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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.

succeeding the date of location.[7] If the assesment work is not performed within the twelve month period beginning the first day of July following the date of the location, a claim becomes subject to relocation by others upon the following July 1st.[8] If, for example, a claim is located on January 1, 1954, the assessment year begins on the first day of July, 1954 and the claim is not subject to relocation because of failure to perform the work until July 1, 1955. On the basis of the foregoing statute a locator would have nearly two years to perform his assessment work in order to preclude a forfeiture through a relocation if the locator perfected his location immediately following the first day of July.

BY WHOM TO BE PERFORMED

The assessment work must be performed by the owner of the unpatented claim, by someone at his instance, by someone in privity with him, or by someone who holds an equitable or beneficial interest in the property.[9] It has been held that because of a stockholder's beneficial interest in the corporation, assessment work performed by such stockholder, although done without the authority from the directors and officers, was sufficient to protect the corporation's claims from forfeiture and relocation.[10] When a location is held by co-owners, one or more of such persons may perform the required assessment work; but if the work is done by one co-owner the federal law requires the remaining co-owners to contribute their share of such expenditures. If a co-owner who has been delinquent in contributing his proportionate share of the cost of annual assessment work fails upon ninety days notice to contribute his proportionate share, the co-owners who have performed the assessment work acquire the interest of the delinquent co-owner.[11]

NATURE OF ASSESSMENT WORK

The federal law provides that with respect to unpatented claims one hundred ($100) dollars worth of labor or improvements shall be performed annually. In order to satisfy this requirement, the assessment work must bear some direct relation to the development of the mine and tend to facilitate the extraction of ores therefrom.[12] Location and discovery work do not satisfy this requirement. It has been held that labor claimed for picking rock from walls of a shaft or from the side or outcroppings of a ledge, in small quantities from day to day and making tests for the purpose of sampling, is not assessment work as such work does not add to the value of the claim nor does it tend to the development of the mine.[13] This may pose a serious problem with respect to core drilling of uranium claims in that in part as least such work is discovery work. However, to the extent

7. 30 U.S.C.A. Sec. 28. Related Wyoming statute provides the same. Wyo. Comp. Stat. 1945 Sec. 57-923, 1953 Cum. Supp.
8. 30 U.S.C.A. Sec. 28.
9. Wailes v. Davies, 158 F. 667 (C.C.D. Nev. 1907).
10. Ibid.
11. See note 7, supra.
12. Smelting Co. v. Kemp, 104 U.S. 636, 26 L.Ed. 675 (1881).
13. Bishop v. Baisley, 28 Ore. 119, 41 Pac. 936 (1895).

that core drilling proceeds to the stage of outlining ore bodies to facilitate mining, it would appear to clearly tend to facilitate the extraction of ore.

It has been held that the sinking of a shaft,[14] the turning of a stream,[15] the construction of a flume to remove waste debris,[16] the laying of rails on ties in a tunnel,[17] and the construction of roads,[18] all contribute directly to the development of a mine and tend to facilitate extraction of ore and as such satisfy the assessment requirements. The cost of capital equipment is not a proper credit to labor and improvement but a reasonable compensation for their use will be allowed as assessment work.[19] Although otherwise with respect to the extraction of ore from other claims, the cost of extracting ore from a particular claim is allowed as proper assessment work with respect to that particular claim.[20] Payment for services of a watchman who was employed to take care of buildings and improvements on a mining claim has been allowed as assessment work where the buildings and improvements were used by the owners in the actual working and development of the claim.[21] The labor and improvements performed can satisfy the assessment requirements though not performed in a wise and judicious manner as the law does not require any particular character of labor, nor say how the work shall be performed.[22]

On the other hand, the cost of transporting supplies to the mining location, the cost of cutlery, groceries, provisions and bedding[23] have all been held not to constitute assessment work. The cost of extracting ore will not constitute assessment work with respect to claims other than the claim from which extracted unless it tends to facilitate the extraction of ore from the claim in question.[24] It has been held that the cost of a mill or the cost of repairing (and presumably operating) a mill designed to reduce or extract ores even if located on and used exclusively in connection with a particular mining claim does not tend to facilitate the extraction of ore and is not proper assessment work.[25]

