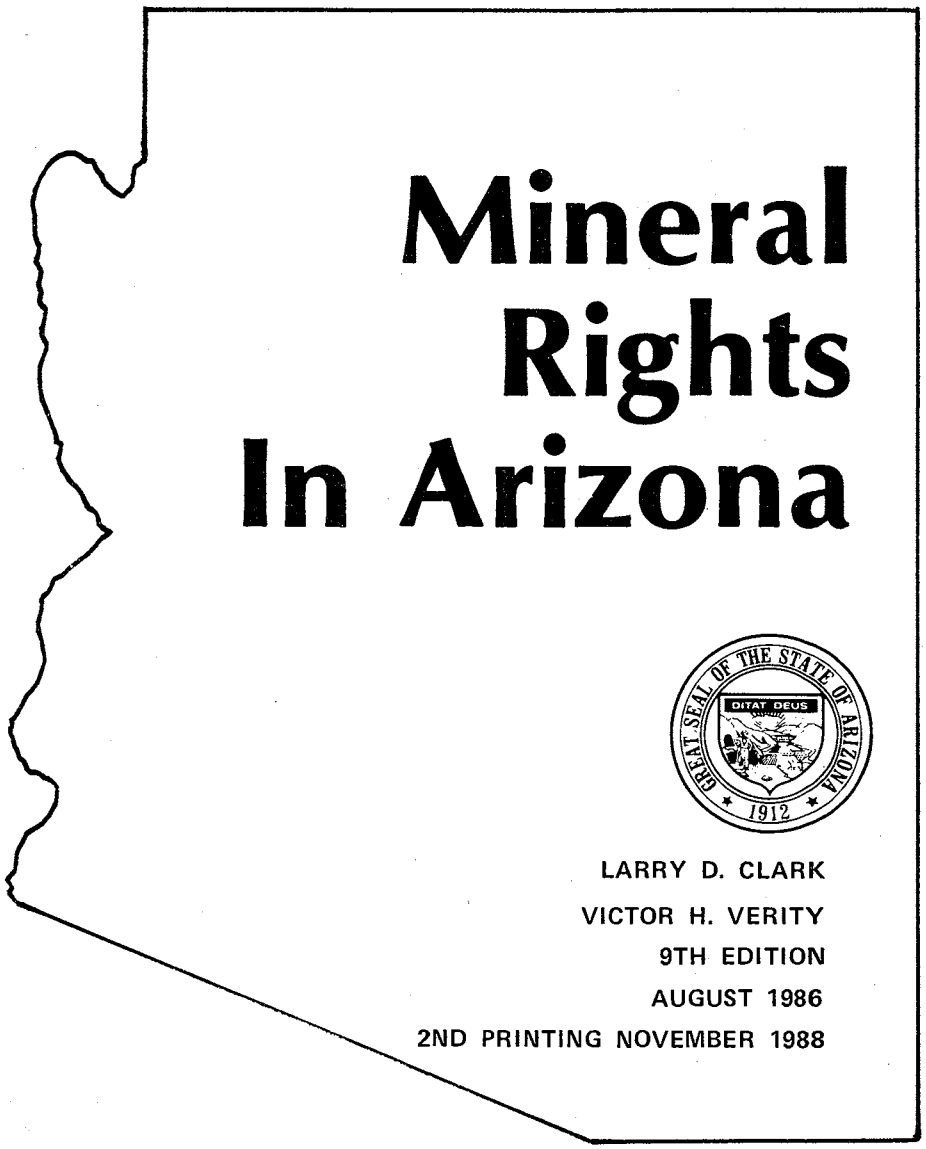
LAWS And REGULATIONS



Mineral Rights In Arizona

LARRY D. CLARK
VICTOR H. VERITY

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DEPARTMENT OF MINES AND MINERAL RESOURCES, State Of Arizona, Phoenix, Arizona

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES

Leroy E. Kissinger, Director

Phoenix Office:
Mineral Building, Fairgrounds
Phoenix, Arizona 85007
(602) 255-3791

Tucson Office:
416 W. Congress, Rm 190
Tucson, Arizona 85701
(602) 628-5399

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LAWS AND REGULATIONS GOVERNING MINERAL RIGHTS IN ARIZONA

by

Larry D. Clark

and

Victor H. Verity

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Reprinted 1988

INTRODUCTION

This booklet was first compiled by J.E. Busch and published in 1946 in response to the demand for a simplified statement of the mining laws. The fourth edition, made necessary by changes in the law, was a complete revision by Victor H. Verity, who also updated the booklet in the fifth, sixth and seventh editions. The seventh edition was reprinted in 1977, with a supplement by John C. Lacy. The eighth edition, also by Victor H. Verity, was published in 1979 and was a major revision which incorporated many new statutes having a substantial impact on the acquisition of mineral rights and on mining operations. This ninth edition, prepared by Larry D. Clark and Victor H. Verity of Molloy, Jones, Donahue, Trachta, Childers & Mallamo, P.C., Tucson, Arizona updates the eighth edition and incorporates new developments in the law.

The scope of the booklet is limited to the principal provisions of the Federal and state mining laws as they apply within the State of Arizona. The laws are set forth generally and with a minimum of legal citation. While this information will be of assistance in avoiding many of the errors and omissions commonly made in the acquisition of mineral rights, the booklet is necessarily generalized and it will not serve to provide answers to many specific legal questions. Additionally, one must be aware of the constant changes in both the Federal and state laws and regulations applicable to the acquisition of mineral rights. When specific legal problems are encountered, an attorney should be consulted.

The Department of Mines and Mineral Resources keeps informed on new and pending legislation, taxation and other matters which affect the mining and mineral industry. Additional information may be obtained from the Department of Mines and Mineral Resources' Phoenix office, Mineral Building, Fairgrounds, Phoenix, Arizona, or the department's Tucson office, 416 West Congress, Room 190, Tucson, Arizona.

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I. MINING LAW GENERALLY

The intent of the mining laws and the leasing acts, both state and Federal, is to develop the mineral resources on the public domain of the United States and state land. The law is intended to protect only the bona fide prospector who stakes a claim or otherwise seeks to acquire mineral rights with a serious intention of prospecting for minerals. The best way to demonstrate good faith is to properly locate the claim, or other mineral interest, and to maintain and work it in full accordance with all legal requirements and with due regard for the rights of the surface owner, whether it be the United States, the state or a private party. Any damage to surface resources should, in all cases, be limited to that which is necessary for mineral exploration and development, since needless destruction of surface resources is unlawful and is certain to create conflicts. Mere excavation of a certain volume of material which is not expected to determine mineral potential is likely to raise serious questions in the mind of the surface owner as to the good faith of the prospector.

Approximately 70 percent of the land in the State of Arizona is owned or controlled, as in the case of Indian reservations, by the Federal government, and is subject to the provisions of the Federal laws. The State of Arizona owns approximately 13 percent and, for the most part, the acquisition of mining rights on such lands is subject to state laws, entirely apart from the Federal statutes. However, as a result of exchanges of land between the state and the United States under the provisions of the Taylor Grazing Act, many instances will be found where the mineral and surface estates have been separated. It is common to find minerals subject to the Federal mining law in areas where the surface of the land is owned by the state. The remaining land, constituting about 17 percent, is privately owned. However, minerals have been reserved by the Federal government in much of this land, and, in such cases, mining claims may be located pursuant to the Federal laws. Frequently, however, the private landowner has acquired the mineral rights, in which case the laws governing the acquisition of Federal and state mineral rights do not apply.

The Federal mining laws are found in Title 30 ("Mineral Lands and Mining"), and a majority of the Federal public land laws are found in Title 43 ("Public Lands") of the United States Code. The principal regulations relating to mining on Federal lands are found in Title 43 ("Public Lands") of the Code of Federal Regulations, although many pertinent regulations are found in other titles. State laws on minerals, oil and gas and geothermal resources are found in Title 27 ("Minerals, Oil and Gas") and Title 37 ("Public Lands") of the Arizona Revised Statutes. Regulations adopted by the State Land Department are published by the Arizona Secretary of State.

The Federal mining laws now in force are founded on legislation enacted in 1872, under which the Federal government provided for the disposition of all of its mineral lands by location and patent (30 U.S.C. § 21). Since 1872, there have been several major changes in the basic mining law, the most significant of which are discussed below.

The mineral leasing laws provide for the acquisition of mining rights by lease from the Federal government of deposits of specified minerals, including

oil, oil shale, gas, potassium, sodium, phosphate and coal. The principal legislation was the Mineral Lands Leasing Act of 1920 (30 U.S.C. § 181). The Mineral Leasing Act for Acquired Lands (30 U.S.C. § 351) authorized the acquisition of leasable minerals on lands acquired by the United States. The Geothermal Steam Act of 1970 (30 U.S.C. § 1001) provides the exclusive means pursuant to which geothermal resources owned by the United States may be acquired and establishes a leasing system for the development and extraction of such resources. For further comments pertaining to the leasing laws, see page 46.

Two acts greatly expanded the multiple use concept, particularly as applied to mineral exploration and development. The Multiple Mineral Development Act (30 U.S.C. § 521) is designed to permit the use of public lands for both mining operations under the mining laws and leasing operations under the leasing acts. This act became effective August 13, 1954 and applies to public domain and to patented lands in which the United States has retained mineral rights. The Multiple Surface Use Act of 1955 (30 U.S.C. § 611) amended the general mining law by providing that the holder of an unpatented mining claim could use the surface and surface resources only for prospecting, mining, processing and uses reasonably incidental thereto.

The Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701), commonly known as "FLPMA," imposed requirements for the filing of location notices and proof of labor with the Bureau of Land Management and granted the Secretary of the Interior broad regulatory authority for the management, use and protection of the public lands. While such authority was previously delegated by many different statutes, it is centralized by FLPMA. Major provisions of FLPMA pertinent to the acquisition of mineral rights include the secretary's authority over the classification and withdrawal of lands (see page 9) and matters pertaining to conveyances and exchanges of Federal lands (see page 5).

II. MINERAL ENTRY ON PUBLIC LANDS

The mineral discovery and the posted location notice of a mining claim must be either upon public lands of the United States or lands in which the United States has retained locatable minerals. However, not all such lands are open to mining location. Similarly, not all lands are subject to entry under the various leasing laws.

In recent years, the determination of whether Federal lands are open to mining location has become exceedingly complex. It is impossible to make a general statement in this booklet that will be instructive regarding whether a specific tract of land is open to mineral entry. This fact can be determined only by consulting the public records of the United States. Although copies of location notices are required to be recorded in the office of the recorder in the county in which the claims are situated, the county records do not reflect the status of the land at the time a location was made. Administrative actions relating to the mineral status of the land, such as withdrawal from or restoration to mineral entry, are not evident from a review of the county records. Similarly, examination of the location notices and proof of annual labor, which must now be filed both with the county recorder

and with the Bureau of Land Management, will not reveal whether the land was open to location at the time of the mineral entry. Thus, the determination of the status of the land at the time of a location must be based upon the Federal land status records and the laws then in effect. The availability of lands for entry under the leasing laws must also be ascertained from the Federal records.

Notwithstanding legislation or administrative action which may have limited or even prevented the acquisition of mineral rights in specified lands of the United States, or in state lands, mining rights may have vested in locators by reason of valid locations made prior to the effective date of such legislation or administrative action, and the validity of such claims is not affected thereby. In such instances, the date of the legislation or the administrative action is controlling and must be taken into consideration in determining the status of the mineral rights.

The determination of whether a tract of land has been affected by the numerous laws, regulations and administrative actions affecting public lands and mineral entries requires an examination of the records of the Bureau of Land Management, United States Department of the Interior for information regarding whether public domain of the United States was at some particular time, or presently is, open to mineral entry. The current address of the Bureau of Land Management is 3707 North 7th Street, 3rd Floor, Phoenix, Arizona 85014. Personnel of the bureau are not available to search the records, nor is such information supplied by mail. The records are open to the public at specified hours. Helpful information may be obtained from the Department of Mines and Mineral Resources' offices in Tucson or Phoenix, and from the Department's publication entitled "Arizona Land Status and Ownership Determination." However, unless a person is experienced in such matters, it is advisable to employ a knowledgeable individual to determine land status.

To ascertain the mineral status of state lands and whether such lands are open to exploration under a prospecting permit or state mining claim location, the records of the State Land Department must be examined. The department's current address is 1624 West Adams, Phoenix, Arizona 85007.

In addition to determining whether applicable laws and regulations preclude mineral entry, it is also necessary to ascertain that the land has not been previously encompassed within a valid location. A notice of location of a mining claim which has been recorded in the county recorder's office and filed with the Bureau of Land Management, and which meets all legal requirements as to content, will describe the claim in a manner which will greatly facilitate identifying its situs on the ground. Although an amendment to the Arizona location laws requires that the county recorder maintain indices by legal subdivision of claims which have been recorded, this requirement is not mandatory as to claims located prior to September 3, 1978. Thus, many claims will not appear on the recorder's index. While the records of the Bureau of Land Management pertaining to unpatented mining claims will identify the geographic location of claims, claims which have not yet been filed or processed will not be identified in such records. Thus, while an examination of the records of the Bureau of Land Management and of the county recorder's office may reveal preexisting, conflicting claims, these records may not be relied upon exclusively, and they do not obviate the necessity for

a careful inspection of the ground upon which a claim is to be located. A complete physical inspection of the ground must always be performed in order to determine whether the land is encompassed within a previously located claim.

As noted above, it is of the utmost importance that the public records and the land be examined carefully by a qualified person in order to determine its status. Accordingly, it is essential that the exact legal description of the land in question be obtained and the failure to ascertain the proper legal description may result in the expenditure of time and money on an invalid location. Finally, it should be noted that, although the land may be open to mineral entry, it may be subject to special restrictions pertaining to the acquisition of mineral rights and mining operations on the lands. These too must be ascertained.

While the status of each tract of land must be individually examined to determine whether it is open to mineral entry, consideration of the availability or nonavailability of various categories of land provides an initial basis for determining land status. Brief comments regarding those categories of land most commonly encountered by the mineral prospector and the availability of these lands for mineral entry are set forth below. These comments are necessarily brief, however, and are not to be taken as a substitute for a thorough examination of the public records pertaining to a particular tract of land.

A. LANDS OPEN TO MINERAL ENTRY

1. National Forests

National forests are open to mineral entry, with some exceptions. Areas withdrawn for administrative, recreational, experimental and other uses may be closed entirely to mining, and operations on mining claims in wilderness areas are subject to special limitations. Mining claims in some areas, even though located prior to the Multiple Surface Use Act of 1955, may by reason of special legislation or regulation include the right to use only so much of the surface as is reasonably necessary to carry on mining operations in order to minimize interference with the purposes for which the forest was established. The supervisor of each forest should be consulted for details regarding mineral entry and acquisition.

Operating regulations promulgated by the Forest Service now govern virtually all exploration and mining operations on national forest lands. These regulations are discussed beginning at page 37.

2. Grazing Districts

There are four grazing districts in Arizona on the public domain of the United States. These were established under the provisions of the Taylor Grazing Act (43 U.S.C. § 315) and are managed pursuant to the provisions of FLPMA. If not otherwise withdrawn, public lands remain open to mineral entry notwithstanding the issuance of grazing leases.

Information regarding grazing leases may be obtained from the appropriate District Grazing Office, the address of which is available from the Bureau of Land Management, Phoenix, Arizona.

3. Land Exchanges

Under the provisions of the Taylor Grazing Act, exchanges of land were authorized both with the state and with private persons. The exchange provisions of the Taylor Grazing Act were repealed by FLPMA, and all exchanges of Federal land are now made pursuant to FLPMA. The Taylor Grazing Act permitted either the United States or the exchanging party, or both, to reserve minerals and to except them from the exchange conveyance. FLPMA permits the Secretary of the Interior to convey or retain the minerals in an exchange. Therefore, for all lands exchanged under the authority of either act, it is necessary to review the status of each tract of affected land to determine ownership of the minerals and whether they may be acquired under Federal or state law.

4. Stock-Raising Homesteads

All minerals in lands patented under the Stock-Raising Homestead Act (43 U.S.C. § 291) are reserved to the Federal government, together with the right to "prospect for, mine and remove the same." A great many Stock-Raising Homestead patents were issued in Arizona, and conflicts occasionally arise between the surface owner and miners, usually due to a lack of information about the provisions of the law. A development which has given rise to further conflicts has been the subdivision of Stock-Raising Homestead lands for residential sites near Arizona's growing cities. Some Stock-Raising Homesteads in and around Tucson and Phoenix were included in a special act which withdrew such lands from mineral entry in 1962 (see page 14). Although FLPMA repealed substantial portions of the Stock-Raising Homestead Act, the repeal did not affect the right to acquire minerals reserved to the United States. Such lands are subject to disposal under the provisions of the Federal mining and leasing laws, and any person qualified to locate a mining claim may enter upon such lands for the purpose of prospecting for minerals and locating mining claims. The prospector must not damage or destroy the permanent improvements or cultivated crops by reason of such prospecting.

As noted above, any person who has acquired from the United States the mineral deposits in Stock-Raising Homestead lands may re-enter and occupy so much of the surface as may be necessary for all purposes reasonably incidental to exploration and mining. However, this is conditioned on securing the written consent of the surface owner, upon payment to the owner of the agreed value of damages to cultivated crops, grazing land and permanent improvements, or upon the execution of a sufficient bond to the United States, for the benefit of the owner of the land, securing payment of damages to cultivated crops, grazing land and permanent improvements.

It is, of course, preferable to reach a private agreement with the surface owner, rather than resort to the posting of a bond. If the efforts to negotiate fail, the mining claimant has an absolute right to post a bond, the amount of which will be determined by the Bureau of Land Management. Upon posting such a bond, the claimant may re-enter the land to conduct mining operations. Forms for the bond and instructions relating thereto may be obtained from the Bureau of Land Management, Phoenix, Arizona.

Every care should be exercised to respect the rights of surface owners. To avoid misunderstanding, the prospector may wish to inform the surface owner of the intention to prospect the land and to locate mining claims. Travel by vehicle should be restricted to established roads wherever possible, and a prospector should avoid unnecessary damage to grass or other forage and interference with stock watering.

5. Agricultural Homesteads and Other Federal Dispositions

Only a very limited number of mineral substances found in lands covered by various types of agricultural homestead patents, including Desert Land Entry patents and Enlarged Homestead patents, may be acquired under the general mining law or the leasing acts.

The early homestead laws did not reserve minerals to the government, and those minerals vested in the patentee. In 1909, the Federal government began reserving coal in some homestead patents (30 U.S.C. § 81). The Agricultural Entry Act of 1914 (30 U.S.C. § 121) provided that patents issued under the various agricultural land laws (including Desert Land Entries and Enlarged Homesteads) were to contain a reservation to the United States of phosphate, nitrate, potash, oil, gas and asphaltic minerals if the lands were withdrawn or classified for such minerals or were known to be valuable for such deposits. This list was supplemented by the addition of sodium and sulphur in 1933 (30 U.S.C. § 124). These substances, if reserved to the United States in patents, will be subject to the provisions of the leasing laws. All other minerals belong to the agricultural patentee. Under the Agricultural Entry Act of 1914, it was possible to show that the lands were nonmineral and to obtain a patent thereto without a mineral reservation of any kind. Thus, the agricultural patent must be examined in each case to determine what minerals, if any, were reserved by the United States. Generally, all minerals in such lands were conveyed to the owner of the land.

Numerous other laws have authorized the disposition of Federal lands, including the Isolated Tract Act, the Townsite Act of 1864, the various railroad right-of-way acts, the Recreation and Public Purposes Act and the Small Tract Act of 1938. Although virtually all laws authorizing the disposition of Federal lands to private parties were repealed by FLPMA, the provisions of the various acts pursuant to which these lands were conveyed governed the reservation of minerals, or selected minerals, and each must be examined in detail to ascertain the status of the lands conveyed pursuant to these statutory provisions. The disposition of Federal lands is now governed by FLPMA which requires, with limited exceptions, that minerals be reserved to the United States in all conveyances of Federal lands.

