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R. Lauren Moran

PROCEDURE IN LOCATING AND PATENTING A MINING CLAIM

R. LAUREN MORAN*

The topic which has been assigned to me for delivery today, as part of this program on various aspects of mineral law, is "The Step by Step Procedure in Locating a Mining Claim and Carrying It to Patent." The scope and breadth of this topic is readily apparent. I have been allowed thirty minutes in which to cover this topic and, without making apologies, I hasten to point out that the treatment, of necessity, must be rather summary. Each of the various divisions and sub-divisions discussed are, and have been, the subject of intensive treatment in themselves; no such treatment is here attempted; the attempt, rather, is to point out the various divisions of the general field to which intensive consideration would need to be given.

Understanding of the basic mining law is impossible without some consideration of the historical background of that law and the historical factors which brought it into being. Our basic mining law is contained in the Federal Law of 1872, as it has been modified and amended by Congressional Enactment from time to time and by the very large number of court decisions construing and interpreting the provisions of that law and applying it to the many and varied fact situations which have arisen. The principle congressional amendments or modifications of that law are contained in the Leasing Act of 1920, in what has come to be known as Public Law No. 585, the Multiple Use Law, and Public Law No. 167, the Surface Resources Act.

The roots of the basic law of 1872 extend into the mining laws of several European countries and of our neighbors to the south. The basic principles contained in those laws were engrained in the consciousness of the early day prospectors and miners and influenced their solution of the problems with which they were faced. Development of minerals throughout the area of the west led to the congregation of various individuals in mining camps. Rules governing and protecting the right of the prospector, the rights of the locator, and the rights of the miner in developing his claim, were forged out of the actual necessities of the situation as they were faced by those early day miners. Our basic law of 1872, then, became a combination of certain legal principles established through many years of legal experience, as modified and distilled in the actual day to day experience in the early day mining camps. Three principles appear to be basic in that law, and those principles, or considerations, remain in our law and continue to be basic in any consideration of it. Minerals can

*R. Lauren Moran received his LL.B. degree from the University of Southern California in 1948. Mr. Moran is a partner in the law form of Moran, Hettinger and Leedy, Riverton, Wyoming.

be discovered only by the painful and laborious process of searching through rugged and remote country; such process will only be attempted if the discovery is suitably rewarded; a reward to the discover of minerals, therefore, is a fundamental principle of mining law wherever that law may be found. The discovery, however, is only the first step; one discovering the mineral must proceed diligently to develop that mineral and, in that respect, he must perform a continuing amount of work each year during all of such time when he wishes to hold the claim; the duty of properly maintaining his claim and performing current development work becomes a second basic principle. Mineral discovered and claim located, further, is of no value unless notice shall be given in some manner of that fact; the discoverer's rights cannot be protected unless means is afforded of giving notice to all other prospectors of the fact, and extent, of the claim which he is making; notice or notoriety of the claim and its location therefore become a further fundamental consideration. These three basic considerations run throughout all of the mining law and the decisions interpreting that law and have materially affected its development and interpretation throughout the years and up to the present time.

We next consider the several principle types of mining claims. Mining claims generally consist of Lode claims and Placer claims. Provision is also made in the law for tunnel sites and also mill site claims. In view of the limitations of this presentation, no discussion will be made of tunnel site claims and mill site claims; it is sufficient at this time to recognize their existence and to point out the fact that this type of claim is available.

In law, certain fundamental distinctions exist between Lode claims and Placer claims. The law defines Lode claims as being veins or lodes of quartz or other rock in place; all other claims shall be considered as Placer claims. In order, then, for a claim to qualify as a Lode claim, the deposit concerned must consist of veins or lodes of quartz or other rock in place. The distinction, as stated in the law, seems to be simple and satisfactory; in fact, and in application, the distinction between Lode and Placer presents one of the most troublesome problems in mining law; it is a continuing and a presently existing problem and one which, in my opinion, can be solved only by proper further congressional enactment.

