designated by the United States survey is apparently sufficient to satisfy the federal requirement that lode claims on surveyed lands be described with reference to the lines of the public survey. There appear to be no cases on this point, but a mention of a particular section is frequently the only reference to the public survey that is made in descriptions of lode claims located on surveyed lands.[35] The requirement of the federal statutes that placer claims on surveyed lands be located so as to conform with the lines of the public survey does not make it mandatory that a placer claim be described by referring to the lines of the survey.[36] That section[37] has been interpreted to mean that it only requires the location of a placer claim to conform with the lines of the public survey when possible.[38] A description of a placer claim as a recognized subdivision of the public survey is, however perfectly adequate for every purpose.[39]

So far as the sufficiency of the description in tying the claim to the natural object or permanent monument is concerned, the standard is whether an ordinary man could find the claim from the description by exercising reasonable diligence.[40] The same standard is applied to the description of the exterior boundaries of the claim.[41] With respect to this

30. Hammer v. Garfield Mining & Milling Co., 130 U.S. 291, 9 S.Ct. 548, 32 L.Ed. 964 (1888).
31. Bismark Mountain Gold Min. Co. v. North Sunbeam Gold Co., 14 Ida. 95 Pac. 14 (1908).
32. Flavin v. Mattingly, 8 Mont. 242, 19 Pac. 384 (1888).
33. A United States mineral monument may also be used for this purpose.. These are created by the mineral surveyor of the particular land district when a patent for a mining claim that is not on surveyed lands is sought . Until the land is surveyed, such monuments have the same efficacy as the monuments of the public survey.
34. Bismark Mountain Gold Min. Co. v. North Sunbeam Gold Co., 14 Ida. 516, 95 Pac. 14 (1908).
35. See Madeira v. Sonoma Magnesite Co., 30 Cal.App. 719, 130 Pac. 175 (D.C.A. 3rd Dist. 1912).
36. Young v. Papst, 148 Ore. 678, 37 P.2d 359 (1934).
37. Rev. Stat. Sec. 2329 (1875), as amended, 30 U.S.C. Sec. 35 (1946).
38. Steele et ux. v. Preble et al., 158 Ore. 641, 77 P.2d 418 (1938).
39. Clark v. Pueblo Quarries, 103 Colo. 402, 86 P.2d 602 (1939); Gird v. California Oil Co., 60 Fed. 531 (C.C. Cal. 1894).
40. Bismark Mountain Gold Min. Co. v. North Sunbeam Gold Co., 14 Ida. 516, 95 Pac. 14 (1908); Brown v. Levan, 4 Ida. 794, 46 Pac. 661 (1896); Ninemire v. Nelson, 140 Wash. 511 249 Pac. 990 (19266); Dennis v. Barnett et al., 30 Cal.App.2d 231, 85 P.2d 916 (1938).
41. Bonanza Consol. Min. Co. v. Golden Head Min. Co., 29 Utah 159, 80 Pac. 736 (1905); Carter v. Bacigalupi, 83 Cal. 187, 23 Pac. 361 (1890).

latter requirement, the courts will often be inclined to overlook it if the beginning point is sufficiently described, and the exterior boundaries are properly staked. It has been held that a description is sufficient if it, taken together with the markings on the ground, will enable a person to determine the premises located.[42]

The courts do not seem to require a very high degree of precision so far as directions and distances are concerned in tying the claim to the monument or in describing the exterior boundaries. For example, a description has been upheld which gave the courses of a certain boundary line as "northerly" and "southerly" when the courses of such line were not true north and south and described a distance of 400 feet as "4."[43] In another case, while discussing the sufficiency of a discovery notice, the court said, "There is no rule of necessity, such as exists in the construction of a deed, which requires that the term 'easterly', used without qualifying language, shall denote due east, and the term 'westerly' shall denote due west."[44] Location notices have also been held to be adequate which contained the following descriptions:

> "This Mine is situated in Mineral Hill Mining District on the left hand side of Rock Creek and about two miles south of John Boyle's mine in Alturas county. . . ."[45]
>
> ". . . lies about one mile from Anvil Mountain in southeasterly direction."[46]

While the difficulty that such description as these would cause in the event that the stakes or monuments had disappeared is apparent, they still seem to come well within the rule that descriptions of mining claims should be construed liberally.