6. Reclamation Withdrawals

The public domain of the United States in Arizona may be withdrawn for reclamation purposes, and substantial portions of the public domain have been included in such withdrawals along the Colorado, Gila, Salt and Bill Williams Rivers, and some tributaries. However, these areas do not necessarily remain closed to entry under the general mining law. It is within the discretion of the Secretary of the Interior to determine whether an area withdrawn for reclamation purposes shall be restored to mineral entry and the conditions under which mining will be conducted (43 U.S.C. § 154). Mining locations in some areas may be entirely prohibited, while in other areas they may be made subject to restrictions which will be incorporated into any mineral patent that may be issued.

The Bureau of Land Management, Phoenix, Arizona is authorized to receive applications for the restoration of lands withdrawn for reclamation and, after consulting with the Bureau of Reclamation, if the latter office does not report adversely, may grant a restoration and designate the restrictions which will be applicable to mining operations.

7. Lake Mead National Recreation Area

The Lake Mead National Recreation Area is covered by several withdrawals. Mining operations are not totally prohibited, but are limited to leasing under such restrictions as will not have a significant adverse impact upon the resources or administration of the area or the recreational use of the area (16 U.S.C. § 460n). For details, inquiries should be made to Lake Mead National Recreation Area Headquarters, Boulder City, Nevada, or to the Bureau of Land Management, Phoenix, Arizona.

8. Power Sites

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

The locator of a mining claim on lands reserved for such purposes must, within 60 days of location, file a copy of the notice of location with the Bureau of Land Management, Phoenix, Arizona. A placer claimant may not conduct mining operations for a period of 60 days after the date of filing such notice. Within this latter 60-day period, the Secretary of the Interior may serve the locator with a notice of hearing to determine whether placer mining operations would substantially interfere with other uses of the land. Following the hearing, placer mining may be allowed, prohibited or permitted with certain restrictions. The act contains no such limitation with respect to lode mining claims. Within 60 days after the expiration of each assessment year, a statement as to the assessment work done or improvements made on both lode and placer claims must be filed with the Bureau of Land Management.

9. State Lands

Lands and mineral rights owned by the State of Arizona are open to prospecting and location. However, state-owned minerals are subject to state law and not Federal law. State mineral laws are discussed beginning at page 52.

10. City of Prescott Watershed

Mining locations made after January 19, 1933 within approximately 3,600 acres in the City of Prescott municipal watershed, situated in the Prescott National Forest, are subject to restrictions regarding the acquisition and use of surface resources. Valid claims in existence on the above date and thereafter maintained may proceed to patent without these restrictions (16 U.S.C. § 482a).

11. Game Refuges and Wildlife Areas

Lands within the state wildlife areas are generally open to the acquisition of mineral rights. However, certain access restrictions may be imposed by the Arizona Game and Fish Commission. Generally, lands which are a part of the National Wildlife Refuge System, including refuges, ranges, management areas, waterfowl protection areas and other areas for the protection and conservation of wildlife, are not open to mineral entry. See page 15 for additional information regarding such areas.

12. Stock Driveways

Mineral rights may be acquired in stock driveways. However, limitations are imposed upon the conduct of operations on such lands and the locator acquires restricted surface rights.

B. LANDS CLOSED TO MINERAL ENTRY

Throughout Arizona there are large areas of public domain which are not open to mining entry. The withdrawals are so numerous that it is beyond the scope of this booklet to attempt a complete coverage of such withdrawals. Furthermore, these areas change from day-to-day, and a published list rapidly becomes obsolete. The following comments are intended to convey only a general idea of lands which are not open to mining location or entry in order that the prospector may be alert to such a possibility, and may make the required investigations to determine the land status.

It should be noted that if a claim is located on land not open to mineral entry, the subsequent opening of the area to location will not validate the claim. This principle applies to all withdrawals from mineral entry.

1. Classification Act of 1964 and FLPMA

In 1964, Congress enacted two statutes which provided for the classification and disposal of public lands. One act, commonly known as the Classification Act, provided that the Secretary of the Interior was to develop and promulgate criteria for the classification of public lands and was to review such lands for a determination of their suitability for disposal or for retention and interim management pending implementation of the recommendations made by a review commission. The companion act, the Public Land Sales Act, authorized the Secretary of the Interior to dispose of lands which had been "classified for disposal."

Although both acts expired by their own terms on December 31, 1970, these acts are of potential significance to the mineral prospector. The Classification Act provided that publication in the Federal Register of a proposed classification segregated the land from entry under the general mining law and the mineral leasing laws, unless the notice otherwise specified. The segregation was effective for a 2-year period and could be extended for an additional 2-year period. Lands classified for disposal and subsequently sold contained a reservation of minerals to the United States. However, the terms of the act provided that, upon such sales, the lands were withdrawn from appropriation under the mining and leasing laws. Although the act expired December 31, 1970, sales for which notice had been published prior to the expiration date could be consummated and a patent issued in accordance with the terms of the act.

Classifications, withdrawals and sales are now governed by the provisions of FLPMA. FLPMA directs the Secretary of the Interior to prepare and maintain an inventory of all public lands and their resources and to develop and maintain land use plans for the public lands. The act also governs the withdrawal and disposition of public lands. Notices or applications to withdraw public lands must be published in the Federal Register, and such notices have the effect of segregating the public land from mining and leasing entry to the extent specified in such notice. If action on the proposed withdrawal is not taken within 2 years, the segregative effect of the proposed withdrawal expires at the end of the 2-year period. FLPMA also contains a review procedure pursuant to which most public land withdrawals which have closed lands to mining and leasing are to be reviewed by 1991 and recommendations made for the restoration of such lands to mineral entry or leasing or the continuation of the withdrawal.

FLPMA also provides for the sale and disposition of public lands which are determined to be unsuitable or no longer required for Federal use or which are necessary for selected private uses. With limited exceptions, dispositions of public land pursuant to FLPMA must contain a reservation of minerals to the United States, together with the right to prospect, mine and remove the minerals under applicable laws and regulations promulgated by the Secretary of the Interior.

2. National Parks and Monuments

National parks and monuments are not open to mineral entry, except when specifically authorized by law. Such areas include the Grand Canyon and Petrified Forest National Parks, and the Chiricahua, Organ Pipe Cactus, Saguaro and Wupatki National Monuments, and many others in different parts of the state which have been established for scientific, historical, educational, scenic or recreational purposes.

All lands within these areas are now withdrawn from location, leasing or entry under the public land laws. Although as recently as 1976, Organ Pipe Cactus National Monument and Coronado National Memorial were open to mineral location, these areas are now closed. Claims which were valid at the time of the establishment of the respective park or monument, or at the time of withdrawal from mineral entry, retain their validity. However, such claims are subject to stringent restrictions, including limitations on access and surface operations. Information regarding these limitations may be obtained from the superintendent of the respective park or monument.

3. Recreational or Other Public Uses

In addition to national parks and monuments and national recreation areas, other areas may be set aside for public use. The state, a county, a municipality or a nonprofit corporation or association may petition for the use of such land. As a general rule, after receipt of a petition to establish an area for recreational or other public use, the Bureau of Land Management withdraws the contemplated area from all forms of entry and during such time all mining locations are prohibited. The lands may be leased or sold by the United States to the petitioning organization. The statute expressly provides that each patent or lease so issued shall contain a reservation to the United States of all mineral deposits in the lands conveyed or leased and of the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior. Unless and until such regulations are issued, the area remains closed to mineral entry.

Examples of such recreational areas are the Tucson Mountain Park, leased to the Pima County Board of Supervisors, and the Phoenix Mountain Park. The lands in Phoenix Mountain Park were purchased from the United States under a special act of Congress, subject to a mineral reservation to the United States and a provision (effective 1927) that mining be conducted only under such rules and regulations as the Secretary of the Interior may prescribe. In the case of both parks, such regulations have never been issued, and the park areas remain closed to mineral entry.

Other forms of recreational withdrawals, such as campsites in the national forests, may also be closed to mineral entry. These are usually small areas and are not generally of significance.

4. Wilderness Areas

The National Wilderness Preservation System was established by legislation which became effective in 1964 and which is commonly known as the Wilderness Act (16 U.S.C. § 1131). The system is to be composed of federally-owned areas designated by Congress as "wilderness areas." The act gave immediate wilderness status to national forest areas classified as "wilderness," "wild" or "canoe" at least 30 days before the effective date of the act. The act also directed a review of national forest primitive areas and roadless areas within the national park system and national wildlife refuges and game ranges for possible designation as wilderness areas. Pursuant to other authority, other national forest lands have been and continue to be evaluated for possible inclusion in the wilderness system. Additions to the wilderness system may be made only by act of Congress.

The Wilderness Act provided for the continued applicability of the mining and leasing laws until midnight December 31, 1983. Accordingly, lands in wilderness areas are now withdrawn from all forms of mineral entry. All mining and leasing activities within wilderness areas must be based upon mineral rights acquired prior to December 31, 1983 and are subject to regulations promulgated by the Secretary of Agriculture governing mining activity in national forest lands (see page 37) and special regulations governing activities within wilderness areas. Mining activity must be conducted in a manner consistent with the preservation of the wilderness character of the lands, and stringent access and operating limitations are imposed. The Wilderness Act provides that claims located after September 3, 1964 will entitle the claimant only to such use of the surface as is reasonably required in connection with mining operations and requires restoration, as near as practicable, of the surface of the land disturbed by mining activity. All patents issued for claims within wilderness areas grant title only to the mineral deposit and to timber necessary for mining, and the surface and other surface resources are reserved to the United States.

A wilderness review program for lands administered by the Bureau of Land Management was mandated by FLPMA. All such lands are to be reviewed and those identified as suitable for inclusion in the wilderness system are to be recommended to Congress for designation as wilderness areas. To date, over 12 million acres of land in Arizona administered by the Bureau of Land Management have been reviewed for wilderness suitability and there remain 85 designated wilderness study areas, which comprise approximately 2.1 million acres. The Bureau of Land Management is scheduled to complete its review of wilderness study areas and to make final recommendations for inclusion in the wilderness system by October 21, 1991.

Lands in wilderness study areas are managed so as not to impair their suitability for wilderness designation, and all mining operations must be conducted accordingly. Special regulations govern mineral operations on lands within wilderness study areas. However, mining and leasing activities may continue in the same manner and degree in which such activities were being conducted on October 21, 1976, the effective date of FLPMA. FLPMA specifies that during the wilderness review period, all lands remain subject to appropriation under the mining and leasing laws unless withdrawn from entry for reasons other than their preservation as wilderness.

For information regarding the current status of specific lands in wilderness study areas, contact the Bureau of Land Management, Phoenix, Arizona.

At the present time, 49 regions in Arizona have been designated as wilderness areas pursuant to the Wilderness Act. Thirty-six of these wilderness areas were created by the 1984 Arizona Wilderness Act. The current Arizona wilderness areas include four national monument areas (Chiricahua, Organ Pipe Cactus, Petrified Forest and Saguaro) and 36 national forest areas (Apache Creek, Bear Wallow, Castle Creek, Cedar Bench, Chiricahua, Escudilla, Fossil Springs, Four Peaks, Galiuro, Granite Mountain, Hellsgate, Juniper Mesa, Kachina Peaks, Kanab Creek, Kendrick Mountain, Mazatzal, Miller Peak, Mt. Baldy, Mt. Wrightson, Munds Mountain, Pajarita, Pine Mountain, Pusch Ridge, Red Rock-Secret Mountain, Rincon Mountain, Saddle Mountain, Salome, Salt River Canyon, Santa Teresa, Sierra Ancha, Strawberry Crater, Superstition, Sycamore Canyon, West Clear Creek, Wet Beaver and Woodchute). There are nine Bureau of Land Management wilderness areas (Aravaipa Canyon, Beaver Dam Mountains, Cottonwood Point, Grand Wash Cliffs, Kanab Creek, Mt. Logan, Mt. Trumbull, Paiute and Paria Canyon-Vermilion Cliffs). Numerous other areas have either been endorsed by the administration for inclusion in the wilderness system, including the Imperial, Cabeza Prieta and Kofa National Wildlife Refuges, or have been recommended to the administration for possible inclusion. Several other areas have been designated for further planning studies and possible future inclusion in the wilderness system. Recommended and future planning areas are subject to the regulations governing mining and leasing operations in wilderness areas.

5. Experimental Forests and Ranges

Lands such as the Sierra Ancha Experimental Forest within the Tonto National Forest in Gila County, and the Santa Rita Experimental Range in the Coronado National Forest in Pima County, are designated for special research purposes. The Sierra Ancha is closed to all forms of mineral entry. The Santa Rita Range is closed to mining location, but is subject to the leasing laws.

6. Military Reservations

The Federal government has created numerous military reservations throughout the western states most of which are closed to mineral entry. Some of the withdrawals for military purposes in Arizona include Fort Huachuca and Luke, Williams, Yuma and other bases. Also included are gunnery and bombing ranges, such as the Luke-Williams and Willcox Ranges and the Yuma Test Station.

7. Reclamation Withdrawals

If an area is withdrawn for possible use for the construction of reclamation facilities, mining claims may be located only if the Secretary of

the Interior, acting within the discretion granted by law, declares the land open for entry under the mining laws (see page 7). Applications for restoration to entry may be filed with the Bureau of Land Management, Phoenix, Arizona, by persons, associations or corporations qualified to locate mining claims.

8. Residential Area Withdrawals

The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201) authorized the Secretary of the Interior to withdraw from mineral entry lands designated as unsuitable for mining operations for minerals or materials other than coal. Public domain may be withdrawn pursuant to this authority only if the area consists of land of a predominantly urban or suburban character which is used primarily for residential or related purposes or if mining operations on Federal lands would have an adverse impact on lands used primarily for residential or related purposes.

9. Agricultural Homesteads

Most of the minerals found in lands acquired pursuant to agricultural homesteads are not open to location under the mining laws. Nearly all of the minerals reserved by the United States pursuant to such homesteads are subject to the leasing laws and not to location under the general mining law (see page 6).

10. Small Tracts for Residence and Other Uses

Prior to its repeal by FLPMA, the Small Tract Act of 1938 authorized the Secretary of the Interior, in the secretary's discretion, to sell or lease a tract of vacant unreserved public land, not exceeding 5 acres, if the land was chiefly valuable for residential, recreational, business or community site purposes. Patents to such lands contain a reservation to the United States of all minerals, and the right to prospect for, mine and remove the same under such regulations as the Secretary of the Interior may prescribe. If no regulations are issued, the land remains closed to mining. Regulations have previously been issued which authorize the acquisition of leasable minerals on small tracts, but no regulations have been issued authorizing the leasing of locatable minerals.

11. Acquisition of Minerals by the Surface Owner

FLPMA authorizes the Secretary of the Interior to convey mineral interests owned by the United States to the owner of the surface estate. This authorization is limited to those situations where the surface is not federally owned, and such a conveyance may be made only if it is determined that there are no known mineral values in the land or that the Federal reservation of mineral rights precludes or interferes with nonmineral development of the land and that such development is a more beneficial use of the land. Mineral interests so conveyed vest in the surface owner and may not be acquired under the mining or leasing laws.

12. Tucson and Phoenix Withdrawals

Subject to valid existing rights, the mineral interests of the United States which had been reserved in patents or other conveyances issued under the public land laws (such as Stock-Raising Homestead patents) were withdrawn from appropriation under the mining and mineral leasing laws and from disposal under the Materials Act of 1947 as to specific lands in and around Tucson and Phoenix described in two acts which became effective October 5, 1962 (P.L. 87-747 and P.L. 87-754).

13. Indian Reservations

Indian reservations in Arizona total more than 19,000,000 acres, or approximately 26 percent of the state's area. All reservations are now closed to the location of mining claims under the general mining law. There may be valid claims in existence which were located when such lands were open for location, particularly on the Tohono O'odham (formerly Papago) Reservation, which was not closed to location until May 27, 1955 (25 U.S.C. § 463).

In general, Indian tribal lands may be leased for mining purposes by authority of the tribal council or other authorized tribal representatives and with the approval of the Secretary of the Interior. Such leases are for a term not to exceed 10 years and so long thereafter as minerals are produced in paying quantities (25 U.S.C. § 396a). Leases may be issued by competitive bid and, in some cases, the terms of mineral leases may be negotiated. Prospecting permits may be issued on tribal lands, but such permits do not normally include a preference right to lease.

All lands allotted to Indians in severalty (with exceptions not applicable in Arizona) may be leased by the allottee for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior, who is authorized to make necessary rules and regulations to carry out the purpose of the statute (25 U.S.C. § 396). Regulations currently in effect provide that the term shall be the same as for tribal lands.

Pursuant to the Indian Mineral Development Act of 1982 (25 U.S.C. § 2101), any tribe may, with the approval of the Secretary of the Interior, enter into joint venture, operating, production sharing, service, managerial, lease or other agreements for the exploration, extraction, processing or other development of mineral resources. Both allotted and tribal lands may be included in such an agreement. The provisions of the Mineral Development Act provide greater flexibility than the leasing statutes and provide the latitude for tribes and those seeking to develop tribal resources to negotiate comprehensive agreement provisions which meet the needs and special circumstances of both parties.

For details regarding prospecting and leasing procedures on Indian reservations, the appropriate tribal authorities should be contacted. Information may also be obtained from the agency headquarters for each reservation. A list of reservations within Arizona, and their respective Bureau of Indian Affairs agencies, can be obtained from the United States Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Arizona.

14. Wildlife Refuges and Other Wildlife Areas

As a general rule, Federal wildlife refuge areas and wildlife management areas are closed to mineral entry. However, virtually all wildlife refuge areas were established by executive order, and the status of each area must be ascertained from the records of the Bureau of Land Management, Phoenix, Arizona. The Grand Canyon National Game Preserve, which covers approximately the area occupied by that portion of the Kaibab National Forest which lies north of the Colorado River, is closed to mineral location. Leasing may be permitted, but only pursuant to special conditions to ensure no damage to the area or its wildlife. The Havasu Lake National Wildlife Refuge, the Imperial National Wildlife Refuge and the Kofa, Cibola and Cabeza Prieta National Wildlife Refuges are closed to entry under the mining laws and most are closed to entry under the leasing laws. In those cases where mining and prospecting are permitted to continue on valid mineral entries existing at the time of withdrawal, operations are subject to regulations governing such activities.

15. Administrative Sites

There are numerous withdrawals of lands for use as administrative sites, including ranger stations, inspection stations, border patrol stations and other similar uses. These lands are not open to mineral entry.

16. Spanish Land Grants

Lands in a valid Spanish Land Grant are not, as a general rule, open to mining locations, since all mines and minerals were normally included with the grant. Although Congress provided that certain confirmation patents were to reserve to the United States "gold, silver, or quicksilver mines or minerals," such reservations apply only to such mines and minerals known to exist at the time of the confirmation patents. These grants have given rise to many complex legal questions and the title to each must be examined to determine the status of mineral ownership.

17. Mexico-United States Border

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

18. Railroad Lands

Pursuant to several acts, the Congress of the United States granted public lands to the transcontinental railroads for the purpose of aiding in the construction of railroads across the country. As a general rule, these grants excluded lands known to be mineral in character, except lands known to contain iron and coal. Since patents granted to the railroads were for lands thought to be nonmineral in character, patents which were issued to the

railroads contained no reservations of minerals. Thus, the railroads acquired title to any minerals within these lands. Subsequently, the railroads sold substantial quantities of such lands, but in most instances reserved the minerals. Accordingly, mineral rights in railroad lands are vested in private parties and must be acquired by lease or purchase from such parties. The records for each tract of land must be carefully examined to determine the status of mineral ownership, not only with respect to the original grant but also any subsequent conveyances or exchanges.