GROUP ASSESSMENT WORK AND ASSESSMENT WORK OUTSIDE OF CLAIM

In order to protect a claim against relocation by others or in order to satisfy the requirements for the issuance of a patent, it is not necessary that assessment work be performed on the claim in question. It is sufficient that

14. See note 12, supra.
15. See note 12, supra.
16. Fredricks v. Klaser, 52 Ore. 110, 96 Pac. 679 (1908).
17. Ibid.
18. Sexton v. Washington, 55 Wash. 38 9, 104 Pac. 614 (1909); Doherty v. Morris, 17 Colo. 105, 28 Pac. 85 (1891).
19. See note 16, supra.
20. See note 9, supra.
21. Lockhart v. Rollins, 2 Idaho 540, 21 Pac. 413 (1889).
22. See note 9, supra.
23. See note 16, supra.
24. The claim or claims in question could be benefited as a result of geological information obtained from the extraction of ore; also, the claims in question could be benefited in that the tunnel used for the extraction of ore on one claim might be so situated that it could be used for the extraction of ore from the claims in question.
25. Golden Giant Mining Company v. Hill, 27 N.M. 124, 198 Pac. 276 (1921).

the work tends to the development of the mine and facilitates the extraction of ore therefrom. The work performed need not be on any claim provided it meets the foregoing criterion or can be performed on one claim for the benefit of a group of claims.

Accordingly the turning of a stream and the construction of a flume have been held to be proper improvements and labor though accomplished outside of the claim in question but tending to facilitate the development of the claim.[26] The costs incurred in constructing a road leading to the claim has generally been considered as proper assessment work,[27] and is commonly relied upon to satisfy the assessment requirement in the early stages of development.

The general rule as to group claims is that if the labor and/or improvements on one or more claims will inure to the benefit of the others, such labor and improvements will be allowed as assessment work on the other claims.[28] Ordinarily with respect to the nature of the labor or improvements no distinction is made as to whether the labor and improvements are made outside of the claim, whether made on one claim for the benefit of a group of claims, or are made on the claim itself. However, with respect to assessment work performed on one claim for which the claimant asserts benefit to a group of claims an additional problem arises in determining whether the other claims are in fact benefited. To illustrate: the sinking of a shaft obviously facilitates the development of the claim in question. However, whether it tends to the development of other claims will depend in large part whether the shaft can be used in the development of the other claims.[29] In connection with the development of uranium claims, large sums are frequently expended in core drilling and whether such drilling costs can be used to satisfy assessment requirements with respect to claims other than those drilled will depend on whether such drilling benefits the other claims. Needless to say in order for assessment work performed on one claim to benefit other claims it must be sufficient in amount to satisfy the total assessment requirements of all the claims in question.

DETERMINING THE VALUE OF ASSESSMENT WORK

The criterion which controls the "worth" of assessment work is the actual reasonable value of such labor and/or improvements performed in the improvement or development of the location.[30] The actual expenditures incurred for labor and materials is not conclusive as to their value, but presumably is an important consideration in ascertaining their reasonable value. As previously noted, the price paid for tools used in development work of a mining claim is not considered as the value of the assessment

26. See note 12, supra.
27. See note 18, supra.
28. Cooperative Copper and Gold Mining Co. v. Law, 65 Ore. 250, 132 Pac. 521 (1931).
29. Harrington v. Chambers, 3 Utah 94, 1 Pac. 362 (1882).
30. Norris v. Minerals Products Co., 158 P.2d 679 (Wyo. 1945); Fredricks v. Klauser, 52 Ore. 110, 96 Pac. 679 (1908).

work but a reasonable compensation for their use would be so considered.[31]

PROOF OF ASSESSMENT WORK

Although the federal law has no similar requirement, many states including Wyoming[32] require the filing of an affidavit to the effect that the required one hundred (100) dollars worth of assessment work has been performed. Such a requirement does not, however, prevent the owner of an unpatented claim from making the necessary proof in any other manner. The statutory affidavit constitutes evidence of the facts therein stated,[33] and places the burden on the relocator to establish that the required annual assessment work was not performed.