Basic distinctions exist between the method of locating Lode claims and Placer claims as set forth in the law. A Placer claim shall be located in accordance with geographical sub-divisions and shall be rectangular in shape; the size of the claim is twenty acres for one individual and provision is made for the location of an association Placer claim consisting of up to one hundred sixty (160) acres for an association of eight (8) individuals; only four (4) corner monuments are required to mark the claim; no discovery work need be performed with respect to the Placer claim.

A Lode claim shall be located along the vein or lode; it shall not exceed six hundred (600) feet in width, or three hundred (300) feet on each side of the vein or lode, and fifteen hundred (1500) feet along the vein or lode; it shall be marked by four (4) corner monuments and two (2) side center monuments and also a discovery monument; certain discovery work must be performed as a condition precedent to the validity of the location.

The nature of these requirements will be commented upon and stated more fully below. It is here pointed out, however, that the distinction between Lode claims and Placer claims is primarily historic in nature; in my opinion it no longer serves any useful purpose and exists as a constant and continuing threat and menace to the good faith miner; in my opinion this distinction should be abolished and one form of location, a mining claim, embodying the better features of each of the two types of location, be established.

We next consider the place of making the location. A mining claim must be located upon land available for mineral location. Unless the land is available for mineral location, a claim located thereon is absolutely void and places no rights in the locator; he is in fact, a trespasser. Lands are not available for mineral location if they have been withdrawn from such availability. Lands may be withdrawn from mineral location by numerous methods, including, but not necessarily limited to, the following: patent of the land, executive withdrawal, withdrawal for special purposes; and prior mineral entry.

As indicating the nature and present vitality of this requirement, a recent case in California was concerned with a contest between two locators; one of the parties in question had so located his claim that a part of it extended upon patented land; his point of discovery, that is the place where he made his discovery of mineral, was located upon the portion which had already been patented; the Court held that the claim could not be valid as to the land previously patented; further, since the point of discovery was located upon the patented land, no valid discovery had been made, since the mineral contained was contained in withdrawn land, and therefore the entire claim was declared invalid.

The enactment of Public Law 585 was made necessary by the principle stated next above. All of you will recall the condition of public necessity which gave rise to the search for uranium. In the early days of that search many thousands of claims were located upon land which was covered by pre-existing Oil and Gas Leases. As a matter of strict law, therefore, the claims were of absolutely no validity, for the existence of the Oil and Gas Lease effected a withdrawal from availability for mineral location. Uranium was desperately needed; many rights had vested under the acts of location and the uranium was available; in many instances it was being

actively produced; a solution was therefore necessary. Public Law 585, therefore, was enacted; under its provisions Lode mining claims made upon preexisting Oil and Gas Leases were given validity upon the performance of certain acts; further provision was made for the further location upon such Oil and Gas land; provision was made for the adjustment of the rights of the various parties in any claims in which both of them should desire to be active; further provision was made for the recognition of the rights of the respective parties in any patent that might issue to the land. The law is very comprehensive and, in the opinion of many people, quite technical. Any one interested in this field should make careful and thorough study of this law and the regulations and the application of its provisions in actual practice.

Thus far we have given brief consideration to the general nature and background of the basic mining law, the various types of mining claims and some of the distinctions between the two principle types of claims, and the nature of the land upon which a mining location may be made. We now turn to a more specific consideration of the location of the specific claim.

The corner stone of the mineral location, the foundation upon which all other rights are established, is the making of a valid discovery of minerals within the limits of the specific claim. Let there be no misunderstanding with respect to this point. Under the basic mining law, as it was initially established, as it developed through the years, and as it presently exists, a valid mineral discovery within the limits of the specific claim is an absolute essential; it is a condition precedent to the establishment or vesting of any right. If no mineral discovery has been made no claim exists.

Little difficulty is encountered in determining the reason for this rule. Congress early determined that discovery of minerals, the development of the mineral resources of the country, was of great importance in the public interest. Minerals could be discovered only by the close attention of the individual prospector. Such prospector, then, should have the benefit of the discovery, the right to the ownership of the minerals contained within the claim; unless, therefore, minerals had been discovered, the right to acquire ownership to the land had not been established and no justification for wresting it from the ownership of the general government had been established.

