NEW MEXICO STATE BUREAU
OF
MINES AND MINERAL RESOURCES

Socorro, New Mexico

Don H. Baker, *Jr.*, Director

LAWS AND REGULATIONS GOVERNING MINERAL RIGHTS IN NEW MEXICO

by

VICTOR H. VERITY
and
ROBERT J. YOUNG

1971

NEW MEXICO STATE

BUREAU OF MINES AND MINERAL RESOURCES

Don H. Baker, Jr., *Director*

A Division of

NEW MEXICO INSTITUTE OF MINING & TECHNOLOGY

Stirling A. Colgate, *President*

PRINTED 1971

For sale by the New Mexico Bureau of Mines and Mineral Resources
Campus Station, Socorro, N. Mex. 87801—Price $1.00

CONTENTS

Citations to laws and regulations are abbreviated as follows:

New Mexico Statutes Annotated—N.M.S.A.
United States Code—U.S.C.
Code of Federal Regulations—C.F.R.

43 C.F.R. as renumbered; see Federal Register June 13, 1970

INTRODUCTION

The preparation and publication of this booklet is funded pursuant to 1967 Laws of New Mexico, Chapter 171, Section 1. The publication would not be possible without the kind cooperation of the Department of Mineral Resources of the State of Arizona, which has authorized the use of the material contained in its publication entitled Laws and Regulations Governing Mineral Rights in Arizona, 7th Edition, Revised June, 1970, by Victor H. Verity, mining attorney of Tucson, Arizona, and the cooperation and consent of the author thereof.

The entire text has been reviewed by Mr. Verity. The material relating solely to New Mexico laws has been written by Robert J. Young, attorney, of Silver City, New Mexico. The Bureau also acknowledges the aid and counsel freely given by Mr. Ben Shantz, attorney, of Silver City, New Mexico, Gilbert R. Griswold and William 0. Jordan who reviewed the material.

The scope of the booklet is limited to the Federal and State mining laws as they apply within the State of New Mexico. The essences of the more important features of the mining laws are set forth with a minimum of citations to the laws and regulations. Citations to Federal Court decisions have been omitted as this booklet is intended to be a field manual for guidance of the prospector and miner.

If the instructions contained herein are followed, it should be possible to avoid the common errors that are frequently made when attempting to locate a mining claim and maintain its validity. However, the laws and regulations are changing constantly. Therefore, should the holder of a mining claim have a legal problem, he is urged to consult an attorney. Only information concerning general laws is available from the New Mexico State Bureau of Mines and Mineral Resource.. It cannot give answers to legal problems dealing with specific cases.

A map of New Mexico which shows major land withdrawals and reservations may be obtained from the U. S. Geological Survey, Denver, Colorado. The map does not attempt to accurately indicate the many small, irregular boundaries, because land withdrawals and restorations occur almost daily.

DON H. BAKER, JR., Director

MINING LAW GENERALLY

The intent of the mining laws and the leasing acts, both State and Federal, is to develop the mineral resources on the public domain and State land. The law is on the side of the bona fide mining locator who stakes a claim with a serious intention of prospecting for minerals. The best way to demonstrate his good faith is to properly locate the claim and to maintain and work it in full accordance with all legal requirements and due regard for the rights of the surface owner whether it be the United States, the State or a private party. Any destruction of surface resources should, in all cases, be limited to that which is necessary to determine the existence of an ore body. Needless destruction of surface resources in this era of awakening consciousness of the environment is almost certain to create conflicts. Mere excavation of a certain volume of material which is not expected to determine the mineral potential, or even whether mineralization exists, often raises a serious question in the mind of the surface owner as to the good faith of the locator.

Total land area of the State of New Mexico is 77,767,040 acres which is owned or held in trust by the Federal Government, the State, or by private owners approximately as follows:

Federal Government	33,979,363 acres
State Trust Lands	9,107,604 acres
Privately-owned lands	34,680,073 acres

The federally-owned or held in trust lands constitute approximately 43.6 per cent of the state's total area. The State Trust Lands, administered by the State Land Office, constitute approximately 11.8 per cent of the total. The State Trust Lands consist of 9,107,604 surface acres and 12,981,525 acres of minerals which have been reserved for the following beneficiary institutions: Common Schools, New Mexico State University, New Mexico Institute of Mining and Technology, University of New Mexico, Northern New Mexico State School, Military Institute, Western New Mexico University, Reform School, Miners Hospital, Penitentiary, Deaf School, School for the Blind, State Charitable and Reform Institutions, Water Reservoirs, Improvements of Rio Grande, Public Buildings, Carrie Tingley Hospital and State Park Commission.

The acquisition of mining rights on State lands is subject to the State laws, entirely apart from the Federal statutes. How-

ever, as a result of exchanges of land between the State and the United States, under the provisions of the Taylor Grazing Act, many instances will be found where the mineral and surface estates have been separated. It is common to find minerals subject to the Federal mining laws and the surface owned by the State. The remaining land, constituting about 44.6 per cent, is privately owned, but in much of it the minerals have been reserved by the Federal Government and the location of mining claims is subject to the Federal laws. Frequently, however, the private landowner owns the minerals contained therein and in such cases the mining laws concerning the location of claims do not apply.

The Federal mining laws are found in Title 30 (Mineral Lands and Mining) and Title 43 (Public Lands) of the United States Code, and the Regulations are in Title 43 (Public Lands) of the Code of Federal Regulations. State laws on Mines and Mining are found in Chapter 63 of the New Mexico Statutes Annotated (1953 Compilation). Regulations promulgated and adopted by the Commissioner of Public Lands are filed with the New Mexico Secretary of State.

The Federal mining laws now in force are founded on legislation enacted in 1872, under which the Federal Government provided for disposition of all its mineral lands by location and patent. (30 U.S.C. § 21 et seq.; 43 C.F.R. Part 3800.) Since 1872 there have been three major changes in the basic mining law. These are:

1. The Leasing Act of 1920.

This act provides for the acquisition of mining rights by lease from the Federal Government of deposits of oil, oil shale, gas, potassium, sodium, phosphate, sulphur, and coal. For details see page 35.

2. The Multiple Mineral Development Act of 1954.

The general purpose of this act is to permit use of public lands for mining operations under the mining laws, and leasing operations under the mineral leasing laws. It is often referred to as Public Law 585 and became effective August 13, 1954. It applies to public domain and to patented lands wherein the United States has retained mineral rights. Further comments will be found on page 39.

3. The Multiple Surface Use Act of 1955.

This act, commonly referred to as Public Law 167, amended the general mining laws by limiting the rights of the holder of an unpatented mining claim in his use of the surface and surface resources. Details will be found on page 40.

WHO MAY LOCATE A MINING CLAIM

Any citizen of the United States, or anyone who has declared his intention to become a citizen, an association of citizens, or a qualified corporation may locate a mining claim upon public domain of the United States. The location of a mining claim by an alien is not absolutely void, but is voidable. There is no limitation on the number of mining locations that can be made by a qualified locator on Federal lands within New Mexico. The statutes of New Mexico provide that no mineral claim may be located upon State land. The only way mineral rights may be obtained on State land is according to the leasing procedures set out on pages 46-53.

LANDS SUBJECT TO LOCATION

In General

The mineral discovery and the posted location notice of a mining claim must be upon public lands of the United States, or upon lands in which the United States has retained the minerals. However, not all such lands are open to mining location.

In recent years the determination of whether lands are open to mining location has become exceedingly complex. It is impossible to make a general statement in this booklet that will serve the purpose of instructing a mining locator as to whether or not a specific tract of land is open to mining location. This fact can be determined only by consulting the public records of the county, State, and the United States.

Copies of location notices are required to be recorded in the Mining Book in the office of the county clerk in the county in which the claims are situated. The land ownership begins with the recording of the patent (deed) from the United States or a deed from the State of New Mexico in the Deed Book in the office of the county clerk in the county in which the land is located. These records do not show the statutes nor adminis-

trative proceedings relating to the mineral status prior to the issuance of a patent, such as withdrawal from and restoration to mineral entry. The records in the county clerk's office in the various counties of the State may be consulted to determine if recorded patents from the United States or deeds from the State of New Mexico have reserved minerals. This information is not always apparent from the recorded instruments, and it may be necessary to consult the records of the Bureau of Land Management or the statutes under which the patent was issued or even decisions of the courts.

Records of the Bureau of Land Management, United States Department of the Interior, Santa Fe, New Mexico 87501, must be examined for information as to the status of public domain of the United States. Personnel of the Bureau are not available to search the records nor is such information supplied by mail. The records are open to the public at specified hours. Unless a person is experienced in such matters it is advisable to employ a competent abstractor or attorney to make the search.

Notwithstanding passage of legislation which may limit or even prevent the acquisition of mineral rights in public domain of the United States or in State land, mining rights may have vested in locators by reason of locations made prior to the effective date of such legislation, and these vested rights are not affected thereby. In such instances, the date is often all-important and is another factor that must be taken into consideration when searching the records for determination of minerals rights.

It is of the utmost importance that the exact description by legal subdivisions be ascertained and the records examined by a qualified person to determine the mineral status. Failure to do so may result in expenditure of time and money on an invalid location. Also, though some lands may be open to mineral entry, they may be subject to special restrictions in addition to those imposed by the Multiple Surface Use Act of 1955.

A notice of location of a mining claim which has been recorded with the clerk of the county may meet all legal requirements as to form, yet the description will often be in such general terms that it is impossible to determine its situs on the ground. Therefore, in addition to the title search in the records, a careful physical inspection of the land must be made for evidence of prior mining locations. No record is made at the

United States Bureau of Land Management until a claim is patented, with the exception that location notices of unpatented mining claims on land withdrawn for a power site must be filed with the Bureau.

If a person wishes to explore for and develop minerals on State land he must direct an inquiry to the State Land Office, P.O. Box 1148, Santa Fe, New Mexico 87501, to ascertain if the State lands are open to leasing.

National Forests

National forests are open to mining location but with some exceptions. Areas withdrawn for administrative, recreational, experimental, and other uses may be closed entirely to mining. Mining claims in some areas, even though located prior to the Multiple Surface Use Act of 1955, by reason of special legislation or regulation may include only so much of the surface as is reasonably necessary to carry on mining operations, in order to retain scenic beauty. The nearest Regional Forester should be consulted for details.

Grazing Districts

There are four grazing districts in New Mexico on public domain of the United States, established under the provisions of the Taylor Grazing Act. (43 U.S.C. § 315 et seq.; 43 C.F.R. Parts 2200, 4122.) Notwithstanding issuance of a grazing lease, the lands remain open to mining location. The grazing lessee has no vested rights in the land, and his lease is subject to cancellation.

Information regarding grazing leases may be had from the corresponding District Grazing Office, the address of which may be obtained from the Bureau of Land Management in Santa Fe, New Mexico, 87501.

Land Exchanges

Under the provisions of the Taylor Grazing Act, exchanges of land are authorized both with the states and with private persons. These exchanges may be made with or without reservation of minerals. Therefore, it is necessary to check on the status of each tract of land to determine ownership of the minerals and whether or not the same may be located.

Stock-Raising Homesteads

All minerals in lands patented under the Stock-Raising Homestead Act of December 29, 1916 are reserved to the Federal Government, together with the right to "prospect for, mine and remove the same." A great many stock-raising homestead patents covering land in New Mexico were issued, and conflicts are constantly arising between ranchers and miners, usually due to a lack of information about the provisions of the law. A development which may give rise to further conflicts has been the subdivision of stock-raising homesteads for residential sites near New Mexico's rapidly growing cities.

Agricultural Homesteads

Only a very limited number of mineral substances found in lands covered by an agricultural homestead patent may be acquired under the general mining laws or the Leasing Act. Practically all minerals belong to the owner of the land.

Reclamation Withdrawals

Public domain of the United States in New Mexico may be withdrawn for reclamation purposes, and much of it has already been included in such withdrawals along the Rio Grande. Withdrawals are described as "first form" when intended for construction of dams, canals, obtaining building materials, etc. "Second form" withdrawals apply to lands to be irrigated. However, these areas do not necessarily remain closed to entry under the general mining laws. It is within the discretion of the Secretary of the Interior to determine whether or not an area withdrawn for reclamation purposes shall be restored to mineral entry and the conditions under which mining shall be conducted. (43 U.S.C. § 154; 43 C.F.R. § 3816.1.) Mining locations in some areas may be entirely prohibited. In other areas they may be made subject to restrictions which will be incorporated into any mineral patent that may be issued.

The office of the State Supervisor of the Bureau of Land Management at Santa Fe is authorized to receive applications for "Restoration of Withdrawal" and, after consulting the Bureau of Reclamation, if the latter office does not report adversely, may grant such restoration and designate the restrictions applicable to mining operations.

Power Sites

By the terms of the "Mining Claims Rights Restoration Act of 1955" (30 U.S.C. § 621), all public lands of the United States already or thereafter reserved for power development or power sites were opened to entry for location and patent of mining claims, both lode and placer, under the general mining laws; but all power rights to such lands were retained by the United States.

The locator of a mining claim on land reserved for such purposes must, within 60 days of location, file a copy of the notice of location with the U. S. Bureau of Land Management, Santa Fe, New Mexico, 87501. A placer claimant shall not conduct mining operations for a period of 60 days after the date of filing such notice. Within this latter 60-day period the Secretary of the Interior may serve notice of a hearing on the locator, following which placer mining may be allowed or completely prohibited, or permitted with certain restrictions. Within 60 days after the expiration of any assessment year, a statement as to the assessment work done or improvements made on both lode and placer claims must be filed with the Bureau of Land Management.