III. MINING LOCATIONS ON PUBLIC DOMAIN OF THE UNITED STATES

A. SUBSTANCES WHICH MAY BE LOCATED

A majority of the mineral substances commonly sought on the public domain of the United States situated in Arizona are subject to mining location under the general mining law. The following are exceptions: deposits of coal, oil, gas, oil shale, phosphate, geothermal resources and certain sodium and potassium compounds, all of which may be acquired only under the mineral leasing laws. See page 46 for information concerning the leasing laws. Additionally, common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay and similar surface resources may not be acquired by location under the general mining law. These substances are obtained by purchase from the United States under the terms of the Materials Act of 1947 (30 U.S.C. § 601) (see page 48). Petrified wood has also been removed from location under the general mining law (30 U.S.C. § 611).

Exploration for minerals on lands owned by the State of Arizona is governed by state law, and Federal law is applicable only to the extent it is specifically referenced in the state statutes. Exploration rights for state-owned minerals may be obtained through a prospecting permit for a maximum term of 5 years with an exclusive right to obtain a mineral lease upon proof of discovery of valuable minerals (see page 54). Alternatively, upon the discovery of a valuable mineral deposit on state land, a state mining claim may be located. The acquisition of state oil and gas rights is governed by separate legislation (see page 58), as are geothermal resources (see page 59). Pursuant to either a prospecting permit or a state mining claim, upon the discovery of a valuable mineral deposit, a mineral lease may be obtained on state land. Prior to the extraction of any minerals, oil or gas or geothermal resources from state land, a lease must be obtained from the State Land Department. The term "mineral" does not include "common mineral products, materials and property," otherwise known as common varieties.

The manner in which mining claims are located varies according to whether the minerals are on public domain of the United States (or lands in which minerals have been reserved by the United States) or on lands owned by the State of Arizona. In some respects the procedures are similar, but in others they differ greatly. Care must be taken to determine whether the land is public domain or state land in order to apply the correct location procedures.

B. WHO MAY LOCATE A MINING CLAIM

Any citizen of the United States, or anyone who has declared the intention to become a citizen, an association of citizens or a qualified corporation may locate a mining claim upon public domain of the United States. The location of a mining claim by an alien or transfer to an alien is not absolutely void, but is voidable.

The Arizona statutes provide that a mineral claim may be located upon state land by any natural person over 18 years of age or any corporation, company, partnership, firm, association or society qualified to transact business in the state.

C. GENERAL CONSIDERATIONS

1. Lodes and Placers

A valid mining claim within the State of Arizona upon public domain of the United States or on lands where the United States has reserved the minerals must be located either as a lode claim or a placer claim. A lode claim is defined as a "claim upon veins or lodes of quartz or other rock in place" (30 U.S.C. § 23). All "forms of deposit, excepting veins of quartz, or other rock in place" are located as placers (30 U.S.C. § 35). Thus, a well-defined vein confined within walls of country rock is located as a lode claim, while valuable minerals which occur as particles in loose, unconsolidated material, such as gold in sand and gravel, are located as a placer claim. When such a distinction is not clear-cut, it often becomes difficult to determine whether a deposit should be located as a lode or a placer. Nevertheless, the locator must make a decision. Unfortunately, it must be done at the inception of the location, before there has been an opportunity to explore the deposit to determine its true geological characteristics. This problem is further complicated by court decisions, sometimes conflicting, rendered in borderline cases. In doubtful cases, the ground may be located by both lode and placer claims. Whether the mineral in a deposit is metallic or non-metallic is not determinative. Rather, the physical characteristics of the mineral occurrence determine the correct type of claim.

The test to apply to determine the correct type of location is whether the deposit is in a vein, lode, ledge, zone or belt of mineralized rock lying within boundaries clearly separating it from the surrounding rock. If so, it should be located as a lode claim. If not, it should be located as a placer claim. This rule is not infallible, but it presents the best general rule which can be offered to the mining locator. The disseminated copper porphyry deposits commonly found in Arizona have been customarily located and patented as lodes.

2. Federal and State Legislation

The Federal mining law provides that a mining claim shall not exceed 1,500 feet in length along the vein or lode and shall not extend more than 300 feet in width on each side of the middle of the vein at the surface (30 U.S.C.

§ 23). The states may enact legislation, if not in conflict with the laws of the United States, governing the location, manner of recording and amount of work necessary to hold possession of a mining claim, subject to the following Federal requirements:

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

Thus, the Federal law establishes only the maximum dimensions of a mining claim and the requirements set forth above. All of the western mining states have adopted legislation supplementing the Federal law, and no two states have identical provisions. The requirements of each state must be met in order to make a valid location on the public domain within such state.

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

Assuming the land is open to mineral entry, the requirements to locate a mining claim on public domain in Arizona are:

(a) A discovery of valuable minerals;

(b) The posting of a location notice*;

(c) The recording of a copy of the location notice and a map, plat or sketch with the county recorder;

(d) The marking of boundaries on the ground; and

(e) The filing of a copy of the location notice and any required supplemental information with the Bureau of Land Management, Phoenix, Arizona.

3. Discovery

A "discovery" of valuable minerals is the foundation upon which the entire mining law is based. It is the inception of title to a mining claim. The courts have uniformly held that a discovery on each and every claim is an indispensable prerequisite to the validity of a location. The discovery must be within the boundaries of each claim, but need not be on the center line nor at the location monument*. It may be in a drill hole and, of course, may be on the outcrop of a lode.

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* Law change, August 1987 - see addendum page 67

Federal mining law does not specify how or where the discovery must be made on a mining claim. The Bureau of Land Management in patent proceedings accepts a discovery at any point within the claim, including discoveries made by diamond or churn drilling. This is a sensible application of the law, particularly in view of modern exploration techniques whereby ore bodies have been discovered at depths ranging from a few hundred to more than a thousand feet below the surface. The only practical way to make a discovery at such depths is by drilling.

Federal mining law does not define discovery, and no precise standards have been established by the Department of the Interior. The department, prior to the turn of the century, promulgated the "prudent man" test. The Federal courts, including the United States Supreme Court, approved and adopted the "prudent man" test, the essence of which is that to constitute a discovery, minerals must be found in such quantity and quality that a person of ordinary prudence would be justified in further expenditure of labor and means, with a reasonable prospect of success, in developing a valuable mine. The department and the courts have consistently held that it is not sufficient that there is only a showing of minerals that would warrant further exploration in the hope of finding a valuable deposit. Based upon the "prudent man" test, the validity of mining claims was sustained and mineral patents granted on proof of the existence of mineralization which, under present-day rulings of the Department of the Interior, would be inadequate to sustain a patent or even the validity of an unpatented claim.

In more recent years, the department has developed, and the courts have sanctioned, a more stringent discovery test, the "marketability" test. Under this test, in order to establish a discovery, the locator must demonstrate the existence of a mineral deposit which can presently be mined, removed and marketed at a profit. In determining whether a mineral deposit has such present economic value, consideration is given to all costs of production, including the cost of compliance with applicable labor, health, safety, environmental and other laws and regulations. Accessibility to market, availability of financing, adequacy of water supplies and the current market price of the mineral or minerals to be extracted are also important factors in the determination of whether a discovery has been established.

The Department of the Interior has become increasingly stringent in the application of the test to determine the adequacy of a mineral discovery, both in patent proceedings and in contests challenging the validity of unpatented mining claims. Thus, the mining claim owner should be wary of initiating patent proceedings before sufficient work has been completed to clearly demontrate the existence of a valuable mineral deposit. If there is a failure to supply such proof, not only will the patent be denied, but the mining claim may also be declared invalid.

With the passage of years, easily found surface showings of minerals have become scarce. The prospector is usually confronted with the necessity of locating a claim over ground which looks promising but which does not contain a then-provable discovery. There is no prohibition in the law against making such a location. However, the locator's possessory rights (*pedis possessio*) depend upon actual possession of each claim and due diligence in

trying to make a discovery thereon. These requirements are incompatible with modern-day exploration techniques and there remains the need for a revision of the mining laws so as to permit the locator a reasonable time to establish a discovery.

The use of Geiger counters, scintillometers and various geophysical and geochemical techniques in the search for minerals raises an interesting question. Do the readings obtained on such instruments, standing alone, constitute a discovery of valuable mineral in a vein or lode sufficient to support a valid mining location? This matter has not been conclusively resolved by the courts or by legislation. Thus, the locator should support such readings by assays and actual sample evidence of mineralization.

In practice, the other acts of location often precede a discovery, but the location is valid only from the date of discovery. Therefore, it is possible that another locator may come upon the ground prior to discovery in a manner sanctioned by law, and upon making a discovery, locate a valid claim, thus extinguishing the attempted location of the first locator. Additionally, the validity of a mining claim without a discovery may be challenged by the Federal government in an administrative contest proceeding which seeks to have the claim declared null and void.

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

D. LODE CLAIMS

1. Location

As noted above, the requirements of both the Federal and state mining laws must be met in order to locate an unpatented mining claim. The following must be performed to locate a lode claim on public domain of the United States within the State of Arizona:

(a) Make a discovery of "mineral in place," that is, enclosed within the surrounding country rock. Detached pieces of mineral that are scattered throughout or on top of the soil, commonly called "float," do not constitute a discovery which will validate a lode location;

(b) Erect at one corner of the claim*, and within the boundaries of the claim, a location monument, which must be a conspicuous monument of stones not less than 3 feet in height or an upright post securely fixed and projecting at least 4 feet above the ground; and

(c) Post a location notice signed by the name of the locator in or on the location monument or post. The notice, a form of which is included at the end of this booklet, must contain:

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* Law change, August 1987 - see addendum page 67

(1) The name of the claim;

(2) The name and address of the locator. The locator can locate for himself, for himself and others, or for others;

(3) The date of the location;

(4) The length and width of the claim in feet and the distance in feet from the location monument to each end of the claim. As noted above, the maximum length is 1,500 feet and the maximum width is 600 feet;

(5) The general course of the claim; and

(6) The locality of the claim with reference to some natural object or permanent monument whereby the claim can be identified and, if known to the locator, the identification of the section, township and range in which the notice of location of the claim is posted.

It should be noted that in addition to the above, quarter sections encompassed within any portion of the claim must be included in the information filed with the Bureau of Land Management (see page 29).

There is no limitation on the number of lode locations that can be made by a qualified locator.

2. Recording

Within 90 days from the date of location, an executed copy of the location notice must be recorded in the office of the recorder of the county in which the claim is situated, together with a map, plat or sketch of the claim. The Federal filings required by FLPMA must also be made within 90 days of the date of location (see page 28). If the posted notice of location does not contain the section, township and range in which the notice is posted, that information must be added to the notice prior to recording. If the land has not been surveyed, the locator must identify the projected, protracted or extended section, township and range in which the notice is posted.

The required map, plat or sketch must be:

(a) In legible form and not more than 8-1/2 inches by 14 inches in size;

(b) On a scale of not more than 1 inch to 2,000 feet; and

(c) Based upon the performance of a survey which is commensurate with the abilities of the locator.

The locator is not required to employ a professional surveyor or engineer for the preparation of the map, plat or sketch. However, the boundaries and

position of the claim or claims must be set forth with such accuracy as would permit a reasonably knowledgeable person to find and identify the claim on the ground. The locator may show contiguous claims on one map, plat or sketch, so long as the claim being located is clearly identified.

The map, plat or sketch must contain the following information:

(a) The name of the claim;

(b) Whether the claim is a lode, placer or millsite claim;

(c) The locality of the claim with reference to the section, township and range in which the claim is situated, together with a course and distance tie from a corner of the claim or contiguous group of claims to a monument of the public land survey, if the land has been surveyed. If the land has not been surveyed, a corner of the claim or claim group must be tied by course and distance to an established survey monument of a United States government agency or United States mineral monument. If no such monument can be found through the exercise of reasonable diligence, the map must show the course and distance from one corner of the claim or claim group to some prominent natural object or other permanent monument described on such map;

(d) The scale of the map;

(e) The county in which the claim is situated;

(f) A north arrow;

(g) The type of corner and location monuments used; and

(h) The bearings and distances between corners.

When a mining claim is located on lands reserved for power sites, a copy of the location notice must be filed with the Bureau of Land Management, Phoenix, Arizona within 60 days after the date of location, as discussed on page 7. In other instances, filings with the Bureau of Land Management must be made within 90 days of the date of the location.

3. Marking Boundaries and Performing Location Work*

A lode claim must be monumented on the ground within 90 days from the date of location in a manner so that its boundaries can be readily traced. This is accomplished by erecting six substantial posts projecting at least 4 feet above the surface of the ground or by erecting substantial stone monuments at least 3 feet high. A post or monument must be erected at each corner of the claim and at the center of each end line. A post must be not less than 1-1/2 inches in cross-section. The post may be of any material as

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* Law change, August 1987 - see addendum page 67

long as it may be readily distinguished as a monument. Each monument must be marked so as to identify the corner or end center of the claim or claims to which it pertains, such as "NE Corner Patricia #1."

End lines must be parallel if the locator is to acquire extralateral rights in a vein or lode. If side lines are not straight lines, monuments must be erected at angle corners.

Prior to September 3, 1978, the Arizona location statutes required that a locator perform location work by either sinking a location shaft on the claim to a depth of at least 8 feet or, in lieu thereof, drilling a hole not less than 10 feet in depth and costing at least $100 for such drilling. Under certain circumstances, the law permitted drilling at one point for a group of contiguous claims. It was also necessary to record an affidavit evidencing the performance of drilling. These requirements have been eliminated from the Arizona statutes, and Arizona law now requires only the posting of the location notice, the monumenting of the claim, the preparation of the required map, plat or sketch and the recording of it, together with an executed copy of the location notice. Of course, the Federal filing requirements must also be met (see page 28).

Failure to perform the acts of location within the times specified is deemed an abandonment of the claim, and all right of the locator is forfeited. For the locator's own protection, there should be full compliance with the law, and it is advisable to record the location notice and perform all other acts of location as soon as reasonably possible without necessarily taking advantage of the full statutory time periods allowed.

4. Relocation

Arizona law provides that the relocation of an abandoned or forfeited claim may be made in the same manner as an original location. Upon relocation, the new locator may use the mineral discovery of the former locator and may adopt the monuments of the prior claim. If the original location work for the claim being relocated included the recording of a map, plat or sketch, the locator may perform relocation work by resurveying or by verifying the accuracy of the boundaries and position of the claim as shown on the map, plat or sketch and by preparing and recording a map, plat or sketch, as described above. The relocation must comply with the Federal filing requirements.

5. Amendment

A location may be amended at any time and the monuments changed to correspond with the amended location, but no change may be made which will interfere with the rights of others. The original discovery must be retained and the amended location notice must be posted on the ground and recorded. If the amendment changes the exterior boundaries of the claim, a new or amended map, plat or sketch must also be recorded. The amended location notice, together with any supplemental information required by FLPMA, should be filed with the Bureau of Land Management, Phoenix, Arizona. An amended notice should be entitled "Amended Location Notice" and should contain the statement:

This is an amendment to the _____ lode (or placer) claim, located on _____, 19__, and of record in Docket _____, Page _____, in the office of the County Recorder of _____ County.

6. Mineral Rights of a Lode Locator

The locator of a valid lode claim on public domain of the United States which is open to mineral entry acquires all minerals which may be acquired by location, including those which may occur as placer-type deposits. The common varieties of certain substances which are obtainable only by purchase under the terms of the Materials Act of 1947 are not acquired by a lode location, nor are mineral substances which are subject to the leasing laws. However, these substances may, under certain circumstances, be acquired if a patent is obtained. The locator may acquire extralateral rights, as discussed below.

7. Extralateral or Apex Rights

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

The nature of many ore bodies, such as disseminated copper porphyries, makes it very difficult to prove, even by expert testimony, whether or not the deposit is a vein or lode within the meaning of the law so as to entitle the claim owner to extralateral rights. In many instances, owners of adjoining claims have entered into "side line" agreements whereby their respective rights are confined by planes passed vertically downward through the side lines, thus eliminating the possibility of costly litigation in an attempt to establish extralateral rights.

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

E. PLACER CLAIMS

1. Generally

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

Under certain circumstances, a placer claim may be prospected for lodes and a lode claim located over the placer claim. Therefore, if the locator of a placer claim knows of the existence of lodes within the claim boundaries,

they should be located as lodes to preclude intervention by others. If there are known lodes within the placer claim, the owner of the placer claim must declare such lodes when making application for a patent. Should the known lodes not be declared, they remain open for location as lode claims, even after a patent issues for the placer claim. On the other hand, if there are no known lodes at the time of patent but their existence is subsequently disclosed, the placer patent conveys all valuable minerals, both lode and placer.

Some common materials that were located formerly as placers are now specifically excluded from mining locations by the Multiple Surface Use Act of 1955 (30 U.S.C. § 611) (see page 48).

2. Size of Claim

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

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

3. Location

In order to meet the requirements of the Federal and state laws, a placer claim on public domain of the United States within the State of Arizona must be located as follows:

(a) Make a discovery of valuable placer mineral. Discovery of mineral in place in a vein or lode will not validate a placer location. Only one discovery of mineral is required to support a placer location, whether it is of 20 acres by an individual, or of 160 acres or less by an association of persons. However, in the event of a contest or in patent proceedings, such a discovery may not conclusively establish the mineral character of all of the land within the claim ; and

(b) Erect a location monument or post and post at one corner and within the boundaries of the claim a location notice signed by the locator, which contains the same information as is required for a lode claim (see page 20).

The location should conform as nearly as practicable to the United States system of public land surveys and the rectangular subdivision of sections. This is not required where compliance would necessitate the placing of the claim lines upon previously located claims or where the claim is surrounded by prior locations. Strict conformity may not be practical, such

as where a placer deposit occurs in the bed of a meandering stream. Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such location will be regarded within the requirements where strict conformity is impractical.

A form for use in locating a placer claim is found at the end of this booklet. As with lode claims, placer claims may be amended and relocated (see page 23).

4. Recording

A copy of the location notice must be recorded with the recorder of the county in which the claim is situated within 90 days after the date of location. Additionally, a map, plat or sketch containing the same information as is required for lode claims must be recorded. However, if the placer claim has exterior limits conforming to legal subdivisions of the public land survey, the map, plat or sketch must include the legal description of the claim instead of the requirements of numbered items (c) and (h) on pages 22.

The filing requirements of FLPMA are also applicable to placer claims, and the location notice and any required supplemental information must be filed within 90 days of the date of location. When a mining claim is located on lands reserved for power sites, a copy of the location notice must be filed with the Bureau of Land Management, Phoenix, Arizona within 60 days after the date of location and the placer claimant may not conduct mining operations for a period of 60 days after the date of filing such notice (see page 7).

5. Marking Boundaries and Performing Location Work*

A placer claim is monumented in the same manner as a lode claim (see page 22). However, an apparent inconsistency in the law requires that a placer claim be located by six monuments. Until this statutory requirement is modified, the claim should be monumented with all six monuments.

6. Mineral Rights of a Placer Locator

The locator of a valid placer claim on public domain of the United States acquires all placer minerals. Known lodes, leasable minerals and the common varieties of certain substances, which are obtainable only by purchase under the Materials Act of 1947, are not acquired, although they may be acquired if a patent is obtained. The placer locator's mining rights extend within vertical planes passed downward through the claim boundaries, and there are no extralateral rights. The right to mine minerals from known lodes within the placer claim, together with extralateral rights on such veins, may be acquired by the location of lode claims on the veins or lodes.

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* Law change, August 1987 - see addendum page 67

F. MILLSITE

Millsite is the name given to a tract of not more than 5 acres of nonmineral land used for mining, milling and other operations in connection with a mining claim. The owner of a "quartz mill or reduction works" not owning a mine in connection with the mill or works may also acquire a millsite (30 U.S.C. § 42).

While the Federal laws are silent as to the manner of locating a millsite, the Arizona statutes provide that such sites are to be located in the same manner as lode claims*. The map, plat or sketch recording requirement must also be met. Additionally, the millsite locator must comply with the Federal filing requirements of FLPMA (see page 28). The millsite may only be located upon vacant and unappropriated public domain which is nonmineral in character. No annual assessment work is required, but FLPMA requires the filing of a notice of intent to hold the millsite (see page 34).