Despite statutes or rules in all the mining states to the effect that an inadequate description or a failure to record will invalidate the location or the certificate,[47] the failure to record the claim by filing a location certificate or the failure to properly describe the claim in the certificate is not fatal. The effect of an inadequate description or a failure to record is not invoked until the location is attacked by a subsequent locator. An

42. Walton v. Wild Goose Mining & Trading Co., 123 Fed. 209 (9th Cir. 1903), cert. denied 194 U.S. 631; McEvoy v. Hyman, 25 Fed. 596 (C.C. Colo. 1885); Brady v. Husby, 21 Nev. 453, 33 Pac. 801 (1893). But see Sharkey v. Candiani, 48 Ore. 112, 85 Pac. 219, 7 L.R.A.(N.S.) 791 (1906); Purdum v. Laddin, 23 Mont. 387, 59 Pac. 153 (1899).
43. Smith v. Newell et al., 86 Fed. 56 (C.C.D. Utah 1898).
44. Wiltsee v. King of Arizona Min. & Mill. Co., 7 Ariz. 95, 60 Pac. 896 (1900).
45. Lew v. Fowler, 45 Ida. 1, 261 Pac. 667 (1927)
46. Vogel et al. v. Warsing et al., 146 Fed. 949 (C.C.A. Alaska 1906).
47. Hagan v. Dutton, 20 Ariz. 476, 181 Pac. 578 (1919); Storrs et al. v. Belmont Gold Mining & Milling Co. et al., 24 Cal.App.2d 551, 76 P.2d 197 (1938); Colo. Stat. Ann., 1935, c. 110, Sec. 182; Swanson v. Koeninger, 25 Ida. 361, 137 Pac. 891 (1913); Helena Gold & Iron Co. v. Baggagley, 34 Mont. 464, 87 Pac. 455 (1906); Nev. Comp. Laws Supp., 1941, Sec. 4122; Upton v. Santa Rita Mining Co., 14 N. Mex. 96, 89 Pac. 275 (1907) ;N. D. Rev. Code, 1943, Sec. 38-0203; Strickland v. Commercial Mining Co., 55 Ore. 48, 104 Pac. 965 (1909); S. D. Code, 1954, Sec. 42.0104; Darger et al. v. Le Sieur, 8 Utah 160, 30 Pac. 363 (1892); Ninemire v. Nelson, 140 Wash. 511, 249 Pac. 990 (1926); Wyo. Comp. Stat., 1945, Sec. 57-915.

inadequate description may be attacked by the federal government in certain circumstances,[48] also, but the occasion for doing this apparently rare. If the locator feels that his description is inadequate even by the standards set forth above, he may be able to correct the defect. Amendment of the location certificate is permitted in every mining state.[49] Such amendment will relate back to the original certificate so as to perfect the location.[50] However, amendment will never be permitted to cut off any rights that may have been acquired by a subsequent locator;[51] it is a preventive measure only and canot have any restorative effect.

In view of the serious consequences that may result from failure to do so, it behooves the locator of a mining claim to make the best possible description that he can under the circumstances. Morrison suggests that the locator refer to two natural objects or permanent monuments whenever possible.[52] It is preferable to use those that are closest to the claim, and fairly accurate compass fixes should be taken on both of them. The distance from the claim to the monuments should be measured as accurately as possible. Although more latitude is permissible in describing the exterior boundaries, it is desirable to make this part of the description reasonably precise because of the possibility that the monuments on the claim may be destroyed in some manner. The locator should remember that what he is trying to do is to show someone else how to reach his claim.[53] Thus, although being fairly specific is necessary, he should be willing to sacrifice detail for clearness. Along the same line, the locator may find it desirable to refer to less prominent monuments from which the claim can be easily found than to use very prominent monuments in relation to which the claim is difficult to place.

