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The New Multiple Use Mining Law

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But the state of affairs did not change in Montana, as the decisions cited have illustrated. It is interesting to note that the legislature did try each of the reforms enumerated by Mr. Black, but each in its turn was either struck down by the court or deprived of its intended scope and effect. It is clearly a rare exception that a tax title is upheld once it reaches the courtroom, and until the attitude of the judiciary changes, further statutory revision would seem vain. It has long been established that where land is subject to taxation, the land can be sold to collect the taxes,¹⁶⁰ and it follows that it is essential to the taxing power of the government and the interests of purchasers and their privies that there be substance, not mere form, to the proceeding. A just balance must be reached between the need to protect the rights of land owners and the equal social need to protect rights acquired through the tax sale. The Montana Supreme Court has recently evidenced a new awareness of the problem in finding adverse possession under the theory that a void tax deed is color of title.¹⁶¹ But adverse possession is not an adequate solution; the remedy still lies in a more liberal construction of the entire tax proceeding.

LAWRENCE S. SWENSON

THE NEW MULTIPLE USE MINING LAW

Within the next few years many Montana attorneys, if their advice has not already been sought, will be called upon to counsel their clients about the ramification of the 1955 Multiple Use Mining Law.¹

This law is not designed to divest the miner of his sub-surface rights, nor of the surface rights necessary to his mining operations, but it is designed to encourage simultaneous development of the other surface resources of the same tract of land.

The law applies to public land administered by the Department of Agriculture and the Bureau of Land Management in the Department of the Interior; it does not apply to land in any national park or monument, or to any Indian lands.² The new law has no application whatsoever to any patented mining claim.³ It is intended to affect but two classes of mining claims: (1) unpatented mining claims located *after* its enactment [July 23, 1955], and (2) unpatented mining claims located prior to its enactment which are based on *invalid* discoveries. However, as will

¹⁶⁰BLACK, THE LAW OF TAX TITLES 60-61 (1888).

¹⁶¹Schumacher v. Cole, 131 Mont. 166, 309 P.2d 311 (1957); Long v. Pawlowski, 131 Mont. 91, 307 P.2d 1079 (1957); Hentzy v. Mandan, 129 Mont. 324, 286 P.2d 325 (1955). These cases in general uphold the proposition that seasonal adverse possession, as for instance, sheep grazing in the summer, is sufficient if that use is one for which the land is suited. A county may adversely possess. Griswold v. Lagge, 132 Mont. 23, 313 P.2d 1013 (1957). Actual possession of a part of a tract with color of title to the whole extends the possession to the limits fixed by the color of title. Fitschen Bros. Co. v. Mayes Estate, 76 Mont. 175, 246 Pac. 773 (1924). See also Shepherd v. Cox, 191 Miss. 715, 4 S.2d 217 (1941).

¹69 Stat. 367-372 (1955), 30 U.S.C. §§ 601, 603, 611-15 (Supp. IV, 1957). Hereinafter, all citations to the foregoing sections of 30 U.S.C. are to Supplement IV, 1957.

²30 U.S.C. § 601.

³30 U.S.C. § 612 (b).

be pointed out below in discussing section 5 of the Act, it may affect valid unpatented mining claims located prior to the passage of the Act.

In order to make clear the applicability of the new law, a short history of the methods of utilizing resources on federal land is necessary. Minerals on federal public lands may be acquired by either of two different methods: by location under the general mining laws,⁴ or by leasing as provided by the mineral leasing laws.⁵

Although the original purpose of both the mineral leasing laws and the mining laws was to promote development of mineral resources on public lands,⁶ competing use under the systems began to hinder rather than aid utilization of mineral resources. In 1954, legislation was passed which permitted "multiple mineral use" of public lands by specifically authorizing simultaneous application of the mining and leasing laws to the same tract of land.⁷ However, while this law was termed a "multiple use" law, it referred only to competing sub-surface uses, and no mention was made of the surface resources on these tracts.