A millsite may be patented subject to the same preliminary requirements as are applicable to lode and placer claims. A millsite is not valid and a patent will not issue unless actual and present use for permitted purposes is shown. A millsite may adjoin the boundaries of a mining claim but, if adjacent to the end line of a lode claim, proof of nonmineral character may be more difficult, since a question may arise regarding whether the vein enters the millsite.

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

G. TUNNEL LOCATION

Although no provisions for a tunnel location are contained in the Arizona statutes, a tunnel location is expressly provided for by the Federal laws (30 U.S.C. § 27). It is not a mining claim. Rather, it gives the locator a right to drive a tunnel a maximum distance of 3,000 feet from the portal along the line of the tunnel site as marked on the surface. Any veins cut in driving the tunnel which do not appear on the surface, and which were not previously known to exist, may be located by the tunnel operator as lode claims. Subject to the limitations discussed below, the right to veins so discovered relates back to the time of the location of the tunnel site.

Locations made on the line of the tunnel of veins or lodes which do not appear on the surface and which are made by other parties after the commencement of the tunnel and while it is being prosecuted with reasonable diligence are not valid. However, failure to prosecute work on the tunnel for a period of 6 months is considered an abandonment of the right to all undiscovered veins on the line of the tunnel.

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* Law change, August 1987 - see addendum page 67

The proprietors of a mining tunnel must post a notice of the tunnel location, giving the names of the parties claiming the tunnel right, the actual or proposed direction of the tunnel, the height and width thereof and the course and distance from the point of commencement to some permanent well-known object in the vicinity. The proprietors must also mark the boundary lines of the tunnel on the surface, and the marked lines define and govern as to the boundaries within which prospecting for lodes not previously known to exist is prohibited while the work on the tunnel is being pursued.

A copy of the notice of tunnel location must be recorded in the county recorder's office, together with a sworn statement or declaration setting forth the facts pertaining to the tunnel and stating the amount expended in prosecuting the tunnel work, the extent of the work performed and that the locator intends to prosecute work on the tunnel with reasonable diligence for the development of a vein or lode or for the discovery of minerals, or both. A tunnel location must comply with the filing requirements of FLPMA.

H. FEDERAL FILING REQUIREMENTS

FLPMA requires that the owner of an unpatented lode or placer mining claim or a mill or tunnel site located after October 21, 1976 must, within 90 days after the date of location, file in the proper Bureau of Land Management office a copy of the official record of the notice of location, including a description of the claim or site sufficient to locate the claimed lands on the ground (43 U.S.C. § 1744). The act provides that the failure to so file is deemed conclusively to constitute an abandonment of the claim.

Department of the Interior regulations expand upon the filing requirements set forth in FLPMA. For claims located in Arizona, all filings must be made at the State Office, Bureau of Land Management, at its current address, 3707 North 7th Street, Phoenix, Arizona 85014, and the notice of location and any required supplemental information must be received and date stamped by the Bureau on or before the due date. The following additional information must be provided if it is not contained in the copy of the location notice which is filed with the Bureau of Land Management:

(1) The name or number of the claim or site, or both if the claim or site has both;

(2) The name and current mailing address, if known, of the owner or owners of the claim or site;

(3) The type of claim or site;

(4) The date of location; and

(5) A description of the claim or site, including a map, narrative or sketch.

The required description must recite, to the extent possible, the section or sections and the approximate location of all or any part of the claim or site within a 160-acre quadrant (quarter section) of such section or sections, together with the township, range, meridian and state, all obtained from an official survey plat or other United States government map showing either the surveyed or protracted United States government grid, whichever is applicable. Additionally, either a topographic map published by the United States Geological Survey on which the location of the claim or site is depicted, or a narrative or sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic or man-made feature, must be provided. Such map, narrative description or sketch must set forth the boundaries and position of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or the mineral interests in such lands to identify and locate the claim on the ground. More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified.

In place of the description and map, narrative or sketch described in the preceding paragraph, an approved mineral survey may be filed. The regulations do not require that a professional surveyor be employed to prepare the map or the description of the claim.

There is a one-time $5 filing fee for each claim filed with the Bureau of Land Management.

While FLPMA requires the filing of a "copy of the official record" of the location notice which is recorded with the county, the current regulations provide that the copy of the location notice which is filed with the Bureau of Land Management may be a copy of the instrument which was or will be recorded in the county. It is preferable, however, to file a copy of the recorded instrument. If this is not available, it is desirable to file a copy of the instrument annotated with the recording information. It is permissable, however, to file a copy of the location notice which is being or will be recorded in the county.

While the failure to file a location notice with the Bureau of Land Management within the 90-day period following the date of location is deemed conclusively to constitute an abandonment of the claim, the failure to pay the filing fee or to provide other required information will not automatically result in an abandonment of a claim. Rather, if the locator fails to pay the filing fee or fails to provide the information set forth in items 1 through 5 above, the Bureau of Land Management will issue a decision requiring that the deficiency be corrected within 30 days. If the defect is not corrected within such 30-day period, the claim filing will be rejected.

For mining claims located before October 21, 1976, the location notice, supplemented by the information discussed above, must have been filed with the Bureau of Land Management on or before October 22, 1979. Failure to timely make such filing resulted in claims being conclusively deemed abandoned and void. As discussed below, FLPMA also requires the filing of documents pertaining to the performance of annual labor (see page 33).

I. RECORDING MAP OF EXISTING CLAIMS

The Arizona laws contain a provision which permitted the owner of any lode, placer or millsite claim which existed on September 3, 1978 to record with the county recorder a map, plat or sketch of such claim on or before October 21, 1980. The map was required to contain all of the information now required to be included in a map prepared at the time of location (see page 21) and was also required to contain the book and page of the recording of the location notice and of any amended notices. All claims for which the point of posting of the location notices was within one section of the public land survey could be included on one map. The recording of such a map within the prescribed time constitutes, after the date of recording, constructive notice to the public of the position of the claim and gives rise to a rebuttable presumption that the claim was monumented on the ground, so that its boundaries can be readily traced.

J. MAINTENANCE OF TITLE

1. Annual Work Requirement

The Federal statutes require that on each mining claim, until a patent has been issued, not less than $100 "worth of labor shall be performed or improvements made during each year" (30 U.S.C. § 28). Location work, as was formerly required, is entirely distinct from assessment work and was not a substitute for the latter. The assessment year commences at 12:00 noon on September 1, and the required work must be performed for each assessment year except for the assessment year in which the claim is located.

For a group of contiguous claims in common ownership or control, it may be possible to perform the work and improvements on fewer than all of the claims, for the benefit of each of the claims in the group. For example, in a five claim group, $500 worth of work and improvements may be made on only one claim if the work tends to develop and benefit each of the claims in the group. The mere fact that the claims are contiguous is not sufficient to satisfy the requirements of the law. What will tend to develop and benefit each of the claims in the group is a question of fact in each particular instance. Work may be performed on adjoining or nearby property, such as the construction of a road. However, such work must meet the test of actually benefiting and developing the unpatented claim or claims for which it is performed.

A single placer claim, whether it is 20 acres located by one person or an association placer located by a group of persons, requires only $100 in annual expenditures. There is no limitation on how long a mining claim may be held so long as assessment work is performed as required by law. Assessment work is not required after the issuance of the final certificate of mineral entry in patent proceedings.

Although there is no annual assessment work requirement for a millsite or a tunnel location, a notice of intention to hold such locations must be filed with the Bureau of Land Management, as discussed on page 34.

2. Labor and Improvements Qualifying as Annual Work

The original Federal statutes and the Arizona statutes supplementing the Federal laws did not describe any specific type of labor or improvement that would meet the annual expenditure requirement of $100 per claim. As a general rule, the work must benefit the claim and facilitate the extraction of ore from it. The types of labor and improvements which meet the requirements of the Federal law have been discussed in many court decisions. Annual work may be underground or on the surface. It may be done off the claim if clearly of benefit or value to the claim. An example would be a crosscut driven for the purpose of intersecting a vein at depth, and this is allowable even where the portal of the crosscut is not within the claim itself or the claim group. However, it must be kept in mind the locator will bear the burden of establishing that work performed off the claim benefited such claim. If challenged, the party claiming the work must establish that the work did in fact tend to develop and benefit the claim or group of claims.

The question often arises as to whether monies spent or work performed do in fact benefit the claims. The mineral locator should be careful to eliminate all doubtful items and should make certain that sufficient sums have been expended on appropriate work so as to preclude any possible question regarding whether the statutory requirements have been met.

Courts have held expenditures for the following to meet the labor and improvements requirement of the statute: buildings, if upon the claims and actually used for mining purposes; employment of a watchman, provided such services are necessary for the preservation of the property (the Arizona Supreme Court has declared that the services of an individual making occasional trips to the property to see if everything was all right are not expenses which can be applied toward the annual assessment work requirement); machinery, tools and equipment essential to the development of the claims; timber used for mine purposes; roadways, both on and off the claims, if for the benefit of the claims; surface cuts and trenches, if measurable, and not merely sample trenches; and diamond, churn and rotary drilling. This list is not complete, and there are other items of labor and improvements which qualify as assessment work. Some expenses which may not be applied as annual work include attorneys' fees, travel expenses and construction of or repairs to a mill.

A Federal statute enacted in 1958 (30 U.S.C. § 28-1) specifically describes certain types of permissible work which had not traditionally been considered as applicable toward the annual labor requirement. That statute provides that the term labor:

> 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.

The surveys which may be performed are defined by the Federal law as follows:

> (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.

As noted above, the survey must be performed by a "qualified expert" and this is defined as an individual qualified by education or experience to conduct geological, geochemical or geophysical surveys. Surveys of this type may not be applied as labor for more than 2 consecutive years nor for more than a total of 5 years on any one mining claim, and each survey must be nonrepetitive of any previous survey performed on the claim.

Prior to the enactment of the statute permitting the performance of geological, geochemical and geophysical surveys, the mere taking of samples had been held by the courts not to meet the annual labor requirements on the theory that such sampling, while necessary to determine whether actual mining should be conducted, does not in fact develop or tend to develop minerals. In light of the statutory provision relating to geological, geophysical and geochemical surveys, it can be argued that where the sampling and assaying are related to surveys of that nature, the expenses should be allowed. However, this question has not been resolved by the courts.

Annual work is not cumulative, and an amount in excess of 1 year's requirement may not be carried forward to succeeding years. However, it is sometimes more economical or convenient to perform 2 years' work as one continuous job. This may be done by performing the work at the close of the current assessment year and continuing past noon on September 1 into the next assessment year, doing the required amount for the second year after 12:00 noon on September 1, the commencement of the new assessment year. When work is being overlapped in this manner, a careful record of the time and date of the performance of such work must be maintained so that the work may be properly allocated to each assessment year.

Annual work may be performed by the locator or owner, by someone in privity with the locator or by one who has an equitable interest in the property. A lessee may do the work, or a stockholder may do the work on claims held by a corporation. However, labor or improvements by a trespasser will not inure to the benefit of the claimant.

Although assessment work is not required upon a millsite or a tunnel location, failure to prosecute the work on a tunnel for 6 months constitutes an abandonment of the right to all undiscovered veins on the line of the tunnel. Money spent on a tunnel location is considered as spent on the lodes which may be discovered and located, for the purpose of the annual assessment work requirement.

To avoid controversy, a claim owner should faithfully and fully perform the annual work as required by law, and sufficient work should be performed to eliminate all doubt as to the adequacy of the amount and type of work claimed.

3. Recording and Filing Annual Assessment Work or Notice of Intention to Hold

Prior to the enactment of FLPMA, Federal law did not require the filing of any proof of annual assessment work. The Arizona statutes permit (but do not require) the recording of an affidavit of assessment work in the office of the recorder of the county in which the claims are located, and provide that such an affidavit, if recorded on or before December 30 of each year, constitutes prima facie evidence of the performance of annual labor and improvements. A form incorporating the Arizona statutory provision for assessment affidavits is included at the end of this booklet.

FLPMA now imposes specific requirements for filing proof of annual labor and improvements, both with the county recorder and with the Bureau of Land Management. The owner of an unpatented mining claim located after October 21, 1976 must, on or before December 30 of the calendar year following the calendar year in which the claim was located and on or before December 30 of each calendar year thereafter, record an affidavit of assessment work or notice of intention to hold the claim in the recorder's office in the county in which the claim is located, and must file with the Bureau of Land Management, Phoenix, Arizona a copy of the official record of the affidavit or notice. The copy of the affidavit or notice filed with the Bureau of Land Management must be an exact, legible reproduction or duplicate (except microfilm) of the notice or affidavit which was or will be recorded in the county recorder's office and must contain or be submitted with a description of the claim sufficient to locate the claimed lands on the ground. The current regulations provide that the Bureau of Land Management serial number assigned to the claim at the time of the initial filing of the location notices will be deemed a sufficient description, and the serial number must appear on or must accompany the affidavit or notice of intent to hold. In instances where detailed reports concerning geological, geophysical and geochemical surveys are recorded pursuant to 30 U.S.C. § 28-1, a legible reproduction or duplicate of the report which has been or will be recorded must be filed with the Bureau of Land Management. The report must include the Bureau of Land Management serial number assigned to each claim. Each affidavit or report must be accompanied by any change in the mailing address of the claim owner.

As discussed below, the Federal filing described above must be made even if annual labor is not required to be performed on a claim. In such a situation, a notice of intention to hold the claim must be recorded and a copy

of such notice filed with the Bureau of Land Management prior to the applicable December 30 deadline.

For unpatented mining claims located prior to October 21, 1976, FLPMA required that the owner of such a claim, within the 3-year period following October 21, 1976 and on or before December 30 of each year thereafter, record and file with the Bureau of Land Management a copy of the recorded affidavit of performance of annual labor or notice of intention to hold. The failure to file an affidavit or notice by the October 22, 1979 deadline, and to timely perform such filing each year thereafter, results in such claims being conclusively deemed abandoned and void.

The owner of mining claims located within any unit of the National Park System established before September 28, 1976 was required to file such claims with the Secretary of the Interior by September 28, 1977 and the failure to do so resulted in the claim being conclusively presumed abandoned and void. Additionally, the owner of any unpatented mining claim, millsite or tunnel site was required to file, on or before October 22, 1979, and on or before December 30 of each calendar year thereafter, either an affidavit of assessment work or a notice of intention pursuant to the requirements of FLPMA. For unpatented mining claims situated in any national park system unit established or enlarged after September 28, 1976, the filing requirements of FLPMA must be met.

Although the Arizona statutes provide that the recording of an affidavit of annual labor on or before December 30 constitutes prima facie evidence of the performance of assessment work, prior to enactment of FLPMA, the recording of assessment affidavits was not mandatory. Now, however, it is essential that the claim owner record an affidavit or notice and that an exact legible reproduction or duplicate be filed with the Bureau of Land Management by December 30 of each year.

In instances where a claim owner files a notice of intention to hold a mining claim or group of mining claims, the notice must be in the form of an exact, legible reproduction or duplicate (except microfilm) of an instrument, signed by the claim owner or the owner's agent, which was or will be recorded in the county in which the claim is situated and which sets forth the Bureau of Land Management serial number assigned to each claim described in the notice and any change in the mailing address of the owner. Alternatively, a notice of intention to hold for a mining claim or group of mining claims may be in the form of a "reference" to a decision on file with the Bureau of Land Management, including the date and serial number of such decision, granting a temporary deferment of annual assessment work under the provisions of 30 U.S.C. § 28b, or a "reference" to a pending petition for such deferment, which includes the date of filing and the serial number. This "reference" should be in the form of a separate instrument or notice which is recorded in the county where the claim or group of claims is situated and filed with the Bureau of Land Management.

An example of a situation where a notice of intention to hold would be used includes the situation where assessment work requirements have not as yet become due. For example, if a claim is located after noon on September 1, the initial assessment work requirement need not be performed during the

assessment year in which the claim was located. However, FLPMA requires that the owner file either an affidavit or a notice of intention to hold prior to December 30 of the calendar year following the year of location.

Although annual assessment work is not required upon a millsite or upon a tunnel location, a notice of intention to hold must be filed with the Bureau of Land Management on or before December 30 of each year following the year in which the location notice was filed with the Bureau of Land Management. The notice must be in the form of a letter or other notice signed by the owner or the owner's agent setting forth the Bureau of Land Management serial number of each site and any change in the mailing address of the owner. Unlike the notice of intention to hold a mining claim, it is not necessary to record a copy of the notice of intention to hold a mill or tunnel site in the local county recorder's office.

As noted above, applicable regulations pertaining to annual filings provide that in those instances where documents must be recorded in the county where the claim is situated, the document which must be filed with the Bureau of Land Management must be an exact, legible reproduction or duplicate (except microfilm) of the document which was or will be recorded with the county. However, whenever possible, such documents should be recorded sufficiently in advance of the Federal filing deadline so that copies of the recorded documents can be obtained from the county recorder for filing with the Bureau of Land Management. Alternatively, it is desirable to annotate the recording information on the document filed with the Bureau of Land Management. These precautions will preclude any question as to whether such documents were timely recorded.

It should be noted that a regulatory exception to the December 30 annual filing deadline has been created. Current regulations provide that an affidavit or notice of intention to hold which is postmarked on or before December 30 of the applicable year and which is received by the Bureau of Land Management by January 19 of the subsequent year shall be deemed timely filed. This exception applies only to affidavits of annual labor and notices of intention to hold and does not apply to the filing of location notices.

Finally, it should be noted that the annual filing must be performed during the calendar year in which the applicable assessment year ends. Thus, a locator who performs annual labor in September, at the commencement of the assessment year, should not file the affidavit pertaining to such work with the Bureau of Land Management until the succeeding calendar year, the calendar year during which the assessment year ends.

4. Failure to Timely Complete Federal Filings of Annual Assessment Work

Failure to timely file with the Bureau of Land Management an assessment affidavit or notice of intention to hold for an unpatented mining claim is, under FLPMA, deemed conclusively to constitute an abandonment of the mining claim (43 U.S.C. § 1744). However, the failure to include certain information required by the Bureau of Land Management regulations, such as the serial number assigned to a claim or a change in the address of the owner, will not result in the automatic invalidation of a claim. Similarly, the failure to

file a notice of intent to hold for a millsite or a tunnel site will not be deemed to automatically constitute an abandonment of the claim. Rather, the claim owner will be notified by decision of the defect in filing or failure to file and will be provided 30 days to correct the same.

5. Failure to Perform Annual Assessment Work

Although the failure to meet the Federal filing requirements pertaining to assessment work will void a claim, the failure to perform labor and improvements of a value of $100 annually for each claim does not, in and of itself, automatically forfeit the claim. It does, however, render it subject to loss by relocation. The courts have held that the failure to substantially meet the assessment work requirement may constitute evidence of abandonment of the claim in proceedings initiated by the government, and the current regulations provide that the "failure of a mining claimant to comply substantially with the requirement of an annual expenditure of $100 in labor or improvements upon a claim ... will render the claim subject to cancellation." If the claim owner has failed to perform assessment work in any year, the work may be resumed at any time thereafter, and the validity of the claim is maintained as of the date of the original location, provided the rights of third parties have not intervened. However, the claim is lost if the locator fails to do assessment work and a valid claim is subsequently located by another person.

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

The annual labor requirement has been waived by Congress in certain years, usually on account of wars, and in other years the time for completion has been extended. At the time of the publication of this booklet, no such moratorium is in effect.

Persons in the military service of the United States may be relieved of the requirements for performance of annual assessment work during their period of service and until 6 months after termination by reason of special legislation known as the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. § 565). To obtain the benefits of this act, before the expiration of the assessment year during which a person enters military service the person must file in the office of the recorder where the location notices are of record a notice of entry into the military service, which sets forth the desire of the locator to hold the mining claims under the terms of the act.

