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MONTANA MINING LAW

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MONTANA MINING LAW

By

KOEHLER S. STOUT

PART ONE

DISCUSSION OF MONTANA MINING LAW

INTRODUCTION

The Montana Bureau of Mines and Geology receives many requests for up-to-date information on mining laws. This work was written to aid in answering such inquiries, as well as:

(1) To present up-to-date mining law in such a manner that the non-legal and non-technical person can use the publication as a helpful guide in his mine location work or mining law problem, and

(2) To aid the technical and legal professions when they become concerned with some facet of mining law.

There has been little recent mining litigation, and you will note that many of the citations are rather old. However, the decisions rendered in these cases, to the author's knowledge, are still applicable to present day mining law.

The first bulletin on mining law by this Bureau was Bulletin 5, by Dr. A. E. Adami, and was entitled, "The Location, Representation, and Patenting of Mineral Lands in Montana." This bulletin, published in 1923, has long been out of print. The present work follows much of his outline, but more recent decisions and interpretations are given, as well as citations of authority. It was decided to include citations, because a booklet of this type cannot be all inclusive, nor can it answer all the questions that will arise. The citations may prove useful if further research is required. References cited in this bulletin are as follows:

Black	Blacks Law Dictionary 4th Ed.
C.F.R.	Code of Federal Regulations
C.J.S.	Corpus Juris Secundum
Cir.	Circular of the Department of the Interior

Fed.	Federal Courts Law Reports
Fed. Cas.	Federal Case
I.D.	Dept. of the Interior Decisions (Begin with Vol. 53)
L.D.	Land Decisions of Dept. of Interior (End with Vol. 52)
Lindley	Lindley on Mines (See Bibliography)
Mont.	Montana State Supreme Court Law Reports
M.R.	Morrison's Mining Rights (See Bibliography)
P.	Pacific Reporter
P2	Pacific Reporter, Second Series
R.C.M. 1947	Revised Codes of Montana, 1947
R.M.M.L.I.	Rocky Mtn. Min. Law Inst. (See Bibliography)
U.S.	United States Supreme Court Law Reports
U.S.C.	United States Code
Van Nuys	(See Selected References)

Other references have been made to publications on mining law. These will be found in the list of Selected References, page 40.

Mining law in the United States is complex, and only highlights of the subject are herein presented. It is hoped the material fulfills the purposes enumerated above. In some cases there may exist some confusion as to whether United States law or Montana law applies. The mining laws of the United States are supreme in what they cover, but the State of Montana has authority to make laws governing the locating and recording of mining

claims, and filing of affidavits of assessment work, and they govern provided they are not inconsistent with the laws of the United States.

The text consists of a general discussion of pertinent points applicable to mining law with some code and case citations. Sections of the Montana Code which apply to mines and mining are included in appendix A. Appendix B contains definitions of terms and other information.

ACKNOWLEDGMENTS

Personnel of the Bureau of Land Management aided in preparing this manuscript. Special credit is due Louis Forsell and Howard A. Johnson, attorneys, for their review and helpful criticism of the text. E. F. Barry and E. R. Sievers of the Forest Service made many valuable suggestions. Robert Newman did an excellent job in drafting the sketches; Dr. Edwin G. Koch, Walter S. March, Jr. and Uno M. Sahinen of the Montana Bureau of Mines and Geology critically examined the manuscript.

PUBLIC LAND SURVEY

Anyone who seeks ownership of land in Montana should familiarize himself with the United States system of public land survey. Although a lode mining location does not have to conform to a legal sub-division, at least one corner of the claim should be tied into a section corner, quarter corner, or township corner of the public land survey, if the area has been surveyed. True, this practice is not required by law, but regulations of the Department of the Interior, as well as recent Federal legislation, require that the claim must be easily located. This practice aids in locating the claim either on a map or on the ground. If the area has been surveyed, placer locations must conform to legal subdivisions of the section except in unusual circumstances.

Where surveyed, the lands of the United States are subdivided into townships, sections, and, in some cases, quarter sections. Not all of Montana has yet been so divided. One unit of subdivision is the township. This square, or almost square unit, is bounded by north-south lines parallel to the meridian and east-west line parallel to the lines of latitude. The sides of a township, as nearly as possible, are each six miles long. (See fig. 1.) The township is further divided into thirty-six sections which, as nearly as possible, are one mile square. The sections are numbered beginning with number one in the northeast corner section and proceeding alternately west and east throughout the township with progressive numbers up through thirty-six in the southeast corner. (See fig. 2.)

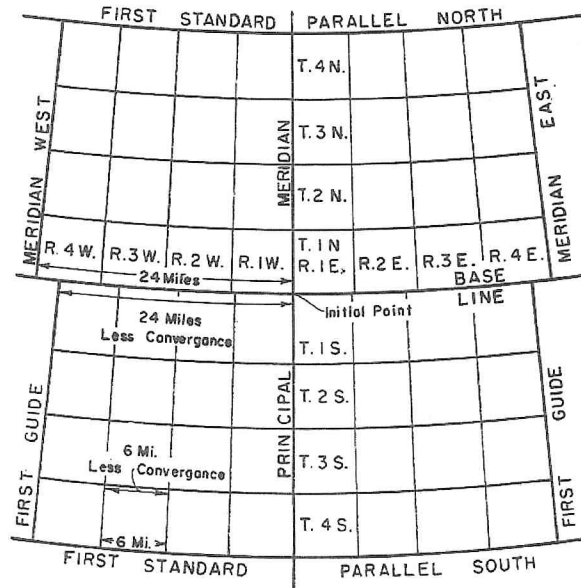


FIGURE 1.—Plan showing standard township and range lines.

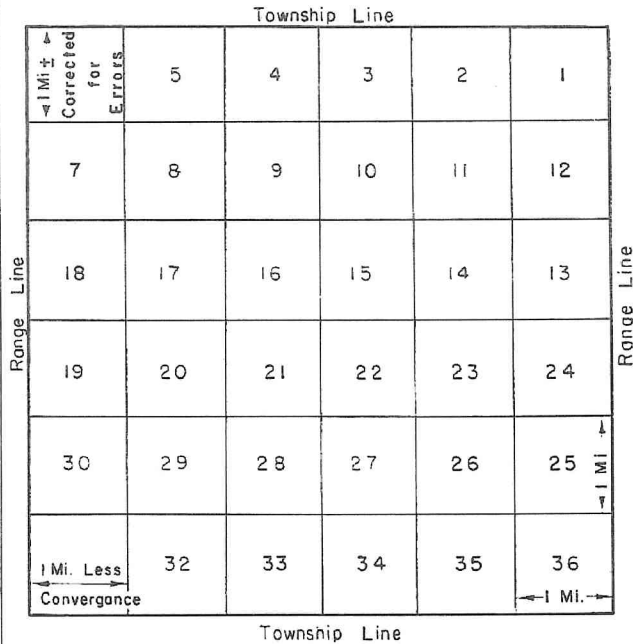


FIGURE 2.—Plan showing subdivision of township. Errors accumulated in surveying are thrown into north and west rows of sections in the township.

Surveys in Montana start from a initial point from which a base line is carried east and west and a principal meridian, north and south. In Montana this point is at longitude 111°39'33" west of Greenwich and north latitude 45°47'13", near Sappington, Montana. Because the meridians converge as they go from the equator towards the

North Pole, it is impossible to lay out an exactly square township, nor will all of the sections be exactly one mile square. Theoretically, the sections which will be less than one mile square will be in the northernmost and westernmost tiers of the township. All of the convergence and other measurement corrections are applied to these areas when the township is subdivided because the south and east lines of the township are the governing lines from which the subdivision is made. Figure 1 shows the parallel and meridian lines as well as the layout of townships within the parallels and guide meridians. The correct terminology of a township is given as "Township 13 N., R. 10 W." or "Township 2 S., R. 3 E." Townships are numbered consecutively north and south, and ranges, east and west according to their direction from the initial point (See fig. 1).

The township, as stated previously, is divided into sections according to figure 2. Surveyors, in recent times, have set iron pipes with a brass cap at the section corners. A standard section corner indicates section, township, and range as follows:

SC	
T3N	R7W
10	11
15	14

A standard quarter corner is marked as follows:

$$\frac{1}{4} \begin{matrix} S14 & S13 \end{matrix} \qquad \frac{1}{4} \frac{S21}{S28}$$

Figures 3 and 4 show the subdivision of a section and how the land within a section may be legally described.

NW 1/4, NW 1/4 40A.	NE 1/4, NW 1/4 40A.	NW 1/4, NE 1/4 40A.	NE 1/4, NE 1/4 40A.
SW 1/4, NW 1/4 40A.	SE 1/4, NW 1/4 40A.	SW 1/4, NE 1/4 40A.	SE 1/4, NE 1/4 40A.
NW 1/4, SW 1/4 40A.	NE 1/4, SW 1/4 40A.	NW 1/4, SE 1/4 40A.	NE 1/4, SE 1/4 40A.
SW 1/4, SW 1/4 40A.	SE 1/4, SW 1/4 40A.	SW 1/4, SE 1/4 40A.	SE 1/4, SE 1/4 40A.

FIGURE 3.—Plan of section subdivided into 40-acre tracts.

NW 1/4 160A.		N 1/2, NE 1/4 80A.			
		S 1/2, NE 1/4 80A.			
W 1/2, SW 1/4 80A.	E 1/2, SW 1/4 80A.	NW 1/4, SE 1/4 40A.		N 1/2, NE 1/4, SE 1/4 - 20A.	
		W 1/2, SW 1/4, SE 1/4 20A.		E 1/2, SW 1/4, SE 1/4 20A.	
W 1/2, SW 1/4, SE 1/4 20A.				E 1/2, SW 1/4, SE 1/4 20A.	
		SW 1/4, SE 1/4	SE 1/4, SE 1/4		

FIGURE 4.—Plan of section subdivided into different sized tracts.

Public land surveys made in the late 1800's and early 1900's in Montana used either stone markers, squared timber or blazed tree markers as section corners or quarter-corner markers. These firmly embedded stones or wooden markers often had marks or notches cut on the south and east sides. These notches meant the number of miles the corner lies from the corresponding township and range lines. Thus, a stone with three grooves notched on the south side means it is 3 miles north of the township line, and if it has 3 grooves notched on the east side, it means it is three miles west of the range line. Looking at figure 2, it is apparent that this is the common section corner between sections 15, 16, 21, and 22. If the stone is on a township line or a range line, the notches will be on the east and west sides and north and south sides respectively indicating the distances east and west or north and south to the next township corner. Stone township monuments (at the corners of townships) are marked numerically with the appropriate township and range. The quarter-section corners will have "1/4" chiseled or cut on the marker.

If the area in which the claim is located has been surveyed, the land office has a record of the survey. Copies of the township plats can be purchased at nominal charge from the Bureau of Land Management in Billings, Montana. If one is not familiar with their system of measurement, the markings on the plat may be confusing. The Department of the Interior uses the following measurements:

- 1 chain = 100 links = 66 feet
- 1 mile = 80 chains = 5,280 feet
- 1 acre = 10 square chains = 43,560 square feet
- 1 square mile = 640 acres

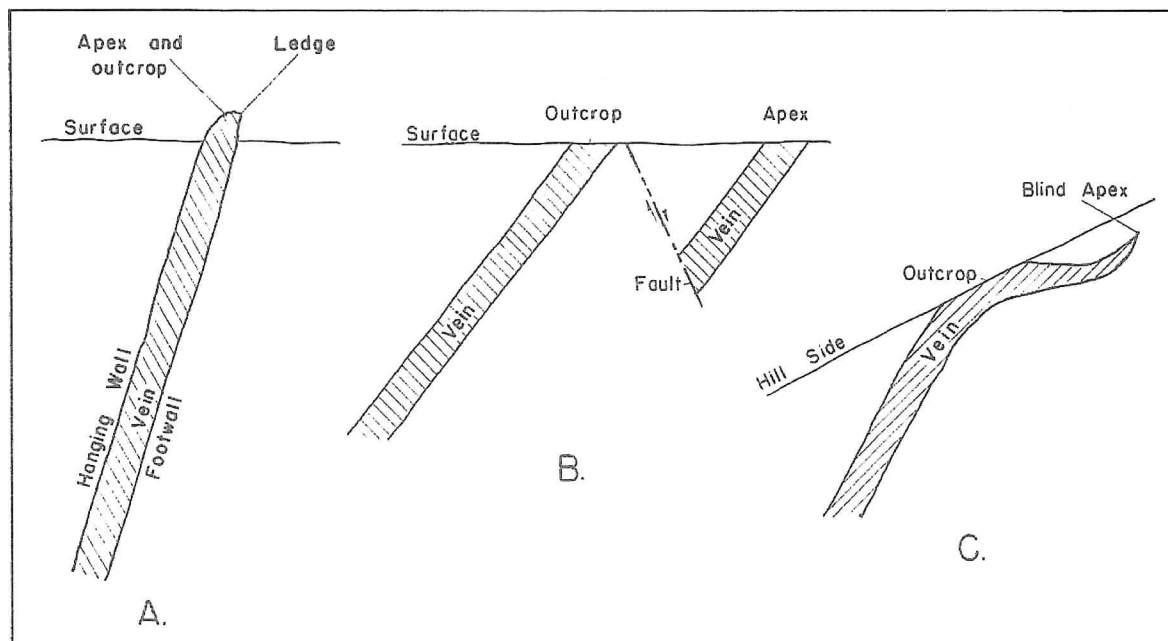


FIGURE 5.—Sketch showing cross-sections of some vein occurrences.

On township plats the distances are measured in chains. When requesting these plats be sure to state the township and range of the area desired.

Patented mining claims are filed in the Bureau of Land Management and copies of the mining claim plats can be obtained at nominal charge. When requesting these plats be sure the survey number of the mining claim is given.

DEFINITIONS, TERMS, AND GEOLOGY

To exactly define all of the terms used in mining law is difficult because of the different shades of meaning given to the same terms by different authorities and courts. The terms "vein," "ledge," or "lode" are used throughout mining law and are generally used as synonymous terms by miners, the Acts of Congress, and the decisions of the courts in mining areas.¹ One of the best definitions of a vein is given in Black's law dictionary² as follows:

"Vein. A continuous body of mineral or mineralized rock, filling a seam or fissure in the earth's crust, within defined boundaries in the general mass of the mountain (which boundaries clearly separate it from the neighboring rock), and having a general character of continuity in the direction of its length. It includes all deposits of mineral matter found through a mineralized zone or belt coming from the same source, impressed with the same forms, and appearing to have been created by the same processes."

1. 58 C.J.S. (Mines and Minerals) Sec. 3

2. Black 4th p. 1725

Black³ defines lode:

"...this term, as used in the legislation of Congress, is applicable to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock. It includes all deposits of mineral matter found through a mineralized zone or belt coming from the same source, impressed with the same forms, and appearing to have been created by the same processes."

There is some distinction between these two terms as used by miners and geologists who consider a vein as one tabular or sheet-like mineral deposit between two definite walls (See fig. 5A), whereas a lode or lead may be one or more roughly parallel veins contained in a wider zone or belt. (See fig. 6A.) Thus, a lode is considered by some miners to be a vein or lode with a prominent outcrop (See fig. 5A). It must be admitted, these terms are used interchangeably throughout different mining districts.

A discovery is a special term in mining law which has not been legally defined. Considerable confusion exists as to the true legal meaning of the word. For a detailed discussion, see page 10.

Apex, dip, outcrop, and strike are oftentimes confusing terms. The apex is the uppermost or top outcrop of a vein which is exposed on the surface, or the uppermost limit of a blind vein which does not outcrop. (See fig. 5 A, B, C). An outcrop is any surface exposure, mineral deposit, or sedimentary bed which appears upon the surface. The apex and outcrop are usually the same, but, not

3. Black 4th p. 1091

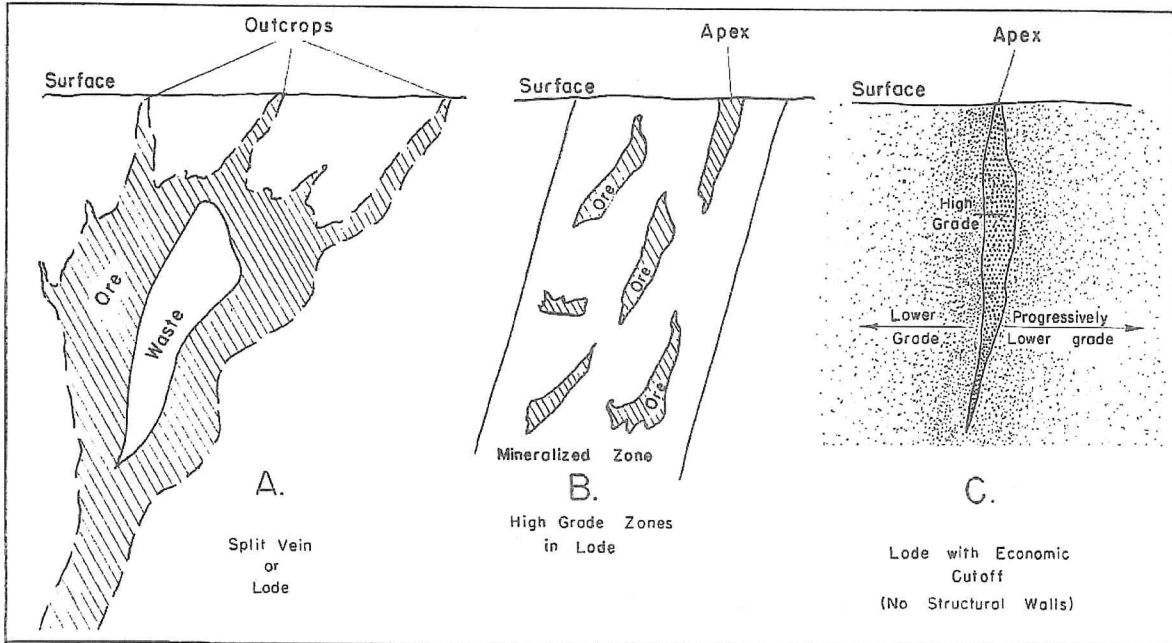


FIGURE 6.—Sketch showing cross-sections of veins and lodes.

always. Figures 5B and 5C show two possible variations between apex and outcrop. The *strike* is the bearing of a *horizontal* line parallel to the plane of the bed, vein, or fault with respect to the cardinal point of the compass (See fig. 7). The *dip* is the maximum angle of inclination downward that a vein, bed, or fault makes with a horizontal plane (See fig. 7). The trace of the outcrop as it goes up or down hill is often mistakenly called the strike of the vein (See fig. 7), but this is only true if the ground is perfectly horizontal or the vein is vertical. (Locating the apex is extremely important in a mining location because the owner

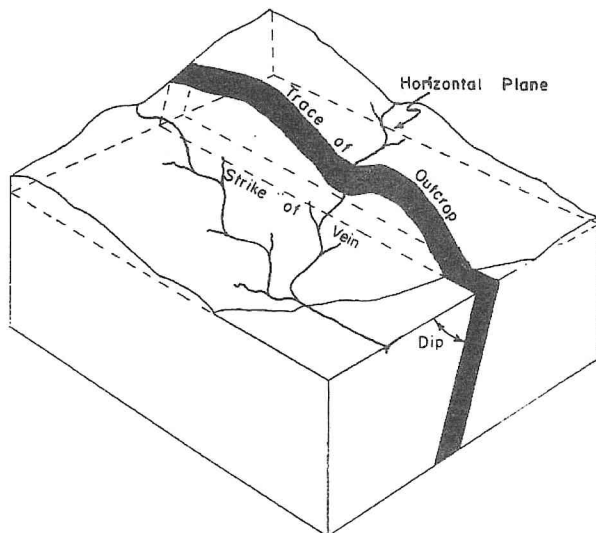


FIGURE 7.—Sketch showing strike, dip and outcrop of a vein.

of the apex has extralateral rights). Other mining claim terminology is illustrated in figure 8.

Another term which is sometimes misused is "ore." Ore is a mineral aggregate of sufficient value, both as to quantity and quality, that it can be mined at a profit. Economic conditions will often dictate whether a mineral aggregate is or is not ore. For example, a vein containing lead minerals may not be ore when lead sells for \$0.10 per pound, but if the price rises to \$0.15 per pound it may then be considered ore. In the first case it cannot be mined at a profit, but in the second case it can. Quantity is also important. A one percent copper ore body would normally not be considered ore unless it exists in very large quantities. Of course the price per pound of copper also influences its classification. Prospectors and miners often refer to any mineral aggregate as ore, but the above definition is the correct one.

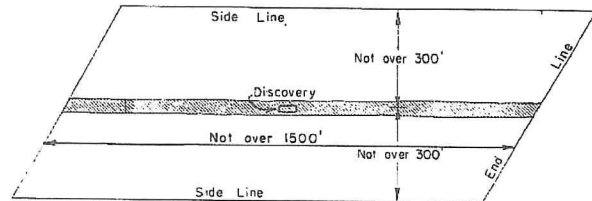


FIGURE 8.—Sketch of claim showing terminology and maximum dimensions.

In mining law the term "third party" means someone other than the U. S. Government and the original locator. The U. S. Government is the "first party" and the original locator is the "second party."

Additional definitions for mining terms are given below:

Adit.—A horizontal opening driven from the surface which gives access to the ore body. The term "tunnel" is frequently used in place of adit, but, technically, a tunnel is open to the surface at both ends.

Adjudicated.—A cause of action where a judgment or decree has been given.

Alluvial.—Generally pertains to loose gravel, soil, or mud which has been deposited by water.

Assay.—The determination of valuable minerals in a sample.

Attitude.—Is the direction and degree of strike and dip of a vein or bed.

Claimant.—One who claims or asserts title or a right to title to a mining claim.

Claim Jumping.—Locating a mining claim over a previous claim when the claim jumpers feel the original locator or claimant has not complied with all the provisions of the mining law necessary to hold a valid claim.

Collar.—The immediate surface at the top of a shaft.

Crosscut.—A horizontal heading driven at a large angle to the strike of a vein.

Dip.—The maximum angle of inclination downward that a vein or bed makes with a horizontal plane.

Drift.—A horizontal underground opening driven along the course of a vein.

Fault.—A fracture in the earth, with displacement of one side of the fracture with respect to the other.

Footwall.—The bottom or lower enclosing wall of a vein.

Mineral.—A homogeneous substance of fairly definite chemical composition and physical properties found in nature and not directly a product of life or the decay of a living thing.

Patentee.—One to whom a patent has been granted.

Plat.—A map, or representation on paper, of a mining claim showing boundaries of claim. It is usually drawn to scale.

Possessory Right.—When referring to mining claims, a right to the mining claims because one is in possession. Not necessarily a valid right.

Rake.—The trend of the ore body within the veins.

Verification.—A confirmation of the correctness and authenticity of a paper or statement by affidavit, deposition or oath. The locator signing a certificate of location in the presence of a Notary Public after which the Notary attests to the fact of signing is a common form of verification.

HISTORY OF MINING LAW

To better understand mining laws in force in Montana, a brief history of mining law will be presented. In most of the European countries, the valuable minerals and metals in the earth were considered to be the property of the Crown and reserved to it. The Crown had absolute control over the mineral wealth and could do with it as it wished. However, in certain mining areas of Germany, England, and some other European countries, there existed local customs which gave the discoverer of certain valuable minerals the right to mine these minerals, provided the discoverer fulfilled certain conditions. This practice encouraged the search for minerals. The Crown realized that working mines meant more wealth to the country, so it allowed this system to exist at times, although generally they disapproved of it.

In this country, the early English common law is the basis of jurisprudence in all States except Louisiana. Louisiana follows the old Roman civil system of jurisprudence. Ordinarily, under English common law, minerals, if not reserved by the Government, are considered the property of the owner of the surface of the land, so, the owner of the surface owns everything on the land, above, and below it within the vertical boundaries of the estate.

In the early days of the Western United States, people came from all over the world to mine the precious metals. During this time the United States Government did not have a clear-cut policy of establishing ownership of minerals and mining claims in this wild and remote area. In the more settled parts of the Eastern United States the common law system of mineral rights was accepted and that is why our present mining laws do not apply to our original thirteen States. The first mining laws or rules in the United States which are important are the 1849 California miners' rules. They were based on early Spanish concepts of mining claims, discovery and possession, modified by English and other European concepts of law. To protect the discoverer's right, mining districts were organized, and rules and regulations adopted by the miners themselves. As the prospectors spread out over the Western States, these rules and regulations went with them. However, each district had its own particular, and sometimes peculiar, rules. To clarify and make uniform the miners' rules, Congress enacted the first mining laws of 1865, which were drawn largely in light of the California miners' rules. This 1865 miners' code was faulty and inadequate in many respects. Sen. Stewart of Nevada was assigned the task of compiling the 1872 mining law. Today the United States mining laws are, in effect, the basic act plus thousands of authoritative decisions handed down thereunder. There are two fundamental principles which form the basis for all mining law whether in this country or foreign lands. (Peele, 1952, p. 24-03.)*

* For complete reference, see page 40

(1) The right of the discoverer and operator of a mine to a secure and clear title good against the world to their property so long as they fulfill all conditions which are necessary to hold that title.

(2) The right of the government, state, or other landlord to rents, royalties, or taxes on the production from the mines. In addition they can demand competent work performance from the lessee. Ownership by the lessee, operator, or mineral discoverer is never obtained except in cases of purchase.

In the Western States, including Montana, both principles just outlined apply to mining law. The first principle applies to areas open to mineral location on the public lands whereas the second principle applies to certain private land, state-owned land, and in certain cases to mineral-bearing land of the Federal Government in Montana.

The extralateral or dip-rights of vein extensions are peculiar to United States law, although a practice similar to this was in limited use in some early-day Spanish-Mexican mining areas. Some early-day mining grants in Germany also recognized this right. The extralateral rights allowed by United States mining laws gives to the claimant of a vein which apexes (tops) on his property the exclusive right to follow the vein down dip, and it belongs to him even though it goes under property, the surface of which is owned by another person. The surface owner has no right to any of the ore where the apex is claimed by another person. This rule applies only to mineral claims located on public lands and not to any other classifications.

The term "public lands" needs some explanation. The Federal Government did not acquire any property rights within the boundaries of the original thirteen colonies, nor in the states formed from these colonies. However, the Federal Government did acquire land by conquests, purchases, and treaties in that area of the United States generally west of the Mississippi River. The mining laws of the United States as amended pertain to this land, if it is not reserved exclusively for other purposes.

Title 43 — Sec. 185 of the Code of Federal Regulations states on the subject of lands open to location:

"Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase, as are also lands in national forests in the public-land States, lands entered or patented under the stock-raising homestead law (title to minerals only can be required), land entered under other agricultural laws but not perfected, where pros-

pecting can be done peaceably, and lands within the railroad grants for which patents have not been issued.

Mining locations may be made in the states of Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, also in the territory of Alaska."

For the most part, land in national parks, national monuments, and Indian reservations are not open to prospecting and location.

The mining laws were enacted to encourage and foster the mineral industry in the United States. The law states that after a locator has complied with all rules and regulations pertaining to the acquisition of a mining claim on the public lands and after receipt of patent he receives the land with no reservations, except that the Federal Government may reserve the "Leasing Act minerals." The title rests in the patentee absolutely, and after the patent, the mining claim is treated as any other private property.

LAW S WHICH AFFECT MINING IN MONTANA

Montana is one of the states which is affected by the mining laws of the United States because Montana contains considerable public land. When locating and appropriating mining claims, the laws of Montana and the United States must be obeyed. The laws of Montana govern unless they contradict the Federal Mining Law; in that case, the Federal law would govern. The location of mining claims on public land is covered in Title 50, Revised Codes of Montana, 1947; Title 30, United States Code; and Title 43, Code of Federal Regulations Revised. More recent Federal legislation which affects mining locations on public land, especially unpatented claims, are the Stock-Raising Homestead Act of December 29, 1916 (Title 43, U.S.C. Sec. 291; Title 43, C.F.R. Sec. 1686), The Leasing Act of 1920 (Title 30, U.S.C. Sec. 181; Title 43, C.F.R. Sec. 191-201), The Multiple Mineral Development Act of 1954 (Title 30, U.S.C. Sec. 521; Title 43, C. F. R. Sec. 186), and the Multiple Surface Use Act of 1955 (Title 30, U.S.C. Sec. 601; Title 43, C.F.R. Sec. 185.120—185.137, commonly called Public Law 167). These laws will be discussed in more detail later in this booklet.

It must be emphasized that the above laws apply only to mining claims and mining leases which are or can be taken out on public lands in the State of Montana. *They do not apply* to land owned by the State of Montana, private individuals, withdrawn or reserved land of the Federal Government, Indian reservations, national and state parks, military reservations, and some other lands. To mine on such lands, special permission from the land owners must be obtained. Land withdrawn by the United States Government is

not open to mining at any time, except power-site withdrawals, which are open to mineral entry under certain conditions, or land subject to Public Law 585, the multiple mineral development act.

Operation of mines in the State of Montana is subject to the so-called "police" regulations of the State and Federal Governments. Coal mining operations are regulated and policed by both the State and Federal agencies. Lode and placer mining operations are regulated and policed only by the State unless they come under the rules of interstate commerce, when the Federal Government may regulate them. The regulations for coal mining in Montana are contained in Chapters 4, 5, and 6 of Title 50, Revised Codes of Montana 1947, and the Federal rules are given in Title 30 U. S. C. Sec. 451-483. Regulations of the quartz mining industry are covered in Chapters 1, 2, and 3, Title 50, of the Revised Codes of Montana, 1947. *These rules and regulations apply to all mining operations in the State whether on public land or private ground.* In addition to these codified rules, mines on State-owned ground and Federal-owned ground not subject to the general mining laws may be subject to other rules and regulations. For example, the Geological Survey makes inspections of mining operations on mineral deposits subject to the Leasing Act of 1920 (Title 30, C.F.R. Chapter II).

All Federal and State laws which affect any industrial enterprise in Montana must be respected. Some of the laws affecting employment of people in any industry are those relating to payment for overtime work, old age and survivor insurance, industrial accident insurance, state and federal unemployment tax, withholding for state and federal income tax.

As Montana is considered a mining state, laws have been formulated to aid the mine operator in this State. Special laws pertaining to mining partnerships and corporations have been passed and will be discussed later in this report.

LANDS SUBJECT TO LOCATION

PUBLIC LANDS

As mentioned in the previous section, the laws governing location and patenting of mining claims and Federal leasing laws apply only to vacant, unreserved, and unappropriated public lands except as provided in Acts relating to multiple use and power withdrawals. To prospect or mine on all other lands in the State, permission must be obtained from the land owner.

In recent years, the problem of what land is open to mining location becomes complex because the status of public land has been and is being revised constantly. The map on plate 1 (in pocket) gives a general picture of the Forest reservation and other concentrated areas of public land. Reserved land such as Indian Reservations and national parks are also included. *It must be empha-*

sized that this map is only general, and some of the land within those general boundaries is not open to mining location.

To determine whether land is open for location, the inquirer should first consult the records in the county assessor's office to determine if anyone owns the land. However, these offices have only patented land information. If no one appears to own the land in question, and you wish to know the exact status, write to the Bureau of Land Management, 1245 N. 29th Street, Billings, Montana, giving the section, township, and range, if surveyed, or a good description in reference to prominent landmarks, if unsurveyed. The location of an area can usually be determined either by consulting maps of the area or by asking some informed land owner in the area.

National Forests.—National forests are considered as part of the public domain and, in general, mining locations can be made in them. However, certain areas may be withdrawn or restricted to mining locations, and some ground within a national forest boundary may be privately owned. The nearest forest ranger or Forest Supervisor should be consulted when investigating the status of land.

The above described lands are public lands to which the mining claim location laws apply.

Withdrawn Lands.—Certain public lands may be withdrawn from mining location for reclamation or other purposes.⁴ If the land is withdrawn for reclamation purposes, the Secretary of the Interior can determine, at his discretion, whether mining will be allowed, prohibited, or carried on under certain restrictions. The Bureau of Land Management can give information on the requirements needed to enter this land.

Formerly public lands reserved for power sites by the United States were restricted to mining, but the Mining Claims Restoration Act of 1955⁵ reopened these areas for location and patent of mining claims. All power rights to such land are retained by the United States Government. However, in addition to the regular requirements, the locator of a placer claim on such land must, within sixty days of such location, file a copy of the certificate of location with the United States Land Office in Billings and shall not conduct mining operations for a period of sixty days following the filing date of the notice. Within this sixty-day time limit the Secretary of the Interior may serve notice to the placer miner of a hearing, the purpose of which is to determine if placer mining will be allowed, prohibited, or restricted. Within sixty days after the expiration of any assessment year, a statement of the work done during the assessment year must be filed in the Land Office.

National Parks and Monuments.—Prospecting and mining is forbidden in Yellowstone and Gla-

4. Title 43, C.F.R. Sec. 185.36

5. Title 30, U.S.C. Sec. 621 (Public Law 359)

cier National Parks and in the different national monuments in Montana.

STATE LANDS

A considerable area of the State is owned by the State of Montana. The Federal Government allots sections 16 and 36 of each township to the State to hold in trust for school lands. However, if these sections are mineral in character or for some other reason reserved, then the Federal Government will trade other sections of land in other areas for these sections. The beds of all navigable streams and navigable bodies of water are owned by the State. The State may obtain ground by other means also. Oftentimes the State reserves mineral rights in land leased or sold by it.

The State Board of Land Commissioners is empowered,⁶ *at its discretion* subject to other provisions of the Code, to lease state-owned lands to persons, associations of persons, or corporations to prospect for or mine metalliferous minerals and/or gems. The time limit and other factors in the lease are at the discretion of the Board.⁷ The Board can also lease lands containing deposits of stone, gravel, sand, coal,⁸ and other minerals.⁹

Anyone interested in prospecting or mining on state-owned land must apply to the State Department of Lands and Investments at Helena, Montana.

INDIAN RESERVATIONS

Indian reservations in Montana are not subject to prospecting or mineral entry under the mining laws. Plate 1 (in pocket) shows the boundaries of the Indian reservations in Montana. In addition to these reservations certain ground on the public domain in Montana outside of the reservation is given as Indian allotments. *These areas are not open to mineral entry.*

If mineral deposits are suspected on Indian reservations, then permission to prospect should be obtained from the superintendent of the reservation. He will advise the inquirer as to what further steps, if any, he should take. Remember, the Indians do not have to allow anyone on their reservation. Depending on their wishes, they can restrict or allow prospecting. Some part of Indian reservations have again been opened to location under the mining laws.

PRIVATE LAND

If ground has been patented without mineral reservation, then the owner has full control over the surface and minerals contained underneath. To prospect on this ground, permission must be received from the landowner. The mining laws relating to locations of claims do not apply.

6. R.C.M. 1947, Sec. 81-602

7. R.C.M. 1947, Sec. 81, Chapter 7

8. R.C.M. 1947, Sec. 81, Chapter 5

9. R.C.M. 1947, Sec. Chapter 7

The Federal Government reserved the mineral rights on homesteads patented after December 29, 1916, and such land is open to location and entry as provided by law. See page 31.

LOCATING A CLAIM ON THE PUBLIC DOMAIN

The following steps are necessary to acquire title to a mining claim located on open unappropriated land of the public lands in Montana:

1. Discovery of mineral
2. Posting of notice of location at point of discovery
3. Establishing corners
4. Performing discovery work
5. Filing certificate of location
6. Performing annual assessment work
7. Application for patent

See appendix A on Montana statutes.

WHO MAY LOCATE

Montana Statute¹⁰ says that:

"Any person who discovers* * * a vein, lode, or ledge of rock in place,* * * may, if qualified by the laws of the United States, locate a mining claim* * *"

The United States Code of Federal Regulations¹¹ defines eligible persons as:

"Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any state, may make mining locations. Agents may make locations for qualified locators."

Aliens.—If an alien located or otherwise acquires an unpatented mining claim, the only one who can contest the alien's action is the United States Government.¹² Therefore, the alien's claim is valid unless so contested. An alien's title to a claim is not void, but voidable. The United States Government, however, will not grant a patent to an alien unless or until he declares his intention to become a citizen of the United States.

Agents, Employees, Minors.—Agents or employees may perform all steps of locating an unpatented mining claim for his principal or employer. The principal or employer may be an individual, a partnership, an association, or a corporation. A person does not have to personally act to perfect title, but all acts must be performed in the title holder's name. A location may be made without the knowledge of the principal; however, a party in whose name a mining claim is located is presumed to have assented to the location. The principle underlying this statement is that the party assents to a deed or other act done manifest-

10. R.C.M. 1947, Sec. 50-701

11. Title 43, C.F.R. Sec. 185-4

12. *Herrington v Martinez*, 45 Fed. Suppl. 543 (1942)

ly for his benefit.¹³ Authority for an agent to locate a mining claim in Montana need not be written.¹⁴

A minor born in the United States is considered a citizen and may locate a valid mining claim because the general mining laws do not specify any particular age.¹⁵ However, minors' actions are affected by certain well established rules on contracts and deeds, and before dealing with minors one should have competent legal counsel.