Considerable criticism has been directed at the definition of a valid mineral discovery. Courts, in dealing with the problem through the years, long ago developed the definition which is still generally accepted; the discovery, to be sufficient, must be a discovery of minerals in such quality and quantity as to justify a man of reasonable prudence, not necessarily a skilled miner, in expending further time and money in

exploration with reasonable expectation of profit. The rule is not a fixed rule, nor one of definite delineation. It is in the nature of the rule of negligence, with which all of us are familiar. As in the law of negligence, the nature of the rule arises from the necessities of the various situations which gave rise to it.

The rule is flexible in nature. Its rigidity varies with the particular circumstances. Where the question arises between a mining claimant and an agricultural homestead entryman, the discovery required may be quite strict; where the validity of the claim is put in issue by agencies of the Federal Government seeking to declare the claim invalid, a very rigid rule is often contended for; where a mineral patent is sought, the rule becomes more rigid in applications; the rule is less strict with respect to a claim in the early period of its location than it is after the claim has been in existence for several years; as between two competing locators, courts, generally, have applied a very liberal rule of discovery.

We next examine the manner in which the discovery may be made. Much authority can be found for the proposition that the discovery must consist of an actual physical disclosure of the mineral discovered within the claim; the proposition contended for by those supporting this proposition is that the mineral discovered must be so disclosed that it is apparent from a visual examination of the place itself.

In recent years, the mining field has seen the development of geophysical and geochemical instrumentalities in prospecting. Mineral bodies even lying at considerable depth within the earth possess certain physical qualities which will cause a reaction upon instruments designed to receive and register such qualities. The reliability of such instruments has now become beyond question. Certain basic defects and infirmities in their general use exist, and are also generally recognized. It is believed, however, that mineral discovery made by means of the results of the use of geophysical instruments is a fact, and, when properly employed and used, may serve to establish the necessary discovery of minerals.

Some individuals of recent years have contended for the existence of what is called an inferred discovery. The existence of minerals within one claim and in association with certain other recognized factors is asserted as a basis for the existence of similar minerals in another nearby claim possessing the same factors. Little support can be found for this proposition and it is believed that a discovery based upon such a proposition is of little validity.

We next consider the rights flowing from the valid mineral discovery. Having made a discovery the prospector has a right to make a location of his claim, based on that discovery. He has a possessory right to the claim concerned. The right which he acquires, while not the full legal title to the land, is recognized to be property in the fullest sense of the

word. It is such property, assuming the completion of the valid location, as can be sold or mortgaged or as can be the subject of any of the other several acts flowing from property ownership.

Discovery being the foundation and initiation of the legal right, too much emphasis cannot be placed upon the importance of preserving the evidence of the discovery when made. Too often, the prospector fails to properly preserve the evidence of his discovery; as a result, when at a later time this title is placed in question, he can produce no evidence of the discovery made at the particular time and his claim is placed in jeopardy. Prudence dictates that the nature of the discovery be preserved in such manner as to be competent evidence in court at any time when the title to the claim may be called in question.

The theory of the law is that discovery should be the first act in the sequence of acts constituting the location of the claim. Here, as in many instances in the law, theory gives ground before the pressure of practical circumstance. The discovery may be the last of the several acts making up the location; this, under the decision of several courts, does not affect the validity of the claim. It must be clearly understood, however, that the initiation of the right is at the date of discovery and no right exists before the discovery has been made. It necessarily follows, then, that, subject to such rights as may exist under the doctrine of pedis possessio, if one performs the other acts of location before the making of a mineral discovery, and another makes a mineral discovery while those acts are being performed, the discovery that is prior in time governs and the later discovery, even if made, must give way to the earlier discovery with respect to any land included within the two conflicting claims.

Having considered in some detail the nature of the rule of mineral discovery, and some of the consequences of its application, we turn to the acts of location.