RELOCATION BY PARTIES OTHER THAN THE ORIGINAL LOCATOR

The failure to perform the annual assessment work does not result in automatic forfeiture of the claim, but merely opens the land to relocation by others. The United States cannot bring an action to declare a claim forfeited because of the failure to perform the annual assessment work.[34] Relocation, as used in mining law, is the appropriation of a mining claim where such claim has been lost by abandonment or failure to perform the annual assessment work. A relocation by someone other than the original locator can only be made where there has been a prior valid location of the claim and where an existing claim is subject to forfeiture such as where the locator has failed to perform the required annual assessment work on an unpatented mining claim. Here there is no termination of the first locator's rights until an actual relocation is carried out which means that all existing regulations pertaining to establishing a valid location must first be performed by the relocator; if any are lacking a valid resumption of work by the first locator will preclude the relocation from taking place.[35] It should be noted, however, that before a valid resumption of work will take place the original locator whose claim is subject to forfeiture for nonperformance of annual assessment work, upon resuming assessment work, must carry on such work until the full statutory amount of one hundred (100) dollars has

31. See note 16, supra.
32. Wyo. Comp. Stat. 1945, Sec. 57-926.
33. Book v. Justice Mining Co., 58 F. 106, 58 F. 827 (C.C.D. Nev. 1893); Mcknight v. El Paso Brick Co., 16 N.M. 821, 731, 120 Pac. 694 (1911).
34. Wilson v. Freeman, 29 Mont. 470, 75 Pac. 84 (1904).
35. Pharis v. Muldoon, 75 Cal. 284, 17 Pac. 70 (1888); McKay v. Mcdougall, 25 Mont. 258, 64 Pac. 669 (1901); Gonu v. Russell, 3 Mont. 358 (1879). Upon failure to perform the required annual assessment work, the claim shall thereafter be open to relocation on or after the 1st of July of any year after the year in which the labor and improvements should have been performed provided no resumption of work has taken place before a subsequent location has been made. Wyo. Comp. State. 1945, Sec. 57-925. Wyoming also has a statute providing the procedure for relocating a claim, (Wyo. Comp. Stat. 1945, Sec. 57-920) but note that such statute restricts the relocation to abandoned claims and makes no mention as to relocation of claims subject to forfeiture. The above statute gives the relocator the option of either perfecting his relocation by the manner provided for perfecting a new claim (Wyo. Comp. Stat. 1945, Sec. 57-916), or the relocator may sink the original discovery shaft ten feet deeper than it was at the time of its abandonment, and erect new, or adopt the old boundaries, renewing the posts or monuments of stone if removed or destroyed and fixing a new location stake. As to relocation of claims subject to forfeiture, to be on the safe side, it seems that a person should perfect a relocation by following the procedure set out for locating a new claim.

been expended upon the claim.[36] A valid relocation may be made by any person who is qualified to locate mineral land,[37] with the exception that where an agent, trustee or other person holds confidential relations with the original locator such person will not be allowed to relocate and secure themselves advantages flowing from the breach of the trust obligations.[38] The same rule applies to co-owners of an unpatented claim because of the fiduciary relationship present. A co-owner of a claim who relocates such claim after insufficient assessment work will not be permitted to thus exclude the other owners and appropriate the claim to himself but will be declared to hold the right or title thereby acquired in trust for all the co-owners.[39]

THE EFFECT OF A FAILURE TO PERFORM REQUIRED ANNUAL ASSESSMENT WORK ON MINERAL LAND THAT WOULD HAVE VESTED IN THE CLAIM WORK ON MINERAL LAND THAT WOULD HAVE VESTED IN THE STATE

The original school land grants made by the federal government to the states provided that title to mineral lands was excepted from the school land grants to the states if such lands were known to be mineral at the date of the states acceptance of the survey of such lands. However in 1927, Congress passed an Act[40] which extended the school land grants to include the mineral lands excepted under the original school land grants. Yet a valid mining claim located upon such mineral land prior to the Congressional Act of 1927 is not effected by the operation of such Act unless or until the claim is extinguished, relinquished, or canceled.[41] Assuming that a valid mining claim is present upon land that was designated as mineral land under the original school land grant, will the mineral land, upon which there is a valid subsisting claim present pass to the state where there is a failure to perform the proper assessment work after January 25, 1927, the date on which the mineral lands were given to the state? There seems to be very little authority on the question and no cases have been found that hold directly on the matter. However, an Arizona case[42] contains dictum to the effect that the right of a state to lease certain school lands depended necessarily upon whether certain mining claims were properly located before the passage of the Congressional Act of 1927 and whether the annual assessment work was performed from the date of the location in 1915 on up to the date in which the lease was given by the state in 1938. Using the foregoing rule as a basis, it is clear that failure to perform the required annual assessment work on mineral land that would have passed to the state but for the presence of a claim on such land will result in land automatically vesting in the state to which the mineral land was granted