DISCOVERY

One requirement of a valid location is that a discovery must be made. Just what is considered a "discovery"? The Code of Federal Regulations¹⁶ states:

"Discovery required before location. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists."

Montana statute¹⁷ refers to discovery as follows:

"Any person who discovers upon the public domain of the United States, within the State of Montana, a vein, lode, or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, or a placer deposit of gold, or other deposit of minerals having a commercial value* * *"

From these statements we may conclude that a discovery does not necessarily need to be commercial ore but there must be enough evidence of mineral content to justify a prudent man spending his time and money in attempting to develop the same into a mine.

The Secretary of the Interior¹⁸ has stated:

"Since only 'valuable mineral deposits' may be located under the mining laws of the United States, no mining claim is valid until there has been a discovery of minerals, within the limits of the claim, which would justify a person of ordinary prudence in the further expenditure of time and money with reasonable prospect of success in developing a profitable mine. Such discovery means more than the showing of only isolated bits of mineral or geologic inferences of mere indications or belief as to the existence of mineral. The Department has full authority to determine that a claim is invalid for lack of discovery."

In unusual cases, courts must sometimes make the decision as to what constitutes a discovery. Although state and Federal statutes are vague in their description of a discovery,¹⁹ both insist that a discovery must be made or the location is invalid. Discovery then is the source of the mine title. Judge Lindley²⁰ in his treatise on mining law states:

"Discovery of mineral is the initial fact. Without that no rights can be acquired."

Sometimes when a locator makes a discovery, he "blankets" the whole area with claims with intention of keeping others out. Such a procedure is not legal unless a discovery is made on each and every claim. Claims without a discovery are void,^{21, 22, 23} but it may require court action or hearing before the Bureau of Land Management if a discovery exists.

By legislation there are some minerals which cannot be located under the terms of the general mining law. Hence, a mining discovery could not be validated with the following minerals: oil, gas, coal, phosphate, sodium, potassium, oil shale,²⁴ and common varieties of sand, stone, gravel, pumice, cinders, and clay.²⁵

POSTING NOTICE OF LOCATION

After a prospector has made a discovery and has convinced himself that it is worth while pursuing further, he must post a Notice of Location to protect his discovery. The notice must be posted at the discovery and must contain the name of the claim, the name of the locators, the date of location and the approximate dimensions of the area claimed. Printed forms of location notices can be obtained from most print shops and many stationery stores. The printed forms, if completely filled, usually satisfy the requirements for a notice of location. However, a printed form is not required by law, and a notice of location written on the back of an envelope or any other piece of writing material is perfectly legal as long as it is legible and contains all the information listed above.

The notice of location must be posted at the discovery. In a Montana case where the notice of location was posted a considerable distance from the discovery, the discovery was ruled invalid when another party intervened.²⁶ Substantial compliance with Montana statute is necessary to validate a mining claim in Montana.²⁷ However, a party who knows of a defect in posting may not jump a claim on this fact alone.²⁸

19. R.C.M. 1947, Sec. 50-701; Title 43, C.F.R. Sec. 185-12

20. Lindley Sec. 835, p. 763

21. *Cole v Ralph*, 252 U. S. 268

22. *Upton v Larkin* 7 Mont. 449, 456; 17 P. 728

23. *Ferris v McNally*, 45 Mont. 20, 25; 121 P. 889

24. Minerals removed by Leasing Act of 1920

25. Minerals removed by Public Law 167, 1955

26. *Butte Northern Copper Co. v Radmilovich*, 39 Mont. 157, 162, 163; 101 P. 1078

27. *Robinson v Laffon*, 181 Mont. 446, 452; 311 Pac. 2nd. 786

28. R.C.M. 1947, Sec. 50-713, *Harvey et al v Havener et al*, Montana, June 1959

13. II Lindley, Sec. 331

14. II Lindley, Sec. 331

15. I Lindley, Sec. 225

16. Title 43, C.F.R. Sec. 185-12

17. R.C.M. 1947, Sec. 50-701

18. *U.S. v Frank J. Miller*, 59 I.D. 446 (1947) substantiated in *U.S. v Minniee Baker, et al*, 60 I.D. 241 (1948)

It would be wise to have the notice conspicuous, yet protected from the weather. Putting the notice in a glass jar or metal can which is firmly affixed to some permanent object at or very near the point of discovery is a common practice. In addition, it would be wise to have some disinterested party witness the posting and also signing the notice by "posted in the presence of....." If the notice becomes lost or destroyed, the locator has a better chance of proving that the notice had been put at the point of discovery.

ESTABLISHING CORNERS OR STAKING

According to Federal statute²⁹ "the location must be distinctly marked on the ground so that its boundaries can be readily traced."

Montana statute is more definite and states:³⁰

"Within thirty days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced. It shall be prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds: (1) A tree at least eight inches in diameter, and blazed on four sides; (2) A post at least four inches square by four feet six inches in length, set one foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock, and surrounded in all cases by a mound of earth or stone at least four feet in diameter by two feet in height. A squared stump of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound; (3) A stone at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least four feet in diameter by two feet in height; or (4) A boulder at least three feet above the natural surface of the ground on the upper side. Where other monuments or monuments of lesser dimensions than those above described, are used, it shall be a question for the jury, or for the court where the action is tried without a jury, as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point."

The question sometimes arises as to whether a claim is valid if a locator uses corner posts other than the ones mentioned in the codes. From the code itself, if corner materials other than the ones enumerated are used, it shall be a question for the judge or jury to decide whether or not the claim is distinctly marked on the ground. In a Montana

case³¹ it appears that as long as the claim can be easily located and the boundaries readily traced, the law is fulfilled. The court stated:

"The statute requires that the boundaries of a location must be so definite and certain that, taking the discovery as the initial point, they may be readily traced, and the declaratory statement must furnish such information that a person of reasonable intelligence may therefrom find the claim and run its lines."

If the claim is irregular, that is not a parallelogram in shape, then it is necessary to establish more than four corners. Every change in direction of a side line must be marked with a corner so that the boundary will be definitely marked. Some locators merely mark the four corners with the appropriate markers, yet they claim irregular boundaries. If only four corners can be found, the boundary line will be considered to run in a straight line from one corner to another. When an irregular side line is claimed, it must be distinctly marked.

As mentioned previously, one can stake out as many claims as he wants, provided that he makes a discovery and complies with all the requirements necessary to make a valid location. It is quite common to have one side line or end line as a common boundary between two adjoining claims. This is known as a contiguous boundary line, i.e. common to both claims. To take advantage of group assessment work, it is necessary in most jurisdictions to have the claims contiguous.

It is not necessary in Montana to mark the center of the end or side lines.

Regarding the size of a mining claim in Montana, the State Statute allows the maximum size claim permitted under the U.S. Mining Laws.³² The U. S. Codes state:³³

"A mining claim located after the 10th day of May, 1872, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode;* * *No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the 10th day of May, 1872, render such limitations necessary."

The Code of Federal Regulations (Sec. 185.10) made this statement about the size of a mining claim:³⁴

31. Robinson v Laffon, 131 Mont. 446, 453; 33 P. 2768

32. Thompson v Barton Gulch Mining Co., 63 Mont. 190, 206; 207 P. 108

33. Title 30, U.S.C. Sec. 28

34. Title 43, C.F.R. Sec. 185.10

29. Title 30, U.S.C. Sec. 28

30. R.C.M. 1947, Sec. 50-701

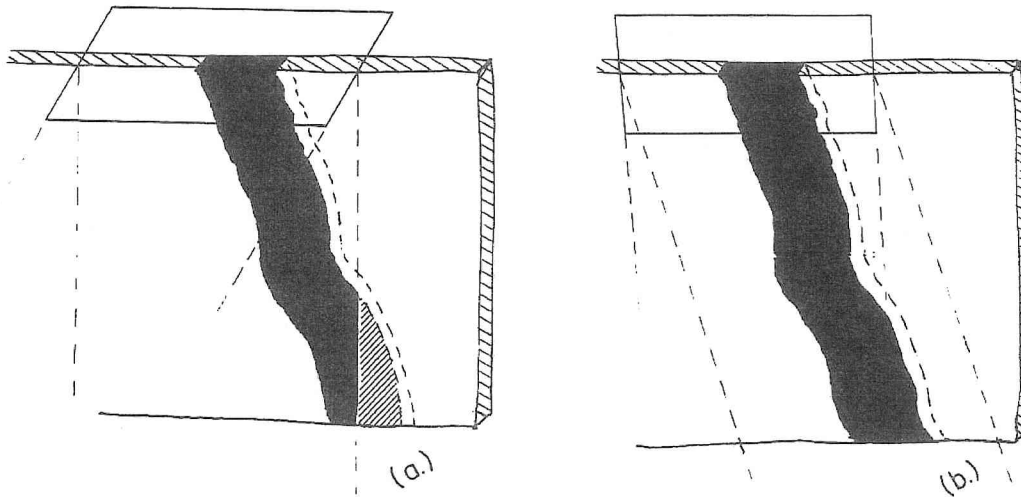


FIGURE 9.—Sketch showing amending of claim location to include all of ore shoot.
(a) Original claim; (b) Amended claim.

“No lode located after May 10, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts. No such local regulations or State or Territorial laws shall limit a vein or lode claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in width unless adverse claims existing on May 10, 1872, render such lateral limitation necessary.”

Apparently the Department of the Interior has not held too closely to his parallelogram idea of mining claims because many claims are irregular in shape, and many of these irregular claims have been patented. However, the maximum size restrictions are enforced.

The side lines are usually nearly parallel to the trace of the outcrop, although they do not necessarily have to be so. The end lines are usually at some large angle to the trace of the outcrop. Figure 8 shows two common patterns for end lines. The end lines can be swung almost any direction as long as they are parallel. The end line can be up to 1,500 feet from the discovery pit along the strike of the vein, but the side lines should not be over 300 feet from the vein.

The maximum size of a lode claim is 600 feet wide and 1,500 feet long. The Secretary of the Interior has ruled that a lode claim located after May 10, 1872 cannot exceed a parallelogram 1,500 feet in length by 600 feet in width.³⁵ A placer claim may contain as much as 160 acres if located by an association of eight locators.

The reason why end lines may be at angles other than 90 degrees with the side lines on the strike of the vein is evident in figure 9. Although

a vein or lode structure may be persistent, ore shoots within these veins may be spotty, irregular, or have definite directions differing from the dip of the vein or lode. Sometimes ore shoots have rakes as shown in figure 9. The apex law says that a claimant has only the ore lying between his two extended end line planes provided they are parallel. If the claim is located as shown in solid lines, the claimant's extralateral rights to the ore would soon run out. However, by swinging the end lines to the dotted positions, as shown, the claimant can take all of the ore contained in the rakes. This is one of the reasons why locations can be amended. However, the locator cannot amend to interfere with prior rights of other locators. Frequently the rake of the ore shoot is controlled by structural conditions such as vein intersections.

Figure 8 shows the usual way of staking out a claim, however, figures 10 and 11 show some valid claim locations for veins with curved apexes. In figure 11 the question arises as to whether the hatched portion of the claim is valid or not. This question has apparently not been settled by the Supreme Court of the United States or the State of Montana. Strictly interpreting the U.S. statute, it would appear invalid; however, some state courts have held this shaded portion as a valid part of the claim (Van Nuys, 1953, p. 44). Of course, extralateral rights would not exist on the strike of the vein beyond where it passed the side lines. If the ground is still open so that the locator will not interfere with another's rights, then he should amend his location to conform to the Federal statute.

The dimensions given in the Code are maximum dimensions of the claim. The end and side lines can be any length up to the maximum allowed. On dimensioning a claim, it is the apex or outcrop of the vein that governs. The dimensions along the vein are 1,500 feet and the width measured at right angles to the vein cannot be over 600 feet, 300 feet on each side of the vein. Therefore, it is possible

35. Title 43, C.F.R. Sec. 185.10

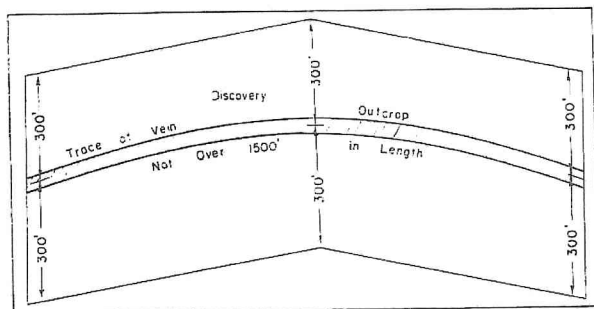


FIGURE 10.—Sketch of claim location for veins with curved apexes. End lines must be parallel, but side lines do not necessarily have to be straight.

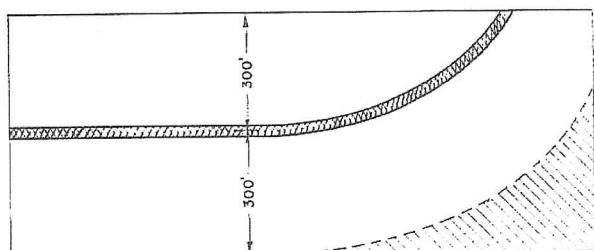


FIGURE 11.—Sketch of claim location showing excess area of claim (hatched) when vein strike turns within claim. Validity of this area is questioned.

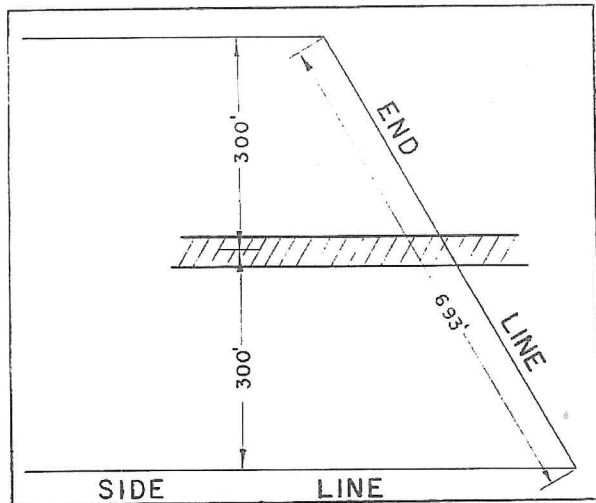


FIGURE 12.—Sketch showing length relationship of end line to legal width of claim.

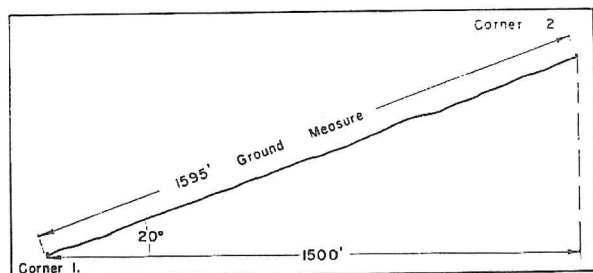


FIGURE 13.—Sketch showing relationship of slope distance to horizontal distance.

in some cases to have the end lines greater than 600 feet in length as shown in figure 12.

Dimensions of a claim are given in horizontal distances. Therefore, when measuring a distance up a steep hillside, a side line may actually measure more than 1,500 feet in length. (See figure 13.) Figure 14 is a chart for estimating slope distances necessary to achieve the proper horizontal distances.

If a claim is too large, the location is valid if staked in good faith, but the excess is invalid and therefore open to location by others.^{36,37} However, if the excess is so great as to show evidence of bad faith or ignorance of the law, then the entire claim may be void.³⁸

A common practice with claim-stakers is to overlap another's claim with end lines, side lines, or even corners. In a Montana case where a junior claimant overlapped a senior claimant, and the senior claimant, although having a valid discovery, did not complete the discovery work in the time allotted, the overlapped section went to the junior locator—it did not revert to the public domain.³⁹ This view was also taken in the case of Del Monte Mining and Milling Co. vs. Last Chance Mining and Milling Co.,⁴⁰ when the court stated:

“Any of the lines of a junior lode location of a mining claim may be laid within, upon, or across the surface of a valid senior location for the purpose of defining for, or securing to, such junior location underground or extralateral rights not in conflict with any rights of the senior location.”

However, if the overlap goes over a valid existing mining location, and the discovery work of the junior exists in the overlapped portion, then the junior's location is entirely void, because a valid claim removes the ground from prospecting by others.^{41,42} If the senior locator loses his title in this case, the ground reverts to the public domain and not to the junior locator.

PERFORMING DISCOVERY WORK

After posting the Notice of Location the locator of a claim has 60 days in which to do the discovery work and expose his “discovery.” This work shall consist of a discovery shaft, cut, or tunnel totaling at least 150 cubic feet in volume. If a shaft, it must be deep enough to expose the vein, and if the vein

36. *Liggett v Stewart*, 5 Mont. 107
 37. *Steele v Preble*, 77 P2 418 (Oregon 1938)
 38. *Madeira v Sonoma Manufacturing Company*, 130 P. 175
 39. *Montana Gold & Iron Co. v Baggoley*, 34 Mont. 464,465
 40. *Del Monte Mining & Milling Co. v Last Chance Mining & Milling Co.*, 171 U.S. 55, 43 Fed. 72
 41. *Swanson v Sears*, 224, U.S. 180
 42. *Lehman v Sutter*, 60 Mont. 97; 198 P. 1100

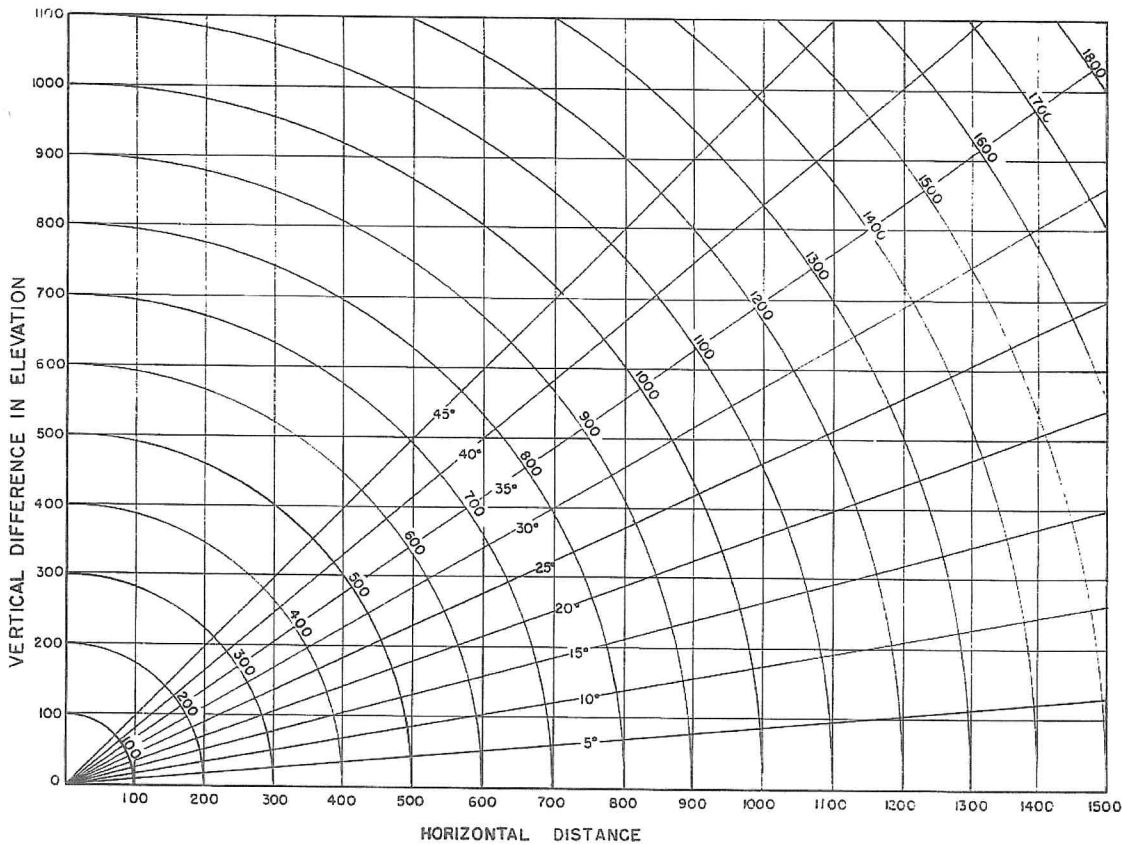


FIGURE 14.—Chart for calculating slope distances for given horizontal distances. Example: The angle of the slope is 20° , and it is desired to measure out a claim 1500 ft. long. What is the slope distance? On the horizontal distance line at 1500 ft., follow up vertically, until this line intersects the 20° slope line. The slope distance then measures approximately 1590 feet.

is exposed at a depth less than 10 feet, the cubical contents (150 cu. ft.) can be made up by horizontal extension of such excavation, or by excavation done elsewhere on the claim; *but in every case, at least 75 cubic feet of excavation shall be made at the point of discovery.*

The Montana code is particularly clear on this point, and will be found in appendix A, Title 50, Section 701-3.

RECORD OF CERTIFICATE OF LOCATION

The next step in the procedure necessary to hold a valid mining claim is the filing of a certificate of location. Montana statute covers this in detail⁴³ as follows:

“Within sixty days after posting the notice of location, and for the purpose of constituting constructive notice of the location, the locator shall record his location in the office of the county clerk of the county in which such mining claim is situated. Such record shall consist of a certificate of location containing:

1. The name of the lode or claim.
2. The name of the locator or locators, if there be more than one.
3. The date of location, and such description of said claim, with reference to some natural object or permanent monument, as will identify the claim.
4. In the case of a lode claim, the direction and distance, claimed along the course of the vein each way from the discovery shaft, cut, or tunnel, with the width claimed on each side of the center of the vein.
5. In the case of a placer claim, the dimensions or area of the claim, and the location thereon on the discovery shaft, cut, or tunnel.
6. The locator and claimant, at his option, may also set forth, in such certificate of location, a description of the discovery work, the corner monuments, and the markings thereon, and any other facts showing a compliance with the provisions of this law. Such certificate of location must be verified, before some officer authorized

⁴³ R.C.M. 1947. Sec. 50-702

to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified, or a certified copy thereof, is prima facie evidence of all facts properly recited therein."

It is necessary to have the Certificate of Location verified before a notary before it is filed in the office of the county clerk and recorder, as the Supreme Court of Montana has held that a declaratory statement that does not contain the required affidavit is void.^{44,45}

ANNUAL ASSESSMENT WORK

Performing the necessary work of discovery, claim staking, and filing the verified Certificate of Location entitles the claimant or locator to hold the claim until noon of the first day of September succeeding the date of location, but for each period of one year thereafter at least \$100.00 worth of work and/or improvements must be done on the claim. This work must be done on a claim whether it contains one, twenty, or one hundred sixty acres. The size of the claim is immaterial.

The Code of Federal Regulations⁴⁶ on annual assessment work states:

"In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that \$10.00 shall be expended annually in labor or improvements for each 100 feet in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than \$100.00 worth of labor must be performed or improvements made thereon annually. Under the provisions of the Act of January 22, 1880, the first annual expenditure became due and must have been performed during the calendar year succeeding that in which the location was made." By the Act of August 23, 1958, 72 Stat. 829, it was provided that the assessment period should thereafter commence at 12 o'clock meridian on the first day of September succeeding the date of the location of the claim. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim. Cornering locations are held not to be contiguous.

An example of this would be as follows: If a claim is located on June 10, 1959, the first annual work or assessment work must be performed between noon September 1, 1959 and noon Septem-

ber 1, 1960. If a claim is located on September 10, 1959, the first annual work must be performed during the period from noon September 1, 1960 and noon September 1, 1961.

Various courts have ruled that work done prior to discovery cannot be counted as assessment work, nor can work which has been done on an invalid claim be counted towards assessment work.^{47,48} Excess work done in any one year cannot be counted toward another assessment year. To insure a valid claim, annual assessment work must be done every year until the claim is patented.

Usually the measure of labor for assessment work on a claim is what it would cost the locator to procure the same labor and materials on the open market.⁴⁹ A party cannot put an arbitrary price on his own labor.⁵⁰ Any work done for the purpose of discovering minerals is considered as improvements within the spirit of the statute.⁵¹ This may include sinking a shaft, driving a level or incline, installing machinery for mining purposes, building roads, and cost of ordinary mining supplies including such items as powder, fuse and drill steel. A watchman's service may count. The expense of taking timber, lumber, buckets, rope, and tools to the mine and carrying them away again after slight use, if any, will not count as annual labor.⁵²

Annual Labor on a Group of Claims.—When a number of claims are held in common, and are contiguous, the total expenditure necessary to hold all the claims in the group may be made on any one claim.⁵³ The work, however, must benefit the entire group. Failure to perform the annual work will subject the claim or claims to location by another unless the original locator resumes work before another party enters or locates the same. The meaning of "contiguous" is not easily defined. Usually two claims are considered contiguous if a side line or end line, or even a part of a side line or end line, are common to both claims. Locations with only one corner in common are not contiguous.⁵⁴ The United States Codes do not specifically require that the claims be contiguous even though the Code of Federal Regulations states it. The California Supreme Court has held that the claims do not have to be contiguous as long as the work benefits the entire group.⁵⁵ This ruling was based on the theory that work does not necessarily have to be done on the claim to improve it. Therefore, work done on one claim may benefit another claim in the same area even though they are not contiguous.

47. *Cole v Ralph*, 252 U.S. 286

48. *Van Nuys*, p. 56

49. *Penn v Oldhauber*, 24 Mont. 287, 61 P. 649

50. *Mattingly v Lewisohn*, 13 Mont. 508, 35 P. 111

51. *U.S. v Iron Silver M. Co.*, 24 Fed. 568

52. *Honaker v Martin*, 11 Mont. 91, 27 P. 397

53. Title 43, C.F.R. Sec. 185.16

54. Title 43, C.F.R. Sec. 185.16

55. *Altoona Q. M. Co. v Integral Q. M. Co.*, 114 Col. 100; 45 P. 1047

44. *O'Donnel v Glenn*, 8 Mont. 248; 19 P. 302

45. *Hickey v Anaconda C. M. Co.*, 33 Mont. 46, 62; 81 P. 806

46. Title 43, C.F.R. Sec. 185.16

The work does not necessarily have to be done on the claim, but assessment work must benefit the claim. Example: Building a road to an isolated lode claim or building a ditch to carry water to a placer claim would benefit the claim, although the work was not necessarily done within the claim area.

Geological Surveys and Other Work.—Public Law 85-876 passed on September 2, 1958 includes some works, although formerly not considered as assessment work, can now be counted towards annual labor. This includes geological, geochemical, and geophysical surveys.

“That the term ‘labor’ as used in the third sentence of section 2324 of the Revised Statutes (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 thereof, (c) the basic findings therefrom, and (d) the name, address, and professional background of the person or persons conducting the work. Such surveys, however, 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, and each such survey shall be nonrepetitive of any previous survey on the same claim.

Sec. 2 As used in this 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.”

From section 2a, above, it would seem that the cost of coredrilling to obtain geological information and its interpretation might be construed as annual labor.

Affidavit of Annual Labor.—Montana law does not require a claimant to make an affidavit pertaining to the annual labor or work performed,

but it states that the owner of the claim (either lode or placer) who performs, or causes to be performed, the annual work or improvement in order to prevent forfeiture of the same, may within twenty days after the due date for annual assessment work to be done, file with the county clerk where the claim is located an affidavit of the work performed. This affidavit is accepted by the courts as prima facie evidence that the work has been performed.⁵⁶

Other Considerations.—There is no limit to the number of claims that a person may hold under Montana law; however, a claimant may be limited by practical considerations. To keep indefeasible title to a mining claim, it is necessary that \$100.00 worth of assessment work be done on each claim every year. In case of a group of contiguous claims, the annual work for all of the claims may be performed, if the work tends to develop all of the claims, on any one of the claims in the groups, but the amount performed on this claim must equal \$100.00 times the total number of claims in the contiguous groups to be effective.

By the mining laws of Montana and the United States, it is not unlawful to locate a mining claim with intent to transfer or lease the claim immediately to another person or corporation.⁵⁷

PLACER CLAIMS

A placer claim may be located on mineral land containing mineral deposits in a loose state, that is not in place in an enclosing rock-type structure. Lindley⁵⁸ states, “If a discovered deposit satisfies the law as to its mineral character, and it is not found in veins of quartz or other rock in place, it may be appropriated under the laws applicable to placers.” He further states that the following nonmetallic minerals have been located as placers.⁵⁹ Alum, asphaltum, borax, diamonds, guano, gypsum, kaolin (china clay), marble, mica, onyx, soda, carbonate and nitrate, slate (for roofing purposes), amber, and building stone. Perhaps the Land Department has clarified this problem as to what is considered as placer by a decision when it stated:⁶⁰

“Neither the width of the deposit nor its sedimentary origin is determinative of whether a mining claim is of placer or lode character. If it is a vein or lode of rock in place bearing valuable minerals, it is a lode; if of some other form of valuable mineral deposit, such as scattered particles of gold found in the softer cover of the earth, it is a placer deposit.

“Gypsum rock in place lying between two persistent beds of limestone, which in the circumstances are taken as the hanging and footwalls of the gypsum deposit, is to be located as a lode rather than a placer claim.”

56. R.C.M. 1947, Sec. 50-704

57. *Mason v U. S.*, 206 U. S. 545, 1923

58. *II Lindley*, Sec. 419

59. *Lindle*, Sec. 420

60. *U. S. Gypsum Co.*, 60 I. D. 24

However, limestone is most generally located as a placer claim when it is to be used as a metallurgical flux.⁶¹ Usually ordinary clay and limestone are not termed mineral in character and hence not susceptible to entry under the U. S. Mining Laws. Abandoned tailings have been located as placer deposits. Public Law 167 has definitely removed common varieties of sand, stone, gravel, pumice, pumicite, or cinders from the provisions of the mining law and makes them subject to sale under the Materials Disposal Act of 1957.⁶² Therefore, they cannot be used to give validity to any mining claim location, either placer or lode.

The Building Stone Placer Act of August 4, 1892⁶³ extended the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said placer mining laws. But in one case⁶⁴ deposits of limestone, sandstone, marble, or slate (when used other than as a valuable building stone) are considered in place and located under the laws pertaining to lode locations. Public Law 167 may upset this decision because it states common varieties of stone cannot be located. It will probably be necessary for the courts to define what rock types fit into common varieties of stone.

A placer claim is located in the same manner as a lode claim, but two important differences exist between placer and lode claims. A valid placer claim may consist of as many as 160 acres, and, except in unusual circumstances, the boundaries of the claim must conform to legal subdivisions of the land. (See figures 3 and 4.)

The area in one placer location may contain as high as 160 acres, but to do this there must be eight locators forming an association. Only twenty acres per locator is allowed. The following table may be useful when locating placer claims.

No. of persons necessary in association	Maximum area of placer claim location
1	20 acres
2	40 acres
3	60 acres
4	80 acres
5	100 acres
6	120 acres
7	140 acres
8	160 acres

If the claim contains any fraction over the maximum area allowed per number of locators, then another locator must be included. For example, if 50 acres are to be included in one claim, three

locators are necessary, or two claims must be located. A corporation is considered as an individual⁶⁵ and can only locate 20 acres as one claim.

Of what importance is this association? The most important factor is that only one discovery is required per claim whether it contains 20 acres or 160 acres. Another important factor is that only \$100.00 worth of assessment work must be done on a claim per year independent of the acreage.⁶⁶ The Department of the Interior has ruled that when a placer claim is patented, the Department can require that each 10-acre tract of the claim be mineral in character.⁶⁷

A placer claim must conform to the legal subdivision of land if the area has been surveyed. The Code of Federal Regulations⁶⁸ is quoted:

“(a) All placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

“(b) Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

“(c) 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.

“(d) Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L. D. 250.)”

61. Lindley, Sec. 421, P. 990

62. Title 30, U.S.C. Sec. 601, Amended 1955

63. Title 43, C.F.R. Sec. 185.30

64. Webb v Amer. Asphaltum M. Co., 157 Fed. 203; Fuller v Mt. Sculpture, P2 342

65. II Lindley, Sec. 449

66. Title 43, C.F.R. Sec. 185.24, 185.25, 185.29

67. Central Pac. Ry. Co. v Mullin, 52 L.D. 573 (1929)

68. Title 43, C.F.R. Sec. 185.28

TUNNEL CLAIMS

The laws of Montana do not touch upon requirements regarding the location of a tunnel claim, so the following is condensed from the Code of Federal Regulations.⁶⁹ A tunnel site location is not strictly considered a mining claim location. However, a tunnel location gives a possessory right to 1,500 feet of all unknown veins which are discovered, cut, or intersected in the line of the tunnel. The length of a tunnel claim is 3,000 feet and all undiscovered veins are protected in this 3,000 feet from the face from subsequent locators. (See figure 15.)

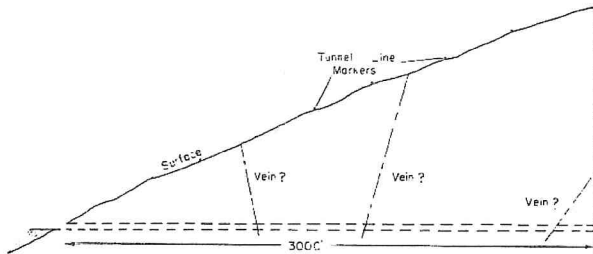


FIGURE 15.—Sectional view of a tunnel claim.

To locate a tunnel claim, it is necessary to:

1. Post a notice of location at the entrance of tunnel. The notice shall contain:
 - a. The names of the parties or company
 - b. The actual or proposed course or direction
 - c. The height and width of the tunnel
 - d. The course and distance from the face to some natural and permanent object in the vicinity.
2. After the notice is posted, the claimant shall establish the course of the tunnel by stakes or monuments placed at proper intervals to the terminus of the 3,000-foot tunnel.

The purpose of this act is to give subsequent locators notice of the tunnel location and prohibit prospecting or locating of any previously unknown veins while work is being diligently pursued in the tunnel.

3. A copy of the tunnel location notice must be filed with the county clerk and recorder. To this notice must be attached a sworn statement or declaration of the owners, claimants, or prospectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves or predecessors in interest in prosecuting the work; the extent of the work performed, and that it is their intention to diligently prosecute work on the tunnel to discover veins. The Federal Code states:⁷⁰

“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 lines of such tunnel.”

Actual work by the tunnel locator is good assessment work for his surface claim if the work develops the claim.

The question frequently arises on a tunnel claim whether the ground is reserved for 750 feet or 1,500 feet on each side of the tunnel line. According to Judge Lindley's interpretation of Cases before the Montana Supreme Court:⁷¹

“The Court supports the doctrine that a perfected tunnel-site practically withdraws the surface to the extent of fifteen-hundred feet on each side of the line of the tunnel, and that the withdrawal remains in force until it is either demonstrated that a given lode will not be cut in the tunnel or the tunnel site is abandoned.”⁷² (See fig. 16.)

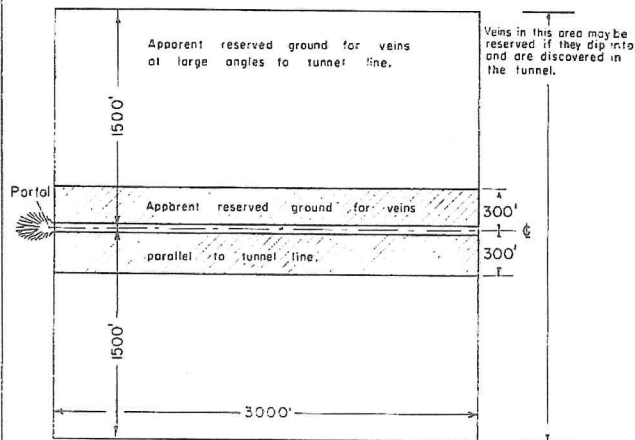


FIGURE 16.—Plan view of tunnel claim showing reserved areas.

After a vein has been cut in a tunnel the question arises as to how the lode claim is then located. The U. S. Supreme Court has sanctioned two different ways.^{73,74}

The first method allows a subsurface location by posting a location notice at the entry of the tunnel stating the fact of a discovery, the distance to the discovery from the tunnel entrance, and recording a copy of the notice complying with state regulations:

The second method allows a surface location with the discovery point vertically over the discovery point in the tunnel. The question of extralateral rights of a location such as this is in doubt.

To insure extralateral rights it would be well to make a surface location in both cases on the apex of the vein.

A tunnel claim cannot be patented.