As has been previously pointed out, the law contemplates the making of the mineral discovery as the initial step in the acts of location. Having made his discovery the prospector may post a notice of location. Here, attention is directed to the distinction between the notice of location and the certificate of location as the same are used in the Federal Law, in some instances, but particularly in State Statutes. The notice of location is the notice which the prospector places on the claim after the making of discovery; the notice is brief and summary in nature, stating only the name of the claim, the date of discovery, the name of the locator and the general outlines of the claim.

Having posted his notice of location the prospector has sixty days in which to complete the other acts of location. He must determine the surface boundaries of his claim and establish his monuments in accordance with the requirements of law. The law requires that the boundaries of the

claim be marked by substantial monuments, one at each of the four corners, and one in the center of each of the sidelines of the claim. The monuments need be of no particular nature, although prudence dictates that they should be of such character and permanence as to be enduring and to give notice to other persons.

We here point out that the importance of the requirements as to monuments is more practical than legal. The purpose of the use of monuments is to give notice to other persons who may be prospecting in the area that a claim has been located. For example, while the law requires only the use of one side center monument in each sideline, in rugged and broken terrain it is conceivable that three or four side center posts should be employed; here, the purpose of the locator is to give full and adequate notice to other persons of the existence of his claim and he should use considerable pains to give clear and adequate notice.

We assume then that a valid discovery has been made, that a notice of location has been posted, and that substantial and satisfactory monuments have been posted upon the claim in such manner as to give full and public notice to all persons of the existence of the claim. We next turn to a consideration of the discovery work requirements.

Discovery work is to be distinguished from assessment work; the two are essentially different and neither one fulfills the office of the other. Assessment work is a requirement of federal as well as state laws; discovery work, as it is properly known, is a creature of state law and the nature of the work varies to some extent under the laws of the several states.

The general purpose of most of the discovery work requirements, as they have existed in the laws of the several states, is to so disclose the vein or lode that its existence and probable course may be observed. Since the requirement is the disclosure of the vein or lode, it follows that no such requirement exists with respect to Placer locations.

In general, two types of work are required or provided for. Laws generally have required a shaft which exposes the vein ten feet in depth or an open cut ten feet in depth which exposes the vein in its course.

Since the performance of the discovery work was essential to the validity of a claim, and since it required an open cut or shaft which exposed the vein, where the mineral concerned was a bedded or channeled deposit lying at depth beneath the surface, no means of locating a valid claim was available. As a consequence, when the uranium activity developed within this state, prospectors could only use the open cut, or "bulldozer cut" as a means of validating their caims. Agricutural interests became extremely disturbed over the excavations cut into land which they considered to be their grazing land. In February of 1955 the drill hole law of Wyoming was enacted as a solution to the problem faced by both agricultural interests and the prospectors.

The drill hole provided that minimum of fifty feet of drilling, which cut or exposed in its course deposits of valuable mineral, when properly implemented and made of record in accordance with the provisions of the act, would be sufficient as discovery work in the location of the claim. The law made certain basic changes in the nature of the mining law of the State of Wyoming. It provided for the use of the drill hole; it made specific provision for the marking of the discovery monument and its location with respect to the drilling; it further required the execution and the placing of record of an affidavit, made under oath, of the performance of any discovery work with respect to any claim thereafter located. Limitations of time prevent any detailed recitation of discussion of provisions of that act. It is pointed out, however, that the requirements of the law are quite specific and that the validity of any claim located after the effective date of the act may be considerably affected by the provisions of that act. For this reason, any persons active in this field should give detailed and careful consideration to all of its provisions. The act is not perfect. It was enacted under the pressure of conditions then existing. It is believed that it represents a forward step in the law of Wyoming but a step which is, at best, imperfect in many respects.