The Materials Act of 1947⁸ was the first attempt by the federal government to conserve and manage the disposal of certain surface resources on a portion of its lands. Specifically, the Secretary of Interior could dispose of sand, stone, gravel, yucca, manzanita, mesquite, cactus, common clay, and timber or other forest products. However, these lands did not include national forests, which were subject to the same laws as before.⁹

The need for the new "multiple use" law was apparent because of the many abuses possible under the existing mining laws. It has been possible for persons who have unpatented claims under the mining laws to prevent orderly management and disposition of valuable timber and other surface resources, and also to block access to such resources on unclaimed federal land while doing no mining on their own tracts.

Due to the uranium "boom" in recent years, these abuses have multiplied. Many claims have been based on commonly occurring minerals such as sand and gravel. It has been possible to acquire a color of right through a mining location for non-mining purposes, such as summer cabins. Some locators desire their mining claims for curio shops, filling stations, or hunting and fishing sites. Although the claims may have satisfied the requirements of mineral discovery, the locations, which are made for non-mining purposes, thwart the intent of the federal government to open its lands to prospectors, and lead to possible waste of the valuable surface resources on these tracts.¹⁰

The new law is designed to strike at these abuses which violate the

⁴REV. STAT. §§ 2318-52 (1875), 30 U.S.C. §§ 21-54 (1952). See Note, 18 *MONT. L. REV.* 180 (1957) for a discussion of location under the general mining laws.

⁵60 Stat. 950 (1946), 30 U.S.C. § 181 (1952).

⁶The mining laws were prefaced, "An act to promote the mining resources of the United States" (17 Stat. 91 (1872)); the Mineral Leasing Act of 1920 was called "An act to promote the mining of coal, phosphate, oil, oil shales, gas, and sodium on public lands" (41 Stat. 437 (1920)).

⁷68 Stat. 708-17 (1954), 30 U.S.C. §§ 521-31 (Supp. IV, 1957).

⁸61 Stat. 681 (1947), 43 U.S.C. § 1185 (1952).

⁹See 43 C.F.R. §§ 185.1-100 (1954) (General Mining Regulations).

¹⁰See H.R. REP. No. 730, 84th Cong., 1st Sess. (1955), contained in 2 *U.S. CODE CONG. & AD. NEWS* 2474 (1955), for a statement of the abuses under the mining laws.

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spirit of the mining laws. It provides that deposits of common minerals such as ordinary varieties of sand, stone, gravel, pumice, pumicite, and cinders shall *not* be deemed valuable mineral deposits within the meaning of the mining laws as to claims located *after* July 23, 1955.¹¹ Further, it prohibits the use of claim located after passage of the Act for any non-mining purpose prior to the issuance of a patent.¹² However, it must be reiterated that the purpose of the new law is not to deprive locators of unpatented claims of any rights they had before the passage of the Act; it is merely an attempt to enable the responsible government agencies to manage and dispose of surface resources.¹³

Much work has already been done locally on surface rights determinations under the new federal law. On the basis of the completed and current work, the officials of Region One of the Forest Service, United States Department of Agriculture, have made available a series of statistics for this Note.¹⁴ While the figures are based on many assumptions, and are at best estimates, they place the magnitude of the task and the value of the surface resources in their proper perspectives.

Region One includes national forests in Montana, northern Idaho, northeastern Washington, and northwestern South Dakota. It is not contemplated that surface rights determinations will cover the entire region, but they will be made wherever interference of mining claims with the efficient management of the land and its resources is sufficient to justify the cost of the determinations.

In all, it is contemplated that 17,600,000 acres in Region One (71 per cent of the total national forest area in the Region), will be processed under the procedures of the new federal law by the end of 1965. This area contains approximately 350,000 claims. As of March, 1958, the preliminary field search procedure had been completed on 2,869,000 acres. Approximately 68,500 unpatented mining claims were considered and 160 claims examined in considerable detail.

It has been estimated that only two per cent of the unpatented claims in the national forests are producing minerals, and that 15 per cent of all mining claims in the national forests have at some time produced minerals. Based on these estimates, 297,000 mining claims within the surface rights determination area of Region One have ever produced valuable minerals.