6. Contribution of Co-Owners to Cost of Assessment Work

If a co-owner of a mining claim fails to contribute such owner's share of the cost of annual work, the Federal and state statutes provide a means by which the owner performing the work may make a demand upon the co-owner for a proportional contribution of the cost of such work. Should the co-owner fail to do so, the owner paying for the work may "advertise out" the delinquent co-owner. The statutory provisions must be strictly followed to terminate the interest of a co-owner.

7. Relocation by Delinquent Owner

The law does not prohibit a delinquent owner from relocating a claim after the expiration of the assessment year if the annual work has not been performed. The ground is open to relocation, but the original owner has no superior rights as against others who might desire to relocate the claim, and the delinquent owner cannot remain in possession and exclude others if the assessment work is unperformed. However, if the owner resumes the performance of assessment work prior to an intervening right and continues diligently until the work is fully performed, the law will protect against a new locator. Miners usually frown upon the practice of relocating to avoid the performance of annual labor, and such a practice may lead to conflicts and litigation far more costly than the expenditures for assessment work.

As a practical matter, it is to the advantage of the owner of a mining claim who has not performed the assessment work as required by law to perform such work rather than relocate the claim. A relocation of the ground necessitates that all the acts required by the statutes for the location of a mining claim be performed, and the costs of relocation will usually exceed the $100 expenditure required for assessment work.

K. OPERATING REGULATIONS ON FEDERAL LANDS

1. Forest Service Lands - General

The United States Forest Service has promulgated regulations governing mineral exploration and mining operations in national forests. The regulations require the claimant or operator to file with the appropriate District Ranger a notice of intent to operate for all operations which might cause the disturbance of surface resources. However, a notice of intent is not required if the operations are limited to:

(a) The use of vehicles on existing public roads used and maintained for national forest purposes;

(b) Searching for and occasionally removing small mineral samples or specimens;

(c) Prospecting and sampling not involving significant surface resource disturbance and which will not involve the removal of more than a reasonable amount of mineral deposit for analysis and study;

(d) Marking and monumenting mining claims;

(e) Subsurface operations which will not cause significant surface resource disturbance; and

(f) Operations which will not involve the use of mechanized earth-moving equipment, such as bulldozers and backhoes, and will not involve the cutting of trees.

A notice of intent to operate must include sufficient information to identify the area involved, the nature of the proposed operations, the route of access to the area of operations and the method of transport.

If the District Ranger determines that the proposed operations "will likely cause significant disturbance of surface resources," the operator will be required to submit a proposed plan of operations. This determination must be made within 15 days after receipt of the operator's notice. The regulations do not provide a definition of what constitutes a "significant" surface resource disturbance, and each case must be evaluated on its own facts depending on the locale and the surface resources involved. If the operator believes a proposed plan of operations will be required, the filing of a notice of intention to operate can be omitted and a proposed plan of operations can be filed.

If a plan of operations is required, it must include:

(a) The name and mailing address of the operator and the claimants, if they are not the operators, and their lessees, assigns or designees;

(b) A map or sketch identifying the proposed area and showing existing and proposed roads and access routes and the approximate location and size of areas to be disturbed;

(c) A description of the type of operations and how they are to be conducted;

(d) A description of the type and standard of proposed and existing roads or access routes and the means of transportation to be used;

(e) The time period in which the operations will take place;

(f) The measures to be taken to minimize adverse environmental impacts on surface resources, including air quality, water quality, disposal of solid wastes, scenic values, fisheries and wildlife habitats and drainage; and

(g) The steps to be taken to rehabilitate the surface resources at the end of the operations.

Once the plan is received, the District Ranger is required to evaluate the plan and notify the operator of the acceptability of the plan within 30 days. Under certain circumstances, an allowance may be made to permit a longer evaluation period. The District Ranger may notify the claimant that a plan is not required, that the plan is approved, that the plan requires certain changes or additions or that the plan cannot be approved until 45 days after a final environmental impact statement has been prepared by the forest service and filed with the council on environmental quality. The regulations also require that the operator, where practical, reclaim the surface disturbed in conducting operations, and a bond may be required prior to the approval of the plan of operations to guarantee completion of the reclamation program.

Additional information regarding the filing of a notice of intent to operate or an operating plan may be obtained from the appropriate District Ranger. At that time, it may be helpful to meet with the District Ranger to discuss proposed operations and environmental considerations which may bear upon approval of the operating plan, and any special conditions, including access, which may be involved.

2. Forest Service Lands - Wilderness Areas

The regulations discussed in the preceding section are applicable to all national forest lands, including established wilderness areas. Wilderness area lands are subject to the additional requirement that operations must be conducted in accordance with the general purposes of maintaining the lands unimpaired for future use and enjoyment as wilderness and to preserve the wilderness character of the area. Authorization to utilize mechanized equipment in such areas will be granted only where the operator can establish that it is essential. Stringent limitations are imposed upon the method and means of access and all reasonable means must be taken to remove structures, equipment and other facilities which are no longer required. On mining claims which are perfected after the designation of a wilderness area, title to the timber remains in the United States, subject to the right to cut and remove timber required for mining operations, but only if such timber is not otherwise available.

3. Bureau of Land Management Lands - General

Surface management regulations have been promulgated governing the conduct of mineral exploration, mining and processing operations on public domain administered by the Bureau of Land Management. Separate regulations have been adopted governing such activities within Bureau of Land Management wilderness study areas and wilderness areas. The wilderness study area and wilderness area surface regulations are discussed in subsequent sections of this booklet.

The Bureau of Land Management's general surface regulations are applicable to all Federal lands administered by the Bureau of Land Management, except: acquired lands; lands where only the minerals are reserved to the United States, such as Stock-Raising Homestead lands; and lands within wilderness study areas. The regulations are intended to prevent unnecessary

or undue degradation of surface resources and to provide for reasonable reclamation. Three levels of surface disturbing activities are identified (casual use, surface disturbing activities of 5 acres or less and surface disturbing activities of more than 5 acres), and the requirements of the regulations are based upon these activity levels.

No notification or approval is required for casual use operations. Casual use means activities which normally result in only negligible disturbance of surface resources. Operations which do not involve the use of explosives, mechanized earth-moving equipment or the use of motorized vehicles in areas designated as closed to off-road vehicle use will generally be considered casual use.

Operations, including access across Federal lands, which will result in the cumulative surface disturbance of 5 acres or less during any calendar year can be conducted only after a notice of such operations has been filed with the district office of the Bureau of Land Management in which the claims are situated. The notice must be provided at least 15 calendar days prior to the commencement of operations. No particular form of notice is required, but it must include:

(a) The name and mailing address of the mining claimant and the operator, if other than the claimant;

(b) The names and the Bureau of Land Management serial numbers of the mining claims on which surface disturbing operations are likely to be conducted;

(c) A description of the proposed activities and their location, provided in sufficient detail so that the activities may be identified on the ground, and the approximate date when operations will commence;

(d) A description of and the location of access routes to be constructed and the type of equipment to be used; and

(e) A statement that reclamation will be conducted in accordance with applicable regulations and that all reasonable measures will be taken to prevent unnecessary or undue degradation.

Approval of a notice is not required. However, consultation with the Bureau of Land Management may be required regarding access.

All operations conducted pursuant to a notice must meet specified operating standards. Access routes must be planned for the minimum width required and must follow natural contours where practicable. Tailings dumps, deleterious materials or substances and other waste produced by the operations must be disposed of so as to prevent unnecessary or undue degradation. At the earliest feasible time, the disturbed areas must be reclaimed, except to the extent necessary to preserve evidence of mineralization. Reclamation operations must include, but are not necessarily limited to: saving topsoil for application after the reshaping of disturbed areas; measures to control

erosion, landslide and runoff; measures to isolate, remove or control toxic materials; reshaping of the area disturbed, the application of topsoil and revegetation, where reasonably practicable; and the rehabilitation of fisheries and wildlife habitats. When reclamation obligations are completed, the Bureau of Land Management must be notified so that an inspection can be made.

An approved plan of operations must be obtained prior to commencing operations which result in a cumulative surface disturbance, including access, of more than 5 acres during any calendar year and for any operations, except casual use, in areas designated: for potential addition to the national wild and scenic river system; as areas of critical environmental concern; as areas within the wilderness preservation system administered by the Bureau of Land Management; and as areas closed to off-road vehicle use. As with a notice, a plan of operations must be filed with the district office of the Bureau of Land Management in which the claims are situated. The plan may be in any form, but it must include the following:

(a) The name and mailing address of the claimant and the operator, if other than the claimant;

(b) A map, preferably topographic, or sketch showing existing and proposed access routes, aircraft landing areas and other means of access and the size of each area where surface disturbance will occur;

(c) The name of the mining claims and the Bureau of Land Management serial numbers assigned to the claims;

(d) A description of the type of operations, how such operations will be conducted and the time period during which the activity will occur;

(e) A description of the measures to be taken to prevent unnecessary or undue degradation and to reclaim disturbed areas; and

(f) A description of measures to be taken during extended periods of non-operation to maintain the area in a safe and clean manner and to reclaim land to avoid erosion or other adverse impact.

The Bureau of Land Management must review and act upon a proposed plan of operations within 30 days and notify the operator that: the plan is approved; changes or additions are required to the plan; the plan is being reviewed, but that an additional period, not to exceed 60 days, is required to complete the review; the plan cannot be reviewed until 30 days following the filing of an environmental impact statement with the Environmental Protection Agency; or the plan cannot be approved until there has been compliance with the provisions of the National Historic Preservation Act or the Endangered Species Act.

The Bureau of Land Management's review of the plan of operations must include a cultural resource inventory of the area to be disturbed. The operator must avoid adverse impacts to any cultural resources identified during such inventory. Additionally, the Bureau of Land Management must be notified of any cultural or paleontological resource which might be damaged by operations and operations may not proceed until 10 days following such notice, so as to provide an opportunity for the protection or removal of such resources. The Bureau of Land Management must also undertake an environmental assessment to identify the impacts of the proposed operation and to determine whether an environmental impact statement is required. If the operator does not have the technical resources to establish the measures to be taken to prevent unnecessary or undue degradation, upon request, the Bureau of Land Management will assist in developing such measures during the environmental assessment.

All operations, including casual use, must be conducted so as to prevent unnecessary or undue degradation and must comply with all applicable laws and regulations, including those pertaining to: air quality; water quality; disposal and treatment of solid waste; the prevention of adverse impacts on fisheries, wildlife and plant habitats; the protection of cultural and paleontological resources; and the protection of survey monuments. Operations which are not conducted so as to prevent unnecessary or undue degradation, the failure to complete reclamation in accordance with the applicable standards or the failure to comply with an approved operating plan, may subject the operator to a notice of non-compliance which could ultimately lead to legal action to enjoin the operations and to recover monetary damages.

Operations which constitute casual use or operations which are conducted under a notice do not require a reclamation bond. However, a bond may be required for operations conducted under an approved plan of operation. In lieu of a bond, cash may be deposited.

The above sets forth only a summary of the surface regulations, which contain additional detailed provisions. Additional information can be acquired from the Bureau of Land Management district office in which the claims are situated.

4. Bureau of Land Management Lands - Wilderness Study Areas

The Bureau of Land Management has promulgated regulations governing exploration, mining and processing operations conducted in wilderness study areas. Although these regulations are substantially similar to the surface use regulations governing operations on other lands administered by the Bureau of Land Management (as discussed in the previous section of this booklet) several important distinctions should be noted.

An approved plan of operations is not required in wilderness study areas for operations which are being conducted in the same manner and degree as on October 21, 1976, the effective date of FLPMA. The geographic extent of such operations will not necessarily be limited to those existing on October 21, 1976, but may include logical, adjacent continuations of then-existing activities. In some instances, a change in activity may be permitted if the

impacts are not significantly different from those previously existing. While operations existing on October 21, 1976 may continue in the same manner and degree, even if they impair the wilderness suitability of an area, such operations must be conducted in a manner so as to not result in any undue or unnecessary degradation of surface resources.

The wilderness study area surface use regulations specify that a plan of operations is not required for: searching for and occasionally removing mineral samples or specimens; operating motor vehicles on areas or trails open to such use; maintaining or making minor improvements of existing access routes, bridges, landing areas or other facilities for access, provided the alignment, width, gradient, size or character of such facilities are not altered; and making geological, radiometric, geochemical, geophysical or other tests and measurements using instruments, devices or drilling equipment which are transported without using mechanized earth-moving equipment or tracked vehicles.

An approved plan of operation is required prior to commencing any of the following operations in wilderness study areas:

(a) Operations which involve the construction of means of access, including bridges and landing areas, or improving or maintaining such access facilities in a way which alters the alignment, width, gradient, size or character of such facilities;

(b) Operations which destroy trees 2 or more inches in diameter at the base;

(c) Operations using tracked or mechanized earth-moving equipment, such as bulldozers or backhoes;

(d) Operations using motorized vehicles over areas or trails which are not open to such use;

(e) Constructing or placing any mobile, portable or fixed structure on public land for more than 30 days;

(f) Operations requiring the use of explosives; and

(g) Operations which may cause changes in a water course.

A plan of operation must be filed with the Bureau of Land Management district office in which the claims are situated. While no particular form is required, the plan must include the following:

(a) The name and mailing address of both the person for whom the operations will be conducted and the person who will be in charge of such operations;

(b) A map, preferably topographic, or sketch showing present and proposed road, bridge and aircraft landing area locations and the size of areas where surface resources will be disturbed;

(c) Information sufficient to describe the entire proposed operation, or reasonably foreseeable operations, and how they will be conducted, including the nature and location of proposed structures and facilities;

(d) The type and condition of existing and proposed means of access or aircraft landing areas, the means of transportation to be used and the estimated period during which the proposed operations will occur; and

(e) The Bureau of Land Management serial numbers assigned to the claims in question.

Within 30 days of the receipt of a plan of operation, the Bureau of Land Management will notify the operator that: the anticipated impact of such operations will impair the wilderness suitability of the area and will not be allowed; the plan of operation is unacceptable and the reasons therefor; modifications to the plan are necessary; the plan of operation is being reviewed, but that an additional period, not to exceed 60 days, is required for such review; additional time is required to perform an environmental impact statement or for compliance with the National Historic Preservation Act or the Endangered Species Act; or the proposed operations do not require a plan of operation.

If the operator is not notified of action on the plan within the 30-day period, or the 60-day extension period, operations may proceed. However, if the Bureau of Land Management subsequently determines that such operations are impairing the wilderness suitability of the area, the operator will be required to submit a modified plan of operations.

In addition to insuring that the proposed operations do not result in unnecessary or undue degradation and that proper reclamation provisions are included in the plan, the Bureau of Land Management will evaluate the proposed plan of operations to insure that such operations will not impair the suitability of the lands for inclusion in the national wilderness preservation system. Impairment will be found unless the lands can be reclaimed to the point of being substantially unnoticeable, in the area taken as a whole, by the time recommendations are to be made for the inclusion of such lands in the wilderness preservation system. Operations will be deemed to be substantially unnoticeable if they are so insignificant as to be a very minor feature of the overall area or are not distinctly recognizable by an average visitor as being man-made or man-caused.

Other requirements set forth in the regulations governing operations in wilderness study areas, including compliance with applicable laws and bonding requirements, are substantially similar to the requirements governing surface use operations on other lands managed by the Bureau of Land Management. Additional information can be obtained from the district office of the Bureau of Land Management in which the claims are situated.

5. Bureau of Land Management Lands - Wilderness Areas

Wilderness areas administered by the Bureau of Land Management are subject to additional surface use regulations. Operations in such areas may be conducted only pursuant to an approved plan of operation (see page 43). Operations are subject to stipulations imposed by the Bureau of Land Management so as to maintain the area unimpaired for use and enjoyment as a wilderness and to preserve its wilderness character. Mechanized and motorized equipment may be used only when essential. Upon the cessation of mining operations, all structures, equipment and facilities must be removed within 1 year and reclamation operations must be commenced within 6 months. Whenever feasible, reclamation operations must restore the surface to a contour which appears natural. Timber from a patented mining claim may be used in conjunction with operations only if it is not otherwise available.

L. PATENTING MINING CLAIMS

Until a patent has been issued, a mining claim is an incomplete title which can be maintained only by the annual expenditure for work and improvements required by law. Should the owner of an unpatented mining claim desire to acquire absolute title, and at the same time clear the record of possible adverse claims, application should be made for a patent from the United States government.

Of primary importance is the fact that there must have been a discovery of mineral on each and every claim. Discovery on one claim, no matter how extensive or valuable, will not serve to validate other claims in the group which lack a discovery. Additionally, at least $500 worth of improvements must be made upon each claim or, if done on one or more claims for the benefit of a group of contiguous claims, the work must be of a value of not less than $500 per claim and of such a nature that it tends to benefit all of the claims in the group. The patenting process is rather complex and requires an approved mineral survey, the filing of an application, the posting and publication of notice and other detailed requirements. The services of a qualified individual should be obtained for assistance with these matters.

The patent to a lode claim grants to the patentee the surface and all minerals within the claim. Surface rights may be restricted by reason of applicable provisions of various legislation, including the Stock-Raising Homestead Act, the Agricultural Homestead Acts, the Wilderness Act and other legislation. Leasable minerals will be reserved to the United States only if the lands were included in a permit or lease, or application therefor, or if the lands were known to be valuable for leasable minerals at the time of the issuance of the patent. The same applies to a placer patent, except that veins or lodes known to exist in a placer claim at the time the application for a patent is made must be declared. If this is not done, the veins or lodes known to exist at the time of the application remain open to location, even after the issuance of the placer patent.

Additional information regarding patenting procedures and a pamphlet may be obtained from the United States Bureau of Land Management, Phoenix, Arizona.

IV. FEDERAL MINERAL LEASING LAWS

Leasable minerals on Federal lands are acquired pursuant to the terms of several Federal statutes. The initial leasing legislation was the Mineral Lands Leasing Act of 1920 (30 U.S.C. § 181), which established a system for leasing the following minerals: coal, phosphate, sodium, potassium, oil and gas, oil shale, native asphalt, solid and semisolid bitumen and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried). In addition, there are several specialized statutes pertaining to the leasing of certain lands or substances. For example, the leasing of sulphur is permitted only in the States of Louisiana and New Mexico (30 U.S.C. § 271). The Mineral Leasing Act for Acquired Lands (30 U.S.C. § 351) opened acquired lands for the acquisition of leasable minerals. In 1970, a leasing system was established for geothermal resources (30 U.S.C. § 1001).

Minerals which are subject to lease are removed from the operation of the general mining law and can be acquired only pursuant to the leasing statutes and regulations applicable to the mineral in question. With the exception of the vast Navajo and Hopi Reservations, which are subject to different statutes and regulations, there has been only intermittent activity in Arizona involving leasable minerals, and thus the leasing laws will be only briefly summarized in this booklet.

The leasing laws, as originally enacted, provided for competitive leasing of lands known to be valuable for leasable minerals and the issuance of prospecting permits on other lands. The prospecting permit could then lead to the issuance of a preference-right lease upon discovery of "commercial quantities" of coal or a "valuable deposit" of the other enumerated substances. While these laws have been substantially amended as they apply to coal and oil and gas, the statutes pertaining to leases of nonfuel minerals have remained essentially unchanged since their original enactment. Lands known to be valuable for such minerals must be leased competitively, while a prospecting permit may be issued if the land is not known to be valuable for such substances. In addition to the discovery of a "valuable deposit," a sodium and potassium permittee must also demonstrate that the lands are "chiefly valuable" therefor in order to obtain a lease. The conditions of the various types of leases, including the lease term, rental and royalty, vary significantly depending upon the substance involved, and reference must be made to the particular statutes and regulations applicable to each mineral substance.