State Lands

Lands owned by the State of New Mexico are not open to prospecting but can be leased according to the procedures set out on pages 46-53.

Game Refuges and Ranges

State game ranges and refuges are generally open to location of mining claims. However, the Bosque Del Apache, Seneca and Bitter Lake National Wildlife Refuges have been withdrawn from mining location.

Stock Driveways

Locations may be made in stock driveways but are partially restricted.

LANDS NOT OPEN TO LOCATION

Throughout New Mexico there are large areas of United States public domain that are not open to mining location. In recent years the withdrawals have become so numerous that it would be beyond the scope of this booklet to give a complete list. Furthermore, these areas change from day to day, and a published list rapidly becomes obsolete. Therefore the following comments are intended to convey only a general idea of lands not open to mining location in order that the prospector may be alert to such a possibility and make the recommended investigations as to the exact legal description of the land and check through the county, State, and Federal offices to determine if he may locate a valid mining claim in a given area.

If a claim is located on land not open to mining location, the subsequent reopening of the area to mineral location does not validate the claim. This principle applies to withdrawals for reclamation, power sites, recreational areas, military reservations, Indian reservations, and similar areas.

Classification Act of 1964

A 1964 law creating the Public Land Law Review Commission stated that it was necessary to have a comprehensive review of the public land laws, rules and regulations of the United States and to determine whether and to what extent revisions thereof are necessary. It was "declared to be the policy of Congress that the public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public." (P.L. 88-606; 43 U.S.C. § § 1391-1392.) Two other laws became effective concurrently with the one creating the Commission. One, commonly known as the "Classification Act," provides that the Secretary of the Interior shall develop and promulgate regulations containing criteria for classification of lands to provide for disposal or interim management pending the implementation of recommendations to be made by the Commission. (P.L. 88-607; 43 U.S.C. § 1411 et seq.) The other law authorized and directed the Secretary to dispose of public lands "that have been classified for disposal." (P.L. 88-608; 43 U.S.C. § 1421 et seq.)

Publication of notice in the Federal Register by the Secretary

of a proposed classification has the effect of segregating the land from disposal under the mining and mineral leasing laws, except to the extent that the notice (or subsequent modification thereof) specifies that the land shall remain open for disposal under the mining or mineral leasing laws. The segregative effect of the proposed classification shall continue for two years from the date of publication (unless sooner terminated) and may be extended for another two-year period.

The authorizations and requirements of Public Laws 88-607 and 88-608 expired December 31, 1970 (6 months after the submission to Congress of the final report of the Public Land Law Review Commission) unless further extended, but segregations for disposal continue for the period of time allowed by Public Law 88-607, and sales given public notification under 88-608 prior to its expiration, may be consummated.

National Parks and Monuments

Such areas include the Carlsbad Caverns National Park and the following national monuments: Chaco Canyon, El Morro and White Sands, and many others in different parts of the State that have been established for scientific, historical, educational, scenic, or recreational purposes. All lands within these areas are withdrawn from location or entry under any of the public land laws, including the mining laws.

Recreational or Other Public Uses

These are areas outside of the national parks or monuments set aside for public use. A state, county or municipality may petition for the use of such land. (43 U.S.C. § 869). As a general rule, after receipt of a petition to establish an area for recreational or other public use, the Bureau of Land Management withdraws the contemplated area from all forms of entry. During such time all mining locations are prohibited. The lands may be leased or sold by the United States to the petitioning body. The statute expressly provides that each patent or lease so issued shall contain a "reservation to the United States of all mineral deposits in the lands conveyed or leased and of the right to mine and remove the same, under applicable laws and regulations" to be established by the Secretary of the Interior. Until such regulations are issued, the area is closed to location of mining claims.

Wilderness Areas

A National Wilderness Preservation System was established by legislation which became effective September 3, 1964 (P.L. 88-577; 16 U.S.C. § § 1131-1136). The system is to be composed of federally owned areas designated by Congress as "wilderness areas." The act gave immediate wilderness status to areas classified as "wilderness," "wild," or "canoe" at least 30 days before that date. Primitive areas on public domain of the United States are to be reviewed over a 10-year period for determination of suitability or nonsuitability for classification as wilderness and inclusion in the system, but no additions are to be made except on act of Congress.

Mining activity, including all forms of prospecting and staking of claims, will be permitted until December 31, 1983, subject to such regulations as may be prescribed by the Secretary of Agriculture, after which the lands in wilderness areas will be withdrawn from mineral entry. The bill provides that claims located during this period will entitle the claimant to only such use of the surface as is reasonably required in connection with mining operations. It calls for the restoration of the surface of the land disturbed to the extent practicable after prospecting, location and discovery work and, in those cases where claims go to patents the government would grant title only to the mineral deposit. Wilderness areas in New Mexico include the Gila Wilderness and the Pecos Wilderness.

Experimental Forests and Ranges

The Jornada Range Reserve is open to mining location; however, withdrawal is pending a hearing and determination by the Secretary of the Interior.

Military Reservations

The Federal Government has created numerous military reservations throughout the western states, particularly since the beginning of World War II, which have been closed to mining locations. Some of the withdrawals for military purposes in New Mexico are White Sands Missile Range, McGregor Range, Sacramento Peak Observatory and Ft. Wingate Military Reservation.

Reclamation Withdrawals

If an area is withdrawn for reclamation purposes, it is not possible to locate a valid mining claim unless the Secretary of the Interior, acting within the discretion granted to him by law, declares the land open for entry under the mining laws.

Agricultural Homesteads

Most of the minerals commonly found in this state, if they occur on agricultural homesteads, are not open to location under the mining laws. Nearly all of the few minerals reserved by the United States are subject to the Leasing Act and not to location under the general mining law.

Small Tracts for Residence and Other Uses

The Secretary of the Interior, in his discretion, is authorized to sell or lease a tract of vacant unreserved public lands, not exceeding five acres, if the land is chiefly valuable for residence, recreation, business, or community site purposes. (43 U.S.C. § 682a; 43 C.F.R. § 2730.0-3.) Patents to such lands shall contain a reservation to the United States of all minerals. However, the right to prospect for, mine and remove the same is subject not only to the mining and leasing laws but to such regulations as the Secretary may prescribe. If no regulations are issued, for all practical purposes the land is closed to mining. Rules and regulations have been issued under which Leasing Act minerals on small tracts may be leased, but rules and regulations have not been issued for other minerals under the general mining laws; therefore the lands remain closed to location of mining claims. Because of the need for strategic and fissionable source materials as well as other minerals important to the economic and industrial welfare and security of the Nation, the Secretary of the Interior may authorize any Federal agency to enter the land for exploratory purposes to determine the nature and extent of such minerals. See page 13 concerning uranium on certain withdrawn lands.

Indian Reservations

All Indian reservations are closed to location of mining claims under the general mining laws. In general, Indian tribal lands

may, with the approval of the Secretary of the Interior, be leased for mining purposes, by authority of the tribal council or other authorized spokesmen for such Indians, for terms not to exceed 10 years and so long thereafter as minerals are produced in paying quantities. (25 U.S.C. § 396 (a); 25 C.F.R. Part 171, esp. § 171.10.)

All lands allotted to Indians in severalty (with exceptions not applicable in New Mexico) may be leased by the allottee for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior who is authorized to make necessary rules and regulations to carry out the purpose of the statute (25 U.S.C. § 396; 25 C.F.R. Part 172). The regulations (25 C.F.R. § 172.12) provide that the term shall be the same as for tribal lands, i.e., not to exceed 10 years and as much longer as the substances specified in the lease are produced in paying quantities (25 C.F.R. § 171.10).

For details of prospecting and leasing procedures for reservations other than the Navajo, communicate with the United States Bureau of Indian Affairs, Albuquerque Area Office, First National Bank Bldg., East, Albuquerque, New Mexico, or with the superintendent on each reservation. The Navajo area office with jurisdiction over Navajo lands in New Mexico is at Gallup, New Mexico. Application should be made directly to the Governor or Tribal Council of the following Indian Reservations or Pueblos: Navajo Tribal Council, P. 0. Box 1060, Gallup, New Mexico 87301; Zuni Tribal Council, Zuni, New Mexico 87327; Jicarilla Apache Tribal Council, Dulce, New Mexico 87528; Mescalero Apache Tribal Council, Mescalero, New Mexico 88340; Acoma Pueblo Tribal Council, P. 0. Box 64, San Fidel, New Mexico 87409; Laguna Pueblo Tribal Council, P. 0. Box 194, Laguna, New Mexico 87026; Isleta Pueblo Tribal Council, P. 0. Box 69, Isleta, New Mexico, 87022; Sandia Pueblo Tribal Council, P. O. Box 262, Bernalillo, New Mexico 87004; San Felipe Pueblo Tribal Council, P. 0. Box 308, Algodones, New Mexico 87001; Zia Pueblo Tribal Council, San Ysidro, New Mexico 87053; Jemez Pueblo Tribal Council, P. O. Box 78, Jemez Springs, New Mexico 87024; Cochiti Pueblo Tribal Council, P. 0. Box 70, Cochiti, New Mexico 87041; and Santa Ana Pueblo Tribal Council, P. 0. Box 35, Bernalillo, New Mexico 87004.

Game Refuges

Mining locations may not be made within the Bosque Del Apache, Seneca and Bitter Lakes National Wildlife Refuges. This is not a complete list of the game refuges, ranges and wildlife management areas in New Mexico. There may be others in which mining locations under the general mining laws are prohibited or restricted. They may or may not be open to leasing under the Mineral Leasing Act of 1920. The status of each area should be ascertained before attempting to locate claims. This information may be obtained from the records of the Bureau of Land Management, Santa Fe, New Mexico 87501.

Administrative Sites

Ranger stations, inspection stations, border patrol stations, etc., are not subject to location.

Uranium on Certain Withdrawn Lands

A cooperative arrangement for the issuance of uranium prospecting permits and mining leases on Government lands under the jurisdiction of Federal agencies not having authority to issue such permits and leases has been announced by the Atomic Energy Commission and the Department of the Interior. This will apply to such lands as military reservations and reservoir areas. (10 C.F.R. § 60.9.)

Petrified Wood

Petrified wood was removed from location under the mining law by a 1962 amendment to the Multiple Surface Use Act (see page 40) in which "petrified wood" is defined as agatized, opalized, petrified or silicified wood, or any material formed by the replacement of wood by silica or other matter. (30 U.S.C. § 611.)

Spanish Land Grants

The lands in a valid Spanish Land Grant are not, as a general rule, open to mining locations, since mines were considered to be a part of the area granted. These grants have given rise to many complex legal questions, and the title to each one must be examined to determine the status of mineral ownership, as there may be exceptions to the general rule.

Mexico-United States Border

By a presidential proclamation in 1907 all public lands within 60 feet of the international boundary between Mexico and the United States were reserved from entry under the public land laws.

Railroad Lands

The Congress of the United States granted public lands to the transcontinental railroads for the purpose of aiding in the construction of railroads across the country. In general, mineral lands, excepting iron and coal, were excluded from the grants. Nevertheless, where patent to the "non-mineral" land was issued to the railroads, they acquired title to the minerals as well. The Santa Fe railroad has sold substantial amounts of such land but in most instances retained the minerals. The right to exploit minerals owned by the railroads is obtained by lease or purchase. However, the records for each tract of land must be examined to determine the status of mineral ownership, not only as regards the original grant but also of any subsequent exchanges with the Government.

SUBSTANCES WHICH MAY BE LOCATED UNDER THE FEDERAL AND STATE MINING LAWS

Public Domain of the United States

Nearly all mineral substances found on public domain of the United States which is open to mining location may be located under the general mining laws. The following are exceptions: deposits of coal, oil, gas, oil shale, sodium, phosphate, sulphur and potash, which may be acquired only under the leasing laws from the United States. See page 35 for details of the Leasing Act. The common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay, and similar surface resources may no longer be acquired by location under the general mining laws. These substances are obtained by purchase from the United States under the terms of the Materials Disposal Act. For details see page 40.

Lands of the State of New Mexico

Exploration rights on lands owned by the State may be ob-

tained through leasing only for an initial term of three years with an exclusive right to a mineral lease upon proof of discovery of valuable mineral. (See page 47.) Oil and gas are covered by special legislation. Prior to the extraction of any minerals, oil or gas from State land, a lease must be obtained from the State Land Office. The term "mineral" does not include "common mineral products, materials and property," otherwise known as "common varieties," and a lease to extract these deposits may be obtained from the State Land Office. (See page 46.)

MINING LOCATIONS ON PUBLIC DOMAIN OF THE UNITED STATES

Lodes and Placers in General

A valid mining claim within the State of New Mexico upon public domain of the United States or on lands where the United States has reserved the minerals must be located either as a lode claim or a placer claim. Lode claims are "Mining claims upon veins or lodes of quartz or other rock in place. . . ". (30 U.S.C. § 23). Concerning placer locations, the statute reads: "Claims usually called 'placers,' including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry . . ." (30 U.S.C. § 35). A well-defined vein confined within walls of country rock is located as a lode claim. Valuable mineral which occurs as particles in loose, unconsolidated material such as gold in sand and gravel is located as a placer claim. When the fact situations are not so clean-cut, it often becomes difficult to determine whether a deposit should be located as a lode or a placer. Nevertheless, the locator must make a decision, and he does so at his peril, at the inception of the location, before he has had time to explore the deposit to determine its geological characteristics. His problem is further complicated by the court decisions, sometimes conflicting, rendered in borderline cases. In doubtful cases the identical ground has been covered by both lode and placer mining claims.