71. *Il Lindley*, Sec. 485

72. *Hope Mine Co. v Brown*, 7 Mont. 550, 11 Mont. 370

73. *Enterprise M. Co. v Rico-Aspen C. M. Co.*, 167 U.S. 108

74. *Campbell v Ellet*, 167 U.S. 116

69. Title 43, C.F.R. Secs. 185.21-185.28

70. Title 30, U.S.C. Sec. 27

MILLSITES

Millsite claims may be located and recorded in the same manner as other claims under Montana law, except that no discovery work is necessary. If a millsite is appurtenant to a mining claim, the certificate of location of such millsite claim shall describe in sufficient detail the mining claim to which it is appurtenant.⁷⁵

A millsite is a tract of land not exceeding five acres. It may be contiguous to the side line of one's lode location, but *not* to an end line, and, of course it must be non-mineral in character. The purpose of a millsite is to provide an auxiliary area to the working of a mine and may be used to carry out mining servies, such as a surface plant and mill.⁷⁶

A millsite may be patented under provisions of the United States Codes.⁷⁷ A millsite may be located by an owner of a mill or reduction plant who does not own a mine or lode claim in connection with the reduction plant. This would be a custom millsite, however in such a case, the mill-site must be used and mere intention to build a mill or reduction work is insufficient to hold a valid millsite claim.⁷⁸

AMENDED LOCATION

The law allows a locator to amend his location and make any changes in the boundaries of the claim which do not involve a change in the point of discovery as evidenced by the discovery shaft or cut.⁷⁹ Evidence of an amended location is made by posting an amended notice of location upon the ground and filing an amended certification of location conforming to the requirements of an original certificate of location. It is necessary to re-stake the claim, and it would be wise to mark the corners as amended corners.

The usual reasons for amending mining claims are:⁸⁰

1. To cure a defect in the recorded certificate of location
2. To cure defects in the original location notice
3. To swing boundaries so that all of the vein can be included
4. To take in part of an overlapping claim that has been abandoned.

An amended location cannot interfere with the existing rights of others at the time of such amendment.⁸¹ After an original location has been made it may be advantageous to swing the claim in some other direction. This cannot be done to injure rights of others who have acquired neighbor-

ing claims after the original discovery, but before the amendment. However, if no one's rights are injured by the amended location then the amending locator's rights date back to the location of the original claim.⁸²

A claim cannot be amended, or relocated, to avoid annual assessment work, i. e. to have a valid amendment the claim must be in good standing in regard to assessment work.⁸³

RELOCATION

A claim which has been abandoned or forfeited may be relocated by complying with all of the requirements necessary to locate an original claim. The original discovery shaft, cut, or tunnel may be used but in such shaft or other workings the locator must perform the same discovery work as is required in the case of an original location.⁸⁴ The common practice of some locators merely to post a notice of location on an abandoned shaft or cut, and not comply with the rest of the necessary requirements is insufficient by Montana law. A new discovery is not essential, but the discovery work must be done.⁸⁵

A common practice among some locators is to relocate mining claims in lieu of assesment work. The Montana Code⁸⁶ condemns this practice by stating: "a locator or claimant may at anytime relocate his own claim for any purpose, *except to avoid the performance of annual labor thereon,* * **"

The rights of a relocater of any abandoned or forfeited mining claim, shall date from the posting of his notice of location and while the relocater is duly performing the acts required by law to perfect and hold his location, his rights shall not be affected by any attempt to re-enter or rework the claim by the former claimant.⁸⁷

The main differences between a relocation and an amended location are:

1. On a relocation the discovery work must be done while on an amended location the discovery work does not have to be redone.
2. If rights of other people have not been affected by the amended location, the date of location reverts to the original discovery. In some cases this may be advantageous.

Montana law treats a person relocating his own claim as merely amending because the claimant may treat the ground contained in both the relocated and original claim as dating to the original discovery.⁸⁸ However, when amending a location in Montana, one must be careful to avoid

75. R.C.M. 1947, Sec. 50-705

76. Hartman v Smith, 7 Mont. 19; 14 P. 648

77. Title 30, U.S.C. Sec. 42

78. Alta Mill Site, 8 L.D. 195

79. R.C.M. 1947, Sec. 50-708

80. R.C.M. 1947, Sec. 50-715

81. R.C.M. 1947, Sec. 50-711

82. R.C.M. 1947, Sec. 50-715

83. R.C.M. 1947, Sec. 50-709

84. R.C.M. 1947, Sec. 50-706

85. II Lindley, Sec. 403

86. R.C.M. 1947, Sec. 50-709

87. R.C.M. 1947, Sec. 50-707

88. R.C.M. 1947, Sec. 50-710

the term relocation, which has a different meaning in Federal law. In Federal law a relocation and an amended location are not considered the same, a relocation being a new location over an old location either by a third party or by the original location after rights of a third party have intervened.

FORFEITURE AND ABANDONMENT

In order to hold a mining claim in Montana, it is necessary to substantially comply with the law in all respects. Montana law gives definite orderly steps to be taken as well as definite time limits within which these steps must be accomplished. If any one of these requirements as to sufficiency or as to time are not satisfied, then the locator or claimant may lose or forfeit his rights to the claim if another party has entered upon his claim. Although a claim may be subject to forfeiture, it is not forfeited until another party has entered the claim.⁸⁹ Therefore if a locator does not comply with the law in regard to the time limitations, but who at some later date, possibly several months thereafter, does complete the necessary work before rights of any other party intervened, he still remains the rightful owner of the claim. This is clarified in the Federal Codes⁹⁰ as follows:

"Upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives have not resumed work upon the claim after failure and before such location."

It is believed this statement of the Federal law applies to all cases of forfeiture.⁹¹

Montana law states that defects in the posted notice of location or recorded certificate shall not affect the validity of the location to one who is aware of the defects; he cannot relocate the claim solely because of these defects.^{92,93}

Abandonment is a question of intent, and it is a voluntary act on the part of a locator or locators relinquishing his, her, or their rights to the claim. The intent is deliberate to desert the claim. Therefore, other people can enter and, by proper relocation, work the claim peacefully. An abandoned claim can be relocated immediately.

Proving abandonment may be difficult in certain cases because proof of either abandonment or forfeiture rests with the party asserting it.⁹⁴ Usually it is up to the judge or jury to decide if an abandonment has taken place. As a common rule,

however, permission given to others to relocate operates as an abandonment. An abandonment may also be effected by an instrument of relinquishment filed in the land office.⁹⁵

PATENTING A MINING CLAIM

LODE CLAIM

By the laws of Montana and the United States, the owner of a valid mining claim has the right to exclusive possession of said claim for mining purposes. "Valid" means that the claim fulfills all the requirements of the law. Recent legislation has somewhat restricted the claim owner's surface rights because he can use only as much of the surface as is necessary for his mining operations. (Some exceptions to this statement will be discussed in Chapter 10 under Public Law 167.) He cannot sell or dispose of any timber on his claim, except what he needs for his mining operations. He cannot use the surface for any purpose except those incident to his mining operations, i. e., he cannot build a summer home or conduct some type of business on the claim.

The Federal law permits a valid mining claim to be patented, which puts it in the status of other real estate. Annual assessment work need no longer be done, but the claim is then subject to taxation. An unpatented mining claim is not subject to tax, except as to the improvements thereon. Patenting a mining claim is optional at the discretion of the claim holder. When a patent is obtained, the owner has full surface rights subject, of course, to the police power of the State over all real estate.

The procedure necessary to patent a claim (lode, placer, and mill site; a tunnel claim cannot be patented) is as follows:

1. Five hundred dollars worth of work must be expended on the claim in developing the mineral resources. This work includes discovery and assessment work, but \$500.00 worth must be clearly proven to the government. In a group of claims, the work is proportioned equally over all the claims in a group, but clear evidence of a discovery must be shown for every claim. (Van Nuys, 1953, p. 88.)
2. The claim must be surveyed, except in the case of a placer claim that conforms to legal subdivision of land in a surveyed area. Only an authorized United States mineral surveyor can make the survey. Prior to the survey, the claimant should make his intentions known by writing to the State Supervisor, Bureau of Land Management, at Billings, Montana, who will send the necessary instructions.
3. Formal notice of the application for patent must be given by posting on the claim in a conspicuous place where it can be readily seen by

89. R.C.M. 1947, Sec. 50-713

90. Title 30, U.S.C. Sec. 28

91. II Lindley, Sec. 645

92. R.C.M. 1947, 60 Mont. 97; 198 P. 1100

93. Lehmen v. Sutter, 60 Mont. 97; 198 P. 1100

94. II Lindley, Sec. 644

95. II Lindley, Sec. 644

any interested party, a copy of the plat of survey and notice of application for patent.

4. The application for patent (proper in all respects) must be filed in duplicate in the land office supported by:

- a. Two copies of the field notes and two copies of the plat of survey
- b. Proof of posting the plat and notice on the claim
- c. Abstract of title, certificate of title, or proof of possessory right
- d. Proof of citizenship
- e. Payment of filing fee
- f. Publishers agreement
- g. Notice for publication
- h. Notice for recording in land office.

Note: The application must show that he has the right of possession to the claim and right to a patent. A full description of the vein or lode, where and what amount of ore has been extracted, and the precise place where the vein or lode is exposed must be included, and all workings should be clearly described. If the mining claim was located after August 1, 1946, applicant must state whether or not he had any direct or indirect part in the development of the atomic bomb project. The management of the land office makes the publication notice, but the cost is borne by the one who applies for the patent. The publication notice must appear at least once a week for a period of 60 days, i.e., it must appear 10 times in the newspaper published nearest to the claim.

5. Final proceedings.

- a. Proof of publication must be made.
- b. Proof of continuous posting of plat and notice on claim during full 60-day period of publication must be made.
- c. Statement that all fees and charges including purchase price of \$5.00 per acre (for lode claim and mill site, and \$2.50 for placer) or fractional part thereof have been paid must be filed.
- d. Diligence must be exercised in pursuing the application.

Note: The proof necessary varies with each one of the items listed, and the land office requirements should be obtained so that they may be fully satisfied.

MILLSITE

A millsite location may not be larger than five acres per claim, it must be non-mineral in character, and it must not be contiguous to a vein or lode claim. It has been held that a millsite may contact a side line of a lode claim, but it must be shown

that the vein or lode does not extend into it. A millsite patent may be applied for at the same time that a patent for the appurtenant lode claim is made, or it may be applied for at a later date. The \$500.00 worth of improvements on the claim may not have to be done, but in lieu of this, use and occupancy of the land for mining and milling purposes must be shown.⁹⁶

PLACER CLAIM

Surveying.—If the placer ground is on surveyed ground and conforms to legal subdivision, no further survey or plat will be required, but the locator must be able to describe the ground fully in terms of legal subdivision. If the claim does not conform to legal subdivision or it is located in unsurveyed territory, then application for a survey must be made in the same way as the application for survey in a lode claim is made.

The land department has ruled that although a placer claim up to maximum size needs only one discovery, the department, in patent proceedings, can require that each 10-acre block composing the claim must be mineral in character.^{97,98}

The owner of an unpatented placer claim has no legal right to a vein within his claim boundaries unless he locates a lode claim over the vein.⁹⁹ He can, however, keep others from locating it, because any prospective locator of the lode must be able to make such location peaceably. After patenting a placer claim, the patentee has title to all undiscovered lodes within his claim without the necessity of locating lode claims over them, but he will not have any extralateral rights unless he does locate the veins under lode claims.

Title 30, U.S.C., Sec. 37, gives the necessary directions for patenting known lodes in a placer location. It States:

“Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to the provisions of sections 21-24, 26-30, 33-48, 50-52, and 71-71 of this title, including such vein or lode, upon the payment of \$5.00 per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of \$2.50 per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section 23 of this title, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an

96. Cir. 1956 Dept. of Int.

97. Title 43, C.F.R. Sec. 185.26, 185.27

98. *Central Pac. Ry. Co. v Mullins*, 52 L. D. 578 (1929)

99. II Lindley, Sec. 619

application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof."

ADVERSE CLAIM

An adverse claim¹⁰⁰ to a patent application must be filed within the 60-day period of publication.¹⁰¹ The adverse claim must be filed in the land office setting forth the nature and extent of the conflict, the interest of the adverse claimant, and an abstract of title prepared by an abstractor approved by the Bureau of Land Management. Unless the area in conflict is described by legal subdivision, a plat showing the extent and boundaries of the conflict must be filed.

Suit must be commenced in a court of competent jurisdiction to determine the right of possession within 30 days after the date of filing of the adverse claim, and it must be pursued diligently to final judgment. All land office proceedings will be stayed until final judgment is reached or the adverse claim waived; and the Bureau of Land Management requires a copy of the judgment certified by the clerk of court or the clerk's certificate that suit has been dismissed or withdrawn, is required as proof of termination of suit.¹⁰²

COST

The question of "How much does it cost to patent a claim?" frequently arises. No exact amount can be stated, but the following items should be considered when arriving at costs.

1. At least \$500.00 worth of work must be done on the claim before it can be patented.
2. A filing fee of \$10.00 must be paid by the applicant at the time of filing and a purchase price of \$5.00 per acre or fraction thereof on lode and mill sites or \$2.50 per acre or fraction thereof on placer claims must be paid before a patent is issued.
3. The cost of obtaining proof of ownership or abstract of title. This may range from a small sum to several hundred dollars.
4. The cost of surveying, if necessary, depends on the time required and will undoubtedly cost at least \$250.00 per claim. If a large group is to be surveyed, then the cost per claim may be reduced.¹⁰³
5. The cost of newspaper publication varies greatly, but it would probably range from \$50.00 to \$100.00.

6. The cost for legal counsel to prepare patent application and other necessary legal papers would vary greatly, but may cost up to several hundred dollars.

7. Totaling all of these costs, including the \$500.00 necessary before a patent can be issued, one must figure from \$1,000.00 to \$2,000.00 or more per claim. In large groups, these costs per claim may be reduced considerably.

The length of time to obtain a U.S. Mineral Patent usually takes at least 12 months if there are no irregularities.¹⁰⁴

For more complete information on patenting a mining claim, one should write to the Bureau of Land Management, 1249 N. 29th Street, Billings, Montana.

EXTRALATERAL RIGHTS

The two distinguishing characteristics of United States mining law are: first, that discovery is the basis for acquiring title, and, secondly, the apex or extralateral rights feature of the law. Extralateral rights means that the owner of the apex, or topmost part of a vein may follow the vein down-dip to any depth even though the vein passes vertically underneath the surface of another person's property. To maintain this right, certain conditions must be observed.

Extralateral rights have been criticized by many people. This is probably because the principle has not been fully understood, and, furthermore there has been some bitter litigation between mine owners with resultant unfavorable publicity. Although opponents of the system argue that the courts in the early days of the West were flooded with extralateral rights litigation, actually investigators have shown that but a small number of mining litigation cases have been concerned with the apex law. Mr. Charles H. Shamel, the author of *Mining, Mineral, and Geological Law* examined the syllabuses of all the cases reported in Morrison's *Mining Reports* and found only 1.9 percent of the reported cases involved a question of extralateral rights (Colby, 1917, p. 311-312). However, the apex cases litigated were tremendously expensive to the litigants and often the issues were settled by a contest between expert witnesses. A good number of the apex litigation cases were brought in Butte, Montana.

As stated in the section on mining law history, the apex law is a unique feature of our mining law. Actually practices similar to this existed in certain areas of Germany and England before our western gold rush. In certain cases, mining grants in such countries as France and Spain gave a certain amount of extralateral rights although none of these rights in the various countries are or were in the exact form that our present law now exists. The forerunner of our present apex

100. Title 30, U.S.C. Sec. 30

101. Bureau of Land Management Circular on Mineral Patents, 1956

102. Information Service, Bureau of Land Management, 1956

103. Information Service, Bureau of Land Management, 1957

104. Information Service, Bureau of Land Management, May 9, 1957

law was adopted as a local rule on June 6, 1851 in the Sanders Ledge Mining District in Nevada County, California. This rule stated "One hundred feet on the ledge with the dips and angles shall constitute a claim" (Colby, 1917, p. 444). Here is a grant of the right expressed in simple form. From here, this idea spread throughout the West and was formulated and enforced in practically all mining districts. The climax or final rule was enacted on May 10, 1872 by Congress.

The writer has seen no better language dealing with discovery and the apex law than that expressed by Senator Wm. M. Stewart (Colby, 1917, p. 456-457) in advocating the passage of the lode law of 1866 before Congress:

"To extend the pre-emption system—applicable to agricultural lands—to mines is absurd and impossible. Nature does not deposit the precious metals in rectangular forms, descending between perpendicular lines into the earth, but in veins or lodes, varying from 1 foot to 300 feet in width, dipping from a perpendicular from one to eighty degrees, and coursing mountains and ravines at nearly every point of the compass. In exploring for vein mines, it is a vein or lode that is discovered, not a quarter section of land marked by surveyed boundaries. In working a vein more or less land is required, depending on its size, course, dip, and a great variety of other circumstances, not possible to provide for in passing general laws. Sometimes these veins are found in groups, within a few feet of each other and dipping into the earth at an angle of from thirty to ninety degrees, as at Freiberg, Saxony, or Austin, in Nevada. In such a case a person buying a single area in a rectangular form would have several mines at the surface and none at five hundred or a thousand feet in depth. With such a division of a mine, one owning it at the surface, another at a greater depth, neither would be justified in expending money in costly machinery, deep shafts and long tunnels for the working of the same. Nor will it do to sell the land in advance of discovery, for this would stop explorations, and practically limit our mining wealth to the mines already found; for no one would 'prospect' with much energy upon the land of another, and land speculators never find mines. The mineral lands must remain open and free to exploration and development; and while this policy is pursued our mineral resources are inexhaustible. There is room enough for every prospector who wishes to try his luck in hunting for new mines for a thousand years of exploration, and yet there will be plenty of mines undiscovered. It would be a national calamity to adopt any system that would close that region to the prospector.

"The question then presents itself, how shall the Government give title, so important for permanent prosperity, and avoid these intolerable evils? I answer, there is but one mode, and that

is to assure the title to those who now or hereafter may occupy according to local rules, suited to character of the mines and the circumstances of each mining district. In the increasing agitation of the subject by the introduction into Congress of bills which miners regard as a system of confiscation, and which tend to destroy all confidence in mining titles, we now need statutes which shall continue the system of free mining, and hold the mineral lands open to the exploration and occupation, subject to legislation by Congress and local rules; something which recognizes the obligation of the Government to respect private rights which have grown up under its tacit consent and approval and which shall be in harmony with the legislation of 1865, protecting possessory rights, irrespective of any paramount interest of the United States. The system will be in harmony with the rules of property as understood by a million men, with the legislation of nine States and Territories, with a course of judicial decisions extending over nearly a quarter of a century and finally ratified and confirmed by the Supreme Court of the United States; in harmony, in short, with justice and good policy."

No attempt will be made to treat the apex rights problem in detail; however, the following explanation may help clarify it so that one will be aware of it when locating a mining claim. The Act of May 10, 1872 still governs mining locations and in this act we can follow much of Senator William M. Stewart's reasoning. The act states:¹⁰⁵

"The locators of all mining locations made on any mineral vein, lode, or ledge situated on the public domain, their heirs and assigns, where no adverse claim existed on the 10th of May, 1872, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their location, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. Nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the

105. Title 30, U.S.C. Sec. 26

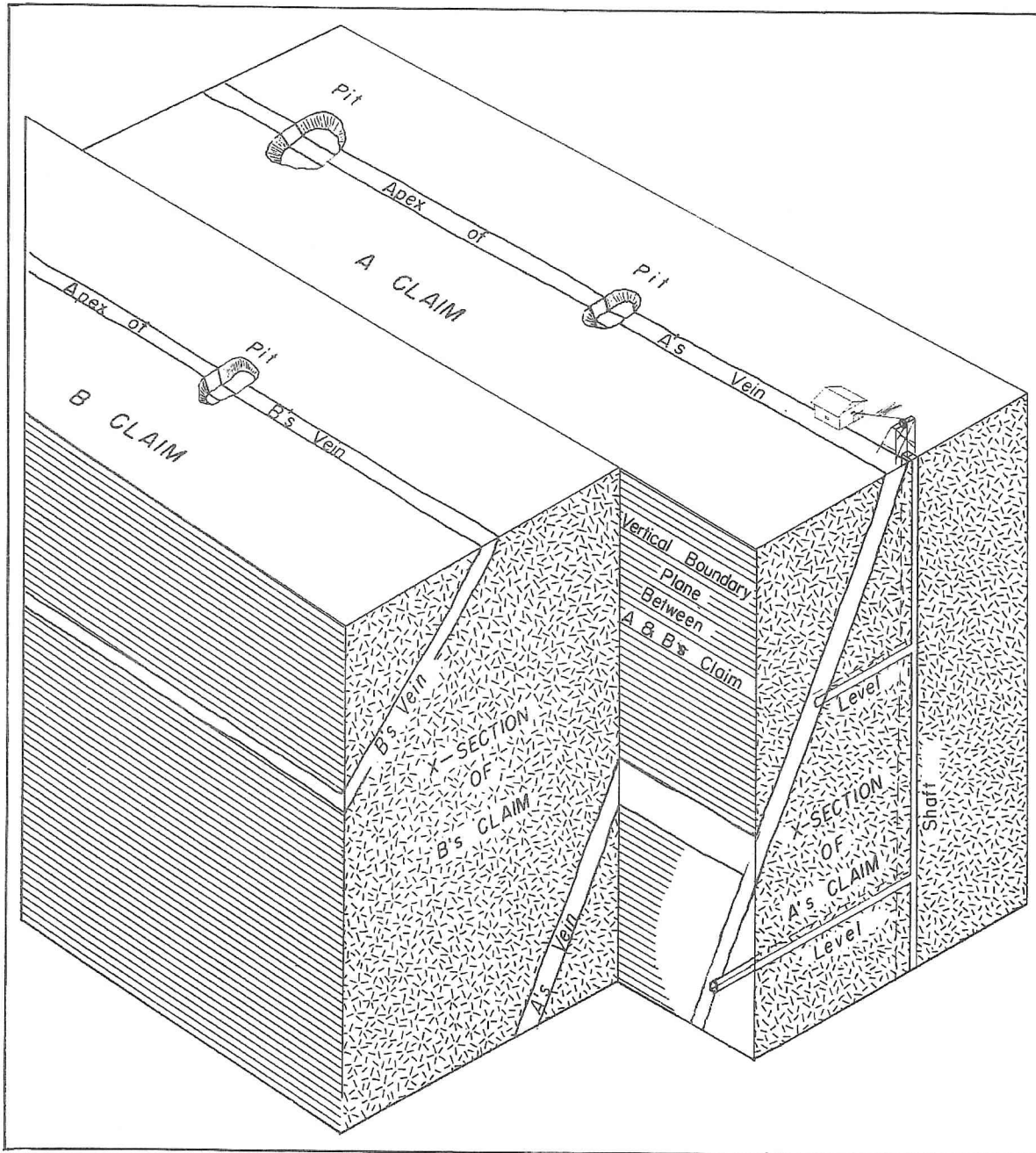


FIGURE 17—Sketch illustrating extralateral rights.

vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.”

Figure 17 shows the ideal apex rights to a vein. As long as the vein apex's in A's ground, he can follow it down under B's surface and furthermore, B has no right whatsoever to this vein.

According to the sketch, A is trespassing on B's ground with his lower X-cut; a question arises

whether he has this right, he probably does not.¹⁰⁶ He should obtain permission from B. He can also sink on the vein, then there is no question of trespass.

Figure 17 illustrates the whole idea behind the apex rights, that is, the discoverer gets title to the entire vein and not just the surface of the ground.

¹⁰⁶ II Lindley, Sec. 615, P. 1470

Figure 17 represents an ideal location. Unfortunately veins are not consistent, but are broken and displaced by faults. Therefore, an attempt will be made to discuss a few of the more common problems of claim location.

On all claims patented after May 10, 1872, the end lines must be parallel in order to possess extralateral rights. However, many mining claims were patented prior to May 10, 1872, under the old mining Act of 1866, which did not specify parallel end lines. With converging or diverging end lines on these old claims, some interesting problems in extralateral rights arise. Figures 18, 19, and 20 show three possibilities. It has been held in situations similar to figure 18 that extralateral rights exist in the vein within the converging end lines to the point of intersection. In the case of diverging end lines, however, the authorities are in disagreement. Some courts hold that extralateral rights do not exist. In a California case¹⁰⁷ where the end lines diverged the dip-right was given at right angles to the strike of the vein as shown by the dotted lines (fig. 19). Apparently Montana has adopted this same ruling in a similar case;¹⁰⁸ however, the circumstances were not the same as in the California case.

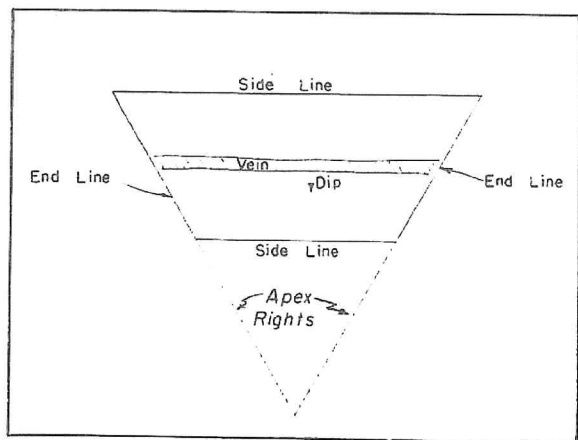


FIGURE 18.—Sketch showing claim location with converging end lines.

Perhaps there is no better interpretation of the apex law than that given by Judge Lindley.¹⁰⁹ In analysing his interpretations the following facts are evident:

1. Parallelism of the end lines is essential under the Act of 1872 for extralateral rights. However, where the vein crosses the side lines that converge in the direction of the dip extralateral rights may be allowed as in the case of converging end lines in claims patented prior to May 10, 1872. No extralateral rights are seldom allowed where the side lines diverge in the direction of the dip.

107. Argonaut M. Co. v Kennedy M. & M. Co., 131 Col. 15; 63 P. 148
 108. Hickey v A.C.M. Co., 33 Mont. 46, 65, 66; 81 P. 806
 109. II Lindley, Sec. 598

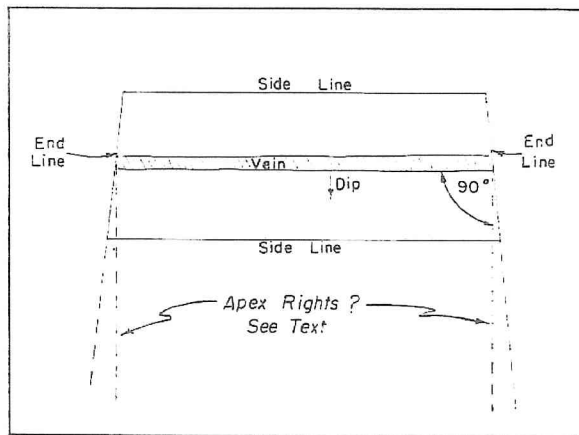


FIGURE 19.—Sketch showing claim location with diverging end lines.

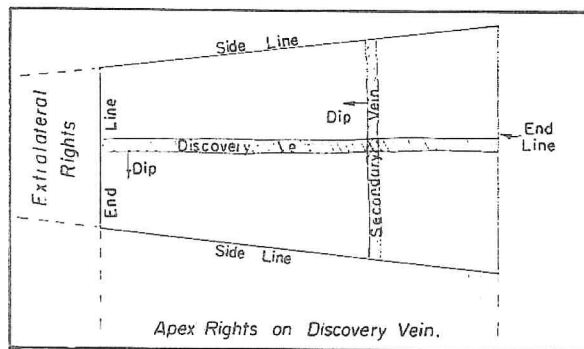


FIGURE 20.—Sketch showing extra lateral rights on a secondary vein in a claim location.

2. Some part of the apex of a vein must be included in the boundaries of a claim to enjoy extralateral rights (example as shown in fig. 21 where an apex of a wide vein is on two claims).
- If A is prior locator he enjoys extralateral rights. If B is prior he enjoys extralateral rights. The junior locator takes up after the senior locator's rights are exhausted. See figure 22 for complications on wide veins.

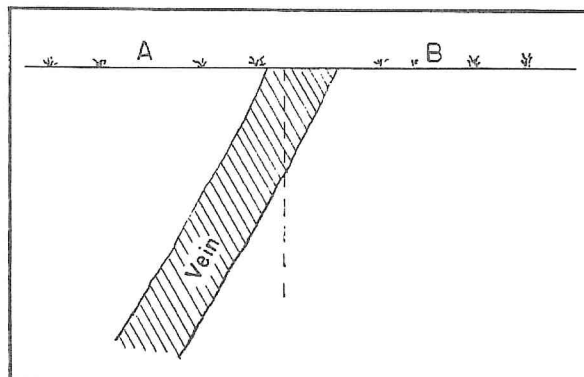


FIGURE 21.—Sketch showing vein apexing in area occupied by two different claims.

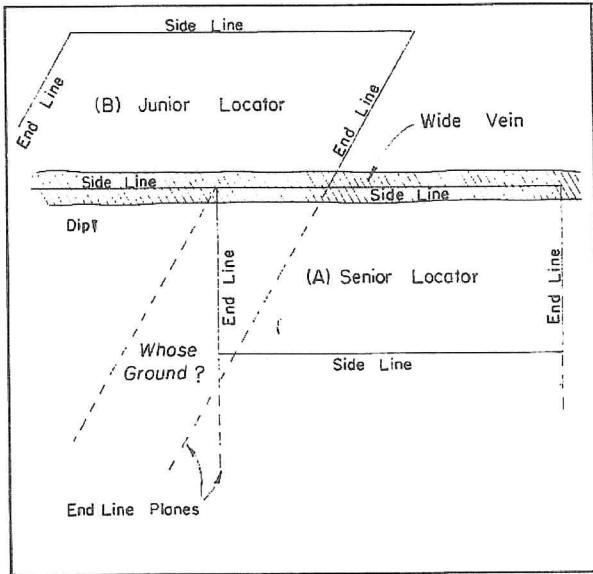


FIGURE 22.—Plan view illustrating problems of apex rights on a wide vein location.

3. When a vein crosses two parallel side lines, extralateral rights pertain to this vein as it would if the vein went through parallel end lines. The side lines are projected as end lines would be and extralateral rights pertain within these boundaries. The angle at which the vein crosses the side line is not pertinent.

4. Where a vein crosses an end line and a side line, the extralateral rights are determined with reference to the end line and a plane parallel to the end line constructed at the point where the vein crosses the side line (see fig. 23).

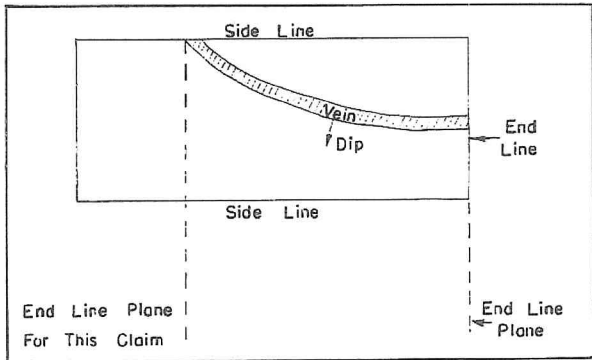


FIGURE 23.—Sketch showing end line plane for side line cutting vein.

5. Where a vein does not cross through any boundaries but apexes wholly within the claim, or if it only crosses one end line but no other boundary, the extralateral right is defined by the volume within the vein limited to planes drawn through the located end lines.

6. The extralateral rights pertain to all secondary veins discovered to apex on the property as defined by the surface limits. The rights are limited to the proceeding discussion, i.e., where vein passes through end lines or side lines.

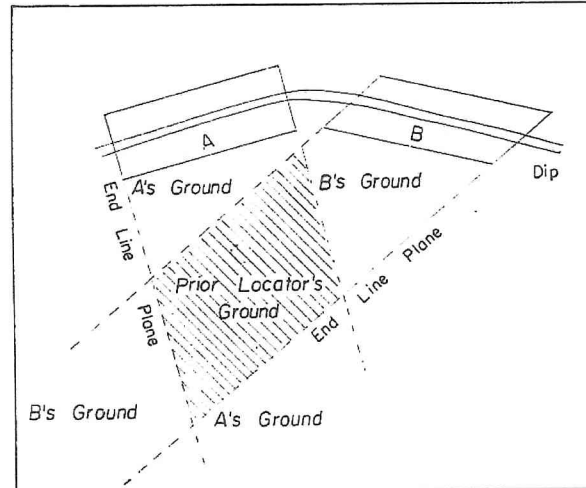


FIGURE 24.—Plan view illustrating apex rights of two claims located on the same vein.

7. Where the extralateral right of two locations conflict, each, having a part of the apex of senior locator takes the part in conflict. In fig. 24, "A" is senior locator and has prior rights on area in conflict over "B". The junior locator takes such remaining segment of the vein within his extralateral bounding planes after the prior grant has been satisfied. This also applies to crossing veins and split veins. Fig. 25 shows a split vein where prior locator takes intersection and remaining part of vein. Fig. 26 prior locator takes intersection but not continuance of two veins.

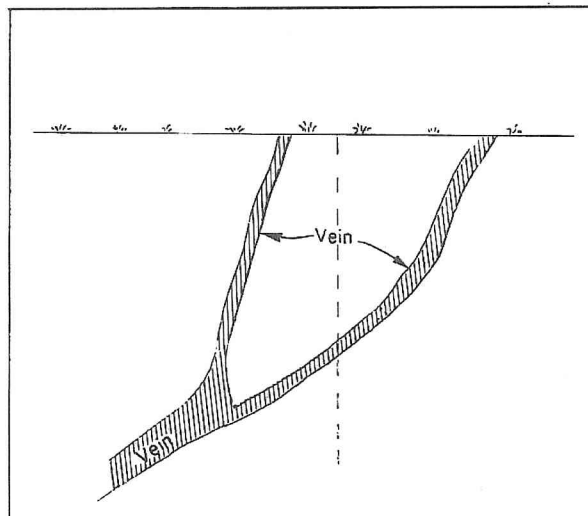


FIGURE 25.—Cross-sectional view of split vein merging to form one vein at depth.

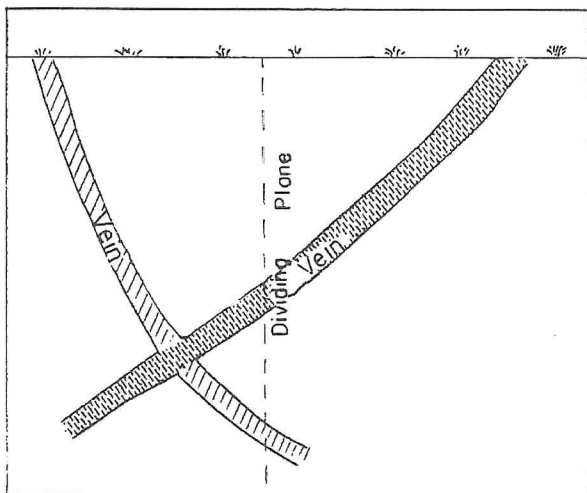


FIGURE 26.—Cross-sectional view of two veins crossing at depth.

It is hoped that the preceeding discussion on extralateral rights will help the discoverer, locator, or purchaser of a mine to more clearly understand the idea behind this law and some of the problems encountered. True, the problems initiated by this law can become extremely complicated, but what other system has been so clearly devised which gives the discoverer the ownership of the vein? Although the law is not perfect, it upholds the ideal of our American forefathers, i. e., he who works and discovers is entitled to reap the harvest.

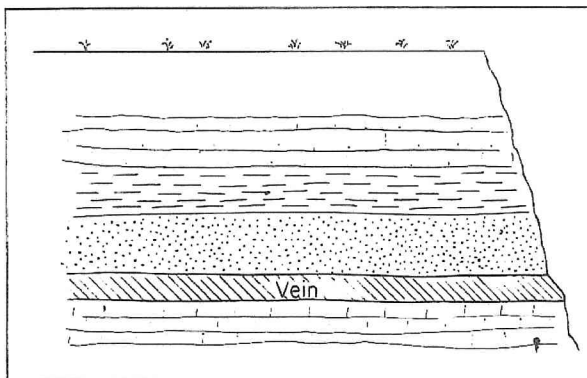


FIGURE 27.—Cross-sectional view of a flat bedded deposit.

BLANKET VEINS

The apex law definitely applies to steep-dipping veins. The question now arises, does this law apply to blanket or horizontal or nearly horizontal veins or beds? From the limited information available it appears that the Apex Law does not apply to these veins in all cases. The main reason given is that the Apex cannot always be defined in a flat bedded deposit, (fig. 27); in certain folded veins, (fig. 28); or in a basin-type deposit, (fig. 29). The problem of whether or not an apex exists in cases such as these is a question of fact which the court or jury must decide. If the court decides

an apex exists, then extralateral rights apply.¹¹⁰ This problem of extralateral rights on blanket or flat dipping deposits has received considerable recent attention because of the uranium mining in the region of southwestern United States. Uranium deposits frequently occur in flat-bedded sedimentary deposits.