36. Honaker v. Martin, 11 Mont. 91, 97, 27 Pac. 397, 398 (1891).
37. Locations can be made by citizens of the United States and those who have declared their intention to become citizens. 30 U.S.C.A. Sec. 22.
38. Cooperative Copper and Gold Mining Co. v. Law, 65 Ore. 250, 132 Pac. 521 (1913); 2 Lindley on Mines 407.
39. Stevens v. Grand Central Mining Co., 133 F. 28 (8th Cir. 1904).
40. 43 U.S.C.A. Sec. 879, 1954 Cum. Supp.
41. 43 U.S.C.A Sec.. 870(c), 1954 Cum. Supp.
42. Rogers v. Berger, 55 Ariz. 433, 103 P.2d 266 (1940).

under the Congressional Act of 1927. The above rule is of particular significance in view of the rule mentioned earlier that a failure to perform assessment work on land not situated within the limits of a school land grant does not automatically result in a forfeiture of the claim; a forfeiture occurs only where a valid relocation is perfected upon the claim in question. A locator whose claim is located upon mineral lands within a school land grant would do well to exercise a much greater degree of effort in performing the required annual assessment work so as to avoid an automatic divestment of his rights to the unpatented claim upon a mere showing by the state that there has been a lack of required assessment work.

MORATORIUM LEGISLATION

Although no law is in force at present, the United States Congress has from time to time seen fit to suspend the annual assessment work requirement with respect to a specified number of unpatented claims held by any one person, association or corporation.[43] The last of such acts required that a claimant file notice of his intention to hold his claims under the Act[44] and failure to do so could result in a forfeiture as a result of a valid relocation.[45] Where one had more than the number of claims on which a suspension of assessment work was allowed a selection had to be made as to those claims desired to come within the Act and annual assessment work had to be performed on the remaining claims in order to prevent a forfeiture through a subsequent relocation.[46]

ASSESSMENT WORK REQUIREMENT AS TO PATENTS

The federal law requires that five hundred (500) dollars worth of assessment work must have been performed before a patent will issue on a mining claim.[47] The character or nature of the assessment work required for obtaining a patent on land claimed and located for valuable deposits is no different from the nature of the annual assessment work required on unpatented mining claims. In both instances the labor and improvements must bear some direct relation to the development of the mine and tend to facilitate the extraction of ores therefrom.[48]

Where several vein or lode claims are held by one person, it is possible to embrace the several claims in one patent proceeding and acquire a patent to all if such lands on which the claims are present are contiguous.[49] Claims which merely corner one another are not considered to be contiguous.[50]

43. 30 U.S.C.A. Sec. 28a.
44. 56 Stat. 271.
45. Kramer v. Gladding, McBean & Co., 30 Cal. App. 2d Supp. 85 P.2d 552 (1938).
46. In re Sunset Packers Inc., 8 F. Supp. 917 (D.C. Nev. 1934).
47. 30 U.S.C.A. Sec. 29.
48. The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Improvements such as buildings, machinery, or roadways, must be excluded from the five hundred (500) dollar estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of the claim and actually facilitate the extraction of mineral from the claim. 19 Fed. Regs. 8835, Sec. 185.43 (b). (Lode Claim Regulations).
49. Hidden Treasure Consolidated Quartz Mine, 35 L.D. 485 (1907).
50. Ibid.