Whether the mineral in a deposit is metallic or nonmetallic does not determine the type of location. The nature of the mineral occurrence determines the correct type of claim.

The test to apply is whether the deposit is in place in a vein, lode, ledge, zone or belt of mineralized rock lying within

boundaries clearly separating it from the surrounding rock. If so, it should be located as a lode claim. If not, it should be located as a placer claim. This rule is not infallible but is the best rule of thumb that can be offered the mining locator for guidance in the field. The disseminated copper porphyry deposits are customarily located and patented as lodes in New Mexico. Uranium found in sandstone and limestone is customarily located as a lode claim.

Federal and State Legislation

The Federal mining law (30 U.S.C. § 23) provides that a lode mining claim shall not exceed 1,500 feet in length along the vein or lode and shall not extend more than 300 feet on each side of the middle of the vein at the surface. The State may make regulations, if not in conflict with the laws of the United States, governing the location, manner of recording and amount of work necessary to hold possession of a mining claim, subject to the following requirements:

> The location must be distinctly marked on the ground so that its boundaries can be readily traced; records of mining claims shall contain the name or names of the locators, date of location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. (30 U.S.C. § 28.)

Thus, about the only thing the Federal law definitely establishes is the maximum length and width of a mining claim. All of the mining states have adopted legislation supplementing the Federal laws, and no two states have identical provisions. Hence, it is necessary to ascertain the requirements of each state for the making of a valid location.

The courts have given a liberal construction to the mining laws, having in mind that they are intended for the benefit of the practical prospector and miner. However, there must be substantial compliance with the statutes.

Assuming the land is open to mineral entry, the requirements to locate a mining claim are:

1. Discovery.
2. Location by posting location notice.

3. Record a copy of location notice.
4. Mark boundaries.
5. Perform location work (discovery shaft or drill hole).

Discovery

A "discovery" of mineral is the foundation upon which the entire mining law is based. It is the inception of title to a mining claim. The courts have uniformly held that a discovery on each and every claim is an indispensable requisite to its validity.

Federal mining law does not define "discovery" and no precise standards have been established by the Department of the Interior. Over a period of many years the federal courts, including the United States Supreme Court, declared that the discovery need not be commercial ore but should be of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Until comparatively recent years the validity of mining claims was sustained and mineral patents granted on proof of existence of mineralization which under present-day rulings of the Department of the Interior would be inadequate to sustain patent or even the validity of an unpatented claim. There has been developed within the Department in more recent years a more stringent discovery rule applicable to many nonmetallics which is generally referred to as the "test of marketability." To justify possession, the mineral locator or applicant for patent has been required to show that by reason of accessibility, good faith in development, proximity to market, existence of present demand, and other factors, that the deposit was of such value that it could be mined, removed and disposed of at a profit. This test is now being applied to metallic as well as nonmetallic deposits. More recently the current market price has been invoked by the Department as one of the elements to determine the value of a mineral deposit in a mining claim.

Numerous opinions of the Solicitor of the Department of the Interior have stated: To constitute a valid discovery upon a lode mining claim there must be a discovery on the claim of a lode or vein bearing material which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that

there is only a showing which would warrant further exploration in the hope of finding a valuable deposit.

The Department of the Interior is becoming increasingly more strict in the application of its tests to determine the adequacy of a mineral discovery for patent procedures and for testing the validity of mining claim locations. It behooves the mining claim owner to be wary of initiating patent proceedings until such time as sufficient exploration work has been completed to clearly demonstrate the existence of a valuable mineral deposit. If there is a failure to supply such proof, not only will the patent be denied but the mining claims may be declared invalid.

In this age of rapidly increasing population and heavily increased land use, it may be expected that the tests applied to determine the validity of a mining claim will become increasingly more strict rather than less stringent.

The use of Geiger counters and scintillometers in the search for uranium raises many questions. The readings alone obtained on such instruments do not constitute a discovery of valuable mineral in a vein or lode sufficient to support a valid mining location. The locator must be prepared to support his statements regarding such readings by assays and actual sample evidence of mineralization.

The discovery of mineral must be within the boundaries of the claim but need not be on the center line. If the discovery is not near the location notice it is advisable to state in the notice the distance and direction to the discovery. The discovery need not be in the so-called "discovery shaft." It may be in a drill hole and of course may be on an outcrop of a lode.

With the passage of years, easily found surface showings of minerals are becoming relatively scarce. The prospector is usually confronted with the necessity of locating his claim over ground which looks promising but without an actual discovery. There is no prohibition in the law against making such a location. However, his possessory right (pedis possessio) depends upon actual possession of each claim and due diligence in trying to make a discovery thereon. To what extent the courts will protect him in that possession is not easily answered for it depends on the facts of each case. There is urgent need for a revision of the mining law to protect the locator for a reasonable time while he endeavors to make a discovery.

In practice, the other acts of location often precede a discovery, but the location is valid only from the date of discovery. Therefore, it is possible that another person may come upon the ground prior to discovery, in a manner sanctioned by law, and upon making a discovery himself, locate a valid claim and thus extinguish the attempted location of the first locator. The validity of a mining claim without a discovery may be challenged by the Government in a proper action to have the claim declared null and void and, of course, the claim cannot be patented.

Since the type of discovery and the manner of locating differ as between lodes and placers, each will be described separately.

LODE CLAIMS

Location

The following steps must be performed to locate a lode claim on public domain of the United States within the State of New Mexico:

1. The locator must make a valid discovery of a vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposit within the limits of the claim. (Federal and State Requirement.)

2. The locator must mark on the surface the boundaries of his mining claim by a substantial post or monument at each corner of the claim so that the boundaries can be readily traced on the ground. (Federal and State Requirement.)

The locator must not fence the claim or use the surface of the claim for any purpose other than prospecting, mining or processing operations and uses reasonably incident thereto. The end lines must be parallel if the locator is to acquire extralateral rights in a vein or lode.

3. The locator must post a location notice in some conspicuous place on the claim. The location notice must be in writing, signed by the locator and contain the following information (A sample form for locating a lode claim may be found on page 58.):

a. The name of the claim located.

b. The name or names of the locator or locators.

c. The date of the location.

d. The locality of the claim with reference to some natural object or permanent monument whereby the claim can be identified. (Federal and State Requirement.)

If the claim can possibly be tied into a public survey marker by distance and direction it is advisable to do so, giving also the number of the section, township and range in which the claim is situated. This is especially important in view of the provisions of the Multiple Surface Use Act, the details of which are given on page 40.

Recording

The locator must record a copy of the location notice with the clerk of the county in which the notice is posted within three months after the notice is posted on the claim. (State Requirement.)

No other record is required except when the claim is located on public lands which have been withdrawn for power development or power sites. If the claim is located on these lands, a record of the claim must be filed with the United States Bureau of Land Management, Santa Fe, New Mexico 87501 within 60 days after the location date.

Performing Location Work

The locator must perform location work on each claim and expose mineral in place within 90 days from the date of location by excavating a discovery shaft or drilling a discovery hole. (State Requirement.)

The excavation by shaft, pit, adit, tunnel or open cut must be at least ten feet below the lowest part of the rim at the surface. As an alternative to excavation, the locator may drill a discovery hole one and one-half inches or more in diameter and at least ten feet deep. The discovery hole must be marked by a substantial post or monument within five feet of the hole. The marker must be at least 30 inches in height above the surface of the earth and be inscribed with the name of the claim, claim owner, depth of the hole and the date the hole was drilled. When the locator drills a discovery hole, he must file an affi-

davit in the Office of the County Clerk where the claim is located within 90 days following the location of the claim. The affidavit must contain the date of the discovery hole, the place of the work within the claim and the nature of the mineral discovered.

Federal mining law does not specify how or where the location work be made on a mining claim. The Bureau of Land Management in patent proceedings accepts a discovery at any point on the claim, including discoveries made by diamond or churn drilling, and does not require that it be in the so-called "discovery" hole. This is a sensible application of the law, particularly in view of recent developments in the field of geophysics whereby ore bodies have been discovered at depths ranging from a few hundred to more than a thousand feet below the surface. The only practical way to make a discovery at such depths is by drilling. It would completely defeat the purpose of the mining laws to require the sinking of a deep shaft on each claim merely for the purpose of finding mineral.

Failure to comply substantially with the above requirements renders the location subject to relocation.

If a person drilling a mine lode discovery hole or mine drill hole to a depth of ten feet or more, encounters a water body or water bearing stratum, he shall do the following:

a. Plug the hole in a manner prescribed by the State Engineer.

b. Report in writing within 90 days from date of discovery to the State Engineer in Santa Fe, New Mexico, and the Director of the State Bureau of Mines and Mineral Resources, Socorro, New Mexico, (1) the depth, (2) location, and (3) the manner of plugging the water body or water bearing stratum.

If a person drilling a mine lode discovery hole or mine drill hole to a depth of ten feet or more encounters natural gas or hydrocarbons in any form, he shall report to the State Oil Conservation Commission in writing within ten days the depth and location of the natural gas or hydrocarbons and within a reasonable time thereafter shall plug the hole in accordance with the rules and regulations of the New Mexico Oil Conservation Commission. This requirement does not apply to seismic, core, or other exploratory holes or wells drilled in search of or for the the production of natural gas or hydrocarbons in any form.

The State law (§ 63-2-1, N.M.S.A.) makes no requirement that either the location notice posted on the ground or the copy thereof recorded with the county clerk be acknowledged. Section 63-2-2, N.M.S.A., provides that the county clerk shall provide special books for recording location notices. The universal practice has been to not require acknowledgments of the mining locations filed for record.

However, certain of the county clerks in the State, relying upon the provisions of § 71-1-3, N.M.S.A., which provides that any instrument in writing, with certain specified exceptions, (mining location notices not being included in the specific exceptions) must be acknowledged before the same can be recorded or considered of record, have refused to record location notices unless the same are acknowledged.

In view of this situation in such counties the locator is faced with the practical necessity of acknowledging his location notices in order to get them recorded. The Attorney General's Office has advised one county clerk that she should record copies of locations notices even though they are not acknowledged. It is hoped that legislation will be introduced in the 1971 legislature to clarify this point and make acknowledgments unnecessary as in the past.

Relocation

The relocation of an abandoned or forfeited claim shall be in the same manner as an original location except the relocator may sink the original discovery shaft ten feet deeper than it is at the time of relocation or drive the original tunnel, pit, adit or open cut ten feet further.

Amendment

If the locator or owner of a mining claim apprehends that the original location notice is defective, erroneous, or the requirement of law has not been complied with before filing, or desires to change the location boundaries, such an owner may file an amended or additional notice of location. The amended or additional notice of location must not interfere with the existing rights of others at the time of filing such notice.

The amended or additional location notice, or record thereof, does not reduce the rights obtained under the original location

notice. It is a good practice to include in the amended or additional notice of location the book and page number where the original location notice is recorded.

Mineral Rights of a Lode Locator

The locator of a valid lode claim on public domain of the United States which is open to mining location acquires all minerals, including those which may occur as placer-type deposits, but excepting the common varieties of certain substances which occur on the surface and which are obtainable only by purchase under the terms of the Materials Disposal Act. Leasing Act minerals are reserved to the United States. The locator may acquire extralateral rights, as explained on page 34.

PLACER CLAIMS

In General

The classic example of a placer is the occurrence of gold particles in gravel. Other minerals, both metallic and nonmetallic, may be located as placers. Some flat-lying deposits, though contained within the country rock, may be located as a placer, whereas the same mineral in a distinct vein or lode would be located as a lode claim.

Under certain circumstances a placer claim may be prospected for lodes and a lode claim located over the placer claim. Therefore, if the locator of a placer claim knows of the existence of lodes within his claim boundaries, he should locate the lodes as such, for his own protection. If there are known lodes within the placer claim, the owner of the placer claim must declare such lodes when making application for patent and otherwise comply with the patent laws. Should the known lodes not be declared, they are open for location as lodes, even after patent issues for the placer claim. On the other hand, if there are no known lodes at the time of patent, but their existence is subsequently disclosed, the placer patent conveys all valuable minerals, both lode and placer.

Some substances that were located formerly as placers are now specifically excluded from mining locations by the Multiple Surface Use Act of 1955. For details see page 40.

Size of Claim

A placer claim shall not include more than 20 acres for each individual claimant, but there is no limit to the number of claims that an individual or association of individuals may locate.

A group of individuals may locate an "association" placer claim with a maximum of 160 acres. Thus two individuals may locate an association placer claim of 40 acres, three individuals 60 acres, etc., up to a maximum of 160 acres by eight individuals in a single claim. However, all locators must be bona fide. If "dummy" locators are used, the validity of the claim may be questioned.

Location

A placer claim on public domain of the United States within the State of New Mexico shall be located as follows:

1. Make a discovery of placer material. Discovery of mineral in place in a vein or lode will not validate a placer location.

Only one discovery of mineral is required to support a placer location, whether it be of 20 acres by an individual, or of 160 acres or less by an association of persons. However, in the event of a contest or in patent proceedings, such a discovery may not conclusively establish the mineral character of all the land within the claim. The locator may find it necessary to show a discovery on each 10-acre subdivision.

2. Post a location notice at a designated corner of the placer mining claim, signed by the locator which contains the following. (A sample form for a placer location may be found on page 59.):

a. The name of the claim.

b. The purpose and kind of material for which the claim is located.

c. The names of the locators.

d. The number of acres claimed.

e. A description of the claim by legal subdivision if located on surveyed lands or a description by metes and bounds, with reference to some known object or monument if located on unsurveyed lands.