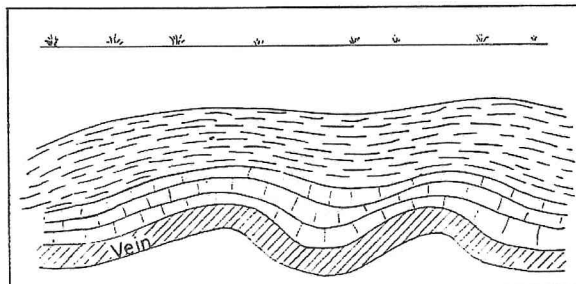


FIGURE 28.—Cross-sectional view of a flat-lying folded deposit.

LIMITATION OF EXTRALATERAL RIGHTS

Extralateral rights apply only to veins discovered on land which is a part of the public domain. Therefore, extensions of veins at depth which are discovered on private or state land are not controlled by the apex rule, but ownership of the veins extends to the surface boundary lines only.

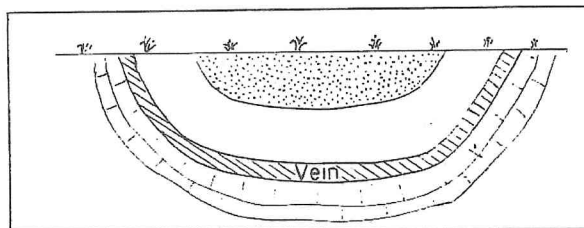


FIGURE 29.—Cross-sectional view of a basin type deposit.

A problem presents itself where a vein, in a properly located mining claim, dips under neighboring ground which is covered by an agricultural patent with no mineral rights reserved, (fig. 30). This situation has not been settled by the United States Supreme Court, but the Ninth District Circuit Court¹¹¹ ruled that the claimant was not entitled to follow the ore under the agricultural patent. Judge Lindley¹¹² feels that this ruling is in error because of the many rulings by courts giving the holder of the apex the right to follow the vein.

LEASING ON FEDERAL LAND

MINERALS AFFECTED

The U. S. Mineral Leasing Act was enacted by Congress on February 25, 1920. This Act has been supplemented and amended several times, and in its present form it pertains to certain mineral deposits which contain oil, gas, coal, phosphate,

110. Summarized from I Lindley, Sec. 311-313 and Morrison P. 201-203

111. Amador Min. Co. v South Spring Hill G.M. Co., 36 Fed. 668

112. II Lindley, Sec. 612

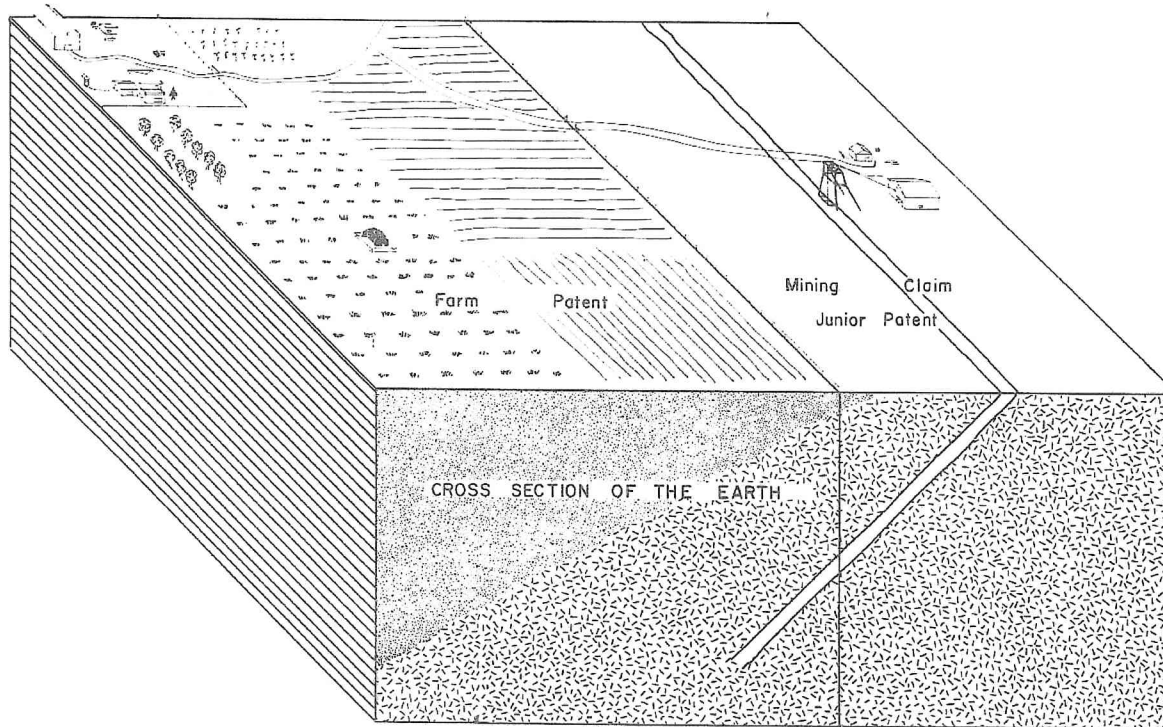


FIGURE 30.—Block diagram showing vein dipping under neighboring agricultural patented ground.

sodium, potassium and/or oil shale.¹¹³ To mine these mineral commodities one must apply to the Secretary of the Interior for a lease. Since July 23, 1955, Public Law 167 includes sand, gravel, common stone, pumice, pumicite, cinders, and clay under leaseable minerals. In all cases, the U. S. Government reserves the ownership of and right to extract helium from all gases produced under the terms of this Act.

LANDS AFFECTED

Any public land containing such deposits as mentioned above and under administration by the U. S. Government (including national forests) is subject to the Leasing Act. Also subject to the Leasing Act are leaseable minerals on lands that have been patented with their leaseable minerals reserved. Lands *are not* subject to the terms of the Leasing Act when they lie in incorporated cities, towns, or villages; in national parks and monuments; and in lands within naval petroleum and oil shale reserves (some exceptions do exist).¹¹⁴

WHO MAY RECEIVE A LEASE

Citizens of the United States, associations, corporations organized under the laws of the United States, or of any State or Territory thereof may receive a lease under the terms of this Act. In the case of coal, oil, gas, and oil shale, municipalities

may also be eligible for a lease. Citizens of another country may not own any interest by stock ownership, stock holding, or stock control in any lease acquired under the provisions of this section unless the laws, customs, or regulations grant similar or like privileges to citizens of this country.¹¹⁵

LEASING LIMITATIONS

"A corporation may not hold an interest in more than the maximum number of leases, either by direct holding as a lessee, or indirectly as a stockholder in other corporations holding leases.

"A corporation holding the maximum number of leases for any kind of the above mentioned mineral deposits, may not hold any interest in any other association, or corporation having similar leases.

"A person with a direct holding of a lease of any kind may hold an interest as a member of an association or as a stockholder of a corporation holding a similar lease if the combined area embraced in the direct holding of a lease, and the area covered by other interests, does not exceed the maximum number of acres allowed for the respective kinds of mineral for any one lessee. Thus an individual may hold stock in any number of corporations holding oil or gas leases, provided his stock interests do not represent a greater acreage than 2,560 acres

113. Deposits of sulphur on the public domain in the States of Louisiana and New Mexico are also included in the Act.

114. Title 30, U.S.C. Sec. 30, as amended 1946

115. Title 30, U.S.C. Sec. 181, amended 1946

TABLE 1.—Data on leasing under Federal Leasing Act, February 25, 1920

Mineral	Coal	Oil and Gas	Phosphate
Size of smallest leasing tracts	40-acre units	640 acres (1 section)	Discretion of Secretary ¹
Awarding of leases	Competitive bidding or by other regulations	Competitive bidding in known oil & gas areas; 1st applicant in unknown areas	Advertisement Competitive bidding Secretary's regulations
Prospecting permits granted	Yes	No	No
Area of prospecting permit (Maximum area)	2,560 acres (4 sections)	—	—
Length of permit (Years)	2 years (May be extended 2 years)	—	—
Maximum size of 1 lease (Acres)	2,560 acres	2,560 acres	2,560 acres
Total extent of all leases in 1 state (Acres)	10,240 acres, 16 sections (May get additional 5,120 acres or 8 sections)	46,080 acres (72 sections) in any 1 state	5,120 acres in state; total of 10,240 acres in U.S.
Rent on land per acre per year (Minimum)	25c acre 1st year 50c acre 2nd through 5th year \$1.00 after 5 years	25c acre 1st year May be waived in non-producing 2d & 3d yrs. \$1.00 acre in producing areas	25c acre 1st year ² 50c acre 2d through 3d year \$1.00 acre thereafter
Royalty (Minimum)	50c per ton of 2,000 pounds	12½% of gross value	5% of gross value of production
Length of Lease	Indeterminate Due for readjustment every 20 years	5-year primary term Some 20-year leases May be renewed	20 years and may be extended
Reference	Sec. 201-209, Title 30, U.S.C.; Public Law 85-698, August 1958	Sec. 192.40, Title 43, C.F.R.; Sec. 226, Title 30, U.S.C.	Sec. 184.211, 212, Title 30, U. S. C.; Sec. 196.2, Title 43, C. F. R.
Mineral	Sodium Salts	Potassium and Potassium Compounds	Oil Shale
Size of smallest leasing tracts	Up to 2,560 acres	Up to 2,560 acres	Up to 5,120 acres
Awarding of leases	To permittee of prospecting permit (post bond) Competitive bidding	To permittee (post bond) Competitive bidding	Discretion of Secretary
Prospecting permits granted	Yes	Yes	No
Area of prospecting permit (Maximum acres)	2,560 acres	2,560 acres	—
Length of permit (Years)	2 years	2 years	—
Maximum size of 1 lease (Acres)	2,560 acres	2,560 acres	5,120 acres
Total extent of all leases in 1 state (Acres)	5,120 acres	?	?
Rent on land acre per year (Minimum)	25c acre 1st year ² 50c acre 2d through 5th year \$1.00 acre thereafter	25c acre 1st year ² 50c acre 2d through 5th year \$1.00 acre thereafter	50c per year ²
Royalty (Minimum)	2% of gross production	2% of gross production	Specified in lease
Length of Lease	20 years preferential right to renew to lessee	20 years preferential right to renew to lessee	Indeterminate
Reference	Part. 195, Title 43, C. F. R. Sec. 261, 262, Title 30, U. S. C.	Part. 194, Title 43, C.F.R. Sec. 281, 282, 283, Title 30, U.S. C.	Part. 197, Title 43, C. F. R.

1. Secretary—means Secretary of the Interior

2. Rentals are to be credited on royalties

in the same producing structure, or 7,680 acres in the same state. An individual may hold three leases directly for oil or gas, and one lease for coal, sodium, phosphate, or oil shale, and, at the same time hold a stock interest in a corporation having leases, provided his direct and indirect holdings do not exceed the maximum area for one person.

"Any interests which are illegally held shall be forfeited to the United States by proceedings in the United States District Courts." (Adami, 1923, p. 39-40.)

The number of acres allowable for each mineral commodity are shown in table 1, page 29.

Assignment.—No lease, issued under this section, may be assigned or sublet except with the consent of the Secretary of the Interior. However, there exists some special provisions enumerated in the codes on assignment of oil and gas leases.¹¹⁶

Work.—Diligence in work, care of the property, safety of the men, and prevention of waste is required in every lease as well as strict compliance of all rules issued by the Secretary of the Interior.¹¹⁷

Termination or Suspension of Lease.—The Secretary of the Interior may cancel any prospecting permit upon failure of the permittee to pursue the prospecting diligently.¹¹⁸ The Secretary may also cancel or terminate a lease provided all the provisions of the leasing act are not fulfilled. Time is also important in these leases, and if the conditions of the lease are not satisfied in the time allotted, the lease may be automatically terminated.¹¹⁹

For the purpose of encouraging the greatest recovery of our natural resources, the Secretary may, at his discretion, waive, suspend, or reduce the minimum royalty or rental on a lease.¹²⁰

The lessee, at the discretion of the Secretary of the Interior, may be permitted to make written relinquishment of all rights under this act. If the Secretary accepts this relinquishment, the lessee is relieved of all future obligations under the lease.¹²¹

Minerals.—Table 1 gives a chart on the requirements for leasing the various minerals under the terms of this Act.

GENERAL

Competent legal advice should be obtained when one contemplates acquiring land under the provisions of the Mineral Leasing Act. Most certainly the Bureau of Land Management must be contacted before any action can be taken. The Federal Government is constantly withdrawing

lands from or reopening lands to leasing and reclassifying other lands, and the Bureau of Land Management is the place where the records of these changes are kept.

LEASING ON STATE LAND

The term "State Land" as used in this section means all state-owned land and land on which the State has retained mineral rights after sale. As mentioned previously, neither the Federal mining law nor the Leasing Act pertains to land owned by the State of Montana nor to privately owned land.

Responsibility for administering the state-owned lands is invested in the Department of State Lands and Investments.¹²² Montana law creates a State Board of Land Commissioners and their duties as defined by Statute are:¹²³

"The State Board of Land Commissioners, consisting of the Governor, Superintendent of Public Instruction, Secretary of State, and Attorney General, as provided by the Constitution, shall be the governing board of the Department of State Lands and Investments; it shall have and exercise general authority, direction and control over the care, management, and disposition of all state lands and the funds arising from the leasing, use, sale, and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the state. The enumeration in this act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers not enumerated but inherent in the general and discretionary powers conferred by the constitution, and necessary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the constitution, nor shall any inherent powers be assumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated."

From the above it is quite apparent that the State Board of Land Commissioners has absolute control over *all* mineral deposits on state-owned land. No rules or regulations on acquiring leases on state-owned mineral deposits have been published by the Board, and anyone wishing to prospect, mine, or lease on state-owned land must

116. Title 30, U.S.C. Secs. 187, 187a, 187b

117. Title 30, U.S.C. Secs. 187, 187a, 187b

118. Title 30, U.S.C. Sec. 183

119. Title 30, U.S.C. Sec. 188, amended 1954

120. Title 30, U.S.C. Sec. 209

121. Title 30, U.S.C. Sec. 187

122. R.C.M. 1947, Sec. 81-101

123. R.C.M. 1947, Sec. 81-108

apply for a permit to do so from the Department of State Lands and Investments, Helena, Montana.

Of interest to mining people, would be the provision of the Montana Code pertaining to coal mining leases and permits, prospecting permits, and metal mining leases, and leases and permits for deposits of stone, gravel, sand, and other minerals. Title 81 of the Montana Code deals with these subjects and will be found in Part 2.

RECENT LEGISLATION

The Federal Mining Laws now in force are founded on the legislation enacted on May 10, 1872, and this is still the basic mining law,¹²⁴ although there has been some later legislation which affects certain provisions of the original law.

Probably the most frequent changes in this law deal with either the suspension of assessment work during certain periods of time or the date on which assessment work must be completed. The most recent of these changes is Public Law 85-736 enacted by Congress on August 23, 1958 which changes the period of annual assessment work on unpatented mineral claims so that it will run from September 1 of one year to September 1 of the succeeding year, and this change became effective with the assessment work year commencing on September 1, 1959.¹²⁵

AGRICULTURAL LAND

Prior to December 29, 1916, most patents which were issued under the agricultural laws did not reserve the mineral rights to the U. S. so the minerals in the land belonged to the patentee or holder of the agricultural patent. The Federal Government did reserve coal in certain homestead patents issued in and after 1909.¹²⁶ In 1914 a law was enacted entitled the "Agricultural Entry Act"¹²⁷ which reserved the minerals: phosphate, nitrate, potash, oil, gas, and asphaltic minerals to the United States. The land could be patented to agricultural use, but these minerals were reserved.

The Stock Raising Homestead Act of December 29, 1916¹²⁸ specifically reserved all minerals in the land to the United States Government together with the right to "prospect for, mine, and remove the same." The minerals in such land are subject to disposal under the provisions of the Federal Mining Laws, but the prospector must comply with the following regulations:¹²⁹

"he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting."

The act also provides that a prospector has a right to enter upon only so much of the surface as is reasonably necessary for mining operations and he can extract the minerals therein. He can do this by complying with the following three conditions:¹³⁰

first, upon "securing the written consent or waiver of the homestead entryman or patentee; or
second, "upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or
third, "in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking of the United States for the use and benefit of the entryman or owner of the land, to secure payment of such damages to the crops or tangible improvements of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon."

In most cases to avoid bitterness and misunderstanding, it would be preferable to come to a private agreement with the homestead owner. However, if these negotiations 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, after which the mining claimant may enter upon the land and conduct mining operations.

The Taylor Grazing Act originally passed on June 28, 1934, but amended since that time, authorizes the Secretary of the Interior to create grazing districts and additions thereto on vacant, unreserved, and unappropriated public land, exclusive of Alaska. In regard to minerals in land affected by this Act, the Act provides that nothing shall restrict prospecting, locating, developing, mining, patenting a mining claim or restrict entering and leasing minerals which come under the Leasing Act.¹³¹ A right of way over land affected by this Act, shall also be allowed for mining purposes. Vested water rights and rights to use timber and other natural resources on lands affected by this Act will still be allowed to the legitimate mining claimant or lessee.¹³² These grazing district lands are considered open for mineral location and the miner is not required to compensate the holder of the grazing areas in any way for permission to prospect or mine as he is under the Homestead Act of 1916.

MULTIPLE MINERAL DEVELOPMENT ACT OF 1954

Prior to this legislation,¹³³ commonly known as Public Law 585, there was a question as to whether land which was leased for minerals was definitely closed to prospecting for other included

124. Title 30, U.S.C. Chapt. 2; Title 43, C.F.R. Sec. 185

125. See section on assessment work in this booklet

126. Title 30, U.S.C. Sec. 81

127. Title 30, U.S.C. Sec. 121, as amended

128. Title 43, U.S.C. Sec. 299

129. Title 43, C.F.R. Sec. 168.6b

130. Title 43, C.F.R. Sec. 168.6b

131. Title 43, U.S.C. Sec. 315c

132. Title 43, U.S.C. Sec. 315b, 315d

133. Title 30, U.S.C. Sec. 521; Title 43, C.F.R. Sec. 186

minerals under the Mining Act. The Secretary of the Interior ruled that lands chiefly valuable for a Leasing Act mineral closed it for otherwise valid mining locations.¹³⁴ With the discovery of uranium on the Colorado Plateau, it became apparent that corrective legislation would have to be taken because much of this area was covered by oil and gas leases. Hence, this Act was passed in 1954.

The main purpose of this Act is to allow mining claims to be validated on land which is also covered by a Federal lease, so that more than one mineral commodity can be extracted at the same time. Of course, the two operations must be conducted in such a manner so that they do not interfere with one another. A method for resolving any conflicts which may arise is included in the Act.

THE MULTIPLE SURFACE USE ACT OF 1955

This Act,¹³⁵ commonly designated as Public Law 167, has some important legislation which applies to all unpatented mining claims on public domain of the United States. All owners of unpatented mining claims should be familiar with its terms.

The need for such an act arose because every year mining claims were located by people for purposes other than legitimate mining operations. Claims were staked out for such purposes as acquisition of timber, homesites, or control of land for various reasons. In many cases, these claims hindered Federal agencies in their work to make most efficient use of our natural resources. The alleged discovery on many of these claims was either sand or stone. Representatives of the mining industry and the Government collaborated on drafting this law, and its intent was to in no way hinder a legitimate mine locator or operator. The mine owner can still patent his claim with full surface rights as before the passage of this Act.

The United States Department of the Interior issues a little pamphlet entitled "Multiple Use on Mining Claims" which can be purchased for ten cents from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. The Forest Service also issues a bulletin called "What is the New Multiple Use Mining Law." These pamphlets sum up this law very well. Basically the following four points covered by this law are:

1. The law removes common varieties of sand, stone, gravel, pumice, pumicite, cinders, and clay from the provisions of the General Mining Laws, but it does not affect the validity of a claim of other minerals occurring in or associated with these common varieties.¹³⁶ The common minerals named above are disposed of under the

Materials Act of 1947.¹³⁷ The disposition is usually done by competitive bidding, but with some exceptions. The original Timber and Stone Act which gave the procedure for leasing land chiefly valuable for stone was repealed on August 1, 1955.

2. This law assures the miner's right to use as much of the timber on his claim as he needs, but no more. It also assures him that he can get needed timber for his mine from other timber lands administered by the Government if the land was logged off after the claim was acquired.¹³⁸

3. The law requires a miner to cut timber under the principles of good forest management, except such timber as is cut to provide clearance. He must follow the rules and regulations of the administering agency.¹³⁹ (For example, before cutting timber he should check with the U. S. Forest Service on their timber cutting regulations.)

4. The law makes it possible for the Government to dispose of the surface resources, except mineral resources, that the miner does not use. This practice is in the interest of good management and conservation practices.¹⁴⁰

The Act also outlines the procedure which the administering agency must follow when determining the surface rights of all unpatented mining claims existing prior to the passage of this Act. First, the administering agency requests the Bureau of Land Management, in charge of the whole area, to publish a notice in the newspaper having general circulation in the county where the claim is located stating that a determination of the surface rights on mining claims will be made. People in actual possession or working the claims and those filing a request in county records are entitled to personal service or service by registered mail of "Notice to Mining Claimants". Others may read the published notices. If a person desired a notice to be sent him by registered mail when the surface rights are to be determined in the area of his claim, he may do so by recording a notice of request in the county recorder's office in the county where the claim is located. This request for the copy must contain:¹⁴¹

1. The name and address of the person requesting the notice.
2. The date of location of the claim.
3. The book and page of recording of the location notice or the amended location notice.
4. The section or sections of the public land surveys which embrace the mining claim.

131. 50 L.D. 650, 276, Rowley 581 D. 550

135. Title 30, U.S.C. Chap. 15, Sub-Chap. II; Title 43, C.F.R. Sec. 185.120-185.137

136. Title 30, U.S.C. Sec. 611

137. Title 30, U.S.C. Sec. 601, amended 1955

138. Title 30, U.S.C. Sec. 612b

139. Title 30, U.S.C. Sec. 612c

140. Title 30, U.S.C. Sec. 612b

141. Title 43, C.F.R. Sec. 185.135

Within 150 days after the first publication appears the claimant has three courses of action open to him which will affect his claim.

1. He may ignore the notice. If he does, the United States Government obtains the right to manage the surface resources under this Act. The locator loses none of his mining rights and his claim can still be patented.¹⁴²
2. He may execute a waiver to surface rights. This has the same effect as the course of action under the preceding section.¹⁴³
3. He may file a verified statement containing the following information:
 - a. The date of location.
 - b. The book and page of recording of the certificate of location.
 - c. The section or sections of the public land survey which embraces the claim if the area has been surveyed, or if the area is unsurveyed, the probable section or sections which will embrace the claim or a tie by course and distance to a United States Mineral Monument.
 - d. Whether the claimant is a locator or purchaser under the location.
 - e. The claimant's name and address and any other person's or persons' name and address which has any interest in the claim.

The Government will make a mineral examination to determine the validity of the claims. If the claims include a discovery and it is otherwise valid, a hearing will not be required. The Government will stipulate that the asserted rights of the mining claimant are valid and effective. On the other hand, if the mineral examiner does not report a valid discovery, the Government will schedule a hearing to determine whether or not the asserted rights of the mining claimant are valid. If the hearing examiner rules in favor of the mining claimant, the surface rights to the claims are unaffected by the published notice, and the claimant retains the same rights he had prior to the act. If the hearing examiner sustains the Government, the claims will be managed as prescribed in section 4, Public Law 167, Act of July 23, 1955.^{144,145} The hearing and appeals are subject to the general procedure and rules of the Department of the Interior. All unpatented mining claims located after July 23, 1955 are subject to the provisions of this Act.¹⁴⁶

A question may arise as to just what is included in the common varieties of said, gravel, pumice, pumicite, or cinders. The United States Code says in part:¹⁴⁷

142. Title 30, U.S.C. Sec. 613a
 143. Title 30, U.S.C. Sec. 614
 144. Title 30, U.S.C. Sec. 613a
 145. Title 30, U.S.C. Sec. 613c
 146. Title 30, U.S.C. Sec. 612a
 147. Title 30, U.S.C. Sec. 611

"that nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit." Common varieties as used in sections 601, 603, and 611-615 of this title do not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and no not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

The Department of the Interior gives the following definitions:¹⁴⁸

"common varieties as defined by decision of the Department and of the courts includes 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."

A footnote states, "thus, while marble would not be a common variety of stone, ordinary building or sand and gravel or pumice or limestone used in building would be."

From this definition it would seem that certain minerals which have definite or desirable chemical properties such as limestone used in the chemical industry, metallurgical furnaces, or cement manufacture; quartzite as a flux in metallurgical furnaces; and gypsum may not be common enough to be included in this Act. Limestone and quartzite, when used as smelter flux, have been located as placer claims.¹⁴⁹ However, until these items are resolved as to their classification, it may be well to locate the minerals under the appropriate mining law and also to apply under the Material Disposal Act.

PUBLIC LAW 157

This Act¹⁵⁰ provides for the entry and location, after discovery, of a valuable source material of uranium upon public lands which have been classified as or known to be valuable for coal or for other purposes. The lignite beds of eastern Montana may be subject to this act because uranium deposits are known to occur within the beds.

Public lands of the United States which are known to be valuable for coal subject to disposition under the Mineral Leasing Laws and which are subject to location under the terms of the Multiple Development Act of 1954, Public Law 585, shall be open to location and entry under the mining laws of the U. S. Government and State of Montana *unless* these lands are within a coal prospecting permit or lease. The land is not open to

148. Title 43, C.F.R. Sec. 185.121

149. Lindley, Sec. 421, P. 990

150. Title 43, C.F.R. 1951 Suppl. 5.1, Sec. 185.140—185.151; Title 30 U.S.C. Sec. 541-5411

location under the mining laws if located within an area that is subject to a coal prospecting permit or lease.

In addition to the requirements necessary to locate a valid mining claim in Montana:

1. The locator must file a copy of the notice of location in the land office of the Bureau of Land Management in Billings within 90 days after the location.

2. The claimant shall report annually to the Mining Supervisor of the Geological Survey the amount of lignite removed in the recovery of the valuable source material for that year and tender payment to him of ten cents per ton for each ton of lignite removed.

(Note: Provisions were made in the act for validating claims prior to May 25, 1955, but this time has now expired.)

3. The locator has the right to remove only so much of the lignite as is necessary to recover the valuable source material. He is not entitled to all the lignite, nor is he entitled to any of the other leasing act minerals.

The act provides for mining valuable source material on lands sold by the U. S. Government where the coal has been reserved to the United States, and it also provides for the procedure necessary for holders of coal prospecting permits or coal leases to mine valuable source material.

The leasing act minerals in this act are the ones enumerated on page 27 of this bulletin. Lignite is considered as a leasing act mineral. Source material means any material which the Atomic Energy Commission considers as source material for radioactive energy.

The claims can be patented, but all leasing act minerals are reserved to the United States Government except for the amount of lignite which has to be removed to recover the valuable source material.

Extralateral rights *do not* apply to claims taken out under these provisions.

MINING ORGANIZATIONS

There exists three fundamental types of business organizations; these are the sole proprietorship, the partnership, and the corporation. Corporations are further divided into such groups as private, public, domestic, foreign, and municipal. Only private corporations organized for mining purposes will be considered in this bulletin.

SOLE PROPRIETORSHIP

Sole proprietorships apply to mines as well as to other businesses. Certain advantages do exist where the claim's ownership rests entirely with one person. There is no delay when one desires to sell or lease it. Sometimes a locator, out of gen-

erosity or for some other reason, will put another person's name on the location notice. Then a partnership does exist and in certain cases this relationship may not be desirable. Of course, if one placer claim is to be located which consists of more than twenty (20) acres, then more than one locator must be on the location notice. A mine owner can have agents or employees working for him at the mine or conducting mine business, but they will not be considered partners, unless some facts exist which would make them partners.

Except for staking claims on more or less of a speculative basis, i.e., where a sale or lease is contemplated, the sole proprietorship has some definite disadvantages such as lack of capital, lack of help for required assessment work, and total responsibility for all debts and other liabilities of the property.

PARTNERSHIPS

Montana, considered as a mining state, recognizes the so-called mining partnership and has special laws regarding these partnerships.¹⁵¹ A mining partnership differs from an ordinary partnership in these important respects.¹⁵²

1. In a mining partnership one does not always have his choice of a partner or partners, which is characteristic of an ordinary partnership.

2. The death of a partner in a mining partnership does not dissolve it as it does an ordinary partnership, but the deceased partner's interest passes to his heirs. In an ordinary partnership, bankruptcy of a partner also dissolves it, but this is not true of a mining partnership.

3. The sale of an interest in a mining partnership by one of the partners does not dissolve it. The purchaser of an interest in the partnership automatically becomes a member of the partnership.

Mining partnerships are associations subject to rules differing from ordinary partnerships because of the peculiar situations under which mining partnerships function. In the matter of creation, no express agreement is necessary,¹⁵³ but it becomes automatic if two or more persons either own or acquire a mining claim for the purpose of working it and extracting minerals therefrom.¹⁵⁴

Profits and losses are shared in the mining partnership in proportion to the interest which any one partner owns to the total ownership.¹⁵⁵ That is, if one partner owns a quarter interest in a claim then he gets a quarter of the total profit or is responsible for a quarter of the total debts. A member of a mining partnership, an agent, or manager thereof cannot bind the partnership by

151. R.C.M. 1947, Title 63, Chap. 10

152. III Lindley, Sec. 796

153. R.C.M. 1947, Sec. 63-1002

154. R.C.M. 1947, Sec. 63-1001

155. R.C.M. 1947, Sec. 63-1003

TABLE 2.—Partnerships

Comparison Feature	Regular	Mining
Share in losses and profits	<ol style="list-style-type: none"> 1. Any ratio by agreement 2. In absence of agreement equal 3. For losses—one partner may be liable for total amount 	<ol style="list-style-type: none"> 1. Same 2. Same 3. Partner shares in proportion which interest he owns bears to whole partnership capital for business debts.
Written contracts	<ol style="list-style-type: none"> 1. Binding as to 3d parties when executed by general partner if within apparent scope. Partner cannot disavow. 	<ol style="list-style-type: none"> 1. Cannot bind unless all partners give express authority to agent in writing—Montana statute.
Conduct of business	<ol style="list-style-type: none"> 1. Majority of partners decide in ordinary business unless otherwise stated in partnership agreement 	<ol style="list-style-type: none"> 1. Members having a majority of interest binds in conduct of business
Dissolution ¹	<ol style="list-style-type: none"> 1. Death dissolves. Time limit dissolves. Operation of law—bankruptcy. 	<ol style="list-style-type: none"> 1. Interest may be conveyed without dissolution death-interest passes to heirs Advertising out, see page 34
When does a partnership exist	<ol style="list-style-type: none"> 1. By actions of the parties involved—Intent is important 	<ol style="list-style-type: none"> 1. When two or more men take out a claim, a partnership exists 2. Express agreement is not necessary
Liability for debts	<ol style="list-style-type: none"> 1. One partner may be liable for debts incurred in partnership business 	<ol style="list-style-type: none"> 1. Only liable to proportion of debt as he has proportion to ownership of claim for business debts .

1. In Montana, conveying an interest by a partner does not terminate the partnership but the buyer does not have full partnership status. He cannot enter into running the business of the firm; he is only entitled to the profits which the selling partner would have received.

a contract in writing, unless he has express authority derived from the members of the partnership.¹⁵⁶ As to the conduct of the partnership's business, the majority of the shares govern.¹⁵⁷ That is, if one person owns six-tenths of all the interest and four other people each own one-tenth of the interest, the one person who owns six-tenths of the interest would govern the business of the group. Chapter 10 of Section 63, Revised Code of Montana, 1947, pertaining to Mining Partnerships can be found in Part 2 of this report.

Grubstakes.—A grubstake agreement is not strictly a partnership agreement or at least not in the terms of the previously mentioned mining partnership. This sort of agreement is a common venture where the prospector performs the labor while the outfitter or supplier supplies the food and other necessities of the prospector while in the search for ore. If the prospector finds anything, then the discovery goes to both the prospector and supplier in proportion to the terms of their agreement. The agreement need not be in writing, but to establish proof, a written agreement would help. The prospector, however, cannot exclude him.¹⁵⁸ If the grubstake agreement ex-

tends beyond the discovery and location of claims that is, it includes provision for exploiting the ore, then an ordinary mining partnership occurs when the property is worked.¹⁵⁹

Terminating Partnerships.—A mining partnership may be terminated as other regular partnerships except that death or bankruptcy of a partner or a sale of interest does not terminate it. Occasionally one of the partners will not perform his required proportion of the work or share in the expenses, or both, and his presence in the partnership definitely hinders the working of the mine.

The United States Code makes it possible to exclude a non-contributing partner on an unpatented mining claim by the "advertising out" process.¹⁶⁰ The section of the Code of Federal Regulations covering the process is as follows:¹⁶¹

"Upon the failure of any one of several co-owners to contribute his proportion of the required expenditures, the co-owners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice

156. R.C.M. 1947, Sec. 63-1009

157. R.C.M. 1947, Sec. 63-1010

158. III Lindley, Sec. 858

159. III Lindley, Sec. 858

160. Title 30, U.S.C. Sec. 28

161. Title 43, C.F.R. Sec. 185.20

in writing, or notice by publication in the newspaper published nearest the claim for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the statement of the publisher as to the facts of the publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must state that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute."

"Loose" Partnership Agreements.—Sometimes two or more people may make agreements to include individual claims in a sort of a group so that both claims or claim groups will be benefited by development work or assessment work which has been done on any one claim. If two people make an agreement such as this, it would be well to have a definite agreement in writing of this intention. The Interior Department discourages these "loose" agreements because in one case¹⁶² where something like the above was done the ruling was made:

"The existence of an understanding between two claimants that if either was to sell his claims, the other would put in his claims too, and the fact that each would sometimes do assessment work for the other, are insufficient to show such a community of interest between the two in performing work on their claims that such work may be considered to be a common improvement for the benefit of both groups of claims."

Intent is important in law, and if two people intend to form a partnership they should do so by firm agreement.

CORPORATIONS

After a mine has been discovered and proven, it often becomes necessary to work it on a scale large enough to bring in a good return on the money invested. To raise the amount of capital to adequately work a mine, it is frequently necessary to form a corporation.

A corporation is a creature of law which has certain powers and duties of a natural person. However, being created by law, the law must be followed exactly to maintain a corporation in good standing.¹⁶³ Private corporations may be formed

by the voluntary association of any three or more persons for the purpose of, among others, the transaction of a mining business and by complying with the Montana law which covers the formation of corporations.¹⁶⁴ The law must be followed or a corporation will not result. Three or more persons associating themselves together and calling themselves a company or corporation will not constitute a company, but rather a partnership.

The main advantages of a corporation as it applies to mining are as follows:

1. Shares of stock can be sold so that capital can be raised for the mining venture.
2. Limited liability feature of the corporation where a person is liable in money only for the amount of stock that he owns and has paid for. If he has shares of stock which he has not paid for, then he is liable for the amount due on the stock.¹⁶⁵
3. Wide ownership of shares reduces the risk to any one individual.
4. The ease of transferability of interest by selling or trading stock.
5. Continued long life of the corporation, (in Montana 40 years with life extension provisions).

Below are some disadvantages of the corporate form of organization:

1. The cost of forming a corporation. The minimum cost would probably be three hundred dollars and may be considerably higher.
2. The corporation is not as flexible as the other forms of business organizations. That is the law will only allow a corporation to do things within prescribed limits or areas.
3. Absentee ownership and, in some cases, absentee direction may hinder its operation.
4. For a corporation to do business in another state, except when involved in interstate commerce, permission must be obtained from that state.

In initial prospects, the partnership form of organization may work out well because of the special Montana laws dealing with mining partnerships.

If three or more people decide to incorporate, competent legal help is practically a necessity. Depending upon the amount for which the corporation is capitalized, Federal laws may also apply. Montana has special laws pertaining to the sale and transfer of stock and the consolidation or merger of mining corporations.¹⁶⁶ The laws

162. U. S. v W. J. Moorhead, 591. D 192 (February, 1946)

163. R.C.M. 1947, 15-101

164. R.C.M. 1947, 15-103, 15-104, 15-108, 15-111, 15-112

165. R.C.M. 1947, Sec. 15-615

166. R.C.M. 1947, Title 15, Chap. 16

pertaining to corporate structure are beyond the intent and purpose of this publication. It is hoped that by this discussion, one will have an idea of the different types of business organizations so that he can pick the one which will best suit his purpose.