Unfortunately, it has not been the custom of miners to be very careful in writing descriptions of their mining claims. When this is combined with the policies and attitudes of the courts, the two together serve to place a title examiner in a nearly impossible position. Mining claims cannot be platted with any reasonable degree of accuracy; for example, two conflicting locations might appear to be several miles apart on the plat. The title examiner, however, cannot rely on the mining claim being where the description says it is. If it is on surveyed land, he would know which section the claim is in, but that is about as far as anyone can go with any

48. United States v. Sherman, 288 Fed. 497 (C.C.A. 8th Cir. 1923).
49. Ariz. Code, 1939, Sec. 65-102; Pub. Resc. Code Ann. (Cal.) Sec. 2310; Colo. Stat. Ann., 1935, c. 110, Sec. 182; Ida. Code, 1947, Sec. 47-605; Rev. Code of Mont., 1947, Sec. 50-798; Nev. Comp. Laws Supp., 1941, Sec. 4125; N. Mex. Stat., 1941, Sec. 67-206; N. D. Rev. Code, 1943, Sec. 38-0211; Ore. Comp. Laws, 1940, Sec. 108-313; S. D. Code, 1934, Sec. 42.0114; Rev. Code of Wash., 1951, Sec. 78.08.080; Wyo. Comp. Stat., 1945, Sec. 57-906; Miehlich et al. v. Tintic Standard Mining Co., 60 Utah 569, 211 Pac. 686 (1922).
50. Gobert v. Butterfield, 23 Cal.App. 1, 136 Pac. 516 (1913).
51. A provision to this effect is included in the statute of every state that has such a statute except Washington. The rule prevails in Utah, where there is no statute, however, and in all probability it would apply in Washington.
52. Morrison, Mining Rights on the Public Domain 85 (Bender-Boss Company, 1936).
53. Dennis v. Barnett, 30 Cal. App.2d 147, 85 P.2d 916 (1938).

certainty. An inspection of the premises might not help much either, particularly with respect to old locations where the monuments or stakes have disappeared. It is even possible that the title examiner could miss a fairly recent location in examining the premises. In view of these factors it would seem that a title examiner should be unwilling to clear a title to a mining claim without actually inspecting the premises, and even then there is a good chance of missing a conflicting location. The notice purpose of requiring a record of mining claims has clearly been overlooked in this context by the courts while they have been pursing their policy of liberal construction.

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THE ASSESSMENT WORK REQUIREMENTS

INTRODUCTION

The mining locator who has made a valid location has certain minimum obligations to perform so as to preserve his unpatented mining claim against subsequent locators. The federal statute[1] requires with respect to each claim that the locator perform not less than one hundred (100) dollars worth of labor and improvements (assessment work) annually upon all claims for which no patent had been issued. Failure to perform such annual assessment does not result in forfeiture of the claim[2] but does permit subsequent relocators to establish paramount locations.[3] In order for the locator of an unpatented claim to obtain a patent with respect thereto, he must prior to filing his patent application perform five hundred (500) dollars worth of assessment work.[4] The assessment work required as to unpatented claims is similar in nature to that required as a prerequisite to obtaining a patent.[5] The assessment work requirements are of particular significance in connection with the development of uranium claims in that characteristically individual locators have located a large number of claims and the competition is such that the failure to perform annual assessment work will undoubtedly result in large number of instances in relocations by others.[6]

THE ASSESSMENT YEAR

The federal statute provides that the period within which the annual assessment work is to be performed shall commence on the first day of July

1. 30 U.S.C.A. 28.
2. Cooperative Copper and Gold Mining Co. v. Law, 65 Ore. 250, 132 Pac. 521 (1913). 2 Lindley on Mines 645.
3. Ibid.
4. The assessment work can all be accomplished in one year; it does not have to take place over a period of years. 30 U.S.C.A. Sec. 29.
5. 30 U.S.C.A. Sec. 28. With respect to the annual assessment work requirements this issue is usually resolved in the courts, whereas the five hundred (500) dollar assessment work requirement for the issuance of a patent is usually resolved in the Department of Interior.
6. See news story in The Mining Record, January 6, 1955, p. 7.