The locations should conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivision of sections. This is not required where compliance would necessitate the placing of the claim lines upon previously located claims or where the claim is surrounded by prior locations. Strict conformity may not be practicable where a placer deposit occurs in the bed of a meandering stream. Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

Recording

A duplicate of the location notice shall be filed and recorded with the office of the county clerk where the claim is located within 90 days after the location is made.

When a mining claim is located on lands reserved for power sites, a copy of the location notice must be filed with the United States Bureau of Land Management, Santa Fe, New Mexico, within 60 days after date of location. Furthermore, a placer claimant shall not conduct mining operations for a period of 60 days after the date of filing such notice.

Marking Boundaries

Each corner of the claim shall be marked by a wooden post at least four feet high securely set in the ground or by a substantial stone monument.

Performing Location Work

There is no New Mexico statutory requirement to do location or "discovery" work on a placer claim. However, the Federal law provides in substance that a placer shall be subject to entry and patent under like circumstances and conditions as a lode claim. Therefore, it is advisable to do the location work on a placer claim, equal in kind and amount to a lode claim, as assurance against possible conflicts and litigation and also to demonstrate good faith.

Mineral Rights of a Placer Locator

The locator of a valid placer claim on public domain of the United States acquires all placer minerals excepting the common varieties of certain substances which occur on the surface and which are obtainable only by purchase under the Materials Disposal Act. Leasing Act minerals are reserved to the United States. Mining rights are within vertical planes passed downward through the claim boundaries. There are no extralateral rights. The right to mine minerals from known veins within the placer claim, together with extralateral rights on such veins, may be acquired by location of lode claims on the veins or lodes.

MILL SITE

Mill site is the name given to a tract of not more than five acres of nonmineral land used for mining, milling and other operations in connection with a mining claim. The owner of a "quartz mill or reduction works" not owning a mine in connection therewith may also acquire a mill site for his "works". (30 U.S.C. § 42; 43 C.F.R. § 3864.1-1.)

Both the Federal and State laws are silent as to the manner of locating a mill site. However, it must be upon vacant and unappropriated public domain and a location notice should be posted and recorded. No annual assessment work is required.

A mill site may be patented subject to the same preliminary requirements as to survey and notice as are applicable to lodes and placers. A mill site is not valid and patent will not issue unless actual and present use for prescribed purposes is shown. A mill site may adjoin the boundaries of a mining claim but if adjacent to the end line of a lode claim, proof of nonmineral character may be more difficult as the question arises whether or not the vein, or its strike, enters the mill site.

It may be that one mill site will not be sufficient for the intended uses and it may be necessary to locate, use and patent more than one mill site claim. However, this does not imply a right to one mill site for each mining claim.

TUNNEL LOCATION

A tunnel location is expressly provided for in the Federal statutes (30 U.S.C. § 27). It is not a mining claim. It gives the locator a right to drive a tunnel a maximum distance of 3,000

feet from the portal along the line of the tunnel site as marked on the surface. Any veins cut in driving the tunnel which do not appear on the surface, and not previously known to exist, may then be located by the tunnel operator by lode claims. The right to veins so discovered relates back to the time of location of the tunnel site.

Locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

The proprietors of a mining tunnel must post a notice of their tunnel location, giving the names of the parties claiming the tunnel right; the actual or proposed direction of the tunnel; the height and width thereof; and the course and distance from the point of commencement to some permanent well-known object in the vicinity. The proprietors must also establish the boundary line on the surface so that, as marked, these lines will de fine and govern as to the boundaries within which prospecting for lodes not previously known to exist is prohibited while the work on the tunnel is being prosecuted with reasonable diligence.

A copy of the location notice defining the tunnel claim must be filed for record with the office of the county clerk where the claim is located. Attached to the recorded notice must be a sworn statement of declaration of the owners, claimants or projectors of the tunnel location setting forth the facts in the case; stating the amount of effort expended by themselves and their predecessors in interest in prospecting work on the tunnel location; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode or for the discovery of mines or both as the case may be (43 C.F.R. § 4315.3).

MAINTENANCE OF TITLE

The following remarks apply to maintenance of title to lode and placer claims located on public domain of the United States within the State of New Mexico.

Annual Work Requirement

The Federal statutes require that on each claim, until patent has been issued, not less than $100.00 "worth of labor shall be performed or improvements made during each year". Location work is entirely distinct from assessment work and may not be substituted for the latter. Assessment work is not required for the assessment year in which the claim is located. Since September 1, 1959, each assessment year is a 12-months' period beginning at noon September 1 and ending at noon September 1 of the following year.

On a group of contiguous claims of common ownership it is possible to perform the work and improvements on one or more of the claims, but for the benefit of all the claims in the group. For example, in a five-claim group, $500.00 worth of work and improvements may be made on one claim only. However, this work must tend to develop or benefit all the claims in the group. The mere fact that the claims are contiguous is not enough to satisfy the requisites of the law. Cornering locations are held not to be contiguous. What will tend to develop or benefit all the claims in the group is a question of fact in each particular instance. The work may be performed on an adjoining patented claim if it meets the test of actually benefiting and developing the unpatented claims in the group.

A single placer claim, whether it be 20 acres located by one person or 160 acres located as an association placer by eight persons, requires only $100.00 annual expenditure. There is no limitation on how long a mining claim may be held so long as assessment work is performed as required by statute. Assessment work is not required after issuance of the "Manager's Final Certificate of Mineral Entry" in patent proceedings.

What May Be Applied as Annual Work

The original Federal statutes and the New Mexico statutes supplementing the Federal laws did not describe any specific type of labor or improvement that would meet the expenditure requirement of $100.00 per claim per year. The type of labor and improvements which met the requirements of the Federal law was determined in a great many court decisions. Annual work may be underground or on the surface. It may be done off the claim if clearly of benefit or value to the claim. An example

would be a crosscut driven for the evident purpose of intersecting a vein at depth. And this is allowable even where the portal of the crosscut is not within the claim itself (or group). However, it must be kept in mind at all times that work which is performed off the claims is presumed not to benefit the claims. If questioned, the burden of proof is upon the party claiming the work, to establish the fact that this work did in fact tend to develop and benefit the claim or group of claims.

The question often arises as to whether monies spent or work done, do, in fact, benefit the claims. The party desiring to take credit for expenditures should be careful to eliminate all doubtful items and make certain that sufficient money is spent to remove all possible question as to having met the statutory requirement.

Courts have passed upon situations where allowable expenditures have included: buildings, if upon the claim and actually used for mining purposes; expenses of a watchman, provided his services are necessary for the preservation of the property. The services of an individual making occasional trips to the property to see if everything was all right are not expenses which can be applied toward the annual assessment work requirement. Machinery, tools, etc. essential to the development of the claim; timber used for mine purposes; roadways, both on and off the property, if for the benefit of the property; surface cuts and trenches, if measurable, and not merely sample trenches; diamond, churn, and rotary drilling can be counted as assessment work. This list is not complete. There are other items of labor and improvements which undoubtedly meet the test.

In September 1958, a statute became effective which for the first time specifically described certain types of work applicable toward the annual expenditure in labor. This statute (30 U.S.C. § 28-1 & 2) provides that the term "labor" as used in 30 U.S.C. § 28 "shall include, without being limited to, geological, geochemical and geophysical surveys conducted by qualified experts and verified by a detailed report filed in the county office in which the claim is located which sets forth fully; (a) the location of the work performed in relation to the point of discovery and boundaries of the claim, (b) the nature, extent, and cost of the work performed, (c) the basic findings of the surveys, and (d) the name, address, and professional background of the person or persons conducting the work. Such surveys

may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim. Each survey shall be nonrepetitive of any previous survey on the same claim."

As used in the new act "(a) The term 'geological surveys' means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

"(b) The term 'geochemical surveys' means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

"(c) The term 'geophysical surveys' means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations;

"(d) The term 'qualified expert' means an individual qualified by education or experience to conduct geological, geochemical or geophysical surveys, as the case may be."

The mere taking of samples has previously been held by the courts not to meet the annual work requirements of the statute on the theory that mere sampling, while necessary data on which to base an opinion as to whether or not the mining work should be conducted, does not in fact develop or tend to develop mineral. In the light of the new statute relating to geological and geochemical surveys, it is entirely possible that where such sampling and assaying are related to surveys of that nature, the expenses should be allowed. The same may be said of expenses of surveying which under court decisions interpreting the old statute were not allowed.

Some expenses which may not be applied as annual work are attorneys' fees, travel expense, and construction or repairs to a mill.

Annual work is not cumulative. In other words, if twice the amount required by statute is done in one year, the excess cannot be applied to the succeeding year. However, it sometimes is more economical or convenient to perform two years'

work as one continuous job. This may be done by performing the work at the close of the current assessment year and continuing past noon September 1 into the next assessment year, doing the required amount for the second year after noon hour September 1.

Annual work may be done by the locator or owners or someone in privity with him, or by one who has an equitable interest. A lessee may do the work. A stockholder may do the work on claims held by his company. However, labor or improvements by a trespasser or a stranger to the title will not inure to the benefit of the claimant.

Annual assessment work is not required upon a mill site nor upon a tunnel location. However, failure to prosecute the work on a tunnel for six months constitutes an abandonment of the right to all underground veins on the line of the tunnel. Money spent on a tunnel location is considered as spent on the lodes which may have been discovered and located, for the purpose of the annual assessment work requirement.

A faithful and full performance of the annual work, when the law requires it, is advisable. Enough work should be done to eliminate all doubt as to its sufficiency.

Bombing and Gunnery Ranges

Owners of valid mining claims upon any land withdrawn for national defense purposes are relieved of annual work thereon until the end of the assessment year during which the withdrawal is vacated by the President or by Act of Congress.

Recording Affidavit of Performance of Annual Assessment Work

The Federal law does not require recording of an affidavit. However, the State of New Mexico has a statutory provision, the essence of which is that within 60 days after the end of an assessment year, the owner of a claim or someone acting for him, knowing the facts, may make and record an affidavit of performance of labor and improvements.

Neither the failure to make nor record such an affidavit will forfeit the claim, but such a record is prima facie evidence of the facts therein stated. The recorded affidavit has the advantage of showing on the official records that all acts have been performed to maintain a continuous chain of title, and the

further advantage that it may, and often does, discourage attempted relocation by others. However, a relocator or other person may attack the recorded affidavit to show its falsity.

A sample form of affidavit for proof of labor on mining claim is included at page 60.

Failure to Perform Annual Assessment Work

Failure to perform labor and improvements of a value of $100.00 annually does not of itself forfeit the claim but does render it subject to loss by relocation. If the claim owner has failed to perform his work in any one year, he may resume his work at any time thereafter and the validity of his claim is maintained as of the date of original location provided the rights of third parties have not intervened. His claim is lost if he fails to do his work and a valid claim is located by another person.

If a mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of annual assessment work has been denied, or such other legal impediment exists as to prevent the mining claimant from entering upon the surface of his claims, the performance of assessment work may be deferred by the Secretary of the Interior. The claimant must make application to the Secretary for such deferment and must file in the office of the clerk of the county where the location notices are recorded a notice to the public of the claimant's petition for deferment and the order or decision of the Secretary disposing of such petition. (30 U.S.C. § 28b.)

The annual work requirement has been waived by Congress in certain years, usually on account of wars, and in other years the time for completion has been extended. At the time of publication of this booklet such moratoriums are not in effect. Persons in the military service of the United States may be relieved of the requirements for performance of annual assessment work during their period of service or until six months after termination, by reason of special legislation known as the "Soldiers' and Sailors' Civil Relief Act" (50 APP. U.S.C. § 565). To obtain the benefits of this act, before expiration of the assessment year during which a person enters military service he must file in the office of the county clerk where the location notices are of record, a notice that he has entered the military service and desires to hold his mining claims under the terms of the act.

Contributions of Co-owners to Cost of Assessment Work

If a co-owner fails to contribute his share of the cost of annual work there is provision set forth in the Federal and State statutes by which the owner performing the work may make a demand upon his co-partner for his proportional contribution. Should the co-owner fail to do so, the partner paying for the work may "advertise out" his delinquent partner. The statutory provisions must be strictly followed to terminate the interest of a co-owner.

Relocation by Delinquent Owner

The law does not forbid a delinquent owner from relocating his claim after the expiration of the "assessment year." The ground is then open to relocation, but the original owner has no superior rights as against others who might desire the claim. He cannot remain in possession and exclude all others if the work is unperformed. However, if he resumes his work prior to an intervening right and continues diligently until the work is fully done, the law will protect him as against a new locator. Miners usually frown upon the practice of relocating to avoid doing annual work, and such practice often leads to trouble and litigation far more costly than the work expenditure.

As a practical matter, it is to the advantage of the owner of a mining claim who has not performed the assessment work as required by law, to perform such work rather than relocate the claim. If a relocation is made, the old shaft or cut which may previously have been made on the original claim cannot be adopted. A relocation of the ground, whether by the former locator or a stranger, makes it necessary that all the acts required by the statutes for the location of a mining claim be performed. Under present conditions the cost of the relocation work will usually exceed the $100.00 expenditure requirement for assessment work.

PATENT TO MINING CLAIMS

A mining claim, until patent has been issued, is a title which is never complete and must be maintained by the annual expenditure on work and improvements as required by law. Should the owner of an unpatented mining claim desire to ac-

quire the absolute title and at the same time clear the record so far as possible adverse claims are concerned, he should make application for a patent from the United States Government. The requirements and procedures for obtaining a patent are detailed and exacting and must be fully complied with. An approved mineral surveyor must be employed, and an attorney should be consulted. Application for patents involves long, tedious and expensive procedures and in the absence of more than adequate discovery there is the danger that the application may be refused and may result in the loss of the claim. Full information regarding patent procedures may be obtained from the United States Bureau of Land Management, Santa Fe, New Mexico 87501.