SAFETY REGULATIONS

Industrial safety in Montana is promoted by the Industrial Accident Board, which administers the Workman's Compensation Act.¹⁶⁷ This Board consists of three members; the commissioner of labor and industry, the commissioner of agriculture, and a third member appointed by the governor and confirmed by the Senate for a term of four years.¹⁶⁸

Mining and practically all labor incident to mining, such as shaft sinking, road building, heavy construction, and work of that nature is considered as hazardous.¹⁶⁹ Every employer engaged in an industry in Montana which is considered hazardous must elect one of the three plans of the Workman's Compensation Act.¹⁷⁰ The plan elected shall be in a form prescribed by the Board. An employee can elect *not* to be bound by the provisions of this Act, and he then will *not* be subject to the terms of the Act. However, until an employee elects *not* to be bound by the Act, he is bound by the provisions of the Act if his employer is covered by the terms of the Act.

The Act provides for compensation in case of injury or death received while on the job.¹⁷¹ An employer who does not elect to come under the provisions of this Act *shall not use* as a defense, in case of injury or death on the job, the three common law defenses of:¹⁷²

1. Employee negligence, unless negligence was wilful;
2. That a fellow employee was negligent which caused injuries;
3. That the employee had assumed the risks inherent in the job.

These defenses are still available to employees in industries which are exempt from the provisions of the Act and to employees who are covered by any one of the three plans of this Act.¹⁷³ An employer who is under the coverage of this Act is *not* subject to any other liability except as this Act provides.¹⁷⁴

As stated previously, the Workman's Compensation Act has three plans. Briefly the plans are:

167. R.C.M. 1947, Title 92, Sec. 92-815
 168. R.C.M. 1947, Sec. 92-104
 169. R.C.M. 1947, Sec. 92-302, 92-303
 170. R.C.M. 1947, Sec. 92-207
 171. R.C.M. 1947, Sec. 92-614
 172. R.C.M. 1947, Sec. 92-201
 173. R.C.M. 1947, Sec. 92-202, 92-203
 174. R.C.M. 1947, Sec. 92-204

Plan I¹⁷⁵ "An employer in an industry which is deemed hazardous may, by filing his election thereto, be subject to and bound by compensation plan No. 1, or the self-insurance plan. He must, however, furnish satisfactory proof to the board of his solvency and financial ability to pay the compensation and benefits which are enumerated in the act. He must be able to discharge all liabilities which are reasonably likely to occur in the fiscal year for which such election is effective and he may settle directly with employees the amount to which they may become entitled under the terms of this act. In addition to filing proof of solvency, the employer, under this plan, must pay an assessment to the board not to exceed two hundredth of one percent of the annual payroll in Montana for the preceding year. At least ten dollars (\$10.00) must be so paid.

Plan II¹⁷⁶ "An employer in an industry which is deemed hazardous may, by filing his election thereto, be subject to and bound by compensation plan No. 2. Under plan No. 2, he may insure his liability to pay the compensation and benefits which may incur under the terms of this act in any insurance company which is authorized to transact business in this state and which complies with the policies of the board.

Plan III¹⁷⁷ "An employer who does not come under either of the other two plans shall pay into the industrial insurance fund a premium based on a percentage of his payroll depending upon the rate set for the occupation by the board. Usually one-fourth of the annual premium assessment is required in advance by the board when the policy is issued to a new industry and one-twelfth of the annual premium assessment is due on the first of every month.¹⁷⁸

The awards to injured employees are the same under all three plans. The advantage of plan No. 3 is that the rates are fixed for the industry and one can get coverage at the average cost and with a small cash reserve. After a mine gets in operation, then either plan No. 1 or plan No. 2 may become more economical.

Plan No. 3 is the one most commonly used by new industries, especially mines. In January of 1961, the following rates for surface and underground mines existed as follows:

Coal Mines

All Underground—Premium = 8% x total wage to employee per month

Strip Operations—Premium = 1.8% x total wage to employee per month

175. R.C.M. 1947, Sec. 92-901, 92-902
 176. R.C.M. 1947, Sec. 92-1001
 177. R.C.M. 1947, Sec. 92-1101
 178. R.C.M. 1947, Sec. 92-1106

Quartz Mines

All Underground—Premium = 9.65% x total wage to employee per month

All Surface—Premium = 4.8% x total wage to employee per month

The Montana Codes relating to industrial safety and safety in coal mining and quartz mining and explosive handling and storage have been published in pamphlet form in 1958 by the Industrial Accident Board. To avoid duplication of effort by State agencies, this Code will not be repeated in this bulletin. Those interested or in need of copies of the Code can obtain it by writing to the Industrial Accident Board, Helena, Montana.

A special committee of union, industry, and representatives appointed by the Governor are working on the task of recodifying the laws pertaining to safety in the metal mining industry. When and if these laws are enacted, the Industrial Accident Board may be able to supply copies.

GENERAL PROVISIONS

LABOR

Mining, being an industry, is subject to all applicable federal and state laws such as provisions of overtime payment, withholding taxes, social security payments and other special requirements.

There are also some special laws which pertain to labor in mines. The period of employment for men in underground mines or workings is eight hours per day unless an emergency arises where life or property is in imminent danger.¹⁷⁹

A person under the age of sixteen years cannot be lawfully employed in underground mines in Montana.¹⁸⁰

PROPERTY TRANSFER

The property interest in an unpatented mining claim which has been validly located and held is considered as a fee simple estate between everyone except the locator and the United States Government. Not until the claim is patented does the patentee have what is considered a fee simple title because then his interest in the land is paramount over everyone including the United States Government. Before patent is issued, the Government is the paramount proprietor because it must pass upon the miner's claim to the ground when patent issues, and the Government is the agency which issues the patent. However, between the locator and everyone else, so long as the validity of the claim is maintained, the character of the property interest is termed an estate in fee, and it is handled like all other real property. It can be bought, sold, conveyed, leased, and it will pass by descent.¹⁸¹

179. R.C.M. 1947, Sec. 41-1107, 41-1121

180. R.C.M. 1947, Mont. Const. Art. XVIII Sec. 3, Sec. 10-207, 10-208

181. II Lindley, Sec. 539

Capital stock in mining corporations is considered as personal property, not real property.¹⁸² Certain items which are necessary to the working of a mine are deemed fixtures and are considered as realty of the mine.¹⁸³ These items consist of sluice boxes, flumes, hose, pipes, tracks, cars, blacksmith shops, mills, and all other machinery or tools used in developing a mine are deemed affixed to the mine.¹⁸⁴ However, this presumption may be overcome where these items are affixed to a mine if an express agreement exists between the parties that these items remain personal property and can be removed by the owner of the personal property. This only holds true between parties who have notice of this agreement.¹⁸⁵

Transfer of interests in mining property is affected by descent, sale or conveyance, and lease. Frequently a mining property is leased whereby the owner gives to another party the right to work his claim, while he retains a royalty or percent of total mineral wealth produced for his interest. In mining there are generally three types of leases recognized and they are:

1. "Straight" lease
2. Lease and Option or Lease and Bond
3. Sublease or "Split-Check" lease.

A "straight" lease gives the lessee the right of possession to the mine and the right of ownership of the mineral when taken from the ground subject to the land owner's interest. A mining lease is similar to an ordinary real estate lease, but often provisions are included which make it more complicated, and the character of the lease may be altered so that courts may construe it to be merely a license, a contract on shares, or an option for a lease.¹⁸⁶

The term "lease and option" or "lease and bond" is usually an ordinary mining lease with the added provision that the lessee may purchase the property under the stipulations in the lease agreement. Sometimes the royalty payments in the lease apply to the purchase price, but it is probably better to have a stipulated sum due at some date for the option to avoid complicated tax situations which may arise under the royalty payments when they are applied to purchase price.¹⁸⁷

The "split-check" lease is one where a mine is divided into several leasing areas and each one of these areas is leased to a miner or miners, or the whole mine may be subleased to several parties (termed sublessees). In an agreement such as this, the miners usually provide the labor while the sublessor (he may actually be the owner or the lessee under one of the other types of leases)

182. R.C.M. 1947, Sec. 91-2901

183. *Britannia Min. Co. v U. S. F. & G. Co.*, 43 Mont. 93, 99; 115 P. 46

184. R.C.M. 1947, Sec. 67-210

185. *Story Gold Dredging Co. v Wilson*, 106 Mont. 166, 174; 76 P2 73

186. *Poore, R.M.M.L.I. P. 420-424*

187. *Poore, R.M.M.L.I. P. 447*

provides the equipment and supplies. The proceeds from this endeavor are split between the sublessor and sublessee according to their agreement.

It is not the purpose or intent of this section to outline lease forms. Competent legal help should be obtained in any one of the above leases because they may become complicated. Poore's work on "Hard Mineral Lease with Forms"¹⁸⁸ is an excellent work on this subject.

Sometimes miners and prospectors feel that these legal forms are too complicated, too expensive, and unnecessary. They feel a simple agreement is satisfactory. This may be true in some cases, but a few questions asked here may bring out some important items which should be covered in a good lease. In absence of agreement: To whom do the rails belong when installed in a mine by a lessee? Who is liable in case a workman is injured on the property? How would a railroad, trucking, or smelter strike affect the lease? How are royalties to be handled? Does the lessor have a right to inspect the property? How can a lessor terminate a lease if the lessee is wasting the property?

These and other items should be covered in the mining lease. As every mine presents a different set of conditions, probably no standard lease could adequately handle all situations.

As mining claims are considered real estate, all matters concerning the title to the claim must be in writing, except for a lease which is less than one year's duration. Any instrument affecting the title to or the possession of real property may be recorded by Montana law,¹⁸⁹ and it should be to protect all parties concerned.

Montana law also has a section on release of oil, gas, and mineral leases where it states:¹⁹⁰

"When any oil, gas, or other mineral lease heretofore or hereafter executed shall become forfeited, it shall be the duty of the lessee, his successor or assigns, within sixty days from the date this act shall take effect, if the forfeiture occurred prior thereto, and within sixty days from the date of the forfeiture of any and all leases, to have such lease released from the record in the county where the leased land is situated without cost to the owner thereof."

RIGHT OF WAY

It is possible to obtain right of ways for roads, ditches, or powerlines across another's land if such right of way is necessary to the operation of one's mining property. Codes relating to right of way are given in Part 2.

188. R.M.M.L.I. 3d Annual

189. R.C.M. 1947, Sec. 13-606

190. R.C.M. 1947, Sec. 73-101

TAXES

Property is subject to taxation in Montana as in all other states. But, in Montana, mineral reserves under the land are not subject to taxation; however, the reservation of the right to enter upon lands to explore for minerals and to extract the same where found is subject to taxation.¹⁹¹ As soon as a mining claim is patented, it then becomes subject to taxation.¹⁹²

Improvements on the mine and ore produced from the mine are taxed and the sections of the Montana Code dealing with the taxation of mines are included in Part 2, Title 84, Chapters 20 and 54.

In addition to the above taxation by the State of Montana, income from any source is taxed under Federal and State income tax laws. The extractive mineral industries, can take advantage of the depletion provisions of our income tax laws. Depletion is an allowance which one can make when material is extracted from a mineral property, oil or gas well, or standing timber above and beyond the ordinary allowable business deductions. In mineral extraction, mining the ore takes away or "depletes" the source of income so this deduction is allowed as an incentive to find new ore resources.

According to the Tax Guide for Small Businesses (which can usually be obtained in January of each year from the Superintendent of Documents, Government Printing Office, Washington 25, D. C.) an operating owner or an owner of an economic interest in mineral deposits or standing timber may claim depletion deductions. The 1959 issue of this booklet states the following on depletion:

"METHODS OF DEPLETION. There are two methods of computing depletion: (1) cost depletion, and (2) percentage depletion. Percentage depletion is not applicable to timber.

"COST DEPLETION. In general, cost depletion is computed by dividing the total number of recoverable units (tons, barrels, etc. determined in accordance with prevailing industry methods) in the deposit into the adjusted basis of the mineral property, and multiplying the resulting rate per unit (1) by the number of units for which payment is received during your tax year if you use the cash receipts and disbursements method, or (2) by the number of units sold if you use an accrual method of accounting.

"The number of units in place in a natural deposit is primarily an engineering problem, and the burden of proof as to the number of units recoverable from it is upon you.

191. *Lehfeldt v Adams*, 303 P2 934-936

192. Montana Constitution XII, 3

"PERCENTAGE DEPLETION is a certain percentage of your gross income from the property during the tax year, but the deduction for depletion under this method must not exceed 50 percent of your taxable income from the property, computed without the deduction for depletion.

"Rents and royalties paid or incurred with respect to the property must be excluded from the computation of the gross income from the property in all cases where percentage depletion is claimed.

"Your minimum depletion allowance under the percentage depletion method is never less than under the cost depletion methods.

"Even if you have recovered your cost or other basis of the property, you are allowed a deduction for percentage depletion."

The percentage depletion allowed for some minerals is as follows:

Mineral	Gross Income
Oil and gas	27 1/2 %
Sulfur and uranium	23 %
Asbestos, lead, zinc, nickel, and mica, if from United States deposits	23 %
Ball clay, china clay, rock asphalt, and most nonmetallic minerals	15 %
Coal and sodium chloride	10 %
Brick and tile clay, gravel and sand	5 %

The Internal Revenue Service has more detailed information on the rates allowed for percentage depletion, and should be consulted.

WASTE DISPOSAL

In many mining operations, the disposal of waste is of concern. Montana now has stream and water pollution codes. A placer miner frequently runs tailings down the creek or stream where he is doing his work. Filling ditches or canals with tailings is unlawful. The section of the Montana Code pertaining to stream and canal pollution is given in Part 2 under Miscellaneous Codes.

Water pollution is now controlled in Montana by an act outlined in Chapter 13 of Title 69 of the Revised Codes of Montana, 1947. This complete act is included in Part 2 of this bulletin.

WATER RIGHTS

The waters of Montana are for the use of the public,¹⁹³ and the water laws follow the appropriation doctrine which literally means first come, first served. The appropriator does not acquire title to the water, but only a right to use it.¹⁹⁴ He cannot waste water to the detriment of later appropriators.

193. Hutchins, P. 366

194. R.C.M. 1947, Sec. 89-805

Unappropriated surface water in any water course, which may be a river, stream, ravine, coulee, spring, lake, or other *natural* source of supply may be acquired by appropriation. Also, an appropriator may impound flood, seepage and waste waters in a reservoir and thereby appropriate the same.¹⁹⁵ The appropriation must be for a useful purpose. A water right can be abandoned but abandonment is usually a question of fact to be determined by a jury or court.¹⁹⁶

If a body of water has not been appropriated, or if there is still some water available after prior appropriators have used their quota then the surplus may be appropriated by following the provisions of Montana law as given in Miscellaneous Codes, Section 89-810 and 89-811.

As in the case of locating a mining claim, failure to comply with the above provisions may deprive the appropriator to the right to use the water as against a subsequent claimant who complies therewith, but if no one enters, then the right to use the water will relate back to the posting of the notice.¹⁹⁷

Water rights may be adjudicated in a court of competent jurisdiction to determine the respective rights of users of the water. After the water rights have been adjudicated, the decree is binding to all subsequent appropriators or diverters of water from the adjudicated stream.¹⁹⁸ After the rights of a stream have been adjudicated, then water rights may still be appropriated, but the requirements vary from those which are necessary on an unadjudicated stream. The appropriator of an adjudicated stream must either have the proposed ditch, flume, or dam surveyed and plotted and the plot filed in the county clerk's office. He must declare in his petition to what water rights his appropriation is subject and that he will be bound by the decree of the court adjudicating the rights.¹⁹⁹

Water rights may be important to a miner, especially a placer miner. If the water supply has been appropriated it may still be possible to buy water from one of the appropriators.²⁰⁰ It is the duty of the county clerk to keep a record of all notices and declarations of water rights in their county.²⁰¹ This record should be consulted when contemplating appropriating or purchasing water.

The legal standard for the measurement of water in Montana is one cubic foot (7.48 gallons) flow per second of time.²⁰² Older water rights were often expressed in terms of miner's inches. One hundred miner's inches shall be considered

195. R.C.M. 1947, Sec. 89-801

196. R.C.M. 1947, Sec. 89-802

197. R.C.M. 1947, Sec. 89-812

198. R.C.M. 1947, Sec. 89-839

199. R.C.M. 1947, Sec. 89-829

200. R.C.M. 1947, Sec. 89-823, 89-824, 89-825

201. R.C.M. 1947, Sec. 89-816

202. R.C.M. 1947, Sec. 89-817

equivalent to a flow of two and one-half cubic feet (18.7 gallons) per second of time.²⁰³ The legal standard of one cubic foot of flow per second of time equals forty (40) miner's inches.

203. R.C.M. 1947, Sec. 89-818

For more detailed information on water law in Montana, one should write to the Montana Agricultural Experiment Station, Montana State College, Bozeman, Montana and ask for Bulletin 545 entitled "The Montana Law of Water Rights" by Wells A. Hutchins.

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PART TWO
SECTIONS OF THE REVISED CODES OF MONTANA, 1947*

TITLE 50, CHAPTER 2,
SAMPLING AND ASSAYING OF ORE

- Section. 50-201. Purchasers and samplers of ore to maintain sample-room.
- 50-202. Samples of fifty pounds per ton to be retained until settlement.
- 50-203. Penalty for commingling foreign substances with ore.
- 50-204. Umpire assayers—appointment, qualifications and duties.
- 50-205. Notice of selection.
- 50-206. Violation of act a misdemeanor—penalty.

§ 50-201. (3436) *Purchasers and samplers of ore to maintain sample-room.* Any person, association, or corporation engaged in the business of buying or sampling or smelting for hire ores of gold, silver, copper, lead, zinc, iron, or other valuable metal, shall maintain a sampling-room or house to which the ore shippers, their agents, or representatives, shall have access at all times during the sampling of ores, or while the same is being carried on, and in which shall be samples of all ores he or they may buy or smelt.

§ 50-202 (3437) *Samples of fifty pounds per ton to be retained until settlement.* Every such person, association, or corporation which shall buy any ores upon any agreement to pay for the same in amount dependent upon the metallic contents of the same, or smelt any ore, shall retain from the pulp or crushed ore, as the same is sampled, an amount selected regularly and at equal intervals from any lot of ore so brought or to be smelted, a quantity not less than fifty pounds out of each ton of such ore, and shall keep the same separate and apart from any other ores or pulp for a period of thirty days, or until full settlement is made and accepted by the shipper; and until such settlement is made and accepted, the ore shipper, his agents, or representatives, shall be entitled to take from the quantity so retained any part thereof for the purpose of sampling or assaying the same; provided, that the value of any part so taken by such owner or shipper may be deducted from the total value of the ore delivered by him.

§ 50-203. (3438) *Penalty for commingling foreign substances with ore.* Any person, or persons, corporation, association or copartnership who shall, with intent to defraud, in any manner introduce any foreign substance into any ore, or commingle any foreign substance with any ore intended for sale in any smelter or which any person, association, or corporation shall have undertaken for hire to smelt; or into any sample retained for tests or assays, as in the next preceding section provided, in any manner whatever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars not more than one thousand dollars, or by imprisonment in the county jail for a period of not less than sixty days nor more than twelve months, or by both such fine and imprisonment.

§ 50-204. (3439) *Umpire assayers—appointment, qualifications and duties.* Any person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt the same, whether for themselves or as the

agent or agents for other purchasers, shall, on or before the tenth day of April, 1909, choose an assayer or assayers who, for at least one year prior to the passage of this act, shall have operated an assay office or chemical laboratory within this state, and to such selected assayer or assayers shall be submitted all samples of ore, sampled by such person, association, or corporation, over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of such ore. Said chosen assayer or assayers shall be known as the umpire or umpires for such person, association, or corporation.

§ 50-205. (3440) *Notice of Selection.* Upon the selection of such assayer or assayers, who shall be actively engaged in the assaying business in the state, every person, association, or corporation selecting the same shall, within ten days after such choice is made, post a notice of such choice, in which shall appear the name of the assayer or assayers so selected, in a conspicuous place with and without the room or house where the sampling of ores is carried on by such person, association, or corporation.

§ 50-206. (3441) *Violation of act a misdemeanor—penalty.* Every person, association, or corporation engaged in the sampling of ores belonging to others, who fails to comply with the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars nor less than five hundred dollars.

TITLE 50, CHAPTER 3,
PAYMENTS FOR CONSIGNMENTS OF ORE
PURCHASES FROM LEASED MINES

- Section 50-301. Time for settlement for ores purchased by smelter, etc.
- 50-302. Violation of act a misdemeanor—penalty.
- 50-303. Purchasers of ore from leased mines to furnish statement.
- 50-304. Sampling works and smelters to mail statement to lessee.
- 50-305. Shipper—penalty for violation.
- 50-306. Smelters—penalty for violation.

§ 50-301. (3442) *Time for settlement for ores purchased by smelters, etc.* Every person, association, company, or corporation, engaged within this state in purchasing ores, minerals, or metals from, or in smelting, milling, or otherwise reducing or preparing the same for market for any other person, or persons, association, company, or corporation, shall, within twenty days after any such ores, minerals, or metals shall have arrived at his, their, or its smelter, mill, reduction works, yards, or other place for receiving such ores, minerals, or metals, make full settlement with and payment of the amount due to the consignor, or consignors thereof, unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction. Every such person, association, company, or corporation, to whom or to which any such ores, minerals or metals have heretofore been shipped and delivered, and for which settlement and payments have not been made or had, shall, within twenty days after this act takes effect, make full settlements and payments therefor to, and with the consignor or consignors thereof,

* Excerpts from the Revised Codes of Montana, 1947, by Permission of the Allen Smith Co., Indianapolis, Ind.

unless restrained or prevented from making such settlement and payment by an order, writ, or process of a court of competent jurisdiction. However, the provisions of this section shall not be applicable to any such ores, minerals or metals received pursuant to an existing written contract at time of shipment between the consignor, or consignors thereof, and the person, association, company, or corporation, receiving the same, where the time for settlement and payment is provided for in such contract.

§ 50-302. (3443) *Violation of act a misdemeanor—penalty.* Any person, association, company, or corporation, violating any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one thousand dollars, nor less than five hundred dollars.

§ 50303. (3444) *Purchasers of ore from leased mines to furnish statement.* All persons or corporations buying or treating ores from leased mines or mining claims, shall furnish both to the lessor and lessee, or lessors and lessees, of such mines or mining claims, a true and correct copy of the statement of returns of ores from such sale or shipment, such statement to show both the gross and net proceeds derived from such sale or shipment of ores. Upon shipment of any such ores from leased premises, either for sale or treatment, the shipper shall furnish to any sampling works or smelter buying or treating same, the name or names, and postoffice address of the lessor or lessors, lessee or lessees, interested in such shipment of ores, and within seven days after receipt of such statement from such sampling works or smelter the said shipper shall make settlement with such lessor or lessors, lessee or lessees, for such shipment or sale of ores, based upon such said statement received by the parties from such sampling works or smelter.

§ 50-304. (3444.1) *Sampling works and smelters to mail statement to lessee.* That all sampling works and smelters within this state shall mail a duplicate copy of any statement showing the gross and net proceeds of all ores bought or treated from lessors of mines, to the lessee or lessees of the mine or mining claim from which the same shall have been extracted at the same time such statement is furnished to the lessor of said mine or mining claim or shipper of such ore.

§ 50-305. (3445) *Shipper—penalty for violation.* Any person or corporation who, as such shipper, shall violate the provisions of section 50-303 shall be liable to the lessor or lessors, lessee or lessees, for ten per cent of the net returns from such shipment, or sale, of ores referred to in said section, in addition to the value of the interest of the lessor or lessors, lessee or lessees in said shipment, the same to be recovered in an action in any court of competent jurisdiction.

§ 50-306. (3446) *Smelters—penalty for violation.* Any person or corporation operating any sampling works, or smelter, within this state who shall violate any of the provisions of sections 50-303 and 50-304 shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than fifty (\$50.00) dollars,

**TITLE 50, CHAPTER 6,
REGULATIONS FOR SALE AND MARKETING
OF COAL**

Section. 50-601.	Regulations concerning bills and invoices.
50-602.	Dealers' duties concerning bills and invoices.
50-603.	Weight of coal substitution of kind.
50-604.	Copies of bills and invoices to be kept for inspection.
50-605.	Penalty for violations.
50-606.	Enforcement of act.

§ 50-601. (3546.1) *Regulations concerning bills and invoices.* Any person, firm or corporation engaged in mining, producing or shipping of coal within the state of Montana, shall accurately bill and invoice the same, plainly indicating on all bills or invoices therefor the place where the same was mined, the person, firm or corporation by whom the same was mined and the trade name or mark, if any, thereof.

§ 50-602. (3546.2) *Dealers' duties concerning bills and invoices.* Any person, firm, or corporation wholesaling, jobbing, exchanging, offering for sale, or selling at retail, any coal within the state of Montana shall accurately bill and invoice the same to the person, firm or corporation purchasing or receiving the same and shall plainly indicate on all statements, bills or invoices, therefor, the name of the coal, the name of the person, firm or corporation producing the same, the place where mined and the trade name or trade mark, if any, thereof.

§50-603. (3546.3) *Weight of coal—substitution of kind.* In the sales of coal within the state of Montana, the seller must give to the purchaser full weight at the rate of two thousand (2,000) pounds per ton, and no person, firm or corporation shall deliver to any customer any coal in substitution for the kind, brand, or character of coal ordered by the customer except upon the express written order, direction or approval of the purchaser.

§ 50-604. (3546.4) *Copies of bills and invoices to be kept for inspection.* Any person, firm or corporation, mining, shipping or producing coal, and all persons, firms or corporations wholesaling, jobbing, exchanging, offering for sale or selling at retail any coal within the state of Montana, shall keep within the state of Montana, a true, accurate and complete copy of all the original statements, bills and invoices of all coal produced, shipped, marketed, exchanged or sold for at least one (1) year; and all papers, records, and files of any person, firm or corporation transporting, producing, shipping, exchanging or selling any coal within the state of Montana shall, at all times, be open to inspection by the attorney general, the county attorneys and the state sealer of weights and measures for the purposes of enforcing this act.

§ 50-605. (3546.5) *Penalty for violations.* Every person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00), nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment. Any person, firm or corporation convicted of a second violation of any of the provisions of this act shall be punished as above provided, and the license of any retail coal dealer shall, thereby, be automatically revoked, and it shall be unlawful for any person, firm or corporation, so convicted, thereafter to engage in said retail business, either directly or indirectly, for a period of six (6) months next after such second conviction.

§ 50-606. (3564.6) *Enforcement of act.* It shall be the duty of the state sealer of weights and measures to enforce the provisions of this act and the duty of the attorney general and the county attorneys of the counties of the state to prosecute all cases arising under the provisions hereof.

TITLE 50, CHAPTER 7,
LOCATION AND RECORD OF MINING AND
MILLSITE CLAIMS

Section 50-701.	Discovery—notice—marking boundaries sinking shaft.
50-702.	Record of certificate of location.
50-703.	Effect of earlier recorded mining locations.
50-704.	Recording of affidavit of performance of annual work.
50-705.	Millsites.
50-706.	Relocation of abandoned claim.
50-707.	Rights of relocater.
50-708.	Amended location.
50-709.	Relocation by owner.
50-710.	Amendment or relocation not a waiver of acquired rights.
50-711.	Rights of third persons not affected.
50-712.	Validating locations heretofore made.
50-713.	Defective locations good against persons with notice.
50-714.	Effect of patent.
50-715.	Amended locations.
50-716.	Effect of amended or additional declaratory statement heretofore filed.

§ 50-701. (7365) *Discovery—notice—marking boundaries—sinking shaft.* Any person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, or a placer deposit of gold, or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States, may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge, or deposit in the following manner, viz:

1. He shall post, conspicuously, at the point of discovery, a written or printed notice of location, containing the name of the claim, the name of the locator (or locators, if there be more than one), the date of the location, which shall be the date of posting such notice, and the approximate dimensions of area of the claim intended to be appropriated.

2. Within thirty days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced. It shall be prima facie evidence that the location be properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds: (1) A tree at least eight inches in diameter, and blazed on four sides; (2) A post at least four inches square by four feet six inches in length, set one foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock, and surrounded in all cases by a mound of earth or stone at least four feet in diameter by two feet in height. A squared stump of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound; (3) A stone at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least four feet in diameter by two feet in height; or (4) A boulder at least three feet above the natural surface of the ground on the upper side. Where other monuments, or monuments of lesser dimensions than those above described, are used, it shall be a question for the jury, or for the court where the action is tried without a jury, as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

3. Within sixty days after posting such notice, he shall sink a shaft upon the vein, lode, or deposit, at or near the point of discovery, to be known as the discovery shaft. Such shaft shall be sunk to the depth of at least ten feet, vertically, below the lowest part of the rim of such shaft at the surface, or deeper if necessary to disclose the vein or deposit located, and the cubical contents of such shaft shall be not less than one hundred and fifty cubic feet; provided, that any cut or tunnel which discloses the vein, lode, or deposit, located at a vertical depth of at least ten feet below the natural surface of the ground, and which constitutes at least one hundred and fifty feet of excavation, shall be deemed the equivalent of such shaft; and provided also, that where the vein, lode, or deposit located is disclosed at a less vertical depth than ten feet, any deficiency in the depth of the discovery shaft, cut, or tunnel may be compensated for by any horizontal extension of such working, or by any excavation done elsewhere upon the claim, equaling, in cubical contents, the cubical extent of such deficiency; but in every case at least seventy-five cubic feet of excavation shall be made at the point of discovery.

§ 507-702. (7366) *Record of certificate of location.* Within sixty days after posting the notice of location, and for the purpose of constituting constructive notice of the location, the locator shall record his location in the office of the county clerk of the county in which such mining claim is situated. Such record shall consist of a certificate of location containing:

1. The name of the lode or claim.
2. The name of the locator or locators, if there be more than one.
3. The date of location, and such description of said claim, with reference to some natural object or permanent monument as will identify the claim.

4. In the case of a lode claim, the direction and distance claimed along the course of the vein each way from the discovery shaft, cut, or tunnel, with the width claimed on each side of the center of the vein.

5. In the case of a placer claim, the dimensions of area of the claim, and the location thereon on the discovery shaft, cut, or tunnel.

6. The locator and claimant, at his option, may also set forth, in such certificate of location, a description of the discovery work, the corner monuments, and the markings thereon, and any other facts showing a compliance with the provisions of this law. Such certificate of location must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified, or a certified copy thereof, is prima facie evidence of all facts properly recited therein.

§ 50-703. (7367) *Effect of earlier recorded mining locations.* All placer mining location or locations of valuable mineral deposits which have heretofore been recorded in the office of the county clerk or recorder, have the same force and effect as though such records had been authorized by law, except in cases where the rights of third persons had been acquired before the passage of this code; and such record is entitled to be admitted in evidence in any court.

§ 50-704. (7368) *Recording of affidavit of performance of annual work.* The owner of a lode or placer claim who performs or causes to be performed the annual work, or makes the improvements required by the laws of the United States in order to prevent the forfeiture of the claim, may, within twenty days after the annual work, file in the office of the county clerk of the county in which such claim is situated an affidavit of his own or an affidavit of the person who performed such work or made the improvements showing:

1. The name of the mining claim, and where situated;
2. The number of days' work done, and the character and value of the improvements placed thereon;
3. The date of performing such work, and of making the improvements;
4. At whose instance the work was done or the improvements made;
5. The actual amount paid for work and improvements, and by whom paid when the same was not done by the owner.

Such affidavits, or a certified copy thereof, are prima facie evidence of the facts therein states.

§ 50-705. (7369) *Millsites.* Millsite claims may be located and recorded in the same manner as other claims, except that no discovery or discovery work is required. Where a millsite claim is appurtenant to a mining claim, the certificate of location of such millsite claim shall describe, by appropriate reference, the mining claim to which it is appurtenant.

§ 50-706. (7370) *Relocation of abandoned claim.* The relocater of an abandoned or forfeited mining claim may adopt as his discovery any shaft or other working, existing upon such claim at the date of the relocation, in which the vein, lode, or deposit is disclosed, but, in such shaft or other working, he shall perform the same discovery work as is required in the case of an original location.

§ 50-707. (7371) *Rights of relocater.* The rights of a relocater of any abandoned or forfeited mining claim, hereafter relocated, shall date from the posting of his notice of location thereon, and, while he is duly performing the acts required by law to perfect his location, his rights shall not be affected by any re-entry or resumption of work by the former locator of claimant.

§ 50-708. (7372) *Amended location.* A locator or claimant may at any time amend his location, and make any change in the boundaries which does not involve a change in the point of discovery as shown by the discovery shaft, by marking the location as amended upon the ground, and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate.

§ 50-709. (7373) *Relocations by owner.* A locator or claimant may at any time relocate his own claim for any purpose, except to avoid the performance of annual labor thereon, and, by such relocation, may change the boundaries of his claim, or the point of discovery, or both, but such relocation must comply in all respects with the requirements of this law as to an original location.

§ 50-710. (7374) *Amendment or relocation not a waiver of acquired rights.* Where a locator or claimant amends or relocates his own claim, such amendment or relocation shall not be construed as a waiver of any right or title acquired by him by virtue of the previous location or record thereof, except as to such portions of the previous location as may be omitted from the boundaries of the claim as amended or relocated. As to the portion of ground included both in the original location and the location as amended or relocated, he may rely either upon the original location or the location as amended or relocated, or upon both; provided, that nothing herein contained shall be construed as permitting the locator or claimant to hold a tract which does not include a valid discovery.

§ 50-711. (7375) *Rights of third persons not affected.* No amendment or relocation of a mining claim by the locator or claimant thereof shall interfere with the right of any third person existing at the time of such amendment or relocation.

§ 50-712. (7376) *Validating locations heretofore made.* All mining locations, made and recorded under the laws of this state heretofore in force, that in any respect have failed to conform to the requirements of such laws, shall, nevertheless, in the absence of the rights of third persons accruing prior to the passage of this act, be valid, if the making and recording of such locations conform to the requirements of this act.

§ 50-713. (7377) *Defective locations good against persons with notice.* The period of time prescribed by this law for the performance of any act shall not be deemed mandatory where the act is performed before the rights of third persons have intervened and no defect in the posted notice or recorded certificate shall be deemed material, except as against one who has located the same ground, or some portion thereof, in good faith and without notice. Notice to an agent, who makes a location in behalf of another, shall be deemed notice to his principal, and notice to one of several coclaimants shall be deemed notice to all.

§ 50-714. (7378) *Effect of patent.* The issuance of a United States patent for a mining claim shall be deemed conclusive that the requirements of the laws of this state, relative to the location and record of such mining claim, have been duly complied with; provided, however, that where questions of priority are involved, the date of the location shall be an issuable fact where it is claimed to have been prior to the date of the record of the location.

§ 50-715. (7379) *Amended locations.* If at any time the locator of any mining claim heretofore or hereafter located, or his successors or assigns, shall apprehend that his original declaratory statement was defective or erroneous, or that the requirements of law had not been complied with, or shall be desirous of changing his boundaries, or taking in part of an overlapping claim which has been abandoned, or in case his original declaratory statement was filed prior to the passage of this law and he shall be desirous of securing the benefit of this act, such locator, or his successors or assigns, may file an additional or amended declaratory statement subject to the provisions of this act; provided, that such relocations or filing of the amended or additional declaratory statement shall not interfere with the existing rights of others at the time of such relocation or filing of the amended or additional declaratory statement, and no such relocation or amended or additional declaratory statement, or other record thereof, shall preclude the claimant or claimants from proving any such title as he or they may have held under the previous location and notice thereof.

§ 50-716. (7380) *Effect of amended or additional declaratory statement heretofore filed.* Any amended or additional declaratory statement which may have been heretofore filed by a locator, or his successors or assigns shall have the same force and effect and be subject to the same terms and conditions as though the same had been filed under the provisions of the preceding section.

TITLE 50, CHAPTER 8, MINING—RIGHTS OF WAY

- Section. 50-801. Owners of mines have right-of-way.
 50-802. Right-of-way for road or ditch.
 50-803. Proceedings to obtain right-of-way.
 50-804. Proceedings before the court.
 50-805. Commissioners to be appointed.
 50-806. Damage to be assessed by commissioners.
 50-806. Damage to be assessed by commissioners.
 50-807. Report of commissioners may be set aside.
 50-808. Right-of-way may be upon payment of

damages assessed.

- 50-809. Appeal from the assessment of damages—how taken.
- 50-810. Trial on appeal—costs.
- 50-811. Cost, how paid.
- 50-812. Final appeal may be taken to supreme court.

§ 50-801. (7382) *Owners of mines have right-of-way.* The owner of a mining claim held under the laws of the United States by patent or other wise, or under the local laws and customs of the state, has a right-of-way over and across the land or mining claim, patented or otherwise of another, as prescribed in this chapter.

§ 50-802. (7383) *Right-of-way for road or ditch.* Whenever a mine or mining claim is so situated that it cannot be conveniently worked without a road thereto, or a ditch to convey water thereto, or a ditch or a cut to convey water therefrom, or without a shaft or tunnel thereto, which road, ditch, cut, flume, or tunnel must necessarily pass over, under, through, or across any lands or mining claims owned or occupied by another, such owner is entitled to a right-of-way for said road, ditch, cut, flume, shaft, or tunnel over, under, through, and across the lands or mining claims belonging to another, upon compliance with the provisions of this chapter.