We next turn to the consideration of the place within the claim where the discovery work shall be located. Wyoming law is peculiar in this respect in its requirement that the sidelines of the claim shall be equidistant from the center of the discovery work. In other words, the discovery work may be located anywhere along the center line of the claim, considered in its lengthwise extent, but the sidelines must be equidistant from the center of the discovery work. A failure to provide the required equidistance does not result in the invalidity of the entire claim but it does result in a casting off of the excess of distance of one sideline from the center over the other. The equidistance rule is based entirely upon the existence of a lode in its classical sense, that is, a fissure running in a more or less straight line along the longitudinal extent of the claim. Such claims seldom exist; certainly they do not exist in recent times where most of the minerals discovered are discovered at depth and are of blanket or bedded deposits. Consequently it is believed that no useful purpose exists for the equidistance rule and that it creates constant confusion and difficulty to the miner who is attempting in good faith to locate claims and develop the minerals therefrom. Adherence to its results in considerable expense and in great uncertainty of titles; legislative re-appraisal of this particular provision is long overdue.

Mention has previously been made that a difference exists between the method of describing a Lode claim and a Placer claim. A Placer claim is located in accordance with geographical subdivisions and is rectangular in shape; consequently, description presents little difficulty. A Lode claim, as has previously been pointed out, is to be described along the lode or vein. The difficulty of meeting the requirement of law with respect to

a Lode claim is readily apparent when one considers a bedded or channeled deposit, lying at anything from fifty to five hundred feet below the surface, following an undulating course, and being anything from ten to one thousand feet in width. Such, nevertheless, is the law, and such is the method of describing a Lode claim.

The law requires that the claim be described with sufficient definiteness that it can be readily located and its boundaries determined. In practice, many prospectors, in the early stage of location, have followed the practice of using indefinite locations, or descriptions of such nature that they may change the course and distance of their respective boundary lines. It is believed that such practice is extremely dangerous at best. A person laying claim to a parcel of ground must, of necessity, state the parcel of ground which he seeks to claim. A failure to state it with clarity and definiteness results, primarily and necessarily, in a failure of that person to advise other persons of the land which he claims. This failure, in nearly every instance, is detrimental to the person who seeks to avail himself of it.

Discovery work having been performed and the description of the claim having been determined, all of the acts which were to be performed upon the ground have been completed. The final step, therefore, is the preparation of the certificate of location. The laws of the several states must be consulted with respect to the form and contents of such certificates. Such laws should be carefully compiled with for the certificate, when recorded, is the initiation and basis of the record title of the locator. The purpose of the certificate is, through the public records, to give public notice of the perfection of the location and the establishment of a prima facie title to the property.

In Wyoming, prior to the passage of the drill hole act, the form and contents of the location certificate were rather simple; they had become rather well established in several printed forms and, while being hardly informative, served to place the fact of the claim of record. After the passage of the drill hole law, the requirements for the location certificate became rather specific. Those requirements should be carefully consulted and, in every instance, the provisions of the law should be carefully complied with.

After the location certificate has been prepared and properly executed it is to be placed of record within the county in which the claims are located. The law extends to the locator a period of 60 days after the date of discovery in which to perfect the physical acts of location upon the ground, prepare the certificate, and record it. If the certificate is not recorded within the time provided by law, the validity of the claim, absent intervening rights, is not affected. It may be prepared and recorded at any time, provided the rights of others shall not intervene. If, however,

the certificate is not recorded within the 60 day period, the ground becomes open for location by others, and, if such location by other parties should take place prior to such act, the locator has, as a general proposition, lost his preferential right to the property.

The order of performance of the acts of location, under the law, then are as follows: mineral discovery, notice of location, performance of discovery work or exposure of lode or vein, posting of monuments and description of claim, preparation and recording of certificate of location. Under applicable court decisions the sequence of events is not material, provided, always, that no right exists until mineral discovery has been made, and the rights which thereafter exist shall date from the date of discovery. The necessity of the making of the mineral discovery as the initiation of the right is subject to one outstanding exception, the doctrine of pedis possessio. Under this doctrine, which has received wide recognition, one in possession of a claim and diligently pursuing a good faith attempt to make a mineral discovery. The protection is limited to such time as possession, actual or constructive, is actively maintained; the possession is for a limited extent of territory and for a reasonable time; the doctrine is active, having received recognition and endorsement from the Supreme Court of New Mexico within the last two or three years.