Of first importance is the fact that there must have been a discovery of mineral on each and every claim. Discovery on one claim, no matter how extensive or valuable, cannot be credited to other claims in the group which lack discovery.

Patent to lode claim grants to the applicant the surface and all minerals within the claim. Surface rights may be restricted by reason of applicable provisions of the Stock Raising and Agriculture Homestead Acts. Leasing Act minerals will be reserved if, at the time of issuance of patent, the lands were included in a permit or lease issued under the mineral leasing laws, or were covered by an application or offer for a permit or lease filed under the mineral leasing laws, or known to be valuable for minerals subject to disposition under the mineral leasing laws. The same applies to a placer patent except that veins or lodes known to exist in a placer claim at the time of making application for patent must be declared and paid for at the lode rate for a surface width of 50 feet along the length of the lode within the placer claim. If this is not done, the lode remains open for location even after issuance of patent.

EXTRALATERAL OR APEX RIGHTS

By specific provision in the mining law, the locator of a lode claim is given the right to follow the vein on its downward course beyond the side lines of his mining claim. End lines must be parallel, and extralateral rights are confined within planes passed vertically downward through these end lines.

The nature of many ore bodies, such as disseminated copper

porphyries, make it very difficult or even impossible to prove by testimony of experts whether or not the deposit is a vein or lode within the meaning of the law to entitle the claim owner to extralateral rights. In many instances, owners of adjoining claims have entered into "sideline agreements" whereby their respective rights were confined by planes passed vertically downward through the side lines, thus eliminating the possibility of costly litigation in an attempt to establish extralateral rights.

In the event a question of extralateral rights arises, each case must be decided upon its own facts. It is not possible in a booklet of this size to do more than make a very general statement.

LEASING ACT OF 1920

The Leasing Act of February 25, 1920 as amended (30 U.S.C. § 181) establishes a system for leasing from the Federal Government the following minerals: coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried) or gas. These minerals are removed from the operation of the general mining laws. In addition to the statutes, detailed regulations will be found in 43 C.F.R. Groups 3100 and 3500.

Guano, although valuable primarily for nitrogen, is subject to the Leasing Act by reason of its phosphate content; and halite or salt due to its sodium content. Sulphur has been made subject to leasing in two states, Louisiana and New Mexico.

Potash Permits and Leases

The occurrence of certain potassium minerals on public domain of the United States within the State of New Mexico has made it desirable to set forth some of the regulations relating to potash.

The Secretary of the Interior is authorized under such rules and regulations as he may prescribe, to grant to a qualified applicant an exclusive permit to prospect for certain potassium salts for a period of not over two years in an area of not more than 2560 acres of land in reasonably compact form. A per-

mittee pays an annual rental of 25 cents an acre or fraction thereof with a minimum total of $20 per year. No material may be removed from lands under permit except for experimental purposes and to demonstrate the existence of potassium deposits in commercial quantities.

Upon showing to the satisfaction of the Secretary that valuable deposits of one of the potassium salts have been discovered by the permittee and that the land in his permit is chiefly valuable therefor, the permittee shall be entitled to a lease of any or all of the permit land, at a royalty of not less than 2% of the quantity or gross value of the output of potassium compounds and related products, except sodium, at the point of shipping to market. Application for a preference right lease must be filed with the Bureau of Land Management not later than 30 days after the permit expires. It must be accompanied by the first year's rental.

Lands known to contain valuable mineral deposits of leasable potassium compounds are subject to lease by the Secretary by competitive bidding.

A potash lease shall be for a term of 20 years and so long thereafter as the lessee complies with the terms of the lease and upon the condition that at the end of 20 years and each succeeding 20-year extension the Secretary may prescribe reasonable legal adjustment of the terms and conditions.

Provision is made for limitations upon the acreage that can be held by one permittee or one lessee, both within and without the state, for posting of a bond prior to issuance of a permit; minimum royalty requirements; and, if land has not been legally subdivided, for survey and payment of the cost thereof by the applicant.

STOCK-RAISING HOMESTEADS

The Stock-Raising Homestead Act of December 29, 1916 (43 U.S.C. § 291; 43 C.F.R. Subpart 3814) provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The mineral deposits in such lands are subject to disposal under the provisions of the Federal mining laws. Any person qualified to locate a mining claim may

enter upon the land for the purpose of prospecting for minerals and locating mining claims, and it is not a trespass. The prospector must not damage or destroy the permanent improvements or cultivated crops by reason of such prospecting.

The act further provides that any person who has acquired from the United States the mineral deposits in such lands has the right to mine and remove the same. He may re-enter and occupy so much of the surface as may be necessary for all purposes reasonably incident to the mining or removal, on one of three conditions: 1. Upon securing the written consent or waiver of the homestead entryman or patentee, 2. Payment to the owner of the agreed value of damages to cultivated crops and permanent improvements, 3. In lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond to the United States for the use and benefit of the entryman or owner of the land, to secure payment of damages to cultivated crops or permanent improvements.

It is of course preferable to come to a private agreement with the homestead owner rather than resort to posting a bond. If the efforts to negotiate fail, the mining claimant has an absolute right to post a bond, the amount of which will be determined by the Bureau of Land Management, and upon posting such bond he may re-enter the land to conduct mining operations.

The original Stock-Raising Homestead Act did not make the mining claimant liable for damages to grass or other forage—only for damage to cultivated crops. Supplemental legislation enacted in 1949 (30 U.S.C. § 54) provided that "any person who . . . prospects for, mines, or removes by strip or open pit mining methods, any minerals from any land included in a stock raising or other homestead entry or patent, and who has been liable under such an existing Act only for damage caused thereby to the crops or improvements of the entryman or patentee, shall also be liable for any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals." Nothing in the 1949 legislation impaired vested rights.

Forms for the bond and instructions relating thereto may be obtained from the United States Bureau of Land Management in Santa Fe, New Mexico.

Every care should be exercised to respect the rights of surface holders. To avoid misunderstanding, it is advisable for the

prospector to inform the surface owner of his intention to prospect the land and to locate mining claims. Travel by vehicle should be restricted to established roads wherever possible. The prospector should avoid unnecessary damage to grass or other forage, and keep away from water holes when his presence there will prevent stock from coming in to water.

AGRICULTURAL HOMESTEADS

The early homestead laws did not reserve minerals to the Government. In 1909 the Federal Government began reserving coal in some homestead patents. (30 U.S.C. § 81.) The Agricultural Entry Act of 1914 (30 U.S.C. § 121; 43 C.F.R. Subpart 3813) provides that patents issued under the various agricultural land laws (this includes Desert Land Entries and Enlarged Homesteads) shall contain a reservation to the United States of phosphate, nitrate, potash, oil, gas, or asphaltic minerals, provided the lands are withdrawn or classified for such minerals or are known to be valuable for such deposits. This list was supplemented by the addition of sodium and sulphur in 1933. (30 U.S.C. § 124.) These substances, if found in New Mexico and reserved to the United States, will be subject to the provisions of the Leasing Act of 1920, except asphaltic minerals and sulphur which are subject to location under the general mining laws. All other minerals belong to the agricultural patentee. Under the Act of 1914 it is possible to show that the land is nonmineral and obtain patent thereto without a mineral reservation of any kind. The agricultural patent must be examined in each case to determine what minerals, if any, were reserved by the United States.

Any person qualified to acquire the mineral deposits reserved to the United States under the Agricultural Entry Act of 1914 may enter upon the lands with a view of prospecting for minerals, first having obtained the approval of the Secretary of the Interior of a bond or undertaking to be filed as security for the payment of all damages to the crops and improvements on the lands by reason of such prospecting, the measure of any damage to be fixed by agreement of the parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title or right to mine and remove the reserved mineral deposits may re-enter and occupy so much of the sur-

face thereof as may be required for all purposes reasonably incident to the mining and removal of the minerals therefrom, and mine and remove such minerals upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix damages.

MULTIPLE MINERAL DEVELOPMENT ACT OF 1954

(30 U.S.C. § 521; 43 C.F.R. Part 3740)

This legislation, commonly known as Public Law 585, applies to public domain and lands wherein the United States has retained mineral rights. A brief explanation is necessary to understand the need for such legislation. The Leasing Act of 1920 did not close the public lands to location of all minerals under the mining laws. However, it was determined by the Secretary of the Interior that those lands which were under lease or were known to contain Leasing Act minerals were not subject to location under the mining laws. Lands not leased and not known to contain Leasing Act minerals, when located by a valid mining claim, precluded the granting of a lease even though Leasing Act minerals might subsequently be discovered thereon.

With the discovery of uranium on the Colorado Plateau, great numbers of mining claims were located on land previously leased for oil and gas. This vitally important source of fissionable material could not be mined as a Leasing Act mineral nor by the locator of a mining claim under the general mining laws. The need for corrective legislation became apparent and Congress first passed temporary measures validating mining claims on leased land followed by enactment of the Multiple Mineral Development Act in 1954, the general purpose of which is to permit the full utilization of the same tract of land for the extraction of Leasing Act minerals as well as those minerals subject to location under the general mining laws. The two operations shall be conducted, so far as reasonably practicable, in a manner compatible with such multiple use, and provision is made for the resolution of conflicts.

Due to the vague manner in which mining locations are frequently described, it is often impossible to determine the exact locality of such claims. The act sets forth a procedure under which a Leasing Act lessee may require mining claimants to come forth and reveal any interests which may be adverse to

the lessee. Failure of a mining claim owner to establish his rights does not result in a forfeiture of his claim but will subject the mining claim to a reservation to the United States of all Leasing Act minerals.

THE MULTIPLE SURFACE USE ACT OF 1955

(30 U.S.C. § 611; 43 C.F.R. Part 3710)

This is commonly known as Public Law 167 and is important, far-reaching legislation that applies to all unpatented mining claims on public domain of the United States. Every owner of an unpatented mining claim should be familiar with its terms. It amended the general mining laws by limiting the rights of the holder of an unpatented mining claim in his use of the surface and surface resources.

Deposits of common varieties of sand, stone, gravel, pumice, pumicite or cinders, or of petrified wood, may not be acquired by location of mining claims. However, this does not prevent a mining location based upon the discovery of some other mineral occurring with these common varieties. An example would be gold associated with gravel, which may be located as a placer claim. The act expressly provides that "common varieties" do not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

Authorization is given to the Secretary of the Interior or the Secretary of Agriculture, depending on which department administers the land in question, under such rules and regulations as the Secretary may prescribe, to dispose of mineral materials including, but not limited to, common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay; also vegetative materials, including, but not limited to, timber, grass, and cactus. The mineral materials may be disposed of under the Materials Disposal Act of 1947 as amended (30 U.S.C. § 601), only upon payment of adequate compensation to be determined by the Secretary and, where appraised at more than $1,000, must be advertised and sold to the highest bidder. (36 C.F.R. § 251-4; 43 C.F.R. § 3612.2.)

Any mining claim located under the mining laws of the United States after the act became effective July 23, 1955 shall

not be used, prior to issuance of patent, for any purposes other than prospecting, mining, or processing operations and uses reasonably incident thereto. The mining claimant may use timber on the claim only to the extent required for his prospecting, mining, or processing operations and uses reasonably incident thereto, including buildings, and to provide clearance for such operations or uses. Except to provide clearance, the cutting or removal of timber must be in accordance with sound principles of forest management. Therefore, prior to the cutting of timber it is advisable to consult the department administering the land. In most instances this will be the National Forest Service of the Department of Agriculture.

Except for the minerals in a deposit which may be located under the general mining laws, a mining claim prior to patent is subject to the right of the United States to manage and dispose of the surface resources, both vegetative and mineral, as well as the right of the United States, its permittees, and licensees, to use so much of the surface as may be necessary for such purposes and for access to adjacent land. Such use must not endanger or materially interfere with prospecting, mining, or processing operations or uses reasonably incident thereto.

In the event the United States disposes of timber from the claim and subsequently the locator requires more timber for his mining operations than is available to him from the claim, he is entitled, free of charge, to be supplied with timber from other areas which shall be substantially equivalent in kind and quality with the timber disposed of by the United States.

The need for a conservation measure of this type arose from the fact that thousands of mining claims had been or were being filed each year, not for bona fide mining purposes, but for acquisition of timber, homesites, grazing, water, and control of power sites. Frequently the alleged discovery consisted merely of the common varieties of sand, stone, etc. To prevent these abuses, representatives of the mining industry and the Government collaborated in drafting the new act providing for multiple surface use of unpatented claims. The rights of an owner to patent his claim are not diminished by the new law, and when patent issues he acquires full ownership of the surface as well as the minerals.

The act does not apply to lands in any national park, national monument, or Indian reservation.

The Timber and Stone Act (43 U.S.C. § 311), which provided for the sale of lands chiefly valuable for stone, was specifically repealed effective August 1, 1955.

It is common knowledge throughout the West that in every mining district there are great numbers of invalid, abandoned, unidentifiable and dormant claims. Usually the only clue to the boundaries of a claim is a rough description contained in a location notice posted in one monument only. Monuments in all stages of disrepair are so thickly scattered that it is impossible to determine which, if any, mark the corners of a particular claim. Recorded copies of location notices usually do not contain a description that will enable an interested party to identify a claim on the ground. The new act establishes a procedure whereby surface rights to such claims, located prior to July 23, 1955, may be determined.