§ 50-803. (7384) *Proceedings to obtain right-of-way.* Whenever such owner desires to work a mine or mining claim, and it is necessary to enable him to do so successfully and conveniently that he should have a right-of-way for any of the purposes mentioned in the foregoing sections; and, if such right-of-way has not been acquired by agreement between him and the owner of the land or claims over, under, across, and upon which he seeks to establish such right-of-way, it is lawful for him to present to the judge of the district court a complaint asking that such right-of-way be awarded to him. The complaint must be verified, and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the lands to be affected by such right-of-way, with the names of the occupants or owners thereof, and may also set forth any tender or offer hereinafter mentioned.

§ 50-804. (7385) *Proceedings before the court.* Upon the receipt of the complaint and filing thereof with the clerk of the court, the judge must direct a summons to issue to the defendants named in the complaint, requiring them to appear before the judge on a day therein named, which must be not less than ten days from the service thereof, and show cause why such right-of-way should not be allowed; the summons may be served on each of the parties in the manner prescribed by law for serving summons in other actions.

§ 50-805. (7386) *Commissioners to be appointed.* Upon the return of the summons, or upon any day to which the hearing is adjourned, the defendants may demur or answer, and issue must be joined, and the judge must hear the allegations and proofs of the respective parties, and if, upon such hearing, he is satisfied that the claims of the plaintiff can only be conveniently worked by means of the privilege asked for, he must make an order adjudging and awarding to the plaintiff such right-of-way, and must appoint three commissioners, disinterested persons and residents of the county, to assess the damages to the lands or claims affected by such order.

§ 50-806. (7387) *Damage to be assessed by commissioners.* The commissioners must be sworn to faithfully and impartially discharge their duties, and must without delay examine the property, lands, and claims, and assess the damages resulting from such right-of-way, and report

the amount to the judge, and if such right-of-way affects the property of more than one person, such report must contain an assessment of damages to each person.

§ 50-807. (7388) *Report of commissioners may be set aside.* For good cause shown, the judge may set aside the report of the commissioners and appoint three other commissioners.

§ 50-808. (7389) *Right-of-way may be upon payment of damages assessed.* Upon the payment of the sum assessed as damages, and all costs, to the persons to whom it is awarded, or the payment of the same to the clerk for the use of such person, plaintiff is entitled to the right-of-way, and may immediately proceed to occupy the same and to erect thereon such works and structures, and make therein such excavations as may be necessary to the use and enjoyment of the right-of-way so awarded.

§ 50-809. (7390) *Appeal from the assessment of damages—how taken.* An appeal from the assessment of damages made by the commissioners may be taken to the district court by any party interested at any time within ten days after the filing of the report of the commissioners. A written notice of appeal must be filed with the clerk and served upon the opposite party.

§ 50-810. (7391) *Trial on appeal—costs.* On appeal, the question of the amount of damages may be tried by the court or jury as in other cases. If the appellant recovers damages exceeding the amount awarded by the commissioners, the opposite party must pay the costs of appeal, otherwise the appellant.

§ 50-811. (7392) *Costs, how paid.* All costs and expenses of the proceedings under the provisions of this chapter, except as provided in the next preceding section, must be paid by the plaintiff, or party making the application. The judge may, if the right-of-way asked for is denied, allow the opposite party a reasonable counsel fee.

§ 50-812. (7393) *Final appeal may be taken to supreme court.* An appeal to the supreme court may be taken by either party, as in other cases.

TITLE 63, CHAPTER 10. MINING PARTNERSHIP

- Section. 63-1001. When a mining partnership exists.
- 63-1002. Express agreement not necessary to constitute.
- 63-1003. Profits and losses—how shared.
- 63-1004. Lien of partners.
- 63-1005. Mine—partnership property.
- 63-1006. Partnership not dissolved by sale of interest.
- 63-1007. Purchaser takes, subject to liens, unless, etc.
- 63-1008. Takes with notice of lien, when.
- 63-1009. Contract in writing—when binding.
- 63-1010. Owners of majority of shares govern.

§ 63-1001. (8050) *When a mining partnership exists.* A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

§ 63-1002. (8051) *Express agreement not necessary to constitute.* An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

§ 63-1003. (8052) *Profits and losses—how shared.* A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

§ 63-1004. (8053) *Lien of partners.* Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced by him for its uses. This lien exists, notwithstanding there is an agreement among the partners that it must not.

§ 63-1005. (8054) *Mine-partnership property.* The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

§ 63-1006. (8055) *Partnership not dissolved by sale of interest.* One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

§ 63-1007. (8056) *Purchaser takes, subject to liens, unless, etc.* A purchaser of an interest in the mining ground of a mining partnership takes it subject to liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership, unless he purchased in good faith, for a valuable consideration, without notice of such lien.

§ 63-1008. (8057) *Takes notice of lien, when.* The purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

§ 63-1009. (8058). *Contract in writing—when binding.* No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership, except by express authority derived from the members thereof.

§ 63-1010. (8059) *Owners of majority of shares govern.* The decision of the members owning a majority of the shares or interests in a mining partnership binds it in the conduct of its business.

TITLE 69, CHAPTER 13, WATER POLLUTION ACT

Section. 69-1328.	Definitions
69-1332.	Pollution unlawful—permits
69-1333.	Inspection and entry
69-1336.	Penalties.

§ 69-1328. *Definitions.* For the purpose of this act, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Sewage" means the water-carried waste products from the residences, public buildings, institutions or other buildings, including the excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present. The provisions of this act shall not apply to the excrementitious discharges of domestic and farm animals providing human health is not involved.

(b) "Industrial waste" means any liquid, gaseous or solid waste substances resulting from any process of industry, manufacturing, trade or business or from the development of any natural resource, together with such sewage as may be present, which may pollute the waters of the state.

(c) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals and all other substances which may pollute the waters of the state.

(d) "Contamination" means an impairment of the qualities of the waters of the state by sewage or industrial wastes to a degree which creates a hazard to human health.

(e) "Pollution" as used in this act shall mean the alteration of the physical, chemical or biological properties of any waters of the state which renders said waters harmful or detrimental for their most beneficial uses and over which the authority of the state board of health as vested by Title 69, Chapter 13 of the Revised Codes of Montana, 1947, as herein amended, does not extend, except that no waters not now being used for human consumption as a single public supply system serving more than one hundred (100) persons shall be classified continuously devoted to industrial waste use except for seasonal variations for a period of over thirty (30) years. Provided, however, that new industry or sewerage system discharging industrial or other wastes into waters excepted by paragraphs (e) and (i) from the provisions of this act shall be required to maintain the classification established by the council at the point of discharge and downstream on such waters. Where waters have been classified or standards established pursuant to this act, any discharge which is not in accord with such classification or standards shall be deemed to be pollution.

(f) "Sewerage system" means pipe lines or conduits, pumping stations, and force mains, and all other construction devices, and appliances appurtenant thereto, used for collecting or conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

(g) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works not specifically mentioned herein, installed for the purpose of treating, stabilizing or holding sewage, industrial waste, or other wastes.

(h) "Disposal system" means a system for disposing of sewage, industrial waste or other wastes, and includes sewerage systems and treatment works.

(i) "Waters of the state" means all streams and lakes, including all rivers and lakes bordering on the state, wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems and other bodies of water, surface and underground, natural or artificial, publicly or privately owned. Provided, however, that unless drainage or seepage from artificial privately owned bodies of water reaches flowing streams of the state in such condition as to pollute such flowing waters, the provisions of this act shall not apply to artificial, privately owned waters; and provided further, the provisions of this act shall not apply to any waters of the state not reasonably suitable for domestic or public water supply for human consumption at the time of the passage of this act.

(j) "Person" means the state or any instrumentality thereof, any municipality, political subdivision, institution, public or private corporation, partnership, individual, or other entity.

§ 69-1332. *Pollution unlawful—permits.* (a) It shall be unlawful for any person to cause the pollution, as defined in section 3, subsection (e) [69-1328 (e)] of this act, of any waters of the state.

(b) It shall be unlawful for any person to construct, install or operate a new sewerage system, disposal system or treatment works, extensions, modifications, or additions to new and existing sewerage systems, disposal systems, or treatment works, extensions, modifications, or additions to factories, manufacturing establishments or business enterprises, the operation of which would cause a substantial increase in waste discharges to the waters of the state, or otherwise substantially alter the physical, chemical or biological properties of the waters of the state to make or cause to be made any new outlet for the discharge of sewage, industrial waste or other wastes into any sewerage system or into the waters of this state without first securing such a permit as the board may by regulations require. The board may require the submis-

sion of plans and specifications for approval or disapproval and such other information as it deems relevant in connection with the issuance of such permits.

§ 69-1333. *Inspection and entry.* The board, through its duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to pollution of any waters of the state.

§ 69-1336. *Penalties.* Any person who violates any final determination or order of the board or of the council shall be enjoined from continuing such violation."

**TITLE 69, CHAPTER 19,
EXPLOSIVES—REGULATION OF MANUFACTURE,
STORAGE, AND SALE**

Section. 69-1901.	Definitions.
69-1902.	Prohibitions and exceptions.
69-1903.	Quantity and distance table for explosives factories and magazines.
69-1904.	Maximum allowed for storage or keeping in building or magazines.
69-1905.	Reduction of distances.
69-1906.	Containers.
69-1907.	Magazines—classes and specifications.
69-1908.	Blasting caps, storage of.
69-1909.	Certificate of compliance.
69-1910.	License.
69-1911.	Inspection.
69-1912.	Who may enter.
32-21-153.	Vehicles transporting explosives.
69-1914 through 69-1917.	Not applicable to mining.
69-1918.	Exemptions.
69-1919.	Existing ordinances not affected.
69-1920.	Explosives, misrepresentations concerning percentage of nitroglycerine.
69-1921.	Regulating sales of explosives.
69-1922.	Storage of explosives in mines.
69-1923.	Storage of explosives in cities, etc.
69-1924.	Construction and location of magazines.
69-1925.	Magazines, etc., to bear warning signs.
69-1926.	Transportation of explosives with passengers forbidden, when.
69-1927.	Careless use of explosives, a misdemeanor.
69-1928.	Penalties.
69-1929.	Penalty when death caused by violation of this act.
69-1930.	Storage of kerosene, petroleum or caps in unincorporated towns or villages—disposal of materials after dark by artificial light, regulation of.

§ 69-1901. (2786) *Definitions.* The term "explosive" or "explosives" whenever used in this act shall be held to mean and include any chemical compound or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing that an ignition by fire friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, or of destroying life or limb.

The word "magazine" as used herein means any building or other structure, other than a factory building, used for the storage of explosives.

The term "building" or "buildings" as used herein shall be held to mean and include only a building or buildings occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble.

The term "factory building" as used herein shall be held to mean any building or other structure containing explosives in which the manufacture of explosives or any part of the manufacture is carried on.

The term "railroad" as used herein shall be held to mean and include any steam, electric or other railroad which carries passengers for hire.

The term "highway" as used herein shall be held to mean and include any public street, public alley or public road.

The term "efficient artificial barricade" as used herein shall be held to mean an artificial mound or properly riveted wall of earth of a minimum thickness of not less than three feet.

The term "person" as used herein shall be held to mean and include firms and corporations, as well as natural persons.

Words used in the singular number shall include the plural, and the plural the singular.

§ 69-1902. (2787) *Prohibitions and exceptions.* No person shall manufacture, have, keep, or store explosives in this state, except in compliance with this act, except that explosives may be manufactured without compliance with this act in the laboratories of schools, colleges and similar institutions, for the purpose of investigation and instruction.

It shall be unlawful to sell, give away, or otherwise dispose of, or deliver to any person under eighteen (18) years of age any explosives, whether said person is acting for himself or for any other person.

§ 69-1903. (2788) *Quantity and distance table for explosive factories and magazines.* All factory buildings and magazines in which explosives are had, kept, or stored, must be located at distances from buildings, railroads and highways in conformity with the following quantity and distance table, and this table shall be the basis on which applications for certificate of compliance, as provided in section 69-1909, shall be made and the certificate of compliance issued; provided that the quantity and distance table may be disregarded and a certificate of compliance may be issued for two second class magazines (see section 69-1907) in any building not otherwise prohibited by law, if the contents and location of the magazine are as follows: (a) One second-class magazine containing not more than fifty pounds of explosives may be allowed if the said second-class magazine is placed on wheels and located not more than ten feet from, on the same floor with and directly opposite to the entrance on the floor nearest the street level; (b) One second-class magazine containing not more than five thousand blasting caps may be allowed if the said second-class magazine is placed on wheels and located on the floor nearest the street level.

The quantity and distance table governing the manufacture, keeping, and storage of explosives is . . . (see Table 3, p. 50).

§ 69-1904. (2789) *Maximum allowed for storage or keeping in building or magazine.* No quantity in excess of three hundred thousand pounds, or in case of blasting caps no number in excess of twenty million caps shall be had, kept, or stored in any factory building or magazine in this state.

§ 69-1905. (2790). *Reduction of distances.* Whenever the building, railroad or highway to be protected is effectively screened from the factory, building, or magazine, where explosives are had, kept or stored, either by natural features of the ground or by an efficient artificial barricade of such height that any straight line drawn from the top of any side wall of the factory building or magazine to any part of the building to be protected, will pass through such intervening natural or efficient artificial barrier, and any straight line drawn from the top of any side wall of the factory building or magazine to any point twelve feet above the center of the railroad or

TABLE 3.—QUANTITY AND DISTANCE TABLE

Quantity that may be had, kept, or stored				Distances from the nearest		
Column One Blasting & Electric Blasting Caps		Column Two Other Explosives		Column Three Building	Column Three Railway	Column Four Highway
Number Over	Number Not Over	Pounds Over	Pounds Not Over	Feet	Feet	Feet
1,000	5,000	—	—	30	20	10
5,000	10,000	—	—	60	40	20
10,000	20,000	—	—	120	70	35
20,000	25,000	—	50	145	90	45
25,000	50,000	50	100	240	140	70
50,000	100,000	100	200	360	220	110
100,000	150,000	200	300	520	310	150
150,000	200,000	300	400	640	380	190
200,000	250,000	400	500	720	430	220
250,000	300,000	500	600	800	480	240
300,000	350,000	600	700	860	520	260
350,000	400,000	700	800	920	550	280
400,000	450,000	800	900	980	590	300
450,000	500,000	900	1,000	1,020	610	310
500,000	750,000	1,000	1,500	1,060	640	320
750,000	1,000,000	1,500	2,000	1,200	720	360
1,000,000	1,500,000	2,000	3,000	1,300	780	390
1,500,000	2,000,000	3,000	4,000	1,420	850	420
2,000,000	2,500,000	4,000	5,000	1,500	900	450
2,500,000	3,000,000	5,000	6,000	1,560	940	470
3,000,000	3,500,000	6,000	7,000	1,610	970	490
3,500,000	4,000,000	7,000	8,000	1,660	1,000	500
4,000,000	4,500,000	8,000	9,000	1,700	1,020	510
4,500,000	5,000,000	9,000	10,000	1,740	1,040	520
5,000,000	7,500,000	10,000	15,000	1,780	1,070	530
7,500,000	10,000,000	15,000	20,000	1,950	1,170	580
10,000,000	12,500,000	20,000	25,000	2,110	1,270	630
12,500,000	15,000,000	25,000	30,000	2,260	1,360	680
15,000,000	17,500,000	30,000	35,000	2,410	1,450	720
17,500,000	20,000,000	35,000	40,000	2,550	1,530	760
		40,000	45,000	2,680	1,610	800
		45,000	50,000	2,800	1,680	840
		50,000	55,000	2,920	1,750	880
		55,000	60,000	3,030	1,820	910
		60,000	65,000	3,130	1,880	940
		65,000	70,000	3,220	1,940	970
		70,000	75,000	3,310	1,990	1,000
		75,000	80,000	3,390	2,040	1,020
		80,000	85,000	3,460	2,080	1,040
		85,000	90,000	3,520	2,120	1,060
		90,000	95,000	3,580	2,150	1,080
		95,000	100,000	3,630	2,180	1,090
		100,000	125,000	2,670	2,200	1,100
		125,000	150,000	3,800	2,280	1,140
		150,000	175,000	3,930	2,360	1,180
		175,000	200,000	4,060	2,440	1,220
		200,000	225,000	4,190	2,520	1,260
		225,000	250,000	4,310	2,590	1,300
		250,000	275,000	4,430	2,660	1,340
		275,000	300,000	4,550	2,730	1,380

highway to be protected will pass through such intervening natural or efficient artificial barricade, the applicable distances given in columns 2, 3 and 4 of quantity and distance table may be reduced one-half.

§ 69-1906. (2791) *Containers.* Except only at a factory building, and except while being used, no person shall have keep or store explosives at any place within this state unless such explosives are completely enclosed or encased in tight metallic, wooden or fibre containers, and, except while being transported or used or in the custody of a common carrier awaiting shipment or pending delivery to consignee during the time permitted by federal law, explosives shall be kept and stored in a magazine constructed and operated as provided in the following section, and no person having explosives in his possession or control shall, under any circumstances, permit or allow any grains or particles to be or remain on the outside or about the containers in which such explosives are held. All containers in which explosives are held shall be plainly marked with the name of the explosive contained therein.

§ 69-1907. (2792) *Magazines — classes and specifications.* Magazines in which explosives may lawfully be kept or stored shall be of two classes as follows:

(a) Magazines of the first class shall consist of those containing explosives exceeding fifty pounds, and shall be constructed of brick, concrete, iron, or wood, covered with iron, and shall have no opening except for ventilation and entrance. The doors of such magazine must at all time be kept closed and locked, except when necessarily open for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. Every such magazine shall have sufficient openings for ventilation thereof, which must be screened in such manner as to prevent the entrance of sparks of fire through the same. Upon each end of such magazine, above the side walls thereof, or upon its barricade, there shall at all times be conspicuously posted a sign with the words "Magazine—Explosives—Dangerous" legibly printed thereon in letters not less than six inches high. No matches or fire of any kind shall at any time be permitted at any such magazine. No package of explosives shall at any time be opened within fifty feet of any magazine, nor shall any explosives be kept therein except in the original containers. Magazines in which more than fifty pounds of explosives are kept and stored must be detached from other structures, and magazines where more than five thousand pounds of explosives are kept and stored must be located at least two hundred feet from any other magazine, and magazines where quantities of explosives over twenty-five thousand pounds are kept and stored must have an increase over two hundred feet of two and two-thirds feet for each one thousand pounds of explosives in excess of twenty-five thousand pounds stored therein; provided, that where magazines are protected one from the other by natural or efficient artificial barricade, the distance above specified may be reduced one-half.

(b) Magazines of the second class shall be made of fire-proof material or wood, covered with sheet iron, and no more than fifty pounds of explosives shall at any time be kept or stored therein, and except when necessarily opened for use by authorized persons, shall at all times be kept securely locked. Upon each magazine there shall at all times be kept conspicuously posted a sign with the words "Magazine—Explosives—Dangerous" legibly printed thereon, and not more than two such magazines shall be had or kept in any building.

§ 69-1908. (2793). *Blasting caps, storage of.* No blasting caps, or other detonating or fulminating caps, or detonators, shall be kept or stored in any magazines in which other explosives are kept or stored.

§ 69-1909. (2794) *Certificate of compliance.* All persons engaged in keeping or storing explosives on the date when this act takes effect shall within sixty days thereafter, and all persons engaging in keeping or storing explosives after this act takes effect shall, before engaging in the keeping or storing of explosives, make a report in writing, subscribed to by such persons, or his agent, to the state fire marshal stating:

(1) The location of the magazine, if then existing or in case of a new magazine, the proposed location of such magazine.

(2) The kind of explosives that are kept or stored or intended to be kept or stored, and the maximum quantity that is intended to be kept or stored thereat.

(3) The distance that such magazine is located or intended to be located from the nearest buildings, railroads, and highways.

The state fire marshal shall, as soon as may be after receiving such report cause an inspection to be made of the magazine, if then constructed, and in the case of a new magazine as soon as may be after same is found to be constructed in accordance with the specifications provided in section 69-1907, the state fire marshal shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance table set forth in section 69-1908, and shall issue a certificate to the person applying therefor, showing compliance with the provisions of this act, which certificate shall set forth the maximum quantity of explosives that may be had kept or stored in said magazine. Such certificate of compliance shall be valid until canceled for one or more of the causes hereinafter provided. Whenever by reason of change in the physical condition surrounding said magazine at the time of the issuance of the certificate of compliance therefor, such as

(a) The erection of buildings nearer said magazine.

(b) The construction of railroads nearer said magazine, or

(c) The opening for public travel of highways nearer said magazine, than the amounts of explosives which may be lawfully had, kept or stored in said factory, or magazine must be reduced to conform to such changed conditions in accordance with the quantity and distance table notwithstanding the certificate of compliance, and the state fire marshal shall modify or cancel such certificate in accordance with the changed conditions. Whenever any person to whom a certificate of compliance has been issued, keeps or stores in the magazine covered by such certificate of compliance, any quantity of explosives in excess of the maximum amount set forth in said certificate of compliance, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the state fire marshal is authorized to cancel such certificate of compliance. Whenever a certificate of compliance is canceled by the state fire marshal for any cause hereinafter specified, the state fire marshal shall notify the person to whom such certificate of compliance is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within ten days from the giving of said notice. Failure to remove the explosives stored in said magazine within the time specified in said notice shall constitute a violation of this act.

§ 69-1910. (2795) *License.* Every person engaging in the keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the state fire marshal according to the quantity kept or stored therein, of not less than one dollar nor more than twenty-five dollars. Said license fee shall be payable in advance to the state fire marshal and by him paid to the state treasurer.

§ 69-1911. (2796) *Inspection.* The state fire marshal shall make or cause to be made, at least one inspection during every year, of each licensed factory or magazine.

§ 69-1912. (2797) *Who may enter.* No person, except an official as authorized herein or a person authorized to do so by the owner thereof, or his agent, shall enter any factory building, magazine, or car containing explosives in this state.

§ 32-21-153. *Vehicles transporting explosives.* Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(a) Said vehicle shall be marked or placarded on each side and the rear with the word "EXPLOSIVES" in letters not less than eight (8) inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four (24) inches square marked with the word "DANGER" in white letters six (6) inches high.

(b) Every said vehicle shall be equipped with not less than two (2) fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(c) The board is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highway as it shall deem advisable for the protection of the public.

§ 69-1918. (2803) *Exemptions.* Nothing contained in this act shall apply to the regular military or naval forces of the United States, nor the duly authorized militia of any state or territory thereof, nor to the police or fire departments of this state, or of any municipality or county within this state, providing the same are acting in their official capacity, and in the proper performance of their duties.

Nothing contained in this act shall apply to explosives while being transported upon vessels or railroad cars in conformity with the regulations adopted by the interstate commerce commission; nor to transportation or use of blasting explosives for agricultural or prospecting purposes in quantity not exceeding two hundred pounds at any one time; nor to any explosives in quantities not exceeding five pounds at any one time; nor to any person or persons carrying ammunition in reasonable amounts.

§ 69-1919. (2804) *Existing ordinances not affected.* Nothing contained in this act shall affect any existing ordinance, rule or regulation of any city or municipality not less restrictive than this act governing the manufacture, storage, and sale of explosives, or affect, modify, or limit the power of cities or municipalities in this state to make ordinances, rules, or regulations not less restrictive than this act, governing the manufacture, storage, sale, use, or transportation of explosives within their respective corporate limits.

§ 69-1920. (2805) *Explosives, misrepresentations concerning percentage of nitroglycerine.* Any person or corporation engaged in the business of selling blasting or giant powder by whatever name the same shall be known containing nitroglycerine, or equivalent explosive compound in any form, who shall sell or vend any such blasting powder upon the representation that the same contains a certain percentage or proportion of nitroglycerine, or equivalent explosive compound, or who being applied to for blasting powder containing a certain percentage or proportion of nitroglycerine or equivalent explosive compound shall sell or deliver any such blasting powder containing a less percentage or proportion of nitroglycerine, or equivalent explosive compound, than represented or than such powder as was applied for, shall be deemed guilty of a misdemeanor and, on conviction, shall be punished by a fine of not more than one thousand dollars nor less than one hundred dollars.

§ 69-1921. (2806) *Regulating sales of explosives.* That every person, company or corporation, manufacturing, storing, selling, transferring, dealing in, or in any manner disposing of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substances, shall keep in a book for that purpose an accurate record of all transactions, with the date thereof, relating to the receiving and disposing of the same, which record shall show the amount of each such explosive received, by whom transported or conveyed, and each and every sale or other disposition made of such explosive, with the amount thereof, and the name of the person to whom delivery of the same was made, who shall be required to receipt therefor. Such record shall at all times be open to the inspection of the state inspector of mines, or any peace officer.

§ 69-1922. (2807) *Storage of explosives in mines.* No person, company or corporation shall store, deposit or keep in any mine a greater quantity than three thousand pounds of blasting powder, giant or Hercules powder, or other highly explosive substance, and no explosives named in this section shall be stored, deposited, or kept in any place where its accidental explosion would cut off the escape of miners working in said mine.

§ 69-1923. (2808) *Storage of explosives in cities, etc.* No person, company or corporation shall store, deposit, or keep within one mile of the limits of any city, town, or village any powder, gunpowder, giant or Hercules powder, or other highly explosive substance, in greater quantities, than one hundred pounds, or more than one thousand giant caps, at any one time, nor shall such explosives be stored, deposited or kept in any quantities whatever within one mile of such city, town, or village, except in a magazine constructed as hereinafter described; provided, that this section shall not be construed to prevent any person, company or corporation, operating a mine within one mile of the limits of such city, town, or village, from storing powder for use in such mine in the manner prescribed in sections 69-1922 and 69-1924; provided also, that this section shall not prevent the keeping of a reasonable amount of gunpowder, not exceeding fifty pounds, in a safe place for sale.

§ 69-1924. (2809) *Construction and location of magazines.* It shall be unlawful to store, deposit, or keep any powder, gun powder, giant or Hercules powder, giant caps, or other highly explosive substance, in amounts exceeding one hundred pounds, elsewhere than in storehouses or magazines constructed as follows:

The walls of such storehouses and magazines shall be constructed entirely of stone or brick. There shall be no opening in such magazine except necessary ventilation, and one entrance not exceeding thirty inches in width. There shall be two doors to such entrance, an outer door opening outward and an inner door opening inward. The said door shall be of plank not less than two inches in thickness, and both doors shall be entirely covered with one-eighth inch iron, and shall be hinged upon two or more iron hooks securely anchored in the walls of such magazine. Both said doors shall be kept securely locked at all times when powder is stored therein, except when it is necessary to store therein or remove therefrom such powder or other explosives. Such storage room or magazine shall be well and securely roofed with fire-proof and bullet-proof material. Such magazine shall not be constructed within less than one-fourth of a mile of any human habitation except by the permission of the county commissioners, nor shall any magazine constructed within one mile of the limits of any city, town, or village be constructed within one hundred feet of any building owned by any other person.

§ 69-1925. (2810) *Magazines, etc., to bear warning signs.* Every storehouse or magazine constructed as pro-

vided in the foregoing section, in which shall be stored, deposited, or kept any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance, shall at all times have posted above the entrance thereof a sign-board on which shall be painted in conspicuous letters not less than four inches in length the words "explosives—dangerous." Every dray, wagon, freight car, or other vehicle in which shall be transported, transferred, or delivered any of the said explosives, shall bear on each side thereof a similar sign with conspicuous letters not less than two inches in length.

§ 69-1926. (2811) *Transportation of explosives with passenger forbidden, when.* It shall be unlawful to knowingly transport or deliver or cause to be delivered giant or Hercules powder, giant caps, nitro-glycerine, nitro-leum, blasting or nitrated oil, or powder mixed therewith or fibre saturated therewith, or any other highly explosive substance in any quantities whatever on any vessel or vehicle whatever carrying passengers by land or water between any points within the state of Montana; provided, that on mixed trains intended for service on railroad lines leading to mining localities or camps the aforesaid explosive substances or any of them may be lawfully carried, by hanging a placard on each side of the car or cars carrying the explosives, reading thus: "This car is loaded with powder"—each letter of said placard to be at least two inches long, but this proviso shall not permit the carrying of any of said explosive substances in the same car or coach in which the passengers are carried.

§ 69-1927. (2812) *Careless use of explosives a misdemeanor.* Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance, whereby any human being is intimidated, terrified, or endangered, shall be guilty of a misdemeanor.

§ 69-1928. (2813) *Penalties.* Any person, or association of persons, violating any of the provisions of this act shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

§ 69-1929. (2814) *Penalty when death caused by violation of this act.* When the death of any person is caused by the explosion of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance that has been stored, kept, handled, or transported, contrary to the provisions of the foregoing section, the person or persons who have so unlawfully stored, kept, handled, or transported such explosives, or who may have knowingly or negligently permitted their agents, servants, or employees to so unlawfully store, keep, handle, or transport the same, shall be guilty of manslaughter, and, on conviction, shall be punished by imprisonment in the state penitentiary for a period not exceeding ten years.

§ 69-1930. (2815) *Storage of kerosene, petroleum or caps in unincorporated towns or villages—disposal of materials after dark by artificial light, regulation of.* No person or persons shall store, or keep in any store, warehouse, or any other building within the limits of any unincorporated town or village, more than five thousand giant caps at any one time, or any coal oil, kerosene or petroleum, exceeding sixty gallons, other than in original packages, within the limits of the said unincorporated town or village, or shall sell, lend, barter or dispose of, deliver or receive the same, or any or either of the said articles or materials, in the section herein enumerated, after dark by the aid of any lamp, lantern, candle, match, or other artificial light, except electric light.

TITLE 81, CHAPTER 5, COAL MINING LEASES AND PERMITS

- Section. 81-501. Coal mining leases.
- 81-502. Not more than one section may be leased to one person—term-fee.
- 81-503. Royalty.
- 81-504. Application-deposit.
- 81-505. Bond.
- 81-506. Improvements of former lessee.
- 81-507. Board may prescribe additional rules and regulations.
- 81-508. Report and payment of royalty.
- 81-509. Coal mining permits for private use and for schools.
- 81-510. Disposition of royalties and other receipts.

§ 81-501. (1805.38) *Coal mining leases.* The state board of land commissioners is hereby authorized and empowered to lease in such manner as it may deem for the best interests of the state any state lands to which the title has vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling and disposing of the coal therein upon the terms and conditions herein stated, and subject to such rules and regulations as the board may prescribe. This power and authority to lease state lands for coal mining purposes shall extend to and include all lands owned by the state no matter in what manner acquired and shall also extend to and include all those state lands which have been sold but in which the coal rights have been reserved by the state of Montana, whether such lands are under certificate of purchase or patents have been issued; but in such cases and in all cases where the lands are under lease for grazing, agriculture or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

All such coal leases shall be subject to the condition that the coal must be mined, handled and marketed in such manner as to prevent as far as possible all waste of coal and shall also be subject to the condition that the mining operations shall be carried on in such systematic and orderly manner as not to make subsequent mining operations more difficult or expensive. Violations of these conditions shall constitute grounds for the forfeiture of the lease, after hearing had thereon before the state board of land commissioners.

§ 81-502. (1805.39) *Not more than one section may be leased to one person—term-fee.* No person, co-partnership, company or corporation shall be entitled to lease more than one (1) section of land for coal mining purposes, and no lease shall be issued for a longer term than five (5) years, but the board may establish such rules and regulations for the renewal of a lease at the expiration of the term as it may deem proper and necessary. The board shall prescribe the form of the lease; the fee for issuing the lease and approving the bond hereinafter provided shall be two dollars and fifty cents (\$2.50) payable to the commissioner.

§ 81-503. (1805.40) *Royalty.* The compensation of the state under all coal mining leases shall be upon a royalty basis and shall be fixed and determined by the board. The amount of such royalty shall be based upon the kind, grade and character of the coal in each particular mine, upon the size, shape and nature of the coal vein, strata or body, and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor affecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than twelve and one-half (12½) cents per ton of two thousand (2,000) pounds.

§ 81-504 (1805.41) *Application-deposit.* The application for a coal mining lease shall be in writing, shall state the quantity of coal that it is proposed to mine under such lease during the first year thereof and during each subsequent year as nearly as the applicant can estimate such quantity and shall contain such further information as the board may require. If the board grants the application, it shall fix the royalty per ton and shall demand from the applicant a deposit of not less than the amount of the royalty on the estimated average production for one (1) month of the lease and it may at its discretion ask for such larger deposit as it may under the circumstances deem necessary in order to protect the interests of the state; but this deposit shall in no case be less than fifty dollars (\$50.00).

This deposit shall be credited to the lease and held intact to the end of the first year. If all the royalties for such year have been paid and are equal to or exceed such deposit then the deposit shall be held intact for the credit of the lessee for the subsequent year or years; but if the royalties accrued and paid during the first year in any subsequent year amount to less than the amount of such deposit, then the difference between the amount of the royalties paid and the deposit shall be deducted therefrom and charged as rent or royalty for the lease for that year so that the annual rental will never be less than the amount of the cash deposit determined upon by the board and in no case less than fifty dollars (\$50.00) per annum. At the beginning of the second year or any subsequent year of the lease, the lessee shall make such additional deposit as will bring the unused portion of his deposit up to the original amount as fixed by the board.

§ 81-505 (1805.42) *Bond.* The board shall also demand a surety company bond in such form and amount as it may determine conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease; but a lessee may in lieu of furnishing a surety company bond increase the cash deposit hereinbefore provided for to such an amount as will in the judgment of the board make the furnishing of a bond unnecessary.

§ 81-506. (1805.43) *Improvements of former lessee.* Whenever a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at such former operations, disposition shall be made of such improvements satisfactory to the board before a new lease is issued. If the owner of such improvement desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree, on the value of such improvements, then such value shall be ascertained and fixed as provided in section 81-406.

Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them, or as fixed by the aforesaid officers, or officer, or that he has tendered payment as so fixed, or that the owner desires to remove his improvements.

§ 81-507. (1805.44) *Board may prescribe additional rules and regulations.* The board shall have the power and authority to prescribe such additional rules and regulations and to do and perform all acts and things not inconsistent with the enabling act, the constitution and the statutes of this state as it may deem necessary and proper relating to the leasing of state land for coal mining purposes.

§ 81-508. (1805.45) *Report and payment of royalty.* On or before the 15th day of each calendar month the lessee shall make a report to the commissioner in such form as may be prescribed by him, showing the number of tons mined during the preceding calendar month, the price

obtained therefor at the mine, the total amount of all sales and containing such additional information as may be required by the commissioner, which report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for such preceding month as shown by the report.

§ 81-509. (1805.46) *Coal mining permits for private use and for schools.* The board may in its discretion grant to any resident of this state a permit for a term of not more than one (1) year to mine coal for the use of himself and his family from any coal deposit belonging to the state of Montana and not under lease upon payment to the state of the flat sum of five dollars (\$5.00) as a royalty for any amount of coal mined by him not exceeding thirty (30) tons of two thousand (2,000) pounds.

The board may also grant a similar one (1) year permit to the board of trustees of any school district in this state, provided that if such school district requires more than thirty (30) tons of coal per annum then any additional amount required shall be paid for in advance at the rate of twelve and one-half (12½) cents per ton. Applications for such permits shall be accompanied by an affidavit to the effect that the coal is not wanted for sale or disposal to other parties but that it is wanted for the use of the applicant and his family or for the use of the school district as the case may be.

The granting of such permits shall not prevent the board from issuing the usual coal mining leases on the land from which the coal under such permit is to be taken. In cases of this kind the permittee shall remove the quantity of coal to which he is entitled as expeditiously as possible and his rights under the permit shall then automatically cease upon the issue of the lease.

§ 81-510. (1805.47) *Disposition of royalties and other receipts.* All fees, royalties, bonuses and penalties collected under coal mining leases shall be credited by the commissioner to the same funds that such receipts under oil and gas leases on such lands would be credited under the provisions of this act; and in the case of coal mining leases, rentals, and bonuses, if any shall be considered as royalties.

TITLE 81, CHAPTER 6,

PROSPECTING PERMITS AND MINING LEASES

- Section. 81-601. Definitions.
- 81-602. Empowering state board of land commissioners to lease, etc.
- 81-603. Provisions of leases.
- 81-604. Royalties-pooling agreements and unit plans of operation.
- 81-605. Quantity of lands.
- 81-606. Form of applications.
- 81-607. Bonds to state.
- 81-608. Bonds to protect lessees, contractees, etc.
- 81-609. Sales, etc., subject to mining leases.
- 81-610. Coal, oil and gas not affected, when.
- 81-611. Examination of lands.
- 81-612. Failure of title.
- 81-613. Assignment of leases or permits.
- 81-614. Determining title to stream beds, etc.
- 81-615. Prospecting permits.
- 81-616. Notice to lessees.
- 81-617. Disposition of royalties, fees and penalties.
- 81-618. Repealing provisions-exceptions.
- 81-619. Leases by state board of land commissioners to holder of prospecting permits of nonmetallic minerals-minimum royalty.
- 81-620. Leases not assignable.