Having completed the acts of location, the locator has acquired the rights to the property contained within the boundaries of his location or locations. We examined briefly the nature of the right which he has thus obtained.

A mining claim has been stated to be "property in the highest sense of the word." It is a property right, and a right in real property. With respect to it, the locator may deal with it as his own and, as a general proposition, exercise all of the rights and powers of the owners of property. It is, nevertheless, an imperfect title and one which is subject to being lost, or defeated, or taken away. It is something less than the full title to the property; it has been referred to as a possessory right, although the nature of the right acquired and established is much greater than a right of possession only.

We have previously pointed out that a valid mining claim can be located only upon land available for mineral location. If a prior mineral entry has been made with respect to the land, that land is no longer available for such location. In the early period of the uranimum rush, prospectors were more concerned with the possibility of finding the desired mineral than they were with availability of the land upon which the desired indications might be discovered. Thousands of uranium claims were located upon land covered by pre-existing Oil and Gas Leases. An Oil and Gas Lease is a mineral entry and, as such, effected a withdrawal of that land from further disposition under the mineral laws. As a

necessary consequence, and as a matter of strict law, all of the claims located upon land covered by pre-existing Oil and Gas Leases were without validity in the law. The claims, nevertheless, had been located; valuable rights had vested and prospectors had located the claim in reliance upon the representations held out by the Federal Government through its instrumentalities. To provide a solution for this situation, Public Law 585, the Multiple Use Act, was drafted and enacted by the Federal Congress. This Act, briefly, provided a means of giving validity to claims previously located, provided for the right to locate mining claims upon land covered by pre-existing Oil and Gas Leases, and provided, further, for the concurrent development of the leasing act mineral and the minerals located under the general mining laws. The provisions thus engrafted upon the law have become and now are an integral part of the basic mining law of our country.

For some time numerous individuals in various parts of the country, particularly those parts of the country possessing attractive timber resources and resources attractive from a recreational standpoint, had used the mining law as a means of obtaining title to land desired primarily for the surface resources. The abuses became a matter of widespread concern, not only to the public generally, but to the Department of Interior and to the mining industry. As a result, Public Law 167, the Surface Resources Act, was enacted by Congress a few years ago. This Act, generally provides that the right of the miner to the surface resources is limited to such part of those resources as it necessarily required by him in the development of his claim; until patent, the right to the surface resources and the disposition of them remains in the Federal Government. This law has become and is a further essential part of our basic mining law.

Both of the Acts are fundamental in nature and great in importance. Their provisions are not simple. Any person interested in this field is well advised to make a careful and detailed study of their provisions and, certainly, all should be aware of their existence and general nature.

Having completed his location, then, the prospector or locator acquires title to his claim; it is property and property which, in the main, he can deal with as his own; it is, nevertheless, subject to the infirmities present in and created by the Multiple Use Act and the Surface Resources Act; in addition it is a title subject to defeasance; it may be questioned by other persons and, if so questioned, must stand upon its own strength and its own validity; its validity may be questioned at any time by the Federal Government or its Agents and, unless validity can be proven, the claim will fall. It is, further, such property as can be maintained only by constant diligence and vigilance.

In order to maintain his claim in force and effect, the locator must perform upon that claim, and each year, representative or assessment work.

The purpose of this requirement is readily apparent. It constitutes proof of the continuing interest of the miner or prospector with respect to the property concerned. It is, further, proof that the claim is held in good faith for mining purpose and its intent is to put upon the mineral locator the burden of some minimum active development of the mineral resources in the claim. It therefore is a further attempt by the Federal Government to carry out and advance the fullest possible utilization and development of the mineral resources existing upon the public domain.