Where the claims are contiguous and the claims are developed in part or in whole by a common improvement the value of such improvement can be distributed equally among the claims. Therefore, where individual improvements and labor are present on the claim, the worth of such individual improvements and labor plus the worth of the equal share of the common improvement can be used to make up the five hundred (500) dollar assessment work requirement.[51]

In the case of placer mining claims the five hundred (500) dollar assessment work requirement on each and every claim as prerequisite to obtaining a patent has been somewhat relaxed. Here, the federal law[52] permits two or more persons or associations of persons having contiguous claims consisting of twenty (20) acres or less to make a joint entry thereof in one patent proceeding if the land area covered by the joint entry is not more than one hundred and sixty (160) acres. Where such group or association claims are present, the assessment work requirement is five hundred (500) dollars for the entire group claim and not five hundred (500) dollars per 20 acre claim as would be the case if vein or lode claims were present.[53]

EVALUATION OF THE ASSESSMENT REQUIREMENTS

A report on natural resources[54] prepared in 1949 for the Hoover Commission suggested the elmination of assessment work for existing unpatented claims if the owners of existing unpatented mining claims would accept certain other changes in the mining laws. The proposed changes in laws pertaining to unpatented claims and patents totaled eleven in number, four of which were material in precluding any further necessity for assessment work. They are as follows:

1. Elimination of the requirement of discovery of valuable minerals so that ground without positive evidence of valuable mineral deposits may be held for sufficient time to complete exploration or to secure evidence indicative of its prospective value.

2. Cancellation of new unpatented mineral claims at the end of three years if evidence of potential value for ore or for valuable mineral deposits has not been found to exist but at the same time give a privilege of renewal of rights for subsequent periods if work is in progress that is approved by the Geological Survey as suitable for testing the ground.

3. Give the Geological Survey the right to cancel new unpatented claims at any time, if it is requested to examine the ground by the agency administering the land, and if it finds the prospective value of the ground

51. James Carretto and other Lode Claims, 35 L.D. 361 (1907). Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode claims held in common may be based are available toward meeting the statutory provision requiring an expenditure as a basis for a patent as to all of the claims of the group situated in proximity to such common improvement. 19 Fed. Regs. 8835 Sec. 185.43 (b). (Lode Claim Regulations).
52. 30 U.S.C.A. Sec. 36.
53. McDonald v. Montana Wood Co., 14 Mont. 88, 35 Pac. 668 (1894).
54. Task Force Report on Natural Resources, Appendix L, Prepared for the Commission On Organization of the Executive Branch of the Government, Pt. 1, No. 7, pp. 50-56 (1949).

too slight to warrant further expenditure of money or effort on its exploration.

4. Granting patents upon establishment of the potential value of the ground for ore or mineral deposits.

The above proposed changes show an intent to extinguish any claim that is such little value that any further exploration would be useless, and at the same time to increase the number of patented claims by granting a patent immediately upon the establishment of potential value of the ground for ore or mineral deposits, and thereby ending any further necessity for assessment work. As the report points out, one potent argument for ending the requirement of assessment work is that in some cases under the existing laws, a locator, with knowledge that his claim has no prospective value, performs the assessment work only so as to secure valuable surface rights such as grazing and cutting timber. Under the proposed changes No. 2 and No. 3 above, such activity could be limited greatly as No. 2 provides that a claim can be canceled at the end of 3 years if no evidence of potential value is found in the claim and No.3 provides that the claim can be canceled at any time if, upon request, the Geological Survey finds the prospective value of the claim too slight. Proposed change No. 1, the elimination of the valuable discovery requirement, is not directly related to assessment work but is included here to show that if the proposed changes are adopted the present requirement that one must have a valuable discovery of minerals before he can make a valid location would be eliminated as well as the assessment work requirement, thereby leaving the way open for the operation of the proposed changes, that is, it would be possible to hold a location for a specified length of time so as to complete exploration activities even though a valuable discovery has not been made.

Such changes are also of benefit to a locator who is actually attempting to extract ore from his claim. Instead of working the claim year after year with little or no success in extracting any appreciable amount of valuable mineral, the locator is informed as to the prospective value of the ground within a limited period after discovery. If the ground does have potential value the locator obtains a patent; if it is of little prospective value the claim is cancelled and the locator can then, if he so chooses, move on to a more promising area. The end result is that the nation as well as the locator receive more, the locator in that he will be much more apt to receive a return on his investment and labor by developing a claim found by the Geological Survey to be of prospective value and the nation in that its pressing need for a more adequate supply of minerals will come closer to being realized.

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