§ 81-601. *Definitions.* a. The term "metalliferous minerals," as used in this act, means gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals.

b. The term "gems," as used in this act, means sapphires, rubies, and other stones commonly known as "precious stones" or "semi-precious stones," but does not include any stone or other earth material commonly used in building or construction work.

c. The term "mining," as used in this act, means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals and/or gems, and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals and/or gems.

d. The term "mining lease," as used in this act, means a lease issued by the state board of land commissioners for the prospecting for and/or mining of metalliferous minerals and/or gems. The term "mining lessee," as used in this act, means the holder of a mining lease as herein defined, whether such holder is the original lessee under such lease, or holds such lease as successor of such original lessee.

e. The term "returns," as used in this act, means the net amount received by the shipper from products of mining operations, after deducting transportation costs and smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

f. The term "full market value," as used in this act, means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.

§ 81-602. *Empowering state board of land commissioners to lease, etc.* The state board of land commissioners is hereby empowered, in its discretion, subject to the other provisions of this act, to lease state owned lands, including the beds of navigable streams and the beds of navigable bodies of water, and the reserve mineral rights of the state in lands heretofore or hereafter sold or leased by the state, to persons, associations of persons, or corporations, for the purpose of prospecting for and/or mining metalliferous minerals and/or gems. Such leases may be for such periods of time as may be determined by said board, subject to such limitations as may be contained in the grants by which the state has heretofore acquired or may hereafter acquire title to lands or mineral rights so leased.

§ 81-603. *Provisions of leases.* Leases issued by said board under the authority of this act shall give the lessee, so long as he shall comply with the terms and conditions thereof, the exclusive right of possession of the lands or mineral rights leased thereby, subject to such reservations as may be contained in such leases, and may contain reasonable provisions for preliminary prospecting periods, and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any), and for the prosecution of the work of mining after the prospecting period, and may provide for the payment of rentals in conjunction with such work requirements, or may prescribe cash rentals as an alternative, or otherwise, as the board may deem best, shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions and reasonable terms under which the lessee may, within a time limited in such lease, remove property placed upon the leased lands by him, in the event of the termination of the lease by forfeiture or lapse of time, and may contain such other provisions as said board and the lessee may agree upon, not inconsistent with the provisions of this act, and in short said board shall have the power in making such leases to exercise business discretion, so long as the provisions of this act shall not be violated.

No mining lessee shall, during any preliminary prospecting period contained in any such lease, remove any metalliferous minerals or gems from the leased premises, except such as may be necessary for the proper testing and sampling of such lands or mineral rights, and except as may be permitted by said board. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it may deem best, amend or modify the terms and conditions within the limitations of this act and/or extend from time to time the term of any lease or prospecting permit issued under the provisions of this act, subject to the limitations contained in section 81-602.

§ 81-604. *Royalties-pooling agreements and unit plans of operation.* In every such lease the board shall reserve to the state of Montana a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value of the leasehold interest conveyed by such lease, as such full market value shall be ascertained by the board in accordance with the provisions of this act; which royalty shall be not less than five per cent (5%) of the returns from, or of the full market value of, the metalliferous minerals and/or gems recovered by the lessee from the state lands or reserved mineral rights covered by such lease.

The state board of land commissioners may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining land for unit operation of placer mining and the apportionment of royalties on a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights and partly on land the mining rights in which are held by others; provided, that from each cleanup of values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state shall be entitled to royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined from land included in the agreement in which the state holds the mining rights, bears to the total yardage or area mined and included in the cleanup; provided further that the state board of land commissioners shall have power to enter into agreements for such unit operation of such placer mining deposits and the apportionment of royalties upon such other equitable basis as shall to them seem in the best interest of the state; and provided further that such agreements shall not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease, or to a less percentage than the minimum provided by law.

§ 81-605. *Quantity of lands.* Any such lease shall cover such quantity of ground as the board shall, in its judgment, determine to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which said lands is to be mined, and the character and size of the operation contemplated or necessary or reasonable in good mining practice, for the profitable recovery of such metalliferous minerals and/or gems therefrom.

§ 81-606. *Form of applications.* Forms of applications for leases under the provisions of this act shall be prepared by the state board of land commissioners, and each applicant for a mining lease shall execute an application in such form. At the time of the issuance of any mining lease, the mining lessee shall pay to the board a fee of not more than one hundred dollars (\$100.00), the amount thereof to be fixed by said board and to be based upon the office work of said board involved in the preparation and issuance of such lease, but the decision of the board as to the amount thereof within said limit shall be final.

§ 81-607. *Bonds to state.* The board may also at the time of the execution and delivery of any such mining lease, or at any time during the life thereof, require any

mining lessee to file with said board, for the benefit of the state of Montana, a bond or bonds conditioned to protect the rights of the state of Montana, particularly in the payment to the proper officer of said state of the royalties reserved in such mining lease, such bond or bonds to be in such form as may be prescribed by said board, and the sufficiency thereof to be subject to the approval of the board. The board may at any time require new or additional bonds if, in its discretion, the interests of the state are not adequately protected by the bond or bonds theretofore filed with it in connection with any such mining lease.

§ 81-608. *Bonds to protect lessee, contractees, etc.* In the case of lands which shall, at the time of the issuance of a mining lease have been sold, or be under contract of sale, or leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of such prior purchaser, contractee, or lessee, and among other things may at any time require the mining lessee to file with said board a corporate surety bond in such reasonable amount as may be fixed by the board, conditioned to protect the rights of such prior purchaser, contractee or lessee, the form of such bond to be prescribed by said board, which bond shall run to the state of Montana for the benefit of such prior purchaser, contractee, or lessee, for whose benefit the same is filed with said board. New or additional bonds may be required by the board at any time. Suit may be brought upon such bond by any such prior purchaser, contractee, or lessee for alleged violation of the terms thereof by such mining lessee, and any such suit shall be brought by such claimant in the name of the state of Montana for the use and benefit of such claimant, and any recovery upon such bond shall be for the benefit of and shall be paid to the claimant in whose suit such recovery is made.

§ 81-609. *Sales, etc., subject to mining leases.* Any sale of state lands, any contract for the sale of state lands, and any lease of state lands, made or issued by said board during the life of any mining lease issued under the provisions of this act shall be subject to such mining lease during the life thereof, and no bond shall be required of such mining lessee for the protection of any such purchaser, contractee or other lessee, unless provision therefor shall be made in such mining lease.

§ 81-610. *Coal, oil and gas not affected, when.* In the case of lands covered by a lease for the mining of coal, oil or gas, no lease for the mining upon any such land for metalliferous minerals and/or gems shall be issued to any person, association of persons, or corporation, other than the holder of such coal, oil or gas lease while such coal, oil or gas lease is in force, except with the written consent of the holder of such coal, oil or gas lease.

§ 81-611. *Examination of lands.* Before leasing any lands for the mining of metalliferous metals and/or gems, the board shall investigate the character of such lands and the nature and possible extent of the mineral deposits therein, for the purpose of determining whether such lands are of such a character as to warrant the issuance of a mining lease thereon, and for the purpose of determining the amount of royalty and other rentals or considerations for which such lands should be leased for mining purposes under the provisions of this act. Upon the filing of an application for a mining lease the board may, if the lands covered by such application shall not have theretofore been examined by the board as above provided, require the applicant for such mining lease to deposit with the board an amount of money, not exceeding five hundred dollars (\$500.00) in any one case, which, in its judgment, will cover the cost of a special examination, to enable the board to pass upon such application in accordance with the provisions of this act. Such deposit shall be used to reimburse the state of Montana for

the actual cost of such examination, and any portion of such deposit not required for such reimbursement shall, upon the approval or rejection of such application, be by the board repaid to the applicant depositing the same. The board shall make and preserve complete records of all such examinations.

§ 81-612. *Failure of title.* In issuing mining leases, as in this act authorized, the said board and the state of Montana shall be deemed to have leased only such right, title, and interest as the state may have in the lands and/or metalliferous minerals and/or gems therein contained, covered by such lease, and neither the state of Montana, nor said board, nor any representative, agent or employee of the state of Montana, or of said board shall be under any liability in the event of the failure of the title of the state of Montana, in whole or in part, to the lands and/or metalliferous minerals and/or gems covered by such lease.

§ 81-613. *Assignment of leases or permits.* In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing such assignment shall not be relieved of any responsibility for operations under such lease or prospecting permit until the financial and more responsibility of the assignee shall have been passed upon and approved by the board, nor until there shall be deposited with the board:

- (a) Such assignment or an executed copy thereof;
- (b) An instrument executed by the sureties upon any and all bonds then held by said board in connection with such mining lease or permit and then in force, consenting to such assignment and containing the agreement of such sureties to be bound by such bonds under such assignment, or new bonds conforming to all the requirements of section 81-607; and
- (c) A fee of two and 50/100 dollars (\$2.50).

§ 81-614. *Determining title to stream beds, etc.* The state board of land commissioners is hereby empowered to take all proper proceedings for the purpose of determining the title to the beds of lakes and other bodies of water and of streams within the state of Montana, and to that end to bring or defend suits or other proceedings in court, or before other proper tribunals.

§ 81-615. *Prospecting permits.* All prospecting permits and all leases outstanding and in good standing at the time of the passage of this act may continue in force until their expiration by their terms, and the rights of the respective permittees or lessees shall be governed by the laws in force when such permits were respectively issued. Prospecting permits without lease may be hereafter issued by the board upon the payment of a fee of one dollar (\$1.00) at the time of the issuance of such permit and a like fee of one dollar (\$1.00) at the end of each year during the life thereof, and any such permit shall provide for due diligence in the work of prospecting during the life of such permit. Any such permit shall be limited to prospecting for metalliferous minerals and/or gems and no such permittee shall have the right to remove from any lands or mineral rights covered by such permit any metalliferous minerals or gems except such as may be necessary for the proper testing and sampling of such lands or mineral rights, and except as may be permitted by said board. During the life of any permit in force at the time of the passage of this act, or issued under the provisions of this section, the permittee may apply for a lease of the lands or mineral rights covered by such permit, and if a lease is granted the same shall be in the form and subject to all the terms and conditions specified in this act, as in the case of a mining lease issued under this act. Such permittee shall have the preference right to a lease, upon such terms as the board shall deem just, subject to the terms of this act, and in any event said permittee shall have

preference without competitive bidding, and upon the most favorable terms permitted under this act, to forty (40) contiguous acres. If some other person shall make a better bid for a mining lease upon the land covered by such permit, and if the board shall award a mining lease to such better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of such lease, the full value of all the work the permittee shall have performed upon the land under his permit in connection with his prospecting and exploration work, and the permittee shall have the right to remove from such land, within thirty (30) days from the date the board shall give such permittee notice of the issuance of such mining lease, or within such further time as the board, upon good cause shown, may allow, any machinery, equipment, improvements, and other property placed thereon by him.

§ 81-616. *Notice to lessees.* Upon the granting of an application for a prospecting permit or a mining lease under the provisions of this act, the commissioner of state lands and investments shall promptly give written notice, by ordinary mail, to the person, association of persons, or corporation to whom such permit or lease shall be so issued, and to the holder of an agricultural or grazing lease embracing the same land, if there be such lessee, or to the holder of a certificate of purchase or patent embracing the same land, if there be such purchaser or patentee. The said notice shall be addressed to such permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known post office address.

§ 81-617. *Disposition of royalties, fees and penalties.* All fees and penalties collected under this act shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the land belongs; and all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land belongs under each particular permit or lease; provided, however, that all rentals and royalties received from "mortgage lands" shall be credited to the same fund or funds as other receipts from such lands; and that all rentals and royalties received under or in connection with a lease or permit on the other lands or mineral rights, not acquired through any grant to the state of Montana from the United States, shall be paid into the same funds into which such receipts are paid when the land is part of the grant for the benefit of the public schools of the state of Montana.

§ 81-618. *Repealing provisions-exceptions.* Sections 1805.48, 1805.49, 1805.50 and 1805.51, of the Revised Codes of Montana of 1935, are hereby repealed, except that all permits and leases issued under said sections and in good standing at the time of passage and approval of this act, shall continue in force until they shall expire by their terms, and said sections shall continue in force only to the extent necessary to protect the rights of the permittees and lessees under such permits and leases.

§ 81-619. *Leases by state board of land commissioners to holders of prospecting permits of nonmetallic minerals-minimum royalty.* Whenever the state board of land commissioners has heretofore issued a prospecting permit for the purpose of prospecting for any of the nonmetallic minerals such as phosphate, sodium, potash, sulphur, oil shale, or other nonmetallic mineral products not including coal, oil or gas, in the belief, on the part of said board, that the same was authorized by sections 81-601 to 81-618, or any other law of the state of Montana, the holder or holders of such permit, providing the same is, by the terms thereof, in good standing at the time of the enactment of this act, shall be entitled to a lease under the terms and provisions of sections 81-601 to 81-618 as fully as if said acts permitted the issuance of leases upon said nonmetallic mineral deposits aforesaid, such lease to

embrace the lands described in any such permit, provided, however, that said lease may be issued to the holder or holders of any such permit at a minimum royalty rate of two per cent (2%) of the gross value of the output of such minerals at the mine; provided, further, however, that any lease for the purpose of mining said nonmetallic minerals heretofore issued by said state board, in the belief, on the part of said board, that the same was authorized by said sections 81-601 to 81-618, or any other law of the state of Montana, providing the same is, by the terms thereof, in good standing at the time of the enactment of this act, is hereby authorized, ratified and confirmed, and shall be considered as valid under the terms and provisions of sections 81-601 to 81-618 as fully as if said acts permitted the issuance of leases upon said nonmetallic mineral deposits aforesaid, provided, however, that nothing herein contained shall be construed as authorizing, ratifying or confirming any lease issued at a minimum royalty rate of less than two per cent (2%) of the gross value of the output of such minerals at the mine.

§ 81-620. *Leases not assignable.* No lease issued hereunder may be assigned without the consent of said board first had and obtained.

TITLE 81, CHAPTER 7,

LEASES AND PERMITS FOR DEPOSITS OF STONE, GRAVEL, SAND, AND OTHER MINERALS

- Section. 81-701. The board may issue leases.
81-702. Report of lessee and payment of distribution of royalties and other receipts.
81-703. Land may be leased for other purposes.
81-704. Stone, gravel and sand permits for public use.

§ 81-701. (1805.52) *The board may issue leases.* Whenever there are found upon state lands to which the title is vested in the state, and which lands have not been sold by the state under certificate of purchase, or otherwise, deposits of stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil or gas, valuable for building, mining or other commercial purposes, the state board of land commissioners may, in its discretion, issue to private persons permits or leases for the removal and disposition of such stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite, gravel, sand, or other said deposits; upon such terms and conditions as the board may determine; provided, however, that all such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands, such gross value to be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances, or as in the determination of the board may be determined fair and reasonable, and the fee for issuing the lease shall be the same as for an oil and gas lease. No such lease shall be made for longer term than ten (10) years, and the board may demand a cash deposit to guarantee the payment of the royalties, or demand a surety bond, or both such cash deposit and bond, as the board may determine.

§ 81-702. (1805.53) *Report of lessee and payment of distribution of royalties and other receipts.* On or before the 15th day of each month, each holder of a lease under the provisions of this act, shall make a report to the state board of land commissioners' office, which report shall be in such form as the state board of land commissioners may prescribe, showing the amount of substances as herein provided, mined or extracted from the lands under

the provisions of this act in the preceding month, the price obtained, the total amount of sales and such additional information as may be required, and shall be verified by affidavit of the lessee, or some responsible person having knowledge of the facts, and shall be accompanied by payment of the amount to the state as royalty for the month covered by the report. The royalties, fees and penalties received under such leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

§ 81-703. (1805.54) *Land may be leased for other purposes.* Such portions of the section or other subdivision of the land on which such deposits are located as are not needed for the quarrying or digging and removal of the stone, limestone, oil shale, clay, sand or gravel may be leased for grazing or agricultural purposes the same as other state lands, and in the case that grazing or agricultural leases are issued they shall provide for a right of way across the land for the removal of the stone, limestone, oil shale, clay, gravel, sand or other deposits, but the rights of the lessee shall also be duly protected.

§ 81-704. (1805.55) *Stone, gravel and sand permits for public use.* The state board of land commissioners is hereby authorized and empowered in its discretion to issue permits upon such terms and conditions as it may determine, not inconsistent with any constitutional or statutory provision relating to state lands to the state highway commission, to the board of county commissioners of the several counties of the state and to the governing boards or bodies of cities or towns and of other political subdivisions of the state granting them the right to take, remove and use stone, gravel or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance and improvement of public roads, highways, bridges, streets or alleys. The rights of lessees to the lands on which such stone, gravel or sand may be located shall be properly safeguarded under the terms of the permits.

TITLE 84, CHAPTER 13, LICENSE TAX—COAL MINES

- Section. 84-1301. "Person" defined.
84-1302. Coal mines license tax—amount—exceptions.
84-1303. Payment of annual license tax.
84-1304. Mine operators to file statements.
84-1305. Records to be kept by mine operators.
84-1306. Quarterly statements of mine operators—payment of license tax.
84-1307. Penalty for neglect or false statement.
84-1308. Procedure to determine tax—penalty—tax lien.
84-1309. Disposal of license taxes.
84-1310. Penalty for violation of act.
84-1311. License taxes supplemental.

§ 84-1301. (2316) *"Person" defined.* The term "person" as used in this act, shall mean and include any individual, firm, co-partnership, and every corporation, joint-stock company and association.

§ 84-1302. (2317) *Coal mines license tax—amount — exceptions.* Every person engaged in or carrying on the business of coal mining or engaged in the business of working or operating any mine or mining property in the state of Montana, from which marketable or merchantable coal of any kind is mined, extracted or produced, whether such person shall carry on such busi-

ness or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1921, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work and operations, in an amount equal to five cents per ton for each and every ton in excess of fifty thousand tons of marketable or merchantable coal mined, extracted or produced by such person in the state of Montana and shipped by such person during such year, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced or delivered by such person to any other person for shipment, sale or use by such other person; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed, by any person to mine coal, or to work in or about, or in connection with any coal mine or coal property or business, to pay such license taxes, nor shall any work required be done in prospecting for, or in developing, or in opening up any coal mine or mining property, be deemed to be the carrying on of a coal mining business, or the engaging in the business of working or operating of a coal mine; provided, further, that if during any such work of developing or opening up any coal mine or coal mining property, any marketable or merchantable coal shall be mined, extracted or produced and sold, then the same shall be deemed the carrying on of a coal mining business and the engaging in the business of working and operating a coal mine.

§ 84-1303. (2318) *Payment of annual license tax.* Such annual license tax shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th, and December 31st, in each year, beginning with the quarter ending Mar. 31, 1921, and the amount of the license tax due for each such quarter shall be paid to the state treasurer within thirty days after the end of each such quarter.

§ 84-1304. (2319) *Mine operators to file statements.* Each and every person engaged in or carrying on the business of coal mining, or engaged in the business of working or operating any mine or mining property in the state of Montana, from which coal of any kind is mined, at the date when this act becomes effective, must, not later than the thirtieth day of April, 1921, and every person who shall, after the date this act becomes effective, engage in the business of coal mining or engage in working or operating any mine or mining property in the state of Montana, from which coal of any kind is mined, must, immediately upon engaging in such business, work or operations, file with the state board of equalization, a certificate and statement, on forms prescribed by such state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business, work and operations, within this state, giving the place or places of business or location of the mine or mining property; the name and address of the managing agent in this state, if an association, joint-stock company, or corporation, or if a firm or partnership, the names and addresses of the persons composing the same; if an association or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the board may deem necessary.

§ 84-1305. (2320) *Records to be kept by mine operators.* Every such person shall keep a record, in such form as the state board of equalization may require, of all coal mined, extracted or produced, and of all coal sold or otherwise disposed of by such person, and such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents and employees.

§ 84-1306. (2321) *Quarterly statements of mine operators—payment of license tax.* Each and every such person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of tons, of two thousand pounds each, of marketable or merchantable coal mined, extracted, or produced by such person during such quarter, from all coal mines or coal mining property worked or operated by such person, and shipped by such person, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced or delivered by such person to any other person for shipment, sale or use by such person, together with the total amount due to the state as license tax for such quarter; and must within such thirty days, and at the time of delivering such duplicate statement to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana, for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state, of the association, joint-stock company, or corporation making the same. Any person engaged in working or operating more than one coal mine may include all coal mines worked or operated by him in one statement. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

§ 84-1307. (2322) *Penalty for neglect or false statement.* It shall be unlawful for any such person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

§ 84-1308. (2323) *Procedure to determine tax—penalty—tax lien.* If any person shall fail, neglect or refuse to file any statement required by section 84-1306 or shall fail to make payment of such license tax within the time therein required, the state board of equalization, shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of tons of marketable or merchantable coal mined, extracted or produced by such person, during such quarter and shipped or used by such person, or delivered by such person to any other person for shipment, sale or use by such other person, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement in triplicate, showing the same, and shall add to the amount of such license taxes, ten per centum (10%) thereof as a penalty, and one of such statements shall be filed in the office of the county clerk and recorder of the county in which the coal was produced and one of such statements delivered to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof, at the rate of eight per centum (8%) per annum from the date of making of such statement by the state board of equalization until paid. Upon request of the state treasurer, it shall be the duty of the attorney general or any county attorney to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

The license tax assessed against any person under this act, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and upon the mine from which the coal was produced, which lien shall attach on the date when the license tax is certified to the state treasurer by the state board of equalization and such lien may be

enforced in the name of the state of Montana, in the same manner as other liens are enforced at law.

§ 84-1309. (2324) *Disposal of license taxes.* All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

§ 84-1310. (2325) *Penalty for violation of act.* Any violation of any of the provisions of the act shall be deemed a misdemeanor, and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

§ 84-1311. (2326) *License taxes supplemental.* The license tax herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

TITLE 84, CHAPTER 14, LICENSE TAX—COAL RETAILERS

- Section. 84-1401. "Person" and "mine operators" defined.
 84-1402. License to retail coal—fees.
 84-1403. Retailers to file statements—contents.
 84-1404. Payment of license fees.
 84-1405. Record of coal sold for retail.
 84-1406. Statement of coal sold—form and filing.
 84-1407. Penalty for failure to file statement.
 84-1408. Procedure to determine tax on failure to file statement—penalty.
 84-1409. Expiration of license.
 84-1410. Full weight of coal.
 84-1411. Misrepresentation in sale forbidden.
 84-1412. Revocation of license.
 84-1413. Invoice of coal.
 84-1414. State treasurer to issue license.
 84-1415. Disposal of license fees.
 84-1416. Penalty for violation of act.
 84-1417. Fees additional to other taxes.

§ 84-1401. (2327) *"Person" and "mine operators" defined.* The term "person," as used in this act means and includes every individual, firm, association, joint-stock company, syndicate, and corporation; and the term "mine operator" as used in this act means every person who engages in the business in this state of working or operating any mine or mining property from which coal of any kind is mined, extracted or produced, whether such person shall engage in such business as owner, lessee, trustee, receiver, or in any other capacity but shall not mean or include a laborer or employee employed to work in or about any such mine or mining property.

§ 84-1402. (2328) *License to retail coal—fees.* Every person who engages in or carries on the occupation or business in this state or retailing or selling at retail, coal of any kind must, for the year 1921, and annually each year thereafter when engaged in such occupation or business procure from the state treasurer a license to engage in and carry on such occupation or business in this state, and shall annually pay to the state treasurer for such license a fee of one dollar, together with an additional sum or amount equal to five cents a ton for each and every ton of coal containing two thousand pounds sold by such person during such year and for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state.

§ 84-1403. (2329) *Retailers to file statements — contents.* Each and every person engaged in or carrying on such occupation or business in the state of Montana at

the date when this act becomes effective must, not later than the 30th day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if an association, joint-stock company, syndicate, or corporation; or, if a firm or co-partnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate, or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state board of equalization may require.

§ 84-1404. (2330) *Payment of license fees.* The said license fee of one dollar shall be paid by each person within thirty days after the end of the quarter ending March 31st in each year, and such additional license fee of five cents per ton shall be paid in quarterly installments for the quarters ending March 31st, June 30th, September 30th, and December 31st in each year, beginning with the quarter ending March 31, 1921, and the total amount of such license fees becoming due for any quarter shall be paid to the state treasurer within thirty days after the end of the quarter for which the same is due.

§ 84-1405. (2331) *Record of coal sold for retail.* Each and every person engaging in or carrying on such occupation or business in this state shall keep a record showing all coal purchased or received by or delivered to such person for sale by such person at retail in this state for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents, or employees.

§ 84-1406. (2332) *Statement of coal sold—form and filing.* Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of tons of coal sold by such person during such quarter for the mining of which no "mine operator" has paid or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, together with the total amount due to the state of Montana as license fees from such person for such quarter; and must within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license fees shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate, or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

§ 84-1407. (2333) *Penalty for failure to file statement.* It shall be unlawful for any person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time required or to make any such statement or certificate false in any particular.

§ 84-1408. (2334) *Procedure to determine tax on failure to file statement—penalty.* If any person shall fail, neglect, or refuse to make or file the statement required by section 84-1406, or shall fail to make payment of such license tax within the time herein required, the state board of equalization shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine an amount of the license fee due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license fees, and shall add to the amount of such license fees twenty-five per centum (25%) thereof as a penalty, and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license fees, with the penalty added thereto, and interest on the whole thereof at the rate of eight per centum (8%) per annum from the date of the making of such statement by the state board of equalization until paid. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

§ 84-1409. (2335) *Expiration of license.* All licenses issued under the provisions of this act shall expire on the 31st day of December following the date of issuance.

§ 84-1410. (2336) *Full weight of coal.* In all sales of coal the person selling the same must give to the purchaser full weight at the rate of two thousand pounds to the ton.

§ 84-1411. (2337) *Misrepresentation in sale forbidden.* No person, association, firm, joint-stock company, syndicate or corporation shall misrepresent to the public respecting any coal offered for sale, nor sell coal of any particular name or from any particular mine under the name or designation of another coal or mine.

§ 84-1412. (2338) *Revocation of license.* The state board of equalization shall have the power to revoke the license of any person upon the conviction of such person of the violation of any of the provisions contained in the two preceding sections, but no revocation shall be made until due notice of the intention of the state board of equalization so to do shall have been given to such person and such person afforded an opportunity to appear before such state board of equalization and show cause why such license should not be revoked.

§ 84-1413. (2339) *Invoice of coal.* Every "mine operator" shall make out and deliver to every person to whom any coal is sold or delivered by such "mine operator" an invoice covering the coal so sold or delivered, on which invoice shall be stated whether or not such "mine operator" has paid, or assumes liability for the payment of the license fee for mining the same, to the state of Montana, under any law of this state.

§ 84-1414. (2340) *State treasurer to issue license.* Upon payment of the license fee for the first quarter in each year by any person engaging in or carrying on the occupation of selling coal at retail in this state, the state treasurer shall issue to the person paying the same a license which shall recite therein that the same shall be and remain in full force and effect for the whole of such year, provided the person to whom it is issued shall there-

after make all payments of quarterly installments of license fees as the same may become due, and such license shall be kept conspicuously posted in the place of business of such person.

§ 84-1415. (2341) *Disposal of license fees.* All license fees collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

§ 84-1416. (2342) *Penalty for violation of act.* Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

§ 84-1417. (2343) *Fees additional to other taxes.* The license fees herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

TITLE 84, CHAPTER 20,

LICENSE TAX—METALLIFEROUS MINES

- Section. 84-2001. "Person" defined.
 84-2002. Persons liable to pay license tax.
 84-2003. Gross value of products, how determined.
 84-2004. Amount of tax.
 84-2005. Statement of gross value of product.
 84-2006. Computation and notice of tax.
 84-2007. Delinquent taxes—penalty.
 84-2008. Procedure in case of failure to file statement.
 84-2009. False or erroneous statements—investigation concerning.
 84-2010. Rehearing on determination of value of gross product or amount of tax.
 84-2011. Lien of tax.
 84-2012. License.
 84-2013. Commencing business.
 84-2014. Additional to other taxes.
 84-2015. Unconstitutionality or invalidity.
 84-2016. Dissolved corporations to make returns on operation of mines and pay metals mines tax due.

§ 84-2001. (2344.1) *"Person" defined.* The term "person," as used in this act shall mean and include any individual, firm, co-partnership, association, joint-stock company, common law company, business trust, syndicate, and corporation.

§ 84-2002. (2344.2) *Persons liable to pay license tax.* Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana from which gold, silver, copper, lead, or any other metal or metals, or precious or semi-precious gems or stones of any kind shall be mined, extracted or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1925, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work or operation in this state, and shall pay to such state treasurer for such annual license the taxes herein-after prescribed, provided, however, that nothing contained in this act shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property, to procure such license or to pay such license taxes, nor shall any discovery work required to be done

in prospecting for or locating any mining claims, or any annual assessment work, or work required in the obtaining of title to mining property from the United States, or required by the laws of the United States or of this state in order to hold possessory title to any mining claims, be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property.

§ 84-2003. (2344.3) *Gross value of products, how determined.* The total "gross value of product" as used in this act, shall mean the market value of all merchantable metals, precious and semi-precious gems and stones extracted or produced, each year from any mine or mining property in the state of Montana or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction or treatment of any such ores. That whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby, as shown by the gross smelter returns of such metals or mineral product in dollars and cents, without any deductions for costs of smelting, reduction or treatment, or otherwise, based upon the average quotations of the price of such metals, or mineral products, in the city of New York, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or other standard publications, giving the market reports during the calendar year immediately preceding. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, in such a manner as may seem equitable.

§ 84-2004. (2344.4) *Amount of tax.* The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones are produced, shall be one dollar, together with an additional sum or amount computed on the gross value of product which may have been derived by [such person from] such business, work, or operation within this state during the calendar year immediately preceding, at the following rates one-half of one per cent ($\frac{1}{2}$ of 1%) of the amount by which such gross value of product exceeds one hundred thousand dollars (\$100,000) and does not exceed two hundred and fifty thousand dollars (\$250,000); and three-fourths of one per cent ($\frac{3}{4}$ of 1%) of the amount by which such gross value of product exceeds two hundred and fifty thousand dollars (\$250,000) and does not exceed four hundred thousand dollars (\$400,000); one per cent (1%) of the amount by which the gross value of product exceeds four hundred thousand dollars (\$400,000) and does not exceed five hundred thousand dollars (\$500,000) and one and one-fourth per cent ($1\frac{1}{4}$ %) of the amount by which the gross value of product exceeds five hundred thousand dollars (\$500,000).

§ 84-2005. (2344.5) *Statement of gross value of product.* Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones are produced, must, not later than the fifteenth day of April, in such year when engaged in or carrying on any such business, work or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar year immediately preceding. Such a statement shall be in the form prescribed by the state board of equalization, and must be verified by the oath of such person, or the manager, superintendent, agent,

president, or vice-president of the corporation, joint-stock or other company or syndicate and must be delivered to the state board of equalization not later than the fifteenth day of April. Such statement shall show the following:

1. The name and address of the owner or lessee of the mine or mining property.
2. The description and location of the mine or mining property.
3. The number of tons of ore or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement.
4. The name and location of the smelter, mill or reduction works to which such ore has been shipped or sold during the period covered by the statement and such other information as the state board of equalization may require.
5. The gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by the statement.
6. The gross value of product in dollars and cents.

§ 84-2006. (2344.6) *Computation and notice of tax.* The state board of equalization shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said board shall at the same time mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid, by each, respectively, that the same is due and payable to the state treasurer, and that it will become delinquent at five o'clock p.m. on the thirtieth day of June, immediately following, and that if the same becomes delinquent a penalty of ten per centum will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of twelve per centum per annum from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

§ 84-2007. (2344.7) *Delinquent taxes—penalty.* All license taxes assessed under the provision of this act shall become delinquent if not paid by five o'clock p.m., on the thirtieth day of June following the date when the same are assessed and certified to the state treasurer, and as the same become delinquent a penalty of ten per centum shall be added thereto, and the whole amount

of said license tax, with penalty added, shall bear interest at the rate of twelve per centum per annum from the date of becoming delinquent until paid.

§ 84-2008. (2344.8) *Procedure in case of failure to file statement.* If any person shall fail, refuse or neglect to make and file such statement and return within the time prescribed, the state board of equalization, shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state, and from any other information which the board may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid, and license issued, and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the license taxes due from, and to be paid by such person, and shall immediately certify the same to the state treasurer, and give notice to such person in the same manner, as though such statement had been filed within time, and the state shall proceed to collect such license tax, adding thereto and collecting therewith, if the same is delinquent, the same penalty and interest as provided for herein for other delinquencies.

§ 84-2009. (2344.9) *False or erroneous statements—in vestigation concerning.* (1) Should the state board of equalization have reason to believe that any statement and return is false, or erroneous in any particular, it may require the person, or if made by a corporation, association or company, the officers thereof, and the employees of any such person, corporation, association or company, to appear before the board and testify concerning the same and any statement contained therein, and may examine all books, records, papers, and documents of such person pertaining to such business, upon giving five days' written notice to such persons, or officers or employees thereof having custody of such books, records, papers and documents, and any person failing, refusing or neglecting to so appear, or refusing to be sworn or to testify, or refusing to answer any material question propounded by the board or any of its members, or refusing to permit the board, or its members, employees or accountants to examine such books, records, papers or documents, or any thereof, pertaining to such business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or not more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If the board, after hearing such evidence, and after such examination of the books, papers, documents and records of such person, shall find and determine that such statement and return is erroneous or false in any material matter, the board shall change and correct the same so as to show the true gross value of product and shall re-assess the amount of the license tax due from such person, and may add thereto a penalty of not exceeding fifty per centum, and shall thereupon immediately certify the amount of such license tax with the penalty added thereto to the state treasurer, and shall at the same time mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty certified to the state treasurer.

(2) The state treasurer shall collect such license tax with penalty added, and if the same has become delinquent he shall also collect interest thereon from the date of delinquency until paid at the rate of twelve per centum per annum. Provided further, that in order to verify such statement and return the state board of equalization may require any person, corporation, association, or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Mon-

tana to appear before the board and testify concerning the gross mineral content of any such ore, or at the request of said board to furnish sworn statements showing the gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold, silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period, covered by such statement, without any deductions whatsoever for smelting, milling, reduction or treatment of such ores or mineral product.

(3) The books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be open to inspection and examination by the said state board of equalization, or its members, employees, or accountants at any time or place, that said board may designate.

(4) If any person required by this act to make or file any statement, or to verify, under oath any statement, shall make such statement false in any respect or shall fail, neglect or refuse to file any statement required by said state board of equalization or shall refuse to appear before the board to testify concerning the gross mineral content of any such ore, or shall refuse to allow the board, its members, employees or accountants at any time or place to inspect or examine the books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

§ 84-2010. (2344.10) *Rehearing on determination of value of gross product or amount of tax.* Every person whose license tax has been determined and assessed by the state board of equalization under any of the provisions of this act, who shall feel aggrieved by the determination and assessment of the board as to the amount of gross value of product, or as to the amount of the license tax, may, at any time within ten days after the date of notice thereof, required to be given to such person, file with the board a petition for a rehearing in which petition must be stated and set forth particularly and specifically the grounds and reasons therefor, and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the board therefrom that the board has erred in any manner in ascertaining and determining the amount of the gross value of product, or the amount of the license tax, or both, the board shall immediately correct such error, or errors, and if such correction shall be in conformity with the request contained in the petition for a rehearing the board shall take no further steps in connection with such petition, other than to certify to the state treasurer the amount of the license tax due from such person after the making of such correction, and notifying such person thereof. If, from such examination, it does not appear to the satisfaction of the board that it has erred in any manner the board shall grant such rehearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board may deem reasonable. On such hearing such person, any taxpayer interested, and the board may introduce witnesses and take testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product, and re-assess the amount of the license tax to be paid by

such person, and give notice thereof in the manner required by section 84-2006.

§ 84-2011. (2344.11) *Lien of tax.* The license tax assessed against any person under this act, together with all penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and used by such person in connection with such business, which lien shall attach to such property on the date when the license tax is certified to the state treasurer by the state board of equalization and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law.

§ 84-2012. (2344.12) *License.* Whenever any license tax is paid under the provisions of this act the state board of equalization shall issue to the person paying the same a license authorizing such person to engage in and carry on such business until the first day of January immediately following the year for which such license tax is paid and such license issued.