The procedure is started by the Federal agency which administers the public domain on which the mining claim is located, such as the Forest Service, for example. The Forest Service will request the Bureau of Land Management, whose office for this state is in Santa Fe, to publish a notice stating that a determination of surface rights on mining claims will be made. A notice describing the area by legal subdivisions will be published in a local newspaper for nine consecutive weeks. Persons in actual possession or working a claim, or whose claims are of record in the county clerk's office and described in such a way as to show the lands are within the affected area, and whose names and addresses can be ascertained, will receive notice by personal service or registered mail.

It is advisable for a person claiming any right to an unpatented mining claim located prior to the effective date of the act to make certain that he receives a copy of any notice to mining claimants affecting lands where the claim is located. He may do so by recording in the county clerk's office where the notice of location is recorded, an acknowledged request for a copy of such notice. The request shall contain: 1) Name and address of the person requesting a copy; 2) date of location; 3) book and page of recording of the location notice, and it is also advisable to include the book and page of amended notices of location; 4) the section or sections of the public land surveys which embrace the mining claim.

What does a claimant do after notice is given? He has 150

days after the date of first publication to do one of three things:

1. He may ignore the notice. In such case the United States obtains the right to manage and dispose of the surface resources. The locator does not lose his mining rights, but they are subject to the provisions of the Multiple Surface Use Act just as though the claim had been located after July 23, 1955.

2. He may execute a waiver to surface rights. Here again his mining rights will be just as though the claim had been located after passage of the act.

3. He may file a verified statement containing the following information: a) Date of location; b) book, page and place of recording the notice of location; c) the section or sections of the public land surveys which embrace the claim; d) whether he is a locator or purchaser under such location; e) his name and address and names and addresses, so far as he knows, of any other person or persons claiming any interest in the claim.

If the claimant files a verified statement, the claim will be examined by a mineral examiner from the Forest Service (or other agency, depending on administration of the affected land). If it is found the claim is valid, a stipulation may be entered into, asserting that the locator's rights are unaffected by the published notice. If the examination discloses doubt as to validity of the claim, a hearing will be held before officials of the Bureau of Land Management.

At any hearing, it will be incumbent upon the claimant to prove validity of the location by showing there has been an adequate discovery, location work has been done, monuments erected, and all other legal requirements have been met, including performance of annual assessment work. On the basis of testimony presented by the Government agency and the claimant, the Bureau will make a decision. If in favor of the claimant, he retains the same surface rights he had prior to passage of the act. If the Bureau decides against the claimant, his mining claim is not invalidated but is subject to the provisions of the Multiple Surface Use Act.

The hearing and any appeal that may be made from the Bureau's decision shall follow the rules of practice of the Department of the Interior with respect to contests affecting public lands of the United States.

Any inquiry into the validity of a mining location under the

procedure established by this act is only for the purpose of determining surface rights. However, there is nothing in the act which prevents the United States from attacking the validity of the claim through the established procedure or at time of patent. Such attack would be on the basis of failure to make discovery or other lack of compliance with the requisites of the mining law. Furthermore, there is nothing in the law to prevent another locator from challenging the validity of a conflicting claim at any time.

A pamphlet entitled "Multiple Use on Mining Claims" which may be obtained from the U.S. Bureau of Land Management, Santa Fe, New Mexico, contains the law and an explanation thereof.

A difficult question is posed by the act wherein it states that "common varieties" of sand, stone, gravel, pumice, pumicite or cinders, may not be acquired by location of mining claims, but that "common varieties" do not include such materials which are valuable because the deposit has some property giving it distinct and special value. Shall the prospector locate the deposit as a mining claim or proceed under the Materials Disposal Act which may involve competitive bidding?

Regulations have been issued by the Department of the Interior (43 C.F.R. Subpart 3710), § 3711.1 of which reads in part as follows:

> "(b) 'Common varieties' include deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits. Mineral materials which occur commonly shall not be deemed to be 'common varieties' if a particular deposit has distinct and special properties making it commercially valuable for use in a manufacturing, industrial, or processing operation. In the determination of commercial value, such factors may be considered as quality and quantity of the deposit, geographical location, proximity to market or point of utilization, accessibility to transportation, requirements for reasonable reserves consistent with usual industry practices to serve existing or proposed manufacturing, industrial, or processing facilities,

> and feasible methods for mining and removal of the material. Limestone suitable for use in the production of cement, metallurgical or chemical grade limestone, gypsum, and the like are not 'common varieties.' This subsection does not relieve a claimant from any requirements of the mining laws."

The Forest Service regulations (36 C.F.R. § 251.4) provide for disposition under the Materials Disposal Act of "common varieties of sand, stone, gravel, pumice, pumicite, and cinders, . . . and . . . other mineral materials, including clay, from such lands where the mineral materials are not of such quality and quantity as to be subject to disposal under the United States mining laws."

If a mineral material occurs commonly, how is it determined that it "has distinct and special value"? It cannot be said as a matter of law that any given deposit of a mineral substance named in the Multiple Surface Use Act is not a common variety and therefore locatable—it depends on the facts of each particular case. In interpreting these facts, the Interior Department has held that in order to show that a deposit is not a common variety, a mining claimant must establish (1) that the deposit has a unique property and (2) that the unique property gives it a distinct and special value. In applying these criteria there must be a comparison of the deposit under consideration with other deposits of similar materials, and it must be shown that the material under consideration has some property which gives it value for purposes for which the other materials are not suited or, if the material is to be used for the same purposes as other minerals of common occurrence, that it possesses some property which gives it a special value for such uses, which value is reflected by the fact that it commands a higher price in the market place. Differences in chemical composition or physical properties are held to be immaterial if they do not result in a distinct economic advantage of one material over another.

Removal of mineral under a belief that it is locatable may expose the miner to liability for wrongful removal of a mineral that is subject to sale under the Materials Disposal Act.

If a deposit of building stone should be found that has some property giving it distinct and special value, within the meaning of the act, it should be located as a placer claim in accordance

with the provision of a statute relating to building-stone entry under the mining laws. (30 U.S.C. § 161.) To determine how other deposits should be located, the general rules relating to lodes and placers apply.

ACQUISITION OF MINING RIGHTS ON STATE LAND

In General

In 1898 Congress passed the Ferguson Act giving Sections 16 and 36 in every township to the Territory of New Mexico to be held in trust with the revenues or proceeds of sale to be used for school purposes. Later when the Enabling Act of 1910 authorized the Territory of New Mexico to become a state, provisions were made to give the State of New Mexico Sections 2 and 32 of every township which were non-mineral and were not otherwise appropriated. The revenues from the sale or lease of these lands were reserved for the Common Schools.

In situations where Sections 2, 16, 32 or 36 happened to be classed as mineral lands or had been appropriated under the mining or homestead laws, the Territory and later State was entitled to make lieu selections from other unappropriated non-mineral sections of the public domain. In many instances, Indian reservations, private land grant claims and homestead entries pre-empted the State's claim to these Common School lands, thereby creating the indemnity or lieu lands due the State by the Federal Government. If these sections fell within the National Forest, title remained in the United States, who administered the property and gave the income to the State until the lieu selections were made.

Article 24 was added to the New Mexico Constitution in 1928, requiring that the development and production of any and all minerals on state owned lands must be leased reserving a royalty to the State. The Legislature has the responsibility to specify the mode and manner of appraisement, advertisement and competitive bidding for use of state land. No right to lease state lands for mineral purposes may be acquired by prior location.

Responsibility of State Land Office and Commissioner

The State Land Office is charged with the responsibility of administering the state trust lands. At the present time, the

trust lands total approximately 13 million acres of minerals and 9 million acres of surface. The Surface and Minerals Division of the State Land Office administers more than 10,000 active general mining leases and more than 6,000 grazing leases.

Application for General Mining Lease

The Commissioner of Public Lands is authorized to lease state lands for the sole and exclusive purpose of prospecting for mining of all minerals other than potassium, sodium, sulphur, phosphorus and other minerals of similar occurrence, and their salts and compounds, salt, oil and gas, coal, shale, clay, gravel, building stone and building materials, under such terms and conditions as he may deem to be in the best interest of the State of New Mexico. State lands may be leased only upon application made to the Commissioner in the manner prescribed by the rules and regulations adopted and published by the Commissioner of Public Lands. A copy of the General Mining Rules and forms may be obtained by writing the Commissioner of Public Lands, P.O. Box 1148, Santa Fe, New Mexico, 87501.

Applications will be considered only for such lands as are shown to be open for leasing on the tract books of the State Land Office. The application for lease shall be made in duplicate upon forms to be prescribed and furnished by the Commissioner. The application must be acknowledged before an officer authorized to administer oaths and shall be accompanied by an application fee of $5.00 which is non-refundable. The application must also include the first year's rental and bonus offered. The Commissioner may waive the requirement for the remittance of the fee rental and bonus in extreme hardship cases. If the application is not accompanied by the proper fees, the application will be rejected as containing no deposit and will not be deemed a proper application.

State land is leased according to legal subdivisions which contain forty acres or one-sixteenth part of a standard section. The application cannot cover more than sixteen legal subdivisions of contiguous acreage. If more than one person signs the application, the first name appearing on the application shall be considered as the bona fide applicant and the lease shall be issued in his name only. This rule specifically applies to cases of partnership and other unincorporated associations. Side agreements

defining and setting out the various interests of the other parties in the lease may be filed with the Commissioner as miscellaneous instruments and when so filed shall constitute constructive notice to the world of the existing contents of the document filed. However, the Commissioner shall look solely and only to the lessee record holder for compliance with the terms and conditions of the lease and the Commissioner shall not have to be a necessary party to any dispute or controversy arising out of or because of such side agreements.

The first application submitted in accordance with the rules and regulations of the Commissioner will be given preferential right to lease state land. However, the Commissioner has power to withhold land from lease at any time on any tract which, in his opinion, serves the best interest of the State. The Commissioner may reject any application at any time prior to approval and issuance of the lease and may then offer the lands or tract of lands for lease at a public auction. Applications received in the same mail delivery shall be considered to have been filed simultaneously and will be treated as simultaneous applications. The Commissioner may dispose of simultaneous applications by giving the lease to the applicant offering the highest bonus or he may reject all applications and offer the lands for lease at public auction.

Withdrawal and Withholding From Lease

The Commissioner may, at his discretion, at any time withhold a tract of land from leasing if, in his opinion, the best interests of the state would be served by doing so. All further applications for a tract of land once withdrawn shall be rejected and any pending applications shall also be rejected. If the Commissioner later determines that the lands are open for leasing, he shall enter a notation on the tract books to that effect and shall consider all applications received within three days after notification thereof. He shall also give fifteen days' written notice to all previously rejected applicants if he again determines that the lands will again be open for leasing within six months from the date of their withdrawal.

The Commissioner may, at his discretion, reject any pending applications for lease and offer the acreage embraced therein for lease upon competitive bidding by sealed bids or at public

auction to the bidder offering the highest bonus in addition to the annual rentals set by the Commissioner. These auctions will be held on the first Monday of each month or the next business day following where a Monday falls on a holiday. Other sales may be held by the Commissioner on dates specified at his discretion. The notice of sale shall be posted in a conspicuous place in the land office not less than ten days before the date of the sale. The notice will specify the place, date and hour of the sale and a description of the lands to be offered for lease, indicating whether the sale is to be by sealed bids or at public auction. If no bids are received for any tract described in the notice, the tract will be posted in the Mineral Tract Book as open acreage and shall be subject to lease to the first applicant who makes application in the manner provided. In the event there is a tie bid on sealed bids, and they are offering the same bonus, the lease shall be disposed of by submission of amended application by the applicants, in which case, preference would be given to the applicant offering the highest bonus.

Forms and Terms of Lease

The primary term of the lease is three years and as long thereafter as any mineral or minerals in paying quantities can be produced or mined from the lands. If the lessee fails to produce minerals in paying quantities during the primary term, he may continue the lease in full force and effect for an additional or secondary term of two years and as long thereafter as any mineral or minerals may be produced or mined from the lands. If the lessee fails to discover and produce minerals in paying quantities during the secondary term of the lease he may continue the lease in full force and effect for an additional or final term of five years and so long as any mineral or minerals in paying quantities are produced or mined from the lease land by paying each year in advance three dollars per acre per annum. If the production of minerals in paying quantities ceases after the secondary term has expired, the lessee may, with the written consent of the Commissioner and by continued payment in advance of annual rentals at the rate provided in the secondary term continue said lease in full force and effect from year to year for an additional period not to exceed three years. The annual rental for the lease during the primary term shall be five

cents per acre per annum but in no instance may be less than ten dollars. During the secondary term of the lease, the rate is fifty cents per acre per annum. If the production in paying quantities is had prior to the expiration of the primary lease, annual rentals shall be paid at the rate fixed in the primary term and every year thereafter that the lease is held. If production in paying quantities is not had until the secondary term has commenced, the annual rental shall be paid at the rate provided for in the secondary term for each year and every year thereafter. If production in paying quantities is not had until the final term has commenced, the annual rental shall be three dollars per acre per year and every year thereafter that the lease is held.

In addition to the annual rentals, the lessee is required to pay a minimum royalty of two per cent of the gross returns from the smelter, mill, reduction process or other sale, less reasonable transportation and smelting reduction charges, and two per cent of all premiums and bonuses received by the lessee, provided that on deposits of rare earth, precious or semi-precious stones and on uranium, thorium, plutonium and other minerals which may at any time be determined by the Atomic Energy Commission to be particularly essential to the production of fissionable materials, the royalty shall be not less than five per cent of the gross returns from the smelter, mill, reduction process or other sale, less reasonable transportation and smelting or reduction charges, if any, of all minerals mined, and five per cent of all premiums and bonuses received by the lessee.