The nature of the work which will satisfy the requirements of law is far from clear in the decisions. The work done, in order to qualify, must tend to improve the value of the mineral resources within the claim and facilitate the extraction thereof. That work, then, which tends to explore the mineral resources or to provide means of mining and extracting the ore, would clearly qualify; in this could be included the opening of tunnels or shafts along the vein, drilling for ore in proving the existence of ore upon the property; the opening of excavations preparatory to mining operations, the construction of roads and other similar facilities which are necessary in extracting and removing the ore. That work, which, in effect, only assists the miner in living upon the property or in preparing to perform this work, may not qualify. One planning his assessment work for the year is faced with a very real problem. He cannot determine exactly whether particular work which he has in mind will qualify and meet the requirements of the law; he will not know whether or not that work does so qualify until his claim is called in question by another party seeking to acquire that same property; the answer which he receives will come from a Court, and it will come at a time when correction is no longer possible and the price of being wrong is the loss of his property.

Where a locator or miner owns a body of several claims, work done upon one claim, under proper circumstances, may qualify as work for the entire group of claims. In order for it to so qualify the total amount of work must equal at least One Hundred Dollars ($100.00) for each of the claims in the group; the claims must be contiguous and the ownership of the claims must be common; in addition the work done upon the specific claim must tend to prove or improve the mineral value of every claim to which the work is to be made applicable. If the work only improves the mineral value upon the claim upon which it was performed; if it has no relationship to the other claims in the group; if no connection can be shown between the deposits upon one claim and other deposits upon the other claim; if any of these factors are present the work will not so qualify and the attempt to use that work to cover all of the claims within the group may be disastrous.

It can readily be seen that substantial room for improvement is present in the law concerning assessment work and its performances. The amount required by the law at the present time, One Hundred Dollars ($100.00),

is certainly unrealistic; the uncertainty in the law as to the nature of the work which will meet the requirements is not desirable and serves no useful purpose; in addition, some more feasible method of giving wider application to a great amount of work done upon one claim is most desirable for, under the present situation, a miner is often required to make a useless expenditure of money in the performance of small acts of work which serve no purpose other than to pay a lip service or surface respects to the requirements of law.

We have now made a very brief and hasty review of the basic nature of the mining law, the nature of the acts required in locating a claim, the nature of the title which is acquired by the locator on perfection of his claims, and something of the requirements of the law with respect to maintaining the claim in force and effect throughout the years following the acts of location. In the short time remaining we shall review very briefly the procedure required in carrying the claims to mineral patent, or through mineral patent procedure.

As an initial proposition, and prefatory to further discussion, it is pointed out that the prudent operator, or prudent counsel who is advising him, will do well to commence preparations for the patent procedure at the very time of location of the claim. The evidence required for obtaining a patent is extensive; if it is available the process is greatly simplified and a substantial amount of money is saved; if it is not available, the patent may be refused. Such evidence is available at the time of location, or, early in the process of development, may be obtained at very little additional cost. Preparation at that time will greatly simplify the task and result in a substantial saving of money and time to all concerned.

The procedure for a mineral patent is initiated by the filing of an application for mineral survey in the office of the Cadastral Engineer of the Land Office in which the land is located. On receipt of the application, accompanied with the required fee, an order for survey issues to the Official United States Mineral Surveyor.

Comment may possibly be made concerning the nature of the mineral surveyor. It is to be remembered at all times that, although he makes the survey at the instance of the applicant, and although his fees and charges are paid directly to him by the applicant, he is the agent of the Federal Government and is not the agent or employee of the applicant for patent. The Bureau of Land Management has taken a very strict view with respect to this situation. Any act which may cause the mineral surveyor to appear to be the agent or employee of the applicant may void the proceedings and make necessary the commencement of a new application. Such acts may be, among others, the signing of an amended location certificate on behalf of the applicant by the surveyor or the active participation in any acts which the applicant may take in furtherance of his application.

The order having issued to the Mineral Surveyor, a mineral survey is made by him of the land concerned. The survey thus made must meet all requirements of the law, rules and regulations respecting official mineral surveys of the public domain. Detailed and extensive field notes must be prepared. After the survey has been made and the field notes prepared they are filed with the office Cadastral Engineer; after office checking by him they are further checked, reproduced, and finally approved by his office.