§ 84-2013. (2344.13) *Commencing business.* If any person shall, after the first day of January of any year, engage in or commence the carrying on of the business of working or operating a mine or mining property in this state, from which any merchantable metal, precious, and semi-precious gems and stones are extracted and produced, such person, must, within sixty days after so engaging in or commencing to carry on such business, notify both the state board of equalization and the state treasurer of such fact.

§ 84-2014. (2344.14) *Additional to other taxes.* The license taxes herein provided for shall be in addition to all other taxes, licenses, and other fees, now required to be paid by persons subject to the provisions of this act.

§ 84-2015. (2344.15) *Unconstitutionality or invalidity.* If any clause, sentence, paragraph or part of this act shall for any reason, be judged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. No caption or any section or set of sections shall in any way affect the interpretation of this act, or any part thereof.

§ 84-2016. *Dissolved corporation to make returns on operation of mines and pay metals mines tax due.* Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the carrying on of the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones, are produced and pay the tax due for such period as it carried on such business, on or before the date of such dissolution or cessation of business. The state board of equalization may grant a reasonable extension of time for filing returns upon good cause shown therefor.

TITLE 84, CHAPTER 54,

MINES TAXATION—GENERAL PROPERTY AND NET PROCEEDS TAX

Section. 84-5401.	Taxation of mines.
84-5402.	Net proceeds tax—statement of yield.
84-5403.	Net proceeds—how computed.
84-5404.	Repealed—Chapter 135, Laws of 1955.
84-5405.	Lien of tax.
84-5406.	Assessment of royalties.
84-5407.	False or fraudulent reports, procedure in case of.

- 84-5408. Transmission of net proceeds to county assessor.
- 84-5409. Taxation and payment on royalty interests.
- 84-5410. Penalty for failure to make statement—estimate of net proceeds.
- 84-5411. Penalty for false statement.
- 84-5412. Examination of records by board of equalization.
- 84-5413. Lien of tax—enforcement of payment.
- 84-5414. Surface ground and improvements not exempt.
- 84-5415. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued.

§ 84-5401. (2088) *Taxation of mines.* All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim is used for other than mining purpose, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof so used for other than mining purposes shall be taxed at its full value for such other purposes; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims, shall be taxed as other personal property.

§ 84-5402. (2089) *Net proceeds tax—statement of yield.* Every person, partnership, corporation, or association, engaged in mining, extracting or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or sources whatever, precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, or other valuable mineral, must on or before the thirty-first day of March of each year make out a statement of the gross yield of the above named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceding the first day of January of the year in which such statement is made, and the value thereof. Such statement shall be in the form prescribed by the state board of equalization, and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership, and must be delivered to the state board of equalization on or before the thirty-first day of March. Such statement shall show the following:

1. The name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons, corporations, or associations owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons, corporations or associations during the period covered by the statement.
2. The description and location of the mine.
3. The number of tons of ore, barrels of petroleum, cubic feet of natural gas or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement.
4. The amount and character of such ores, mineral products or deposits, and the yield of such ores, mineral products or deposits from such mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of said ores or mineral products or deposits measured by standard units of measurement, yielded to

such person, corporation or association so engaged in mining, and to said royalty holders and each of them, if any, during the period covered by the statement.

5. The gross yield or value in dollars and cents.
6. Actual cost of extracting same from mine.
7. Actual cost of transporting to place of reduction or sale.
8. Actual cost of reduction or sale.
9. Actual cost of marketing the product and conversion of same into money.
10. Cost of construction, repairs and betterments of mines, and cost of repairs and replacements of reduction works.
11. The assessed valuation of reduction works for the calendar year for which such return is made.
12. Actual cost of fire insurance and workmen's compensation insurance.

§ 84-5403. (2090) *Net proceeds—how computed.* The state board of equalization shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to-wit:

1. All royalty paid or apportioned in cash or in kind by the person, corporation or association so engaged in mining.
2. All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments.
3. All moneys expended for improvements, repairs and betterments necessary in and about the working of the mine, except as hereinafter provided.
4. All moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine.
5. Depreciation in the sum of six per cent (6%) of the assessed valuation of such milling and reduction works for the calendar year for which such return is made.
6. All moneys actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale, and for extracting the metals and minerals therefrom, and for marketing the product and the conversion of the same into money.
7. All moneys expended for first insurance and workmen's compensation insurance, and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees.

In computing the deductions allowable for repairs, improvements and betterment to the mine, the state board of equalization shall compute and allow ten percent (10%) of such cost each year for a period of ten (10) years.

No moneys invested in mines or improvements shall be allowed as a deduction unless all machinery, equipment and buildings represented by such moneys shall be returned to the county assessor of the county in which such mine is located for assessment purposes, at the level of assessment of all other property in such county.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, and except as hereinbefore provided in this section, shall be included in such expenditures; and such expenditures shall not include the salaries or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

§ 84-5405. (2090.2) *Lien of tax.* The tax so assessed on net proceeds shall be and shall constitute a lien upon all of the right, title, and interest of such operator in or to such mine or mining claim and upon all of the right, title and interest in or to the machinery, buildings, tools and equipment used in operating said mine or mining claim.

§ 84-5406. (2090.3) *Assessment of royalties.* Upon receipt of the list or schedule setting forth the names and addresses of any and all persons, corporations and associations owning or claiming royalty, and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state board of equalization shall proceed to the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded during such preceding calendar year, and the same shall be taxed on the same basis as net proceeds of mines are taxed as provided by section 84-301.

§ 84-5407. (2090.4) *False or fraudulent reports, procedure in case of.* If any such report required by this chapter contains any wilfully false or fraudulent statements as to the gross amount received by any person, corporation or association so engaged in mining as aforesaid, for any mine's product, then the said state board of equalization shall compute the gross value of such mine's product, and such gross value shall be based upon the average quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or some other standard publication, giving the market reports for the year covered by the statement; and, provided further, that if any such person, corporation, or association has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of, as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York City, or some other standard publication giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

§ 84-5408. (2091) *Transmission of net proceeds to county assessor.* On or before the first day of July in each year the state board of equalization shall transmit to the county assessor of each county in which such mines and mining claims are situated, the valuation of the net proceeds of such mines and mining claims for the purpose of taxation, as the same have been determined and fixed by such state board of equalization. The said valuation for the purpose of taxation shall be an amount equal to the average net proceeds from such mine for the five calendar years next preceding, or for as many years next preceding as the mine has produced gross yield, or for as many years next preceding as this act has been in effect, whichever is less. The average net proceeds for valuation shall be computed by dividing the total net proceeds for such period by the number of years for which such net proceeds were taken into account. In determining net proceeds of each individual year for averaging to determine valuation for purposes

of taxation, the actual annual net proceeds as defined in section 84-5403 of the Revised Codes of Montana, 1947, including losses, if any, from such mines and mining claims shall be taken for each year rather than the average valuation for such year. In no event shall there be valuation for the purpose of taxation for a year when there has been no gross yield from such mines and mining claims for the preceding average years and such years shall not be taken into account in computing the net proceeds for any year. The county assessor shall immediately enter the same upon an assessment roll called "assessment roll of net proceeds of mines," alphabetically arranged, and in which shall be specified in separate columns and under the following heads:

1. The name and address of the owner or lessee of the mine.
2. The description and location of the mine.
3. The number of tons of ore or other mineral products or deposits extracted and treated or sold from the mine during the period covered by the statement.
4. The gross value of the ores, mineral products or deposits, in dollars and cents, extracted and treated, or sold during the year, to be determined as provided in the preceding section.
5. The net proceeds, in dollars and cents, of such mine or mining claims during the years, to be determined as provided in the preceding section.

The form of said assessment roll shall be prescribed by the state board of equalization in conformity with the provision of this act.

§ 84-5409. (2091.1) *Taxation and payment on royalty interests.* At the time of transmitting net proceeds assessments the state board of equalization shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located and thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the fifteenth day of September following, upon which date said taxes shall be due and payable. Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines.

§ 84-5410. (2092) *Penalty for failure to make statement—estimate of net proceeds.* If any person, partnership, association, or corporation shall refuse or neglect to make and deliver, under oath, to the state board of equalization any statement required by this act, or to comply with any requirements of this act, the state board of equalization must cause such refusal to be noted upon the assessment-roll opposite the name of such person, partnership, association, or corporation, and upon such estimate of the ores, mineral products, or deposit mined and treated or sold by such person, partnership, association, or corporation, and upon such estimate shall fix and determine the value of the net proceeds of said mine or mining claim, as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state board of equalization shall have the power to subpoena and examine, under oath, any person, members of a partnership or association, officers or agents of a corporation, and the employees of such person, partnership, association, or corporation, and every person who refuses or neglects to appear and testify, when required to do so by the state board of equalization as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

§ 84-5411. (2093) *Penalty for false statement.* If any person required by this act to make or file any statement, or to verify, under oath, any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any material respect, such person shall be deemed guilty of perjury, and upon conviction thereof shall be punished as is by law provided for the punishment of perjury.

§ 84-5412. (2094) *Examination of records by board of equalization.* The state board of equalization shall have the right and power, at any time, to examine the records of any person, partnership, association, or corporation specified in this act, as the same may pertain to the yield of ore or mineral products or deposit, in order to verify the statements made by such person, partnership, association, or corporation, and if, from such examination, or from other information, said state board of equalization find any statement, or any material part thereof wilfully false or fraudulent, said state board of equalization must assess in the same manner as provided for in section 84-5403.

§ 84-5413. (2095) *Lien of tax—enforcement of payment.* The taxes on such net proceeds must be levied as the levy of other taxes are provided for, and every such tax is a lien upon the mine or mining claim from which the ore or mineral products or deposits are mined or extracted, and is a prior lien upon all personal property and improvements used in the process of extracting such ore or mineral products or deposits; provided, however, that such personal or real property is owned by or under lease by the person, partnership, association, or corporation who extracted said ore, or mineral products or deposits.

The tax on such net proceeds may be collected, and the payment thereof, enforced, by the seizure and sale of the personal property upon which the said tax is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax is collected.

§ 84-5414. (2096) *Surface ground and improvements not exempt.* Nothing in this act must be construed so as to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or mining claim, or used in connection therewith, or supplies used either in mills, reduction works, or mines.

§ 84-5415. *Dissolved corporations to make returns on net proceeds of mines and pay tax accrued.* Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the net proceeds of mines, and pay the tax due for such period as it transacted business, on or before the date of such dissolution or cessation of business. The state board of equalization may grant a reasonable extension of time for filing a return upon good cause shown therefor.

MISCELLANEOUS CODES

COTENANTS OF MINING PROPERTY

Cotenants of mining property have certain rights under Montana law which are as follows:

§ 93-2829. (9091) *Action by joint-tenant against his cotenant.* If any person shall assume and exercise ex-

clusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy in common, the party aggrieved shall have his action for the injury in the same manner as he would have if such joint tenancy or tenancy in common did not exist; provided, that nothing herein contained shall prevent one cotenant or joint-tenant, or any number of cotenants or joint-tenants acting together less than all, from entering on the common property at any point or points not then in the actual occupancy of the nonjoining cotenant or joint-tenants, and enjoying all rights of occupancy of the property, without waste; and in the case of mining property, from mining the same in a minerlike manner, and extracting, milling, and disposing of the ore from the common property, paying its or their own expenses, and subject to accounting to the nonjoining cotenant or joint-tenant for the net profits of such mining operations, if any made; and all liens for labor and materials incurred in such mining shall attach only to the undivided interest or interests of the working cotenants or joint-tenants, but nothing herein shall prevent or preclude the cotenant or joint-tenant, not joining in the operation of such mining property, from receiving his, its, or their proportionate share of all ore or ores on the dump, upon payment or tendering payment of the actual cost of mining the same.

INVALID CONTRACTS AND FRAUD

The following quotations from the Montana Codes would probably apply to mining more than some of the other sections. This section states that certain agreements must be in writing or they are invalid.

§ 13-606 (7519) *What contracts must be in writing.* The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof.
2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 30-105 of this code.
3. An agreement made upon consideration of marriage other than a mutual promise to marry.
4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accepts or receives part of such goods, chattels, or the evidence, or some of them, of such things, or pay at the time some part of the purchase-money; but when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, the price, and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum.
5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.
6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

The following sections on fraud specifically apply to mines:

§ 94-1815. (11419) *Use of false pretenses in selling mines.* Every person who, with intent to cheat, wrong, or defraud, places in or upon any mine or mining-claim any ores or specimens of ores not extracted therefrom, or exhibits any ore or certificate of assay of ore not extracted therefrom, for the purpose of selling any mine or mining claim, or interest therein, or who obtains any money or property by any such false pretenses or artifices is guilty of a felony.

§ 94-1816. (11420) *Interference with samples for assay.* Every person who interferes with, or in any manner changes samples of ores or bullion produced for sampling, or changes or alters samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong or defraud is guilty of a felony.

§ 94-1817. (11421) *Making false samples of ore.* Every person who, with intent to cheat, wrong, or defraud, makes or publishes a false sample of ore or bullion, or who makes or publishes, or causes to be published a false assay of ore or bullion is guilty of a felony.

MINING CLAIMS IN NATIONAL FORESTS

Montana has some statutes governing the marking of mining claims within national forests:

§ 46-1411. (3380) *Marking land and mining claims in national forest.* It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented mining claims, which said lands or patented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

§ 46-1412. (3381) *Method of Marking.* For the purpose of this act, it shall be prima facie evidence that such boundaries are properly marked if the same are defined; provided, that such monuments or some tree, stump, or post adjacent thereto shall be conspicuously marked with the name of the owner or claimant of such ground and the name of the claim or the description of the land claimed.

§ 46-1413. (3382) *Marking—right of action against trespassing stock.* No person owning or possessing agricultural or grazing land, or patented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle, or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said sheep so trespassing strayed thereon on their own inclination and without being driven, or whether said sheep were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the land owner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

Destroying any posted notice is considered as a misdemeanor. The code provision states:

NOTICES

§ 94-3318. (11491) *Destroying or tearing down notices.* Every person who intentionally—

1. Defaces, obliterates, tears down, or destroys any copy or transcript, or extract from or of any law of the United States or of this state, or any proclamation, advertisement or notification set up at any place in this state by authority of any law of the United States or of this

state, or by order of any court, before the expiration of the time for which the same was to remain set up; or,

2. Defaces, obliterates, tears or destroys any notice placed or posted on a mining claim, or removes or destroys any stake or monument placed thereon to identify it, is punishable by imprisonment in the county jail not exceeding three months or by a fine not exceeding one hundred dollars, or both.

PROCEDURE TO EXAMINE ADJOINING MINING PROPERTY

§ 93-6218. (9494) Same — procedure. Whenever any person shall have any right to or interest in any lead, lode, or mining claim which is in the possession of another person, and it shall be necessary for the ascertainment, enforcement, or protection of such right or interest that an inspection, examination, or survey of such lead, mine, lode, or mining claim should be had or made; or whenever any inspection, examination, or survey of any such lode or mining claim shall be necessary to protect, ascertain, or enforce the right or interest of any person in another mine, lode, or mining claim, and the person in possession of the same shall refuse, for a period of three days after demand therefor in writing, to allow such inspection, examination, or survey to be had or made, the party so desiring the same may present to the district court, or a judge thereof, of the county wherein the mine, lead, lode, or mining claim is situated, a petition, under oath, setting out his interest in the premises, describing the same, that the premises are in the possession of a party, naming him, the reason why such examination, inspection, or survey is necessary, the demand made on the person in possession so to permit such examination, inspection, or survey, and his refusal so to do. The court or judge shall thereupon appoint a time and place for hearing such petition, and shall order notice thereof to be served upon the adverse party, which notice shall be served at least one day before the day of hearing. On the hearing either party may read affidavits or produce oral testimony, and if the court or judge is satisfied that the facts stated in the petition are true, he shall make an order for an inspection, examination, or survey of the lode or mining claim in question, in such manner, at such time, and by such persons as are mentioned in the order. Such person shall thereupon have free access to such mine, lead, lode, or mining claim for the purpose of making such inspection, examination, or survey, and any interference with such person while acting under such order shall be contempt of court. If the order of the court is made while an action is pending between the parties to the order, the costs of obtaining the order shall abide the result of the action, but all costs of making such examination or survey shall be paid by the petitioner.

RELATING TO STREAMS AND CANALS

§ 94-3204. (11467) *Taking water from or obstructing canals.* Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume or reservoir, used for the purpose of holding or conveying water for manufacturing, agricultural, mining or domestic uses, or who, without like authority, shall raise, lower, or otherwise disturb any gate or other appurtenance thereof used for the control or the measurement of water, or who shall empty or place, or cause to be emptied or placed into any such canal, ditch, flume or reservoir, any rubbish, filth or obstruction to the free flow of the water, is guilty of a misdemeanor.

The next code pertains to sawmill operators and apply to mining operations that do their own timber sawing and framing.

§ 26-339. (3718) *Dumping refuse from sawmill into streams.* No person, firm, or corporation operating a sawmill on or near a stream, pond, lake or river, or any person, firm, or corporation purchasing from or acting for, with or on behalf of said sawmill operator, shall here-

after dump, drop, cart or deposit, or cause to be dumped, dropped, carted, or deposited, sawdust, bark, shavings, ashes, cinders, or other sawmill waste in or near any such stream, pond, lake, or river, in such manner of place as will likely result or cause the same to be carried into the waters of any such stream, pond, lake, or river; and any person so doing shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished as provided by section 26-324.

§ 94-3351. (11276) *Depositing coal slack in streams.* All persons owning or having in operation, and all persons who may hereafter own or put in operation in the state of Montana, either in person or by agent, any coal mine on any stream containing fish or water which is used for domestic purposes, or for irrigation, are hereby required to so care for any coal slack or other refuse emanating from such coal mining operation as to prevent the same from mingling with the waters of such streams.

§ 94-3552. (11277) *Same—penalty.* All persons owning or operating, or who may hereafter own or operate any coal mine on any stream containing fish or water which is used for domestic purposes, or for irrigation, who shall dump, cart, or deposit, or cause to be deposited, in such stream any such coal slack or other refuse emanating from such coal-mining operation, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any court of competent jurisdiction, shall be fined in any sum not less than two hundred dollars nor more than five hundred dollars for each and every offense.

WATER RIGHTS

§ 89-810. *Notice of Appropriation.* Any person hereafter desiring to appropriate the waters of a river, stream, ravine, coulee, spring, lake, or other natural source of supply concerning which there has not been adjudication of

the right to use the waters, or some part thereof, must post a notice in writing in a conspicuous place at the point of intended diversion stating therein:

1. The quantity of water claimed, measured as hereinafter provided;
2. The purpose for which it is claimed and place of intended use;
3. The means of diversion, with size of flume, ditch, pipe, or aqueduct, by which he intends to divert it;
4. The date of appropriation;
5. The name of the appropriator.

Within twenty days after the date of the appropriation the appropriator shall file with the county clerk of the county in which such appropriation is made a notice of appropriation, which, in addition to the facts required to be stated in the posted notice, as hereinbefore prescribed, shall contain the name of the stream from which the diversion is made, if such stream have a name, and if it have not, such a description of the stream as will identify it, and an accurate description of the point of diversion of such stream, with reference to some natural object or permanent monument. The notice shall be verified by the affidavit of the appropriator or some one in his behalf, which affidavit must state that the matters and facts contained in the notice are true.

§ 89-811. *Diligence in appropriating.* Within forty days after posting such notice, the appropriator must proceed to prosecute the excavation or construction of the work by which the water appropriated is to be diverted, and must prosecute the same with reasonable diligence to completion. If the ditch or flume, when constructed is inadequate to convey the amount of water claimed in the notice aforesaid, the excess claimed above the capacity of the ditch or flume shall be subject to appropriation by any other person, in accordance with the provisions of this chapter.

FORMS

- NOTICE OF LODE LOCATION
- NOTICE OF LODE LOCATION SHORT FORM
- CERTIFICATE OF LODE LOCATION
- NOTICE OF PLACER LOCATION
- CERTIFICATE OF PLACER LOCATION
- NOTICE OF MILLSITE LOCATION
- AFFIDAVIT OF ANNUAL LABOR AND IMPROVEMENTS

NOTE: Printed forms of "notice of location" and "certificate of location" can usually be purchased at newspaper printing establishments and news stands in most mining areas.

NOTICE OF LODE LOCATION

NOTICE IS HEREBY GIVEN, That the locator_____ and claimant_____ named at the foot of this notice ha_____ discovered a vein, lode, or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper, and other valuable deposits; that the same is hereby located and claimed under the provisions of the laws of the United States and the State of Montana, that said discovery is at or near where this notice of location is posted.

That the name of this claim is the_____Lode Mining Claim, and it is situated in the County of_____, State of Montana; That the approximate dimensions of area of the claim hereby intended to be appropriated are as follows to-wit: _____feet in a_____direction, and_____feet in a_____direction along the course of the vein, lode, or ledge from the point of discovery at or near where this notice is conspicuously posted, and_____feet on each side from the center of the vein, lode or ledge; the same being _____feet wide by _____feet in length.

This notice is the first notice, or "Notice of Location," as provided for under the provisions of Chapter 7 of Revised Code of 1947 of the State of Montana. Thirty days from the date hereof is hereby claimed in which to define boundaries of this claim. And sixty days from the date hereof is hereby claimed in which to sink the discovery shaft and file the "CERTIFICATE OF LOCATION" of this claim in the office of the County Clerk of said county, according to the statutes in such case made and provided.

This Notice of Location is dated and posted on the ground at or near the point of discovery, this_____day of _____, 19_____.

 Locator_____and Claimant_____ of the foregoing and described quartz lode mining claim.
 (This "NOTICE OF LOCATION" must be posted at or near the point of discovery and is not to be recorded)

(Short Form)

NOTICE OF LODE LOCATION

Notice is hereby given that the undersigned ha_____ discovered a vein, lode, or ledge of rock in place bearing valuable mineral deposits, and ha_____ this _____ day of _____, 19_____ located same as the _____ Lode Mining Claim by posting this location notice at or near the point of discovery.

The approximate dimensions of the area of the claim located are: _____ feet in a _____ direction, and _____ feet in a _____ direction along the vein, lode, or ledge from the point of discovery and _____ feet on each side of the middle of the vein or lode.

Locators and claimants

CERTIFICATE OF LOCATION

Of the Lode Mining Claim

Know all men by these presents, that a citizen or citizens of the United States, of lawful age, do hereby certify and declare as follows, to-wit:—

That on the day of, A. D., 19, the Quartz Lode mining Claim, situated in Mining District, County of State of Montana, was duly discovered:

That on said day a written or printed Notice of Location of said claim was duly posted, conspicuously, at the point of discovery on said claim, which said notice contained the name of the Locator....., the date of location (which said date of location was the date of the posting of such notice), and the approximate area of the claim intended to be appropriated:

That thereafter and within thirty days after the posting of said notice of Location, the locator..... distinctly marked the location of said claim on the ground so that its boundaries could be easily traced, by placing monuments at each corner and angle of said claim, which said monuments consist of trees, posts, stumps, stones and boulders described as follows, to-wit:

Beginning at the Cor. No. 1 of this claim, which is a marked Cor. No. 1 of the Lode, Thence First Course..... a distance of feet to (Direction) Cor. No. 2 of this claim, which is a marked Cor. No. 2 of the Lode, Thence Second Course..... a distance of feet to Cor. No. 3 of this claim, which is a marked Cor. No. 3 of the Lode, Thence Third Course..... a distance of feet to Cor. No. 4 of this claim, which is a marked Cor. No. 4 of the Lode, Thence Fourth Course a distance of feet to Cor. No. 1, the place of beginning:

That within sixty days after the date of posting said notice of location:

- 1. The locator..... named herein sunk a discovery shaft on said claim at the point of discovery..... feet by feet, to the depth of at least ten feet, vertically, below the lowest part of the rim of such shaft at the surface, and that the cubical contents of said shaft excavated is not less than one hundred and fifty cubic feet. (If you sink a discovery shaft cancel all of paragraphs 2 and 3.)
2. The locator..... named herein excavated an open cut on said claim at the point of discovery..... feet wide by..... feet long and to the depth of at least ten feet, vertically, below the natural surface of the ground, and which said cut consists of at least one hundred and fifty cubic feet of excavation. (If you excavate an open cut cancel all of paragraphs 1 and 3.)
3. The locator..... named herein excavated a tunnel on said claim at the point of discovery..... feet wide by..... feet in height and..... feet in length, and to the depth of at least ten feet, vertically, below the natural surface of the ground, and which said tunnel consists of at least one hundred and fifty cubic feet of excavation. (If you excavated a tunnel cancel all of paragraphs 1 and 2.)

That the said locator..... did there, in the bottom of said (Shaft, Cut or Tunnel) at the lowest vertical depth thereof, disclose the vein, lode or deposit so located:

That said locator..... claim..... feet in a..... direction, and..... feet in a direction along the course of the vein each way from the discovery shaft, and..... feet on each side of the center of the vein, the said claim located being..... feet wide by..... feet in length;

That the following reference is hereby made to natural objects and permanent monuments so as to identify said claim, to-wit:

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

That the following claims adjoin this claim, to wit: On the North the lode

mining claim. On the South the _____ lode mining claim. On the East the _____
_____ lode mining claim. On the West the _____ lode
mining claim.

That the claim so located, marked and designated as aforesaid is named and known as the _____
_____ lode mining claim, and it is situated in _____
Mining District, County of _____, State of Montana.

That the name _____ of the locator _____ and claimant _____ follows, and the undivided interest in the above described
location claimed by each of the undersigned is indicated by the fraction set after each name.

_____ () _____ ()
_____ () _____ ()
_____ () _____ ()
_____ () _____ ()

Locator _____ and Claimant _____

STATE OF MONTANA,
County of _____ } ss.

being first duly sworn, on his oath says: That he is a citizen of the United States, and that he is of lawful age;
that he is _____ locator _____ and claimant _____ of the _____
Lode Mining Claim; that said location is made in good faith; that this "Certificate of Location" is made in good
faith, and that the matters and things stated in the foregoing "Certificate of Location" are true of his own
knowledge _____

Subscribed and sworn to before me this _____ day of _____, A. D. 19 _____

Notary Public for the State of Montana.

Residing at _____

My commission expires _____

NOTICE OF LOCATION
(Placer)

NOTICE IS HEREBY GIVEN, That the locator _____ and claimant _____ named at the foot of this notice ha _____
discovered a placer deposit of gold and other valuable deposits; that the same is hereby located and claimed under
the provisions of the laws of the United States and the State of Montana; that said discovery is at or near
where this notice of location is posted.

That the name of this claim is the _____ Placer Mining
Claim and it is situate in the County of _____, State of Montana;

That the approximate dimensions of area of the claim hereby intended to be appropriated are as follows, to
wit: _____ feet in a _____ ly and _____ ly direction, and _____ feet in a _____ ly
direction, containing an area of approximately _____ acres (or square feet);

This Notice of Location is dated and posted on the ground at or near the point of discovery (or at the center
of said Claim) this _____ day of _____, A. D. 19 _____

Locator _____ and Claimant _____ of the foregoing and described placer mining claim.

(This "NOTICE OF LOCATION" must be posted at or near the point of discovery, or at the center of the claim,
and must be recorded.)

CERTIFICATE OF LOCATION

Of the _____ Placer Mining Claim.

Know all men by these presents, That the undersigned, each of whom is a citizen of the United States, or has declared his intention to become such, did, on the _____ day of _____, 19____, discover a placer deposit bearing _____ and other minerals having a commercial value, and on the same day did locate and claim the same as the _____ Placer Mining Claim, by posting a notice of location conspicuously at the point of said discovery, containing the name of said claim, the name of the undersigned as locator____, the date of said location and the approximate dimensions of such claim intended to be appropriated.

This claim is situated in _____ Mining District (unorganized), in the County of _____, State of Montana. The adjoining claims are as follows, to-wit:

- On the North _____, the _____ Claim;
- On the _____ East, the _____ Claim;
- On the South _____, the _____ Claim;
- On the _____ West, the _____ Claim.

Measured from the discovery _____ of this claim as a starting point, the following natural objects and permanent monuments are distant as follows, to-wit; _____ is distant _____ feet in a _____ direction; _____ is distant _____ feet in a _____ direction.

Subsequent to the date of said location, to-wit, on the _____ day of _____, 19____, the undersigned did distinctly mark said location on the ground so that its boundaries could be readily traced, in the following manner, to-wit:

Beginning at _____ Corner No. 1, which is a _____ and which is distant _____ feet in a _____ direction from the point of discovery, and running thence
 First Course: Direction, _____, distance _____ feet, to _____ Corner No. 2, which is a _____ and running thence
 Second Course: Direction, _____, distance _____ feet, to _____ Corner No. 3, which is a _____ and running thence
 Third Course: Direction, _____, distance _____ feet, to _____ Corner No. 4. Which is a _____, and running thence _____
 Fourth Course: Direction, _____, distance _____ feet, _____ To Corner No. 1, the place of beginning.

Within sixty days after posting said notice of location the undersigned performed the following discovery work, to-wit:

At the point of discovery dug a _____ of the following dimensions, to-wit: _____ constituting in all _____ cubic feet of excavation, and said work has disclosed at the point of discovery a valuable deposit of _____

THE UNDERSIGNED intend _____ to hold this claim, with all the rights and privileges, as to surface ground and valuable deposits of every kind contained within said boundaries, which are given or allowed by the laws of the United States aforesaid, or of the State of Montana. And to record this notice and statement, under oath, in the County Recorder's Office of said County, as provided by law.

Dated this _____ day of _____, 19____, and signed.

Locator _____ and Claimant _____

STATE OF MONTANA,
 County of _____

ss.

_____ being duly sworn, say _____ that _____ he _____ of lawful age and _____, the locator _____ and claimant _____ of the foregoing described Placer Mining Claim; that he has read the foregoing declaratory statement and knows the contents thereof; that the locators are citizens of the United States; that said location is made in good faith and was made at the date set forth in said statement, and that the matters set forth in the foregoing notice by _____ subscribed are true of his own knowledge.

Subscribed and sworn to before me this _____ day of _____ A. D. 19____

Notary Public for the State of Montana, Residing at _____

My commission expires _____

NOTICE OF MILL SITE LOCATION

Notice is hereby given, that the undersigned claimant... and owner... of the... Lode Claim, or... Mill or Reduction Works, situated in the County of... State of Montana, did, on this... day of..., 19..., locate five acres of non-mineral land known as the... Mill Site.

That, the approximate dimensions of area are... feet by... feet.

From this point Corner No. 1 lies... feet in a... direction, beginning at Corner No. 1 of this claim which is a... marked... Corner No. 1 of the mill site. Thence, first course... a distance of... feet to Corner No. 2 of this claim which is a... marked... Corner No. 2 of the... mill site. Thence second course... a distance of... feet to Corner No. 3 of this claim which is a... marked... Corner No. 3 of the... mill site. Thence third course... a distance of... feet to Corner No. 4 of this claim, which is a... marked... Corner No. 4 of the... mill site. Thence fourth course... a distance to... feet to Corner No. 1, the place of beginning.

Witnesses: Locator... and claimant... [Signature lines]

A certificate of location and a verification of the same must be filed with the county clerk and recorder of the county in which the mill site is located and must comply with all the requirements necessary in filing for a lode claim. The form for the certificates of location for a lode claim may be used.

AFFIDAVIT OF ANNUAL LABOR AND IMPROVEMENTS

STATE OF MONTANA, } ss. County of ...

...being duly sworn say... he... is, are resident... of said... County and State, that during the year..., the following named person... did and perform certain work and labor and made improvements upon the... Mining claim..., situated in the... Mining District..., to-wit:

That the number of days worked and labor performed by said person was ...

That the character of said work and labor done on said claim consisted of...

That the character of the improvements made on said claim was...

That the lumber, timber, and other materials used in making said improvements were provided or furnished by...

That the value of said lumber, timber and other materials was...

That the value of said work and labor performed was ...

That the following expenses were incurred while performing said work and labor and in making said improvements, to-wit: ...

That said work and labor was performed and said improvements made between the following dates, to-wit: Between... and... in said year and said work and labor was done and said improvements made on the following days ...

That said work and labor was done and said improvements were made at the instance and request of... who claimed to be the... of said claim.

That the total cost of said work, labor and improvements and the expenses connected with the same was \$... and... of said amount... paid to the affiant for said work and labor and expenses.

[Signature lines]

Subscribed and sworn to before me this... day of..., 19...

Notary Public for the State of Montana Residing at... My Commission expires ...

(Seal)

CODE OF SIGNALS IN METAL MINES

Section 50-112. Code of signals in Metal Mines.

Section 50-113. Penalties.

Section 50-112. Signals of. It is made the duty of the inspector of quartz mines of Montana, and he is hereby required to prepare a complete code of signals for the use in all mines in this state, worked through a shaft of seventy-five feet or more in depth, and employing ten or more men, and cause the same to be made known to each owner or operator of a mine in Montana by printed circular instructions, to the end that a uniform code of mine signals may prevail. The said inspector of mines of Montana may add to or change such code of signals as circumstances may require, but no change of signals shall go into effect until a time specified by him, not less than sixty days nor more than ninety days from the time such change shall be ordered by him; provided, that the code of signals first prepared by him shall be used in all said shaft mines from and after June 1, 1895.

Section 50-113. Penalties. Any owner or operator of a mine who shall refuse or neglect to cause the signals provided for in the preceding section to be used in his mine, to the exclusion of all other signals, shall be deemed guilty of a misdemeanor, and upon conviction of such refusal or neglect shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days or more than ninety days, in the discretion of the court, for each and every offense.

STATE CODE OF MINE SIGNALS

Signal Bells

- 1 bell hoist, 1 bell stop (if in motion).
- 2 bells lower men, 3 bells hoist men.
- 4 bells blasting signal, engineer must answer by raising bucket a few feet and letting it back slowly.
- Then one bell hoist men away from blast.
- 5 bells steam on, 6 bells steam off.
- 7 bells air on, 8 bells air off. 3-2-2 send down drills. 3-2-3 send down picks.
- 9 bells danger signal (cause of fire or other danger), then ring number of station where danger exists. No person shall ring any bell except the station tender, except

in case of danger, or when the main shaft is being sunk. Engineers must slow up when passing stations when men are on cage.

Station Bells.

Bells	Pause	Bells	Sta. No.	Bells	Pause	Bells	Sta. No.
2	"	1	1	7	"	1	26
2	"	2	2	7	"	2	27
2	"	3	3	7	"	3	28
2	"	4	4	7	"	4	29
2	"	5	5	7	"	5	30
3	"	1	6	8	"	1	31
3	"	2	7	8	"	2	32
3	"	3	8	8	"	3	33
3	"	4	9	8	"	4	34
3	"	5	10	8	"	5	35
4	"	1	11	9	"	1	36
4	"	2	12	9	"	2	37
4	"	3	13	9	"	3	38
4	"	4	14	9	"	4	39
4	"	5	15	9	"	5	40
5	"	1	16	10	"	1	41
5	"	2	17	10	"	2	42
5	"	3	18	10	"	3	43
5	"	4	19	10	"	4	44
5	"	5	20	10	"	5	45
6	"	1	21	11	"	1	46
6	"	2	22	11	"	2	47
6	"	3	23	11	"	3	48
6	"	4	24	11	"	4	49
6	"	5	25	11	"	4	50

Where electric bells are used in connection with other bells.

If cage is wanted ring station signal. Station tender will answer 1 bell.

Reply 1 bell to go up.

Reply 2 bells to go below.

If station is full of ore and station tender is wanted, ring station signal and do not answer back.

If 2-1-2 bells are rung, engineer or station tender does not understand, repeat signal.

In case of danger or accident, ring station signal, station tender will reply 1 bell, ring 9 bells.

One copy of this code should be posted on the gallows frame and one before the engineer.

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The map mentioned in the last paragraph of the first column on page 8 is obsolete and is no longer included in this report. The U. S. Bureau of Land Management, 316 North 26th Street, Billings, Montana 59101, has published a similar but larger map entitled Areas of Administrative Responsibility of Federal Lands, State of Montana. Scale of this map is 1:500,000 (about 8 miles/inch) and the price is \$4. Orders for the map should be sent to the Bureau of Land Management, not to the Montana Bureau of Mines and Geology.

MONTANA BUREAU OF MINES AND GEOLOGY
Butte, Montana

A D D E N D U M

Bulletin 22, Montana Mining Law, by Koehler S. Stout, March 1961

Since the printing of this bulletin, Secretary of the Interior Udall * has announced a change in regulations governing prospecting for phosphate. The following changes should be made in Table 1, page 29, of Bulletin 22, under the mineral, phosphate.

Mineral	Phosphate
Awarding of lease	Preferential right to permittee of prospecting permit. By Secretary's regulations.
Prospecting permits granted	Yes
Area of prospecting permit (Maximum area)	2,560 acres
Length of permit (years)	2 years, may be extended 4 more years

The rest of the columns remain the same.

* Federal Register, Tuesday, June 13, 1961, p. 5261-5266.