Assignments

The owner of a lease may assign, in whole or in part, his interest in the lease, upon the approval of the Commissioner. No assignment of an undivided interest in a lease or any part thereof, or any assignment of less than a legal subdivision shall be recognized or approved by the Commissioner. The assignments will be executed and acknowledged in the same manner prescribed for conveyance of real estate and shall be filed in triplicate with the Commissioner. One copy shall be recorded permanently, another filed and a duplicate returned to the assignee. The Commissioner shall provide the necessary forms for assignment and the assignment must be accompanied by a filing fee of ten dollars. The Commissioner may refuse to ap-

prove any assignment not executed in proper form or by the proper persons, or when the lease is not in good standing as to the assigned tracts, or when litigation is pending, affecting the lease or affecting the interest of any person therein. If the Commissioner approves the assignment of the lease, the assignor shall be relieved from all obligations owed to the State with respect to lands embraced in the assignment, and the State shall be likewise relieved from all obligations to the assignor as to the said lands, and the assignee shall succeed to all of the rights and privileges of the assignor and assumes all of the duties and obligations of the assignor as to the lands. The record owner of any lease may enter into any contract for development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production. It is not necessary that the contracts, agreements or other instruments be approved by the Commissioner. Nothing will relieve the record title owner of the lease from complying with any of the terms or provisions and the Commissioner shall look solely and only to such record owner for compliance. In any controversy respecting any such contracts, agreements or other instruments entered into by the lessee with other persons, neither the State of New Mexico nor the Commissioner of Public Lands shall be a necessary party. All such contracts and other instruments may be filed either in the Office of the Commissioner or recorded in the office of the county clerk where the lands are situated, and the filing or recording thereof shall constitute notice to all the world of the existence and contents of the instruments filed. The filing fee for miscellaneous instruments in the Office of the Commissioner shall be $1.25 for the first page and fifty cents for each additional page with a maximum charge of $10.00 per instrument.

As long as there is production of minerals from any of the lands embraced in any mineral lease, the lease shall continue regardless of any assignment of all or a portion of the lease which may have been prior or subsequent to the production. The assignment must be recorded with the Commissioner within one hundred days after having been executed by the assignor. Those presented after the expiration of that time shall not be approved by the Commissioner. The Commissioner has

authority to cancel any lease for nonpayment of rentals, nonpayment of royalties, or for violation of any of the terms, convenants or conditions of the lease. Before any cancellation of the lease, the Commissioner must mail to the lessee or assignee, by registered mail addressed to the post office address of such lessee or assignee shown by the records of the Office of the Commissioner, a thirty day notice of intention to cancel the lease, specifying the default for which the lease is subject to cancellation. No proof of receipt of the notice is necessary and thirty days after such mailing, the Commissioner may enter cancellation unless the lessee or assignee shall sooner have remedied the default. The lease may be relinquished with the consent of the Commissioner in whole or in part. However, the Commissioner shall not approve any relinquishment of an undivided interest therein nor less than a legal subdivision.

Bonds

Before the lessee can begin any activities of prospecting, development or operation on the lease premises, he must execute and file with the Commissioner a good and sufficient bond or undertaking in an amount to be fixed by the Commissioner in an amount not less than five thousand dollars in favor of the State of New Mexico, for the benefit of the State's contract purchasers, patentees and surface lessees, to secure payment for such damage to their tangible improvements upon such lands as may be suffered by reason of development, use and occupation of the lands by the mining lessee. A five thousand dollar bond for each lease will be deemed sufficient unless or until one or more surface lessees can show the Commissioner that such an amount is not adequate in a given case. If a lessee holds more than one mining lease, a blanket bond in the amount of ten thousand dollars will be acceptable. The Commissioner may also require that the lessee will furnish a performance bond in a reasonable amount to guarantee payment of royalties to become due the State.

Reports

Prior to obtaining production in paying quantities, no reports are required of the lessee unless specifically requested by the Commissioner. Immediately upon obtaining production of

minerals in paying quantities, the producing lessee shall notify the Commissioner in writing, giving the date production was commenced, and stating specifically the legal subdivision, section, township, and range, and on or before the twentieth day of the month next following production, lessee shall file with the Commissioner a production and royalty statement, showing production and royalty for the preceding calendar month. Such statements are to be prepared upon forms prescribed and furnished by the Commissioner, and in accordance with instructions accompanying said forms. The Commissioner or his representative shall have the right to conduct a field audit and to inspect all records, books or accounts pertaining to the mining, extraction, transportation and returns of ores taken from the leased land. At the request of the Commissioner, the lessee shall furnish the reports, samples, logs, assays or cores within reasonable bounds as he may deem to be necessary to the proper administration of the lands under lease.

If a person drilling a hole to a depth of 10 feet or more on State lands encounters a geothermal energy source of 100 degrees Centrigrade or more, he shall report the location and nature of the geothermal energy source in writing within 90 days to the Director of the State Bureau of Mines and Mineral Resources, Socorro, New Mexico. State lands include all lands owned by the State of New Mexico and lands in which mineral rights or geothermal resources have been reserved to the State.

Lease of State Lands For Other Minerals and Materials

The lease of State lands for the purposes of mining potassium, sodium, sulphur, phosphorus and other minerals of similar occurrence, and their salts and compounds, salt, oil and gas, coal, shale, clay, gravel, building stone and building materials is similar to the procedures outlined above. The term of the lease, renewal, annual rental charge, exploration and development, royalty, monthly reports, total acreage and bond requirements will depend on the nature of the mineral to be mined or material to be extracted. For complete details on the sale or lease of state land, write the Commissioner of Public Lands, P.O. Box 1148, Santa Fe, New Mexico 87501, and ask for the booklet entitled Rules and Regulations Concerning the Sale, Lease and Other Disposition of State Trust Lands.

GENERAL INFORMATION

Community Property and Conveyance of Mining Claims

Although New Mexico is a community property state, the law does not require a spouse's signature on a conveyance of an unpatented mining claim by the other spouse. However, it is recommended that both join in the conveyance. Both must join in the conveyance of patented claims or in the assignment of a mineral lease on State land.

No Lien Notice

The owner of a mining property should protect himself against liens by posting a nonliability notice as provided in § 61-2-10, N.M.S.A. when the property is being worked by others. The law requires that the owner shall conspicuously post a written notice that he will not be responsible for the construction, alteration or repair within 3 days after the owner or person having a claim or interest in the property obtains knowledge of the construction, alteration, or repair, or the intended construction, alteration or repair. Failure to post such a notice renders the property liable for labor and material liens.

Mine Safety Rules

Any mine operator upon starting operations should inform himself immediately on the State mine safety laws and regulations. These may be purchased from Case Thompson Printing Co., 1516 Fifth St., N.W. Albuquerque, New Mexico. Further information may be obtained from a State Mine Inspector at one of the following addresses: 505 Marquette, N.W., Albuquerque, New Mexico; 4801 Jones St., Carlsbad, New Mexico 88221; or P.O. Box 780, Silver City, New Mexico 88061.

Workmen's Compensation

An employer hiring two or more workmen is subject to the provisions of the New Mexico statutes relating to Workmen's Compensation for both occupational accidents and diseases. Although the statute does not require that industrial insurance be carried unless there are two or more employees, every operator should familiarize himself with the provisions of the law

and consider the advantages of carrying such insurance to protect himself against possible personal liability.

Mining Partnership and Grubstake

A mining partnership differs from the ordinary general partnership inasmuch as a sale of his interest by a mining partner will not dissolve the partnership. Neither does death of a partner terminate the partnership, for the successor to the deceased becomes the partner of the survivor. In both general and mining partnerships one partner may bind the other for obligations incurred in the conduct of the business.

A "grubstake" is an agreement between two or more persons whereby one party usually furnishes money, or money and supplies, and the other party prospects for minerals and locates mining claims. The parties are tenants in common of the claims thus located, and the agreement may even constitute a mining partnership. Since such agreements are usually verbal, it is difficult to determine what was intended if a dispute arises. Grubstake agreements should be reduced to writing and clearly state the exact terms on which the parties have agreed.

Public Land Survey

Anyone seeking land, whether as a mining location or otherwise, should understand the survey system. It is the basis for title descriptions.

Lands are surveyed into townships six miles square. Surveys start from an initial point from whence a base line is carried east and west, and a guide meridian north and south. In New Mexico this is known as the New Mexico Principal Meridian—usually written N.M.P.M. Townships are numbered consecutively north and south and ranges east and west, according to the distance and direction from the initial point. Thus, Farmington is in T.29 N., R.13 W.; Tucumcari is in T.11 N., R.30 E.; Carlsbad is in T.22 S., R.27 E.; and Silver City is in T.18 S., R.14 W.

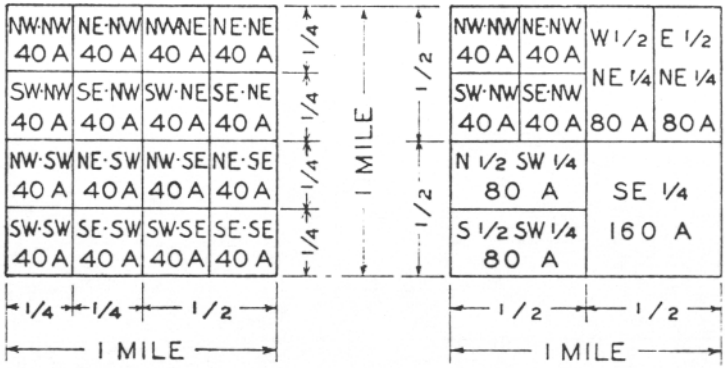
Each township is subdivided into 36 sections, each approximately 1 mile square (the boundaries of which run due north and south, and east and west, in a regular and uniform township). At the corners of each section since 1912 the surveyor sets an iron pipe with a brass cap whereon is stamped the township, range and section corners. At each half-mile on every

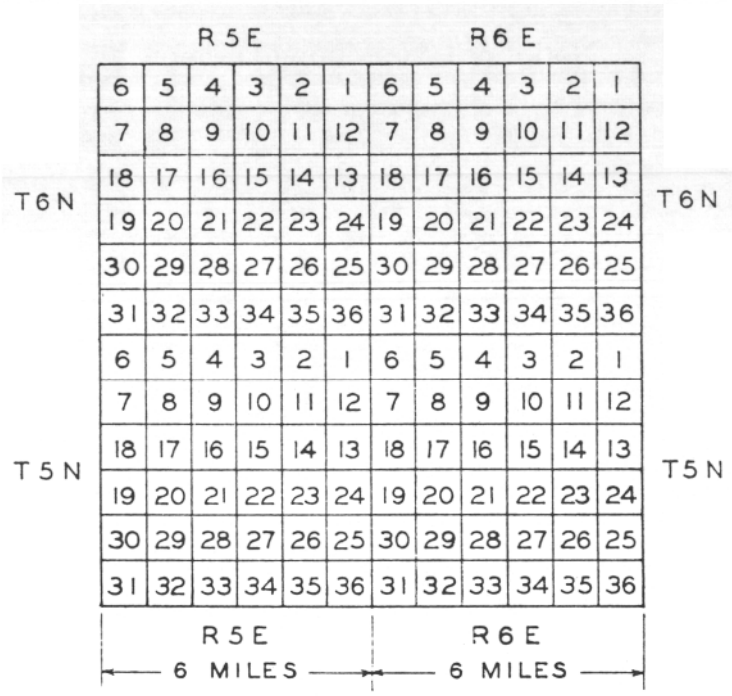
section line a smaller pipe is set whereon the cap is stamped "S ¼"--or the corner of a quarter-section, often called a quarter-corner. A line on the cap will be N-S, or E-W, and the sections on either side of the line numbered thus:

$$8/9 \text{ or } \frac{3}{10}.$$

All of the foregoing is illustrated by the maps on the next page. Four townships are shown, and the numbering of the sections within the townships. Additional diagrams show how a single section is further sub-divided into 40-acre tracts, and how land within a section may be described.

(Note: Public land surveys made prior to 1912, are marked by stone corners. These are firmly set stones and, for section corners, will be notched on the south and the east side as many miles as the corner is from the south and the east boundary of the township. Thus, a corner common to sections 15, 16, 21, 22, for example, will have 3 notches on its south side, or edge, and 3 notches on its east side or edge. The quarter-section corners will have "¼" chiseled on the stone.)





FOUR TOWNSHIPS WITH 36 SECTIONS EACH

FORM 106

Notice of Lode Mining Location

STATE OF NEW MEXICO,

County of ....., } The ..... Mining Claim.
..... Mining District. }

The undersigned, who ..... citizen ..... of the United States (or ha ..... declared intention to become such) and of lawful age, hereby declare ..... and give ..... notice to all persons concerned that ..... ha ..... discovered within the limits of the claim hereby located, a vein, lode or deposit of mineral bearing rock in place, and that on this ..... day of ....., A. D. 19 ..... , do ..... hereby give notice of ..... intention to locate and claim under and by virtue of Chapter 2, Title 30 of the United States Code, and all laws amendatory thereof and supplementary thereto, including laws pertaining to "fissionable source material", and laws of the State of New Mexico, a mining claim upon the said vein, lode or deposit, together with all its dips, faults, variations, spurs and angles, and all veins, ledges or deposits within the boundaries of this claim, to be named the .....
..... Mining Claim.