On approval having been obtained of the Plat of Mineral Survey and field notes, the notice of intention to apply for patent must be posted upon the claims concerned and the act of posting must be attested to by two disinterested witnesses. A copy of the Plat of Mineral Survey must also be posted and this material must remain continuously posted upon the claims, and in a conspicuous place, for a period of sixty (60) days.

Along with the posting of the notice of intention to apply for patent, the application for patent must be prepared. This application need be in no specific form; its contents, however, are extensive, and very great care should be employed in its preparation. It must show the identity of the applicant and that he or it is of such nature that a patent may issue to such an applicant under the provisions of law. An abstract or certificate of title must be furnished. Proof of possessory right must be given, in detail; this includes all of the acts of location and all of the acts showing the location and existence of a valid mining claim and that the title to such claim is vested in the applicant. The nature and extent of the mineral discovered must be shown and the existence and course of the lodes or veins must be indicated. Clear proof of the existence and location of the mineral is necessary, and, in most instances, specific and careful field examination will be made by the mineral examiner from the Bureau of Land Management. The existence of mineral alone is not sufficient; proof must also be given that the ore which is present can be extracted at a profit, or that reasonable expectation of such a profitable operation is present. The facts which support the desired conclusion must be set forth in reasonable detail and they must be facts and not rosy expectation. The law also requires that at least Five Hundred Dollars ($500.00) worth of acceptable work must have been performed upon each of the claims for which a patent is sought; proof of the performance of such work in the required amount and of the required nature must be given.

The basic purpose of the application is to demonstrate to the officials of the Federal Government that the applicant in good faith intends to develop the mineral resources of the land concerned and that mineral resources are present upon that land in such quantity and quality that the Federal Government is justified in giving the land to that person under the applicable minings laws.

On filing of the application for patent with the Bureau of Land

Management, notice of the filing of the application must be published in the newspaper designated by the appropriate official. The notice must contain all of the facts required by the law which are, in general, the vital statistics concerning the entire application, including the name of the applicant, the number and date of the application, the name of the claims concerned, their description and other pertinent factors. The notice must be published for nine (9) successive weeks. Publication is shown by the customary Affidavit of Publication furnished by the newspaper.

Too much importance cannot be placed upon the content and correctness of the published notice. It has, in general, the same effect as the summons or publication of summons, in an ordinary civil action. The patent proceedings are in the nature of quiet title proceedings; they are proceedings in rem; they lead to the placing in the hands of the applicant the patent to the land concerned; the published notice is a vital part of the proceedings.

The application having been filed, the notice of intention and the Plat having been posted upon the claims and remained there for the necessary period, and the notice having been published within the appropriate newspaper for the required period, the final step is the making of the final proof. Such proof consists of an affidavit of the fact that the notice and the Plat have remained continuously posted upon the claim for a period of more than sixty (60) days; that the publication has been made as ordered and for the prescribed time in the appropriate newspaper; a statement of certain specified fees and expenses paid by the applicant in the course of the filing of his application; the payment of the purchase price at the specified amount per acre for each acre or fraction of acre concerned.

During such period, or as soon after that time as the personnel of the land office is able to make the examination, a detailed mineral examination is made of the property concerned by the examiner from the office of the Bureau of Land Management. All of the material is processed in the local office and final action is taken in the Bureau of Land Management in Washington, D. C. Thereafter, if the work of the applicant has been successful, patent issues to him and title to the land, as title is generally known, is vested in him.

The foregoing is a very hasty and sketchy review of some of the basic provisions of the mining law concerning the location and patenting of mining claims. I hope that all of you will understand that it does not purport to be an exhaustive treatise upon the subject; as was stated at the outset, any of the general subjects or topics touched upon in this discussion would, in itself, be the subject of exhaustive consideration and, at one time or another, has been the subject of such attention. It is

intended only as a means of calling to the attention of those who have little familiarity with this particular field, a few of the high points to which attention should be given if a problem is presented with respect to that part of the field of mining law included within this assignment. I very much appreciate the courteous attention which you have given to me and I sincerely hope that some of the comments made may be of some small value to a few of those who are here present.