With limited exceptions, under the Federal Coal Leasing Amendments Act of 1976, coal leases are issued only by competitive bidding. The act and current regulations establish a complex system for the determination of which lands are to be offered for leasing. This is based in part on a determination of anticipated demand for coal and anticipated production from existing leases, as well as an analysis of the environmental impact which coal mining will have on lands proposed to be leased. The Bureau of Land Management has incorporated the criteria established by the Surface Mining Control and Reclamation Act of 1977 for designating lands unsuitable for surface coal operations into the procedures for preparation of land-use plans mandated by

FLPMA. Lands designated as unsuitable or otherwise failing to meet the leasing criteria will not be offered for leasing. Coal leases are issued for a term of 20 years and so long thereafter as coal is produced in commercial quantities. However, any lease not producing in commercial quantities at the end of 10 years will be terminated. Royalties for newly issued leases are set at not less than 12-1/2 percent of the value of the coal, and the royalty is subject to readjustment at the end of the primary term and every 10 years thereafter. A 2-year coal exploration license may be issued, but such license does not confer a preference right to obtain a lease.

Lands which are not within any known geological structure of a producing oil and gas field may be leased to the first qualified applicant non-competitively for a primary term of 10 years, and so long thereafter as oil or gas is produced in paying quantities. Royalties are set at 12-1/2 percent of the amount or value of production. Lands within any known geologic structure of a producing oil or gas field may be competitively leased to the highest qualified bidder. Such leases are issued for a term of 5 years and so long thereafter as oil or gas in paying quantities is produced. A royalty of not less than 12-1/2 percent is also payable. Annual rentals for both competitive and non-competitive leases are established by regulation and vary according to the type of lease and date of issuance.

The Geothermal Steam Act of 1970 (30 U.S.C. § 1001) established procedures for obtaining leases from the Federal government for geothermal resources, and this act is the exclusive means by which the rights to such resources may be acquired on Federal lands. The act authorizes the issuance of leases for the development and utilization of "geothermal steam and associated geothermal resources," which include:

> (1) All products of geothermal processes, embracing indigenous steam, hot water and hot brines;
>
> (2) Steam and other gases, hot water and hot brines resulting from water, gas or other fluids artificially introduced into geothermal formations;
>
> (3) Heat or other associated energy found in geothermal formations; and
>
> (4) Any by-product derived therefrom.

The Secretary of the Interior is authorized to issue leases on public, withdrawn or acquired lands administered by him or by the forest service, as well as on lands conveyed by the United States subject to a reservation of geothermal resources. The courts have held that, where land was conveyed prior to the passage of this act subject to a reservation of minerals, the United States retains title to the geothermal resources as well.

Geothermal leases are issued for a primary term of 10 years and so long thereafter as geothermal steam is produced or utilized in commercial quantities, not to exceed an additional 40 years. The lessee may have a preferential right to a renewal of the lease for a second 40 year term if geothermal steam is being produced or utilized in commercial quantities and

the lands are not needed for other purposes. Lands within a known geothermal resources area must be leased competitively, and noncompetitive leases may be issued for other lands. Nonexclusive exploration rights for geothermal resources may be acquired by application to the Bureau of Land Management. The lessee must pay a royalty of not less than 10 percent nor more than 15 percent of the amount or value of the steam, heat or energy which is sold or utilized. Additionally, the lessee must pay a royalty of not more than 5 percent of the value of any by-product sold or utilized, and the secretary may require the production of valuable by-products under certain circumstances. However, if the by-product is one of the minerals subject to the mineral leasing laws, the royalty rates of those statutes apply.

Leases which are no longer capable of producing geothermal steam in commercial quantities may be extended up to 5 years for as long as by-products are produced in commercial quantities. If such by-products are minerals subject to the mineral leasing laws and the lease is primarily valuable for the production thereof, the lessee may convert the geothermal lease to a lease under the provisions of the appropriate leasing statutes. Similarly, claims for by-product minerals which would otherwise be subject to the general mining law may be located within 90 days after the termination of the geothermal lease.

All prospecting and leasing activities pursuant to the various leasing laws are subject to detailed regulations governing all phases of exploration and mining activity. The regulations address such matters as the qualification of applicants, acreage limitations, the posting of compliance bonds, limitations on assignments and transfers and the use and management of surface resources. The United States Geological Survey is responsible for certain technical matters pertaining to such activities. Information regarding the requirements for each of the various types of leases may be obtained from the Bureau of Land Management, Phoenix, Arizona.

V. MINERAL MATERIALS DISPOSAL

The Materials Act of 1947 (30 U.S.C. § 601), as amended, authorizes the disposal of mineral materials, including petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay on Federal lands. Deposits of these common varieties were expressly removed from the operation of the general mining law by the Multiple Surface Use Act of 1955 (30 U.S.C. § 611). Such substances may not be acquired by the location of mining claims, but may be acquired only pursuant to the provisions of the Materials Act of 1947. However, this does not prevent a mining location based upon the discovery of some other mineral occurring with these common varieties. An example would be gold associated with gravel, which may be located as a placer claim. The Multiple Surface Use Act of 1955 expressly provided that "common varieties" did not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value, and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of 2 inches or more.

The Materials Act of 1947 authorizes the Secretary of the Interior or the Secretary of Agriculture, depending on which department administers the

land in question, under such rules and regulations as they may prescribe, to dispose of mineral materials of the type described above and vegetative materials, including timber, grass and cactus. Such materials may be disposed of only upon payment of adequate compensation, to be determined by the secretary, and where appraised at more than $1,000 must be advertised and sold to the highest bidder. Provisions are made in the act for Federal, state and local governmental agencies to obtain such materials for noncommercial purposes without charge.

A difficult question is posed by the provision of the Multiple Surface Use Act of 1955 which states that "common varieties" do not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value. Should the prospector locate the deposit as a mining claim or proceed under the Materials Act of 1947, which may involve competitive bidding? If a mineral material occurs commonly, how is it determined that it "has distinct and special value"? It cannot be said as a matter of law that any given deposit of a mineral substance named in the Multiple Surface Use Act of 1955 is not a common variety and therefore locatable. Rather, it depends on the facts of each particular case. In interpreting these facts, the Department of the Interior has held that, in order to show that a deposit is not a common variety, a mining claimant must establish both that the deposit has a unique property and that the unique property gives it a distinct and special value. In applying these criteria, there must be a comparison of the deposit under consideration with other deposits of similar materials, and it must be shown that the deposit under consideration has some property which gives it value for purposes for which the other deposits are not suited or, if the material is to be used for the same purposes as similar materials of common occurrence, that it possesses some property which gives it a special value for such uses, which value is reflected by the fact that it commands a higher price in the marketplace. Differences in chemical composition or physical properties are held to be immaterial if they do not result in a distinct economic advantage of one deposit over another.

Removal of mineral material under the belief that it is locatable may expose the miner to liability for wrongful removal of a mineral that is subject to sale under the Materials Act of 1947.

If a deposit of building stone should be found that has some property giving it distinct and special value, it should be located as a placer claim in accordance with the provisions of a statute relating to building stone entry under the mining laws (30 U.S.C. § 161).

VI. MULTIPLE USE OF FEDERAL LANDS

The public domain is administered under a multiple use concept which is intended to maximize the benefits derived from public land and to provide, to the extent possible, for the coexistence of simultaneous multiple uses of public lands. Two acts passed in the mid-1950's greatly expanded multiple uses, particularly as they pertain to mineral exploration activities on public lands. These acts, both of which continue to be of significance to mineral prospectors, are discussed below.

The Multiple Mineral Development Act (30 U.S.C. § 521) applies to public domain and lands in which the United States has retained mineral rights. A brief explanation is necessary to understand the purpose of this legislation. The Mineral Lands Leasing Act of 1920 did not expressly close any public lands to location of nonleasable minerals under the mining laws. However, it was determined by the Secretary of the Interior that those lands which were under lease or were known to contain leasable minerals were not open to the location of other minerals under the mining laws. Similarly, it was held that the location of a valid mining claim on lands not leased and not known to contain leasable minerals precluded the granting of a lease even though leasable minerals might subsequently be discovered on such lands.

With the discovery of uranium on the Colorado Plateau, great numbers of mining claims were located on lands previously leased for oil and gas. This important source of fissionable material could not be mined by either the lessee or the locator of a mining claim under the general mining law. The need for corrective legislation became apparent, and Congress first passed temporary measures validating mining claims on leased lands and then followed with the enactment of permanent measures in the 1954 act.

The general purpose of the Multiple Mineral Development Act is to permit the full utilization of the same tract of land for the extraction of both leasable minerals and locatable minerals. In addition to providing procedures for the validation of certain previously located claims which otherwise would have been invalid, the act opened to location under the general mining law lands included with a prospecting permit or lease, or application therefor, and lands known to be valuable for minerals subject to disposition under the Mineral Lands Leasing Act of 1920. The act was later amended to include lands subject to lease or permit or known to be valuable for geothermal resources. All claims located after August 13, 1954 are subject to a reservation to the United States of all leasable minerals and the right to enter upon and use so much of the surface of the claim as is necessary for the exploration, development and mining of such leasable minerals. Any patents issued for claims located after August 13, 1954 will be subject to the same reservation if, at the time of the issuance of the patent, the claimed lands were included in a permit or lease, or an application therefor, or were known to be valuable for leasable minerals.

All operations for leasable and locatable minerals are to be conducted, so far as is reasonably practicable, in a manner compatible with one another and so as not to damage the deposit, the improvements or the facilities of the other party. Where simultaneous operations cannot be so conducted, provision is made for the resolution of conflicts by a court of competent jurisdiction.

The act also sets forth a procedure under which an applicant, offeror, permittee or lessee under the mineral leasing laws may require a mining claimant to assert any claim which the locator may have to leasable minerals by virtue of a location predating the act. Failure of a mining claim owner to establish such rights does not result in a forfeiture of the claim, but will subject the mining claim to a reservation to the United States of leasable minerals.

The Multiple Surface Use Act of 1955 (30 U.S.C. § 611) amended the general mining law by limiting the rights of the holder of an unpatented mining claim in the use of the surface and surface resources. Prior to issuance of patent, any mining claim located after the effective date of the act, July 23, 1955, may not be used for any purposes other than prospecting, mining or processing operations and uses reasonably incidental thereto. The mining claimant may use timber on the claim only to the extent required for prospecting, mining or processing operations and uses reasonably incidental thereto, including buildings, and where necessary to clear the land for such operations or uses. Since the cutting or removal of timber must be in accordance with sound principles of forest management, except where required to provide clearance, it is advisable to consult the agency administering the land prior to cutting any timber.

Prior to patent, a mining claim is subject to the right of the United States to manage and dispose of both vegetative and mineral surface resources, except locatable minerals, as well as the right of the United States to use so much of the surface as may be necessary for such purposes and for access to adjacent land. However, such use must not endanger or materially interfere with the prospecting, mining or processing operations of the mineral locator. In the event the United States disposes of timber from a claim and subsequently the locator requires more timber for mining operations than is available within the claim, timber which is substantially equivalent in kind and quality to the timber disposed of by the United States from the claim may be obtained from other areas.

The need for the Multiple Surface Use Act of 1955 arose from the fact that thousands of mining claims had not been located for bona fide mining purposes, but for the acquisition of timber, homesites, grazing, water and other nonmineral uses. To prevent these abuses, representatives of the mining industry and the Federal government collaborated in drafting the act governing multiple surface use of unpatented claims. The rights of a claim owner to patent a claim are not diminished by the act, and when the patent issues, full ownership of the surface and surface resources, as well as the minerals, subject to the provisions of the Multiple Mineral Development Act, are acquired. The act does not apply to lands in any national park, national monument or Indian reservation.

The Multiple Surface Use Act of 1955 established a procedure for determining surface rights to claims located prior to July 23, 1955. The procedure is initiated by the Federal agency which administers the public domain on which the claim is situated, and a notice is published stating that a determination of surface rights on the mining claim will be made. The claimant may file a verified statement containing the information required by the act, and the claim will be examined by a mineral examiner from the agency which administers the affected land. If the claim is found to be valid, a stipulation may be entered into which establishes the locator's rights to the surface resources. If the examination discloses a doubt as to the validity of the claim, a hearing will be held on that issue. If the claimant ignores the published notice or does not establish the validity of the claim, the claim will be subject to the provisions of the act reserving surface resources to the United States prior to patent.

A person claiming a right to an unpatented mining claim located prior to the effective date of the act may ensure receipt of a copy of any notice pertaining to a determination of surface rights by recording in the county recorder's office where the location notice is recorded an acknowledged request for a copy of the surface determination notice. The request must contain the name and address of the person requesting a copy of the notice, the date of location, the book and page of recording of the location notice (it is also advisable to include the book and page of any amended notices of location) and the section or sections of the public land surveys which are embraced by the mining claim.

VII. ACQUISITION OF MINERAL RIGHTS ON STATE LANDS

The term "state lands" refers to lands and minerals owned by the State of Arizona. The acquisition of minerals on state lands is governed by legislation found in Title 27 of the Arizona Revised Statutes and State Land Department regulations published by the Arizona Secretary of State. Neither the Federal mining laws nor the state laws relating to the acquisition of federally-owned minerals apply to state lands, except as they may be specifically incorporated.

Minerals on state lands may be mined only pursuant to a state lease. Although mining claims may be located on state lands, this does not confer the right to extract minerals, and the act of location is only a part of the procedure leading to the issuance of a mineral lease. A mineral patent to state lands may not be acquired, and the greatest interest which a locator may acquire in state land is a leasehold for 20 years, with a preferred right to renewal.

All state lands are subject to a mining location except those lands under state leases for mineral, commercial or homesite purposes and lands being specifically used or controlled by state institutions. All state lands are subject to leasing for oil and gas under the provisions of the Arizona statutes. Additionally, state lands may be leased for the development of geothermal resources. The acquisition of these substances on state land is also governed by state laws, and the Federal statutes and regulations have no applicability to such acquisitions.

Instructions and forms pertaining to prospecting permits, the location of mining claims and applications for mineral, oil and gas and geothermal leases may be obtained from the State Land Department. The department's current address is 1624 West Adams, 4th Floor, Phoenix, Arizona 85007.

A. LOCATION OF MINERAL CLAIMS ON STATE LAND

The Arizona statutes provide that the discoverer of "a valuable mineral deposit on any state land may enter upon and locate the deposit as a mineral claim" (A.R.S. § 27-231). The term "mineral" is defined as including mineral compound and mineral aggregate. There are two types of state mining claims, one of which includes extralateral rights, while the other does not. These are commonly referred to as Type A and Type B claims, respectively. The procedures to be followed for each type of claim are discussed below.

1. Location of a State Claim with Extralateral Rights (Type A Claim)

A mineral deposit which is a vein, lode or ledge may be located in the manner provided for the location of mining claims upon the public domain of the United States (A.R.S. § 27-232(A))*. A copy of the location notice, together with the county recorder's certificate of recordation, must be filed in the office of the State Land Commissioner within 30 days after the date of location. Additionally, the current Arizona statutes provide that the locator of a Type A claim must "perform discovery work required by law for mining claims under the laws of the United States. . .or an equivalent amount of development drilling of a reasonable value of one hundred dollars on each claim" (A.R.S. § 27-233(B)).

The statutory requirement for discovery work was not revised in conjunction with the 1978 revision of the state laws pertaining to the location of claims on Federal lands and the discovery requirement for the location of a Type A claim must be interpreted in light of the 1978 amendments. As noted above, Type A claims must be located in the same manner as claims on Federal lands*. Thus, the locator must monument the claim and prepare the location notice and the required map, plat or sketch, as discussed beginning at page 20. It should be noted, however, that a copy of the recorded location notice must be filed with the State Land Department within 30 days after the date of location, and thus the time periods relating to the location of claims on Federal lands are not applicable. Since the performance of discovery work on claims located on Federal lands is no longer required, it would appear that no discovery work is required to be performed for a Type A location. This does not eliminate the requirement, however, for the discovery of a valuable mineral deposit.

The Arizona statutes also require that the locator of a Type A claim submit to the State Land Commissioner satisfactory proof of the performance of discovery work within such reasonable time as the Land Commissioner prescribes. Current regulations of the State Land Department require that the evidence of discovery be provided within 30 days after the time of location.

After all of the required acts of location and filings have been completed, the locator has a preferred right to a mineral lease within 90 days after location. The locator of a Type A claim will acquire extralateral rights on the discovery vein to the same extent as lode locations on Federal lands.

2. Location of a State Claim without Extralateral Rights (Type B Claim)

In addition to the Type A claim discussed above, the Arizona statutes provide that any mineral claim may be located in conformity with the lines of the public land survey and embracing not more than 20 acres (A.R.S. § 27-232(B)). A lease obtained pursuant to such a location does not confer extralateral rights, and mining rights are confined within planes drawn vertically downward through the exterior boundary lines.

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* Law change, August 1987 - see addendum page 67

The statutory provisions for the location of a Type B claim do not incorporate the Federal location procedures by reference, but rather set forth specific requirements for the location of such a claim. The locator must mark the location on the ground by erecting a monument or placing a post extending at least 3 feet above the surface of the ground at each angle corner of the claim. A memorandum stating the name of the locator, the name of the claim and designating the corner by reference to cardinal points must be attached to each monument or post. Within 30 days after the location, the locator must file for record in the office of the county recorder of the county in which the claim is located a notice of location with the name of the locator, the name of the claim, the date of location and the legal description of the land claimed.

Location or so-called discovery work is not required on Type B mineral claims, but proof of discovery is necessary. As with a Type A location, one copy of the location notice, together with the county recorder's certificate of recordation, must be filed in the office of the State Land Commissioner within 30 days from the date of location. Additionally, the locator must submit evidence or proof of the discovery of a valuable deposit of mineral on each claim within 30 days after the time of location. The locator has a period of 90 days within which to file an application for a mineral lease, but a lease will not be issued unless the proof of discovery has been submitted within the 30-day period.

B. MINERAL EXPLORATION PERMITS ON STATE LANDS

An alternative means for the acquisition of mineral rights on state lands is a state mineral exploration permit (also referred to as a prospecting permit), which grants exclusive mineral prospecting rights on such lands during the time the permit is in effect. A permit may be effective for up to a maximum of 5 years, and the permittee may acquire a mineral lease on lands when a valuable mineral deposit has been discovered. A prospecting permit may not be used to explore for oil and gas, common mineral products or geothermal resources, all of which are governed by separate legislation. The prospecting permit provides a means in addition to the location of state mining claims for acquiring a state mineral lease. Thus, a person desiring to obtain a state mineral lease may comply with either the procedures for the location of mining claims or may apply for a prospecting permit. However, the locator of a mining claim has only the limited period of 30 days in which to submit proof of discovery of a valuable mineral deposit and 90 days to apply for a lease, while the permit grants the prospector a term of up to 5 years in which to conduct exploration and submit proof of discovery. The exploration permit provides a more realistic means of exploration for minerals which are located at depth.

Any natural person over 18 years of age or any partnership, corporation, association, company, firm or society qualified to transact business in Arizona may apply to the State Land Commissioner for a mineral exploration permit on state land. An application may include one or more rectangular subdivisions of 20 acres, more or less, or lots, in any one section. If it is desired to explore land in different sections, a separate application must be made for the land in each section. There is no limit to the number of permits

for which application may be made. The application must be in writing and contain a description of the land for which the applicant seeks a mineral exploration permit, together with other information required by the State Land Department. Application forms are available from the department. The application and filing fee are filed with the State Land Department, and all applications are stamped with the time and date of filing with the department. A priority accrues based upon the time of filing, and the land is deemed to be withdrawn from mineral location while the application is pending.

If the State Land Commissioner finds that the applicant is entitled to a prospecting permit, the applicant is notified by registered or certified mail of the amount of rental to be paid for the exploration permit and whether a bond will be required. Within 15 days after the mailing of this notice, the applicant must pay the initial rental, $2 per acre, for the land designated in the notice and, if required, file a bond. Upon payment of the rental and the filing of the required bond, the commissioner issues the mineral exploration permit. If the applicant fails to make the payment or furnish the bond within the 15-day period, the application is cancelled.

As noted above, the State Land Commissioner may require a surety bond for the payment of loss from or destruction caused by the permittee to grasses, forage, crops and improvements of the owner and the lessee of the surface of the state land to be included in the permit, or the land across which the permittee may exercise the right of ingress and egress. The commissioner may also require the permittee to furnish a bond which will guarantee restoration of the surface to its former condition upon partial or total relinquishment of land, or upon the cancellation or expiration of the permit other than by issuance of a mineral lease.