Said Claim so located is rectangular in form, being 1500 feet in length along said vein, lode or deposit, and 600 feet along the surface in width; said Claim measures lengthwise of the claim ..... feet in a ..... ly direction and ..... feet in a ..... ly direction from the Point of Discovery, at which this Notice is posted, and in width measures 300 feet on each side of said Point of Discovery; the general course of the lode, vein or deposit is from the ..... to the .....

The undersigned ha ..... distinctly marked the said location on the ground, so that its surface boundaries may be readily traced, by four substantial posts or monuments, one at each corner of the claim, each so marked or inscribed as to indicate the corner intended, and ha ..... posted at a conspicuous place on such location the within written Notice.

Said Claim is situated in the above mentioned Mining District, County and State, and is more particularly described as follows: Commencing at the ..... Corner thereof, whence the ..... Corner of Section ....., Twp. ..... , Range ....., bears ..... degrees, ... minutes ..... a distance of ..... feet, thence .....
..... 600 feet; thence .....
..... 1500 feet; thence .....
..... 600 feet; thence .....
..... 1500 feet to the point and place of beginning;
Said Claim being located in the ..... of Section .....
..... and the ..... of Section .....
....., Township ..... , Range .....
NMPM.

Said Claim is further more particularly described by reference to the following natural object or permanent monument as will identify it, as follows:

.....
.....
.....
.....
.....
.....

Dated and posted on the ground this ..... day of ..... , 19 ..... .

....
....
....
....
LOCATOR(S) AND CLAIMANT(S)

(NOTE. Complete and sign two copies. Post one at the point of discovery. Record the other in the office of the above County Clerk within Ninety Days.)

Placer Mining Location

NOTICE IS HEREBY GIVEN to all whom it may concern, that.....

.....

.....

citizens of the United States, over the age of twenty-one years, have this day located and by these presents do locate.....acres of placer mining land, in accordance with the mining laws of the United States and of the State of New Mexico. Said land and claim lies and is situated in .....Mining District, in the County of..... State of New Mexico, and is more particularly bounded and described as follows, to-wit:

Beginning at the..... corner where this notice is posted.....

.....

.....

.....

.....

.....

.....

.....

This claim is located for.....and other mineral deposits.

Said land and claim to be known as.....Placer Mining Claim.

Dated on the ground this.....day of

.....19.....

.....

.....

Witnesses.

.....

.....

.....

.....

.....

.....

.....

Locators.

***If on surveyed land describe the legal subdivision, if unsurveyed land, describe as accurately as possible by courses and distances.**

PROOF OF LABOR ON MINING CLAIM FORM NO. 88 (REV. 8/67)

PROOF OF LABOR ON MINING CLAIM

STATE OF NEW MEXICO, }
County of _____ } ss.

_____ being first duly sworn deposes and says that the owners

_____

_____

of the unpatented mining claim in the _____ Mining District in said County and State, known and recorded by the name of _____

_____

caused to be done and performed the assessment work thereon required by law to be done upon such claim for the year 19__; that the time when such work was done in the month of _____

_____ 19__, and the amount, character and the actual cost thereof were as follows:

_____

_____

_____

_____

_____

_____

and that the names of the persons who performed such work are as follows:

_____

_____

WITNESS hand and seal this _____ day of _____, 19__

_____ (Seal) _____ (Seal)

_____ (Seal) _____ (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO }
COUNTY OF _____ } ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 19__,

by _____,
(Name or Names of Person or Persons Acknowledging)

My commission expires:
(Seal)

_____
Notary Public

FOR RECORDER'S USE ONLY

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO }
COUNTY OF _____ } ss.

The foregoing instrument was acknowledged before me this _____

day of _____, 19__,

by _____,
(Name of Officer)

_____ of _____,
(Title of Officer) (Corporation Acknowledging)
a corporation, on behalf of said corporation.

My commission expires:

(Seal)

_____
Notary Public

THE VALLIANT CO. ALBUQUERQUE, N. M.

NEW MEXICO STATE LAND OFFICE

BOND FOR PERFORMANCE OF MINERAL LEASE

Know All Men By These Presents:

That _____ as Principal, and _____ a corporation organized, existing and doing business under and by virtue of the laws of the state of _____, and authorized to do business in the State of New Mexico, as Surety:

In Obligation 1: Are held and firmly bound unto the State of New Mexico, for the use and benefit of the Commissioner of Public Lands in the sum of _____ Dollars, for the purpose named in WHEREAS 1 and CONDITION 1 below, for the payment of which, well and truly to be made, we bind ourselves, our heirs, successors and assigns, and each and every one of them and us jointly and severally firmly by these presents;

And, in Obligation 2: Are held and firmly bound unto the State of New Mexico, for the use and benefits of holders of State purchase contracts or holders of deeds for state lands, with minerals reserved, in the further sum of _____ ($_____) Dollars for the payment of which, well and truly to be made, we bind ourselves, our heirs, successors and assigns, and each and every one of them and us jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals, this _____

The conditions of the foregoing obligations are such that:

WHEREAS 1, the said principal has entered into a mining lease with the State of New Mexico, through its Commissioner of Public Lands, said lease being designated in the Office of the Commissioner of Public Lands as _____ the original of which is in the files of the State Land Office.

CONDITION 1:

NOW, THEREFORE, if the said principal in all respects shall comply with all and singular the terms, provisions and conditions of the said lease;

THEN, THEREFORE, obligation 1 shall be null and void; otherwise and in default of complete compliance with any and all of said obligations the same shall remain in full force and effect.

WHEREAS 2, all or part of the lands embraced in said lease has been sold, with minerals reserved to the State of New Mexico to a purchaser who holds either a limited patent from the State of New Mexico or a state purchase contract, entitling the holder of said contract to such limited patent upon complete payment, as shown by the official records of the Commissioner of Public Lands;

CONDITION 2:

AND, FURTHER, if the said principal in all respects shall make good and sufficient recompense, satisfaction and/or payment unto the holder, or his successors in interest of any said state purchase contract or any said limited patent for State Lands for all damages to the livestock, range, water, crops or tangible improvements on such lands as may be suffered by such holder, or his successors in interest, by reason of such mining development, use or occupancy of such lands by the said lessee, or principal, during the entire period of such mining operations, or for such damages as a court of competent jurisdiction may determine and fix in any action brought on this bond.

THEN, THEREFORE, Obligation 2 shall be null and void; otherwise and in default of complete compliance with any and all of said obligations, the same shall remain in full force and effect.

The intentions of the parties hereto are in effect the creation of two bonds with the same parties and same date but with different obligations and conditions, in one instrument, for the sake of simplicity and convenience, as much as though such undertakings were actually separate bonds; the fulfillment or release of one obligation does not release the other and two obligations exisit only when a sum is named in both obligations. When no sum is named, in Obligation 2, that part of this instrument pertaining to Obligation 2 is to be disregarded.

_____
Principal

_____
Principal

_____
Principal

COUNTERSIGNED BY: By _____
Surety

_____
Resident Agent

_____, New Mexico.

STATE OF NEW MEXICO }
COUNTY OF _____ }

On this _____ day of _____ before me personally appeared _____ to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

My Commission expires _____
Notary Public

_____

STATE OF _____ }
COUNTY OF _____ }

On this _____ day of _____ before me appeared _____ to me personally known, who, being by me duly sworn, did say that he is _____ of _____ and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and the said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year in this certificate first above written.

My Commission expires: _____
Notary Public

_____

NEW MEXICO STATE LAND OFFICE

ASSIGNMENT OF MINERAL LEASE

KNOW ALL MEN BY THESE PRESENTS:

That_____
(State whether married or single)

and_____
(wife if any)

hereinafter called "Assignor____," part__of the first part, for and in consideration of the sum of One Dollar, and other good and valuable consideration paid by_____

_____

_____

whose postoffice address is_____

hereinafter sometimes called the "Assignee___," party of the second part, ha_____ sold, transferred, set over and assigned, and by these presents do_____ sell, transfer, set over and assign to the Assignee_____ heirs, successors and assigns, all of the assignor___ right, title, interest and claim in and to that certain Mineral Lease No. _____made by the State of New Mexico to_____

under date of_____, 19_____, and more particularly described as follows:

INSTITUTION	SECTION	TOWNSHIP	RANGE	SUBDIVISION	ACRES

The Assignee assumes and agrees to perform all obligations to the State of New Mexico insofar as said described lands are affected, and to pay such rental and royalties, and to do such other acts as are by said lease required as to the above described subdivisions, to the same extent and in the same manner as if the provisions of said lease were fully set out herein.

It is agreed that the Assignee shall succeed to all the rights, benefits and privileges granted the Lessee by the terms of said lease, as to the lands above described.

IN WITNESS WHEREOF, the said part_____ of the first part ha_____ hereunto set _____ hand___and seal_____on this the _____day of_____, 19____.

_____

_____

FOR OFFICE USE ONLY:

ASSIGNMENT FEE $10.00 From No._____ RECEIPT NO.
ASSIGNMENT NO._____
H.C._____ To No._____ _____

M-22 (Individual)

STATE OF_____)
County of_____) ss.

On this_____day of_____, 19_____, before me personally appeared

_____

to me known to be the person_____ described in and who executed the foregoing instrument, and acknowledged that_____executed the same as_____free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

_____
Notary Public

My Commission Expires:_____

Office of Commissioner of Public Lands
Santa Fe, New Mexico

I hereby certify that the within assignment was filed in my office on_____, and approved by me on_____.

_____
Commissioner of Public Lands

INSTRUCTIONS AND INFORMATION

1. All Assignments must be filed, in triplicate, in the State Land Office within 100 days from date of issue and accompanied by Cashier's Check, Bank Draft, P. O. or Express Money Order.

2. Recording and approval fees are $10.00 for each Assignment.

3. When assignments are accompanied by personal check, the Commissioner of Public Lands reserves the right to withhold approval of assignment until checks are paid.

4. Assignment will not be approved when assigned to more than one person or corporation.

5. Assignments must show complete postoffice address of assignee.

6. Assignments must be executed before an officer authorized to take acknowledgments of deeds. Corporations must use corporate form of acknowledgment, and forms for acknowledgment by an attorney in fact will be furnished upon request.

7. Assignments must show whether assignors are married or single; if married, both husband and wife must sign the assignment, and certificate of acknowledgment must show marital status of assignors.

8. All official business, letters and communications must be addressed to and sent direct to the Commissioner of Public Lands.

9. Make all payments for annual rental and recording approval fees to:

COMMISSIONER OF PUBLIC LANDS
SANTA FE, NEW MEXICO 87501

NEW MEXICO STATE LAND OFFICE
ASSIGNMENT OF MINERAL LEASE

KNOW ALL MEN BY THESE PRESENTS:

That_____

a corporation,_____

hereinafter sometimes called "Assignor_____," party of the first part, for and in consideration of the sum of One Dollar, and other good and valuable consideration paid by

_____

whose postoffice address is_____

hereinafter sometimes called "Assignee_____," party of the second part, has sold, transferred, set over and assigned, and by these presents does sell, transfer, set over and assign to the Assignee_____successors and assigns, all of the Assignor's right, title, interest and claim in and to that certain Mineral Lease No._____ made by the State of New Mexico to_____ under date of_____ and more particularly described as follows:

INSTITUTION	SECTION	TOWNSHIP	RANGE	SUBDIVISION	ACRES

The Assignee assumes and agrees to perform all obligations to the State of New Mexico insofar as said described lands are affected and to pay such rental and royalties, and to do such other acts as are by said lease required as to the above described subdivisions, to the same extent and in the same manner as if the provisions of said lease were fully set out herein.

It is agreed that the Assignee shall succeed to all the right, benefits and privileges granted the Lessee by the terms of said lease, as to the lands above described.

IN WITNESS WHEREOF, the said party has hereunder caused these presents to be signed and sealed by its proper officers by authority of its Board of Directors this the day of_____, 19_____.

ATTEST:

_____
Secretary

By_____
President

FOR OFFICE USE ONLY:

ASSIGNMENT FEE $10.00
ASSIGNMENT NO._____
H.C._____

From No._____
To No._____

RECEIPT NO.
_____

M—12 (Corporation)

STATE OF NEW MEXICO)
)ss.
County of_____)

On this_____day of_____,19____, before me personally appeared_____ to me personally known who being by me duly sworn did say that he (she) is the President of the_____ and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Dircetors, and said_____ _____acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on this, the day and year first above written.

_____
Notary Public

My Commission expires_____

Office of Commissioner of Public Lands
Santa Fe, New Mexico

I hereby certify that the within assignment was filed in my office on_____

_____, and approved by me on_____.

_____
COMMISSIONER OF PUBLIC LANDS

INSTRUCTIONS AND INFORMATION

1. All Assignments must be filed in the State Land Office within 100 days from date of issue and accompanied by Cashier's Check, Bank Draft, P. O. or Express Money Order.

2. Recording and approval fees are $10.00 for each Assignment.

3. When assignments are accompanied by personal check, the Commissioner of Public Lands reserves the right to withhold approval of assignment until checks are paid.

4. Assignments will not be approved when assigned to more than two persons.

5. Assignments must show complete postoffice address of assignee.

6. Assignments must be executed before an officer authorized to take acknowledgments of deeds. Corporations must use corporate form of acknowledgment.

7. Assignments must show whether assignors are married or single; if married, both husband and wife must sign the assignment, and certificate of acknowledgment must show marital status of assignors.

8. All official business, letters and communications must be addressed to and sent direct to the Commissioner of Public Lands.

9. Make all payments for annual rental and recording and approval fees, to:

COMMISSIONER OF PUBLIC LANDS
SANTA FE, NEW MEXICO
87501

INDEX