A prospecting permit is issued for an initial 1 year term and is subject to four annual renewals, for an aggregate term of not to exceed 5 years. The permit terminates automatically at the end of each annual term unless, prior to expiration, the permittee files with the department an application for renewal for the ensuing annual period. At the time of making application for renewal, the permittee must file an affidavit showing expenditures in "exploration" for mineral deposits in the amount required during each annual period. The required expenditure must be not less than $10 for each acre included in the permit during each of the first 2 years and, during the last 3 years not less than $20 per year for each acre. In addition to the affidavit of expenditure which must be filed by the permittee when making application for renewal, other proof in support of such expenditures may be required by the commissioner.

The permit statutes define the term "exploration" as activity conducted on state land to determine the existence or nonexistence of a valuable mineral deposit, including geological, geochemical or geophysical surveys conducted by qualified experts, and drilling, sampling and excavation, together with the costs of assay and metallurgical testing of samples from the land. A permittee may expend the required sums on one or more contiguous permits under a common plan of development so long as the total area of the contiguous permits can be included within a square measuring 3 miles on a side. Where work in excess of the annual expenditure requirements is performed, the permittee may carry such excess expenditures forward and apply them to

expenditure requirements for succeeding permit years. If the permittee is unable or unwilling to expend funds for exploration in lieu of exploration work, a cash payment may be made to the State Land Department in the amount required for exploration expenditures.

The initial rental fee of $2 per acre paid at the time of obtaining the permit covers the first 2-year's rental and, even though the permittee must make application for renewal and submit proof of expenditures at the end of the first year, no additional rent is then due. The last three annual periods for which a prospecting permit may be renewed are subject to an annual rental of $1 per acre for the land for which the renewal application is filed. The permittee may relinquish all or any part of a prospecting permit at any time, but no part of the advance rental may be refunded.

While the mineral exploration permit is in force, no person, except the permittee and the authorized agents and employees of the permittee, is entitled to explore for valuable minerals on the state land covered by the permit. The permittee has such surface rights as are necessary for prospecting and exploration for minerals, but may remove from the land only that amount of mineral required for sampling, assay and metallurgical test purposes. The permittee also has the right of ingress and egress from the land across other state lands along routes approved by the commissioner.

An exploration permit may be assigned in whole or in part by the permittee, but an assignment is not effective until a copy is filed with the department and approved by the commissioner.

Upon termination of a prospecting permit, the permittee is required to submit to the State Land Department information concerning drilling, including the total depth, lithologic logs and logs of surveys including "gamma ray, resistivity, caliper and deviation surveys." No chemical assays are required, and the information is kept confidential for a 1-year period. In addition, the permittee may request that the information be held confidential for an additional 1-year period.

The permittee has the exclusive right to apply for a mineral lease upon establishing that a valuable mineral deposit has been discovered on state land within the permit area. A separate lease is issued for each rectangular subdivision of 20 acres, more or less, or lots within which a discovery has been made. Upon receipt of a lease application, the required filing fee and satisfactory proof of discovery of a valuable mineral deposit, the commissioner will issue a mineral lease to the applicant. For purposes of the annual labor requirement, the land within the rectangular subdivision or lot for which such lease is issued is considered a mining claim and is deemed to have been located as of the date of the filing of the lease application. No extralateral rights are acquired for leases issued pursuant to a prospecting permit.

C. LEASE OF STATE LANDS FOR VALUABLE MINERALS

As previously noted, neither a state mineral claim nor a prospecting permit results in the right to mine and remove valuable minerals from state

land. The locator or permittee must obtain from the State Land Department a mineral lease, and all mining operations must be conducted in accordance with the terms of the lease. This section deals with leases for valuable minerals and not common mineral materials, which are discussed on this page.

Both the mineral locator and the permittee under a prospecting permit have a preferred right to obtain a mineral lease upon the discovery of a valuable mineral deposit and application to the State Land Department. All mineral leases are issued for a term of 20 years, with a right to renew for an additional 20-year term. A state mineral lease confers the right to extract and ship minerals, mineral compounds and mineral aggregates from the claim. On all leases except those acquired pursuant to a Type A location, this right is limited to the area located within planes drawn vertically downward through the exterior boundary lines of the claim. In the case of leases obtained pursuant to Type A locations, the lease confers extralateral rights on the discovery vein in the same manner as is given to locators upon the public domain of the United States. The state mineral lessee is also accorded the right to use so much of the surface as is required for purposes incidental to mining, and the right of ingress to and egress from other state lands, whether or not leased for purposes other than mining.

The annual rental for a mineral lease is $15 per claim, which is payable in advance at the time of the application for the lease and at the beginning of each subsequent annual period. The state receives a royalty of 5 percent of the net value of the minerals produced from the claim, which is defined as the gross value after processing (where processing is necessary for commercial use), less the actual cost of transportation from the place of production to the place of processing, less costs of processing and taxes levied and paid upon the production of the minerals. In those cases where minerals are not processed for commercial use, the net value is the gross proceeds, or gross value, at the place of sale or use, less the actual cost of transportation from the place of production to the place of sale or use, less taxes, if any, levied and paid upon production.

A state mineral lessee must perform annual labor, as required by the laws of the United States, upon each claim (lease) or group of claims in common ownership. The annual labor must commence at the expiration of 1 year from the date of location, and the lessee must furnish proof of such performance to the State Land Commissioner within 90 days after the expiration of each annual assessment period.

D. LEASE OF STATE LANDS FOR COMMON MINERAL PRODUCTS

"Common mineral products, materials and property" are excluded from the location and leasing provisions applicable to valuable minerals. By statute, such products are defined as cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float rock, waste rock and materials of similar occurrence commonly used as aggregate, road material, rip-rap, ballast, borrow, fill and other similar purposes. While these materials may not be acquired pursuant to a mineral exploration permit or the location of state mining claims, they may be purchased from the state.

The Arizona statutes provide that the State Land Department may issue leases for the severance, extraction and disposition of common mineral products from state lands. However, an Arizona Supreme Court decision established that common mineral products and other natural products of the land must be sold through competitive bidding and the State Land Department no longer issues leases for these materials. Regulations have been promulgated which require that all products be disposed of pursuant to public auction, except for sales to governmental agencies. An application to purchase common mineral products must be filed with the department. After the filing of the application, the department may issue permits for limited exploration and testing for such products on the land in question. All non-governmental sales are by public auction after the advertising of the sale and pertinent terms, including the minimum royalty rate, which is established by appraisal.

The successful bidder must execute a sales agreement which is for a term of not more than 20 years. The royalty rate established by the bid is fixed for the first 2 years and thereafter is subject to reappraisal by the department. The sales agreement imposes limitations on the conduct of operations and requires surface restoration upon the termination of operations. The commissioner may require a bond to assure performance of the sales agreement, and a surface restoration and damage bond is mandatory.

E. LEASE OF STATE LANDS FOR OIL AND GAS

Leases for oil and gas on state land are acquired by direct application to the State Land Department and may not be acquired through the location of mineral claims or through a prospecting permit. As discussed below, both competitive and noncompetitive leases may be obtained.

When state lands are located outside of a known geological structure of a producing oil and gas field, the person making the first application for the lease may be issued a lease without competitive bidding. An area of not more than 6 miles square may be included in any one lease, which must be in as compact a body as possible, but may include noncontiguous land. If a producing well is established, the lessee must reduce the lease acreage to not more than 2,560 acres within 30 days of the completion of the well. The annual lease rental is $1 per acre, with a minimum rental of $40 per lease. A noncompetitive lease also requires the payment of a royalty of 12-1/2 percent of the oil, gas and other hydrocarbons produced, saved and removed from the lands, or, at the option of the department, the market value of such products.

A noncompetitive lease is issued for a term of 5 years and for as long as oil or gas is produced in paying quantities. A lease upon which no oil or gas is being produced at the end of the primary term may be extended for one additional 5-year term by paying double the rental during such additional term. Alternatively, a lease on which no oil and gas is being produced, but upon which drilling operations are being diligently pursued at the time of its expiration may continue in effect for a period of 2 additional years and so long thereafter as oil or gas is produced in paying quantities.

When state lands are located within a known geological structure of a producing oil or gas field, the lands may be leased only by competitive

bidding. Upon the receipt of an application to lease or whenever in the opinion of the department there is a demand for the leasing of such lands, the department publishes notice for sealed bids. The notice specifies, among other information, the royalty to be required, which may not be less than 12-1/2 percent, and describes the offered land. The bidder offering the highest bonus is awarded the competitive lease, which is for a term of 5 years and as long thereafter as oil or gas is produced in paying quantities. In addition to the royalty, an annual rental of $1 per acre must be paid. Alternatively, a lease on which no oil or gas is being produced, but upon which drilling operations are being diligently pursued at the time of its expiration may continue in effect for a period of 2 additional years and so long thereafter as oil or gas is produced in paying quantities.

Additional information regarding oil and gas leasing may be obtained from the State Land Department, Phoenix, Arizona. Detailed state laws and regulations govern the production and conservation of oil and gas and provide for the issuance of well-drilling permits, the spacing of wells, pooling of interests and other matters. Additional information may be obtained from the Arizona Oil and Gas Conservation Commission, Phoenix, Arizona.

F. LEASE OF STATE LANDS FOR GEOTHERMAL RESOURCES

The State Land Department is authorized to issue leases for the development and sale of geothermal resources. Geothermal resources include all products of geothermal processes embracing indigenous steam, hot water and hot brines, steams and other gases, including those resulting from water, fluids or gas artificially introduced into geothermal formations, heat or other associated energy found in geothermal formations and any mineral or minerals, exclusive of fossil fuels and helium gas, which may be present or associated with geothermal steam, water or brines. The geothermal statutes do not contain provisions for prospecting permits or noncompetitive leases for the development of geothermal resources, and all leases must be issued pursuant to competitive bidding. Upon receipt of a lease application, the department publishes a call for bids, describing the land involved, the royalty and the annual rental which will be required. The lease is offered to the highest and best bidder based upon the first year's bonus to be paid to the State Land Department.

All leases must provide for the payment of a royalty of not less than 12-1/2 percent of the gross value of the resources at the well head and an annual rental of not less than $1 per acre. Leases are issued for a primary term of 10 years and as long thereafter as geothermal resources are produced in paying quantities. In the event drilling is being diligently pursued at the expiration of the lease term, the lease may continue in effect for an additional 2-year period. Not more than 2,560 acres may be included within any one lease. While the leased lands must be in as compact a body as possible, noncontiguous lands may be included within one lease. The lessee may be required to post surface damage and restoration bonds.

Application forms and additional information pertaining to geothermal leasing may be obtained from the State Land Department, Phoenix, Arizona.

G. LEASE OF STATE LANDS FOR COMMERCIAL PURPOSES AND RIGHTS-OF-WAY

State mineral leases grant the lessee the right "to use as much of the surface as required for purposes incident to mining." Oil and gas leases provide that "the lessee shall have the right to use as much of the surface of the lands as reasonably necessary for its operations under the lease," and geothermal lessees "have the right to use as much of the surface of the lands as reasonably necessary for its operations under the lease as determined by the department." Should additional state land be required for incidental uses, application should be made to the State Land Department for a commercial lease or a right-of-way for the intended uses.

VIII. GENERAL INFORMATION

A. DRILLING PERMITS

Except as noted below, all wells, including exploration wells, must be drilled by a well driller holding a license issued by the Arizona Department of Water Resources, Phoenix, Arizona. Persons desiring to drill only one well may obtain a one-time well license from the department. Additionally, a well drilling permit must be obtained for each well which is to be drilled. The latter permit is obtained by filing a notice of intention to drill on forms provided by the department, together with a filing fee. For exploration drilling, the notice may be filed for a project as a whole. Following the receipt of a notice, the Department of Water Resources issues a drilling card authorizing the commencement of drilling.

All wells are subject to specified minimum well construction standards and abandonment procedures. Upon completion of an exploration project, a completion report must be filed with the Department of Water Resources setting forth: the number of wells drilled; the depth to water encountered or detected, if applicable; the abandonment method used or construction details, if completed for re-entry; and such additional information as the department may require. Additional information may be obtained from the Department of Water Resources, Phoenix, Arizona.

B. CONVEYANCE OF MINING CLAIMS

Although Arizona is a community property state, the law does not require a spouse's signature on a conveyance of an unpatented mining claim by the other spouse. However, it is recommended that both join in the conveyance. Both spouses must join in the conveyance or transfer of mineral properties other than unpatented mining claims, including patented claims, and in the assignment of mineral leases.

Pursuant to FLPMA, Department of the Interior regulations require that whenever the owner of a mining claim, millsite or tunnel site which has been filed with the Bureau of Land Management sells, assigns or otherwise transfers all or any part of the interest in a claim, the transferee must file a notice of transfer with the Bureau of Land Management, Phoenix, Arizona within 60

days after completion of the transaction. The notice must contain the serial number assigned to the claim and the name and mailing address of the person or persons to whom the interest was sold, assigned or otherwise transferred. If a person acquires an interest through inheritance, the above requirements must be completed within 60 days after the transfer. There is no fee for filing the notice of transfer of interest. The only effect of failure to file this notice is that in the event the claim is contested only the owners of record with the Bureau of Land Management will be personally notified of the contest. Any other owners will be put on notice only by publication and will be bound by any contest proceeding, even though they have not been personally served.

C. NO LIEN NOTICE

The owner of a mine or mining claim can protect against liens by posting a nonliability notice when the property is being worked by others under a lease, bond or option (A.R.S. § 33-990). The law requires that the owner conspicuously post the notice at the collar of all working shafts, tunnels and entrances to the mine and boarding houses on or before the day the lessee or those working the claim begin operations. A copy must be recorded in the office of the recorder of the county in which the mine or claim is located within 30 days after the date of the lease, bond or option. Failure to post such a notice renders the property subject to labor and material liens. A form of no lien notice is included at the end of this booklet.

D. MINE SAFETY RULES

Prior to commencing operations, a mining operator must be informed as to applicable state mine safety laws and regulations. These may be obtained in booklet form from the office of the State Mine Inspector, Phoenix, Arizona. Additionally, the operator must be informed of the potential applicability of Federal statutes and the regulations enacted pursuant to the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 801). While an analysis of these statutes and regulations is beyond the scope of this booklet, the operator should be aware of their broad applicability and of the health and safety standards which are imposed. Additional information may also be obtained from the United States Mine Safety and Health Administration, Phoenix, Arizona.

E. WORKER'S COMPENSATION

Every employer, except the employer of domestic servants, is subject to the provisions of the Arizona statutes relating to worker's compensation for both occupational accidents and diseases. Every operator should be familiar with the regulations and the law in order to ensure compliance with their requirements. Complete information may be obtained from the Industrial Commission of Arizona, Phoenix, Arizona.

F. LABOR LAWS

The statutes pertaining to labor in mines in Arizona are available in booklet form from the State Mine Inspector, Phoenix, Arizona. Information may

also be obtained from the Industrial Commission of Arizona. It should be noted that a mine operator must not employ a person under 18 years of age.

G. ENVIRONMENTAL PROTECTION

In addition to the numerous Federal and state statutes discussed throughout this booklet, the mineral prospector must be aware of other Federal and state statutes and regulations pertaining to environmental protection. Some of the principal legislation includes the National Environmental Policy Act of 1969 (42 U.S.C. § 4321) (pursuant to which an environmental impact statement may be required for certain exploration and mining activities), the Clean Air Act (42 U.S.C. § 7401) (pursuant to which ambient air quality standards and pollutant limitations are established) and the Federal Water Pollution Control Act (33 U.S.C. § 1251) (which regulates effluent discharge). Other legislation, such as the Noise Control Act of 1972 (42 U.S.C. § 4901), the Safe Drinking Water Act (42 U.S.C. § 300f), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601), are also applicable to mining activities. Additional legislation provides protection for endangered species of wildlife and plants and for the protection and preservation of historical, archeological, cultural and scientific resources. Numerous additional statutes, regulations and licensing requirements are applicable to uranium operations, including the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. § 2111), which regulates the use and disposition of tailings and by-product materials from uranium operations.

Much of the legislation discussed above is supplemented by state statutes and regulations and, in some instances, by county and municipal ordinances. Operators should be particularly aware of state laws which protect native plants and vegetation and which require obtaining a permit prior to damaging or removing protected native plants and vegetation from state or public lands. A permit is not required for the destruction of native plants or vegetation on privately owned lands in conjunction with the clearing of lands or in conjunction with construction activities, if the protected plants or vegetation will not be removed or sold. However, 30 days prior written notice must be provided to the state Commission of Agriculture and Horticulture before undertaking such clearing or construction activities. Additional information and permit applications may be obtained from the Commission of Agriculture and Horticulture, Phoenix, Arizona.

A state law of particular significance to mine operators is Chapter 368, 37th Legislature - Second Regular Session (1986), signed by the Governor on May 13, 1986. This legislation is a comprehensive surface and groundwater quality code which will have substantial impact on mining activities within the State of Arizona. All aquifers within the state are classified as drinking water aquifers and existing Federal water quality standards are adopted by the code. Additional water quality standards may be adopted as deemed necessary for the protection of water quality. Owners and operators of specified facilities and operations, including: surface impoundments such as holding, storage, settling, treatment or disposal pits, ponds and lagoons; solid waste disposal facilities; mine tailings piles and ponds; and mine leach operations; are required to obtain permits for such operations. The code also

contains provisions pursuant to which a responsible party may be required to take remedial action pertaining to the discharges of hazardous wastes and other pollutants, including those occurring prior to the effective date of the code. The code contains comprehensive enforcement provisions which may result in injunctive action, monetary penalties and the filing of criminal charges. Effective July 1, 1987, the Department of Environmental Quality will be created and the responsibility for the numerous state environmental laws will be transferred to that department.

Information regarding these matters may be obtained from the respective state or Federal agencies responsible for the administration of these laws.

H. TAXES

In Arizona, an unpatented mining claim which is not being operated is not assessed for taxes. A patented mining claim which is not being operated and buildings and improvements on either kind of claim are taxed on an assessed valuation of 16 percent of the market value, or 25 percent of market value if they are used for commercial or industrial purposes. Producing mines or mining claims, the personal property and improvements relating thereto, and the mills and smelters operated in conjunction with such mines are currently taxed on an assessed valuation of 32 percent of the market value and such assessed valuation is to be decreased to 25 percent by 1990. Additional taxes are levied based on the gross proceeds from mining operations.

I. WATER AND WATER RIGHTS

In an arid state such as Arizona, rights to surface waters are based upon prior appropriation. In the early history of the state, these rights were acquired by prior beneficial use alone, but are now regulated by state laws which require an application for use and obtaining a permit to apply such water to use. There must be strict compliance with these laws in order to obtain surface water rights.

Percolating groundwater is not subject to the Arizona statutes relating to appropriation. A comprehensive groundwater code was enacted in 1980 and the right to acquire and use percolating groundwater for mining purposes is dependent upon the geographic area in question. The 1980 statute created four Active Management Areas within the State of Arizona and placed extensive limitations upon uses of groundwater in these areas. As a general matter, groundwater within an Active Management Area can be obtained for mining purposes only through the acquisition of certain grandfathered groundwater water rights, as specified in the code, or by obtaining from the Department of Water Resources a dewatering permit or a mineral extraction and metallurgical processing permit. The groundwater code is extremely complex, particularly with respect to water rights and uses within Active Management Areas, and qualified assistance should be obtained. Outside of Active Management Areas, groundwater may be pumped and used, including for mining and processing operations, so long as the water is placed to reasonable and beneficial uses. As noted on page 60, a permit must be obtained from the Department of Water Resources, Phoenix, Arizona, prior to drilling for water.

J. ROADS, RIGHTS-OF-WAY AND WASTE DISPOSAL

Problems are occasionally encountered regarding the use of lands in conjunction with mining operations, such as the use of existing roads, the establishment of new roads, rights-of-way for pipelines and power lines and other uses of the land. Generally, such matters can be resolved to the mutual satisfaction of the prospector and the owner of the land in question. If agreement cannot be reached, there are provisions in the Arizona statutes for the exercise of the right of eminent domain to acquire land for waste and tailings disposal and for the establishment of roads, pipelines and transmission lines.

Information regarding rights-of-way on state lands can be obtained from the State Land Department, Phoenix, Arizona. Applications for rights-of-way on Federal lands, when required, should be directed to the Bureau of Land Management, Phoenix, Arizona or the agency having administrative responsibility for the land in question.

K. MINING PARTNERSHIP AND GRUBSTAKE AGREEMENTS

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

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

L. PUBLIC LAND SURVEY

Anyone seeking to acquire rights in land, whether pursuant to a mining location or otherwise, must understand the survey system which forms the basis for property descriptions.

Lands are surveyed into townships 6 miles square. Surveys start from an initial point from which a base line is carried east and west, and a guide meridian north and south. In Arizona, this is known as the Gila and Salt River Meridian -- usually written G&SRM. Townships are numbered consecutively north and south and ranges east and west, according to the distance and direction from the initial point. Thus, Kingman is situated in Township 21 North, Range 17 West; Show Low is in Township 10 North, Range 22 East; Bisbee is in Township 23 South, Range 24 East, Yuma is in Township 8 South, Range 23 West and Gila Bend is in Township 12 South, Range 6 West.

Each township is divided into 36 sections, each 1 mile square, the boundaries of which run due north and south and east and west in a regular and uniform township. Since 1910, the surveyor has set at the corners of each section an iron pipe with a brass cap which is stamped with the township, range and the sections having a common corner. At each 1/2 mile on each section line, a smaller pipe is set with a cap which is stamped "1/4," designating it as a quarter corner, and the sections to which it is common are also marked. A vertical line separates the east-west sections, and a horizontal line separates north-south sections.

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

Public land surveys made prior to 1910 are marked by stone corners. These are firmly set stones and, for section corners, will be notched on the south and the east side with as many miles as the corner is from the south and the east boundary of the township. For example, a corner common to sections 15, 16, 21 and 22 will have three notches on its south side or edge, and three notches on its east side or edge. The quarter-section corners will have a "1/4" chiseled on the stone.

ADDENDUM

CHANGES WHICH GO INTO EFFECT AUGUST 17, 1987 WILL AFFECT MONUMENTING LODE, PLACER AND MILLSITE CLAIMS

The Thirty-eighth Session (1987) of the Legislature of the State of Arizona enacted into law Senate Bill 1125 which amended Arizona Revised Statutes, ARS 27-202 and ARS 27-204 and changed how mining claims are to be monumented. A copy of the new law is reprinted on the back of this addendum.

The amended law requires placement of the **location monument** (sometimes called the discovery monument) for new lode mining claims on the centerline of the claim instead of "... at one corner of the claim, ...". The **location monument** must still be "... within the boundaries of the claim, ...". The corner and end center monumenting requirements for lode claims remain the same. The change applies to lode claims located on Federal Minerals and to Type A Claims located on Arizona State Trust Lands.

The amendment changes the boundary monumenting requirements for placer and millsite claims but not lode claims by eliminating the need for end center monuments. END CENTER MONUMENTS ARE STILL REQUIRED FOR LODE CLAIMS. The amendment states that "ONLY THE CORNERS OR ANGLE POINTS OF THE *placer and millsite* CLAIM MUST BE MONUMENTED". The location monument is still required to be "... at one corner, and within the boundaries of the claim..." for placer and millsite claims.

The amendment eliminates the use of "... a monument of the survey of the United States ..." as an acceptable alternative to a mining claim monument if the positions of the two were to have coincided.

The change affects mining claims located on or after August 17, 1987 both on Federal Lands in Arizona and on State Trust Lands in Arizona. Mining claim monumenting procedures in other states are not affected. Claims located before August 17, 1987 do not have to be changed. The details of how mining claims located under the 1872 Mining Law on Federal Lands are monumented is left to each state on an individual basis. Each state is somewhat different.

It should be noted the amendments as enacted contain a provision that "This act does not affect the validity of the location or monumentation of any lode, placer or millsite claim completed pursuant to law in effect before the effective date of this act."

Please feel free to contact the Arizona Department of Mines and Mineral Resources for questions or additional information.

LODE, PLACER, AND MILLSITE MINING CLAIMS - LOCATING AND MONUMENTING

CHAPTER 77

SENATE BILL 1125

AN ACT

RELATING TO MINERALS, OIL AND GAS; PRESCRIBING METHODS OF LOCATING AND MONUMENTING LODE, PLACER AND MILLSITE MINING CLAIMS; AMENDING SECTIONS 27-202 AND 27-204, ARIZONA REVISED STATUTES, AND AMENDING TITLE 27, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 27-205.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 27-202, Arizona Revised Statutes, is amended to read:

27-202. Method of locating a lode claim; monument; location notice; amendments

A. Location of a lode, ~~placer or millsite~~ claim shall be made by erecting on the surface ~~at one corner~~ ON THE CENTERLINE within the boundaries of the claim a conspicuous monument of stones not less than three feet in height, or an upright post securely fixed and projecting at least four feet above the ground, in or on which there shall be posted a location notice, signed by the name of the locator. The location notice shall contain:

1. The name of the claim located.
2. The name and address of the locator.
3. The date of the location.
4. The length and width of the claim in feet, and the distance in feet from the location monument to each end of the claim.
5. The general course of the claim.
6. The locality of the claim with reference to some natural object or permanent monument whereby the claim can be identified and, if known to the locator, the identification of the section, township and range in which the notice of location of the claim is posted.

B. Until the requirements of subsection A are complied with, no right of location is acquired.

C. The notice may be amended at any time and the monument changed to correspond with the amended location, but no change shall be made which will interfere with the rights of others. If such amendment changes the exterior boundaries of the claim, a new or amended map, plat or sketch shall be recorded pursuant to section 27-203 showing such change.

Sec. 2. Section 27-204, Arizona Revised Statutes, is amended to read:

27-204. Monumenting lode claims

The boundaries of a lode, ~~placer or millsite~~ claim shall be monumented by six substantial posts projecting at least four feet above the surface of the ground, or by substantial stone monuments at least three feet high, one at each corner of the claim and one at the center of each end line of a lode claim. Substantial posts may be of any material as may be readily distinguished as monuments and shall be not less than one and one-half inches in cross section. ~~When the point of a monument is at the same point and coincides with a monument of the survey of the United States, the monument of the government survey shall be deemed a mining claim monument.~~ Each monument erected by the locator shall be marked to identify the corner or end center of the claim or claims for which it was erected.

Sec. 3. Title 27, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 27-205, to read:

27-205. Locating and monumenting placer and millsite claims

THE LOCATOR OF A PLACER MINING OR MILLSITE CLAIM SHALL LOCATE THE CLAIM IN THE SAME MANNER AS PRESCRIBED FOR A LODE CLAIM, EXCEPT THAT:

1. THE LOCATION NOTICE SHALL BE POSTED ON A SEPARATE MONUMENT AT ONE CORNER OF THE CLAIM WITHIN THE BOUNDARIES OF THE CLAIM.
2. ONLY THE CORNERS OR ANGLE POINTS OF THE CLAIM MUST BE MONUMENTED.

Sec. 4. Savings

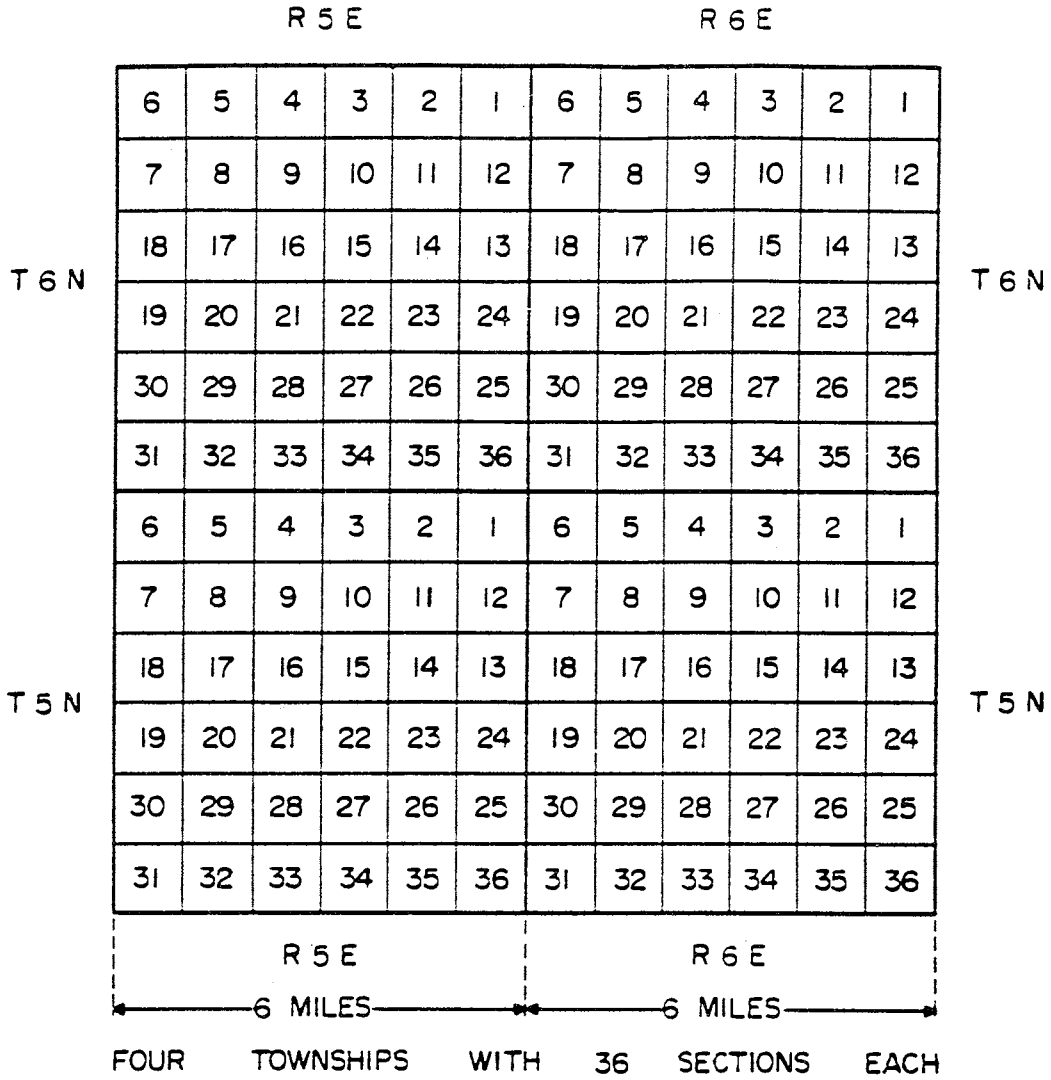
This act does not affect the validity of the location or monumentation of any lode, placer or millsite claim completed pursuant to law in effect before the effective date of this act.

Approved by the Governor, April 16, 1987.

Filed in the Office of the Secretary of State, April 17, 1987.

Changes or additions in text are indicated by CAPITALS; deletions by ~~strikeouts~~

SURVEY MAP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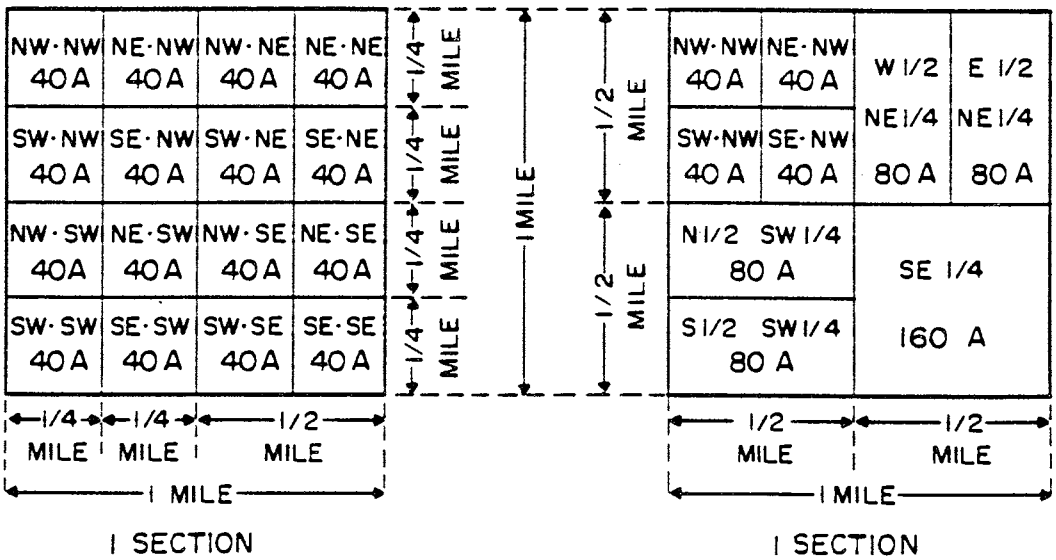
R 6 E
T 6 N
T 5 N
6 5 4 3 2 1 6 5 4 3 2 1
7 8 9 10 11 12 7 8 9 10 11 12
18 17 16 15 14 13 18 17 16 15 14 13
19 20 21 22 23 24 19 20 21 22 23 24
30 29 28 27 26 25 30 29 28 27 26 25
31 32 33 34 35 36 31 32 33 34 35 36
R 5 E
6 MILES
R 6 E
6 MILES
FOUR TOWNSHIPS WITH 36 SECTIONS EACH


NW·NW 40 A
NE·NW 40 A
NW·NE 40 A
NE·NE 40 A
SW·NW 40 A
SE·NW 40 A
SW·NE 40 A
SE·NE 40 A
NW·SW 40 A
NE·SW 40 A
NW·SE 40 A
NE·SE 40 A
SW·SW 40 A
SE·SW 40 A
SW·SE 40 A
SE·SE 40 A
1/4 MILE
1/4 MILE
1/2 MILE
1 MILE
1 SECTION
NW·NW 40 A
NE·NW 40 A
W 1/2 NE 1/4 80 A
E 1/2 NE 1/4 80 A
SW·NW 40 A
SE·NW 40 A
N 1/2 SW 1/4 80 A
SE 1/4 160 A
S 1/2 SW 1/4 80 A
1/2 MILE
1/2 MILE
1 MILE
1 SECTION

LOCATION NOTICE
(LODE)

NOTICE IS HEREBY GIVEN that the _____ lode mining claim has been located by _____, whose current mailing address is _____.

The general course of this claim is _____ and it is situated in _____ County, Arizona.

This claim is _____ feet in length and _____ feet in width. This claim runs from the location monument on which this location notice is posted approximately _____ feet in a _____ direction to the _____ end line and _____ feet in a _____ direction to the _____ end line. This claim is marked by six monuments, one at each corner and one at the center of each end line of the claim.

The location monument on which this notice is posted is situated within Section _____, T. ___ __., R. ___ __., G&SRM, Arizona, and this claim encompasses portions of the following quarter section(s), Section(s), Township(s) and Range(s): _____, G&SRM, Arizona.

The locality of this claim with reference to some natural object or permanent monument and additional information (if any) concerning its locality are as follows: _____

_____.

DATED AND POSTED on the ground this ____ day of _____, 19___.

LOCATOR(S):

_____

LOCATION NOTICE
(PLACER)

NOTICE IS HEREBY GIVEN that the _____ placer mining claim has been located by _____, whose current mailing address is _____.

The general course of this claim is _____ and it is situated in _____ County, Arizona.

This claim is _____ feet in length and _____ feet in width. This claim runs from the location monument on which this location notice is posted approximately _____ feet in a _____ direction to the _____ endline and _____ feet in a _____ direction to the _____ endline. The claim boundaries are marked by six monuments, one at each corner and one at the center of the _____ line and one at the center of the _____ line of the claim.

The location monument on which this notice is posted is situated within Section _____, T. _____, R. _____, G&SRM, Arizona. This claim encompasses portions of the following legal subdivision(s) (if located by legal subdivision) or the following quarter section(s), Section(s), Township(s) and Range(s): _____, T. _____, R. _____, G&SRM, Arizona.

The locality of this claim with reference to some natural object or permanent monument and additional information (if any) concerning its locality are as follows: _____

_____.

DATED AND POSTED on the ground this ____ day of _____, 19___.

LOCATOR(S):

_____

CLAIM MAP

Lode ( )
Placer ( )

N

Scale: _____

1. The above map depicts the _____ mining claim, which is located in Section (s) _____, Township _____ ____, Range _____ ____, G&SRM, _____ County, Arizona.

2. The type of corner and location monuments used are as follows:

_____

3. The bearings and distances in degrees and feet between claim corners are as depicted on map.

AFFIDAVIT OF PERFORMANCE OF ANNUAL WORK

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

_____, being duly sworn, according to law, deposes and says:

That he is a citizen of the United States, more than 18 years of age and resides at _____, _____ County, Arizona;

That he is personally acquainted with the following unpatented mining claims which are situated in the _____ Mining District, _____ County, Arizona, the name(s), book(s) and page(s) of the recording of the location notice(s) in the office of the recorder of said county and the BLM serial numbers of which are as follows:

Claim Name	Recorded Book	Page	BLM No.

That the notices of location of said claims are posted within the following Section(s), Township(s) and Range(s): _____;

That _____, whose address is _____, is the owner of the above-described claims;

That between the dates of _____ and _____ in excess of _____ Dollars ($_____) worth of work and improvements were done and performed upon or for the benefit of this claim group;

That such work and improvements consisted of _____ and were performed by _____; and

That the above work and improvements were made by and at the expense of _____ for _____, the owner of the claims, for the purpose of complying with the laws of the United States pertaining to assessments or annual work.

DATED this ____ day of _____, 19____.

_____

SUBSCRIBED AND SWORN to before me this ____ day of _____, 19___ by _____.

_____
Notary Public

My Commission Expires:

_____

NOTICE OF NON-LIABILITY FOR LABOR AND MATERIALS FURNISHED

NOTICE IS HEREBY GIVEN that the undersigned is the owner of the following described mine or unpatented mining claims situated in _____ County, Arizona, the names of which and the book(s) and page(s) of recording of the location notice(s) in the office of the recorder of said county and the BLM serial numbers of which, are as follows:

Claim Name	Recorded Book	Page	BLM No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Pursuant to the terms of a _____ agreement entered into between the owner and _____, which is dated _____ and is for a term commencing on _____ and ending on _____, the property will be in the possession of and operated by _____.

The owner is not and will not be working or operating the claims or mine or any part of the claims or mine and does not intend to purchase supplies or materials for the claims or mine or to employ any persons to labor thereon during the term of the above-described agreement.

The owner will not be liable for labor performed or materials or merchandise furnished in the operation or development of the claims or mine during the term of the above-described agreement, and the claims or mine will not be subject to a lien or any debts incurred for labor performed or materials or merchandise furnished for the operation or development of the claims or mine during the term of the agreement.

DATED AND POSTED on the ground this ____ day of _____, 19___.

OWNER

_____

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me the ____ day of _____, 19___ by _____.

_____
Notary Public

My Commission Expires:

_____

NOTICE OF INTENTION TO HOLD MINING CLAIMS(S)

This Notice of Intention to Hold Mining Claim(s) is made pursuant to 43 C.F.R., subpart 3833.2.3, by:

Name (owner or agent) _____

Address _____

City, State, Zip _____

Claim Name	BLM AMC#	Book and Page # or Docket # of Location Notice

The above named claim(s) is (are) held and claimed by the owner(s) for the valuable mineral contained therein. I (we) intend to continue development of the claim(s).

Annual assessment work or report of geological, geochemical or geophysical survey is not required because _____

_____

_____

_____

Signed by _____

Date _____

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