The scope of this classification is further demonstrated by the fact that almost three billion dollars in timber stumpage value is involved.

Notwithstanding the speculative nature of the listed statistics, it is apparent from their magnitude that efficient management and control

¹¹30 U.S.C. § 611.

¹²30 U.S.C. § 612.

¹³See H.R. REP. No. 730, note 10 *supra*, for a statement of the purposes of the bill.

¹⁴These statistics were prepared through the cooperation of Mr. C. L. Tebbe, Regional Forester; Mr. E. F. Barry, Timber Management; Mr. E. R. Sievers, Geologist in charge of Land Examinations; and Mr. Robert Parker, Counsel for the Forest Service. It must be emphasized that these figures are not official statistics, but rather represent a group of rough estimates of values and acreages, derived from the completed and the contemplated surveys. Memorandum from United States Department of Agriculture, Forest Service, Region One, Federal Building, Missoula, Montana, March 31, 1958.

must be exercised to effectuate the most beneficial handling and disposal of these renewable surface resources. Without efficient control of surface areas, these resources might well be wholly or partially wasted.

The new statute was entitled *An Act to amend the Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes*. It is intended to allow the simultaneous use of surface and subsurface tracts of public land, and is designed as remedial legislation with three broad aims:

1. To prohibit location of mining claims which are not specifically for mining, prospecting, processing, or related activities.
2. To provide for utilization of timber, forage and other surface resources on these same lands.
3. To accomplish these ends without basically changing the principles of the general mining laws.¹⁵

Section 1.¹⁶ Amendment of the Material Act

Section 1 permits the Secretary of the Interior or the Secretary of Agriculture, as the case may be, to dispose of common varieties of minerals such as sand, stone, gravel, etc., and surface vegetation on the public lands of the United States. This section applies to national forests and title III Bankhead-Jones¹⁷ lands, but does not apply to national parks, national monuments, or Indian lands.

Section 2.¹⁸ Receipts from Materials Disposal

Money received from the sale of mineral materials will be handled in the same manner as money received from the sale of other natural resources. Where national forests are involved, 25 per cent of these receipts are turned over to the state for disbursement to the counties in which that forest is located. This money is generally used for public schools and public roads.¹⁹

Section 3.²⁰ Removal of Common Materials from Mining Locations

This section provides that no claim located after the passage of the Act, based on discoveries of common varieties of sand, stone, gravel, pumice, pumicite, or cinders, will be valid under the mining laws of the United States. A proviso in this section allows valid mining claims based on discoveries of such minerals which have properties giving the deposit special and distinct value. "Block pumice" in pieces having one dimension of two inches or more is expressly included as a mineral having special and distinct value.

This section applies only to locations made after enactment of this statute, and does not disturb any rights under valid, unpatented mining

¹⁵See H.R. REP. No. 730, note 10 *supra*, at 2480.

¹⁶30 U.S.C. § 601.

¹⁷50 Stat. 525-26 (1937), 7 U.S.C. §§ 1010-12 (1952). This act relates to retirement of sub-marginal land for soil conservation, flood control, reforestation, etc.

¹⁸30 U.S.C. § 603.

¹⁹35 Stat. 260 (1908), as amended, 16 U.S.C. § 500 (1952).

²⁰30 U.S.C. § 611.

claims located before the enactment of the statute and based on discoveries of the above mentioned common minerals.

Section 4.²¹ Rights of Future Locators to Surface Resources

This section outlines the rights, limitations, and restrictions applying to unpatented mining claims located after enactment.

Subsection (a) provides that on claims filed after July 23, 1955, the miner may use his claim for prospecting, mining, or processing operations, and other uses related and incident thereto, but not for any other purpose prior to patent. The miner's essential rights are fixed by this subsection.

Subsection (b) provides that the miner has the right to use timber for mining purposes and that he can also remove timber to provide clearance. Until he obtains his patent, however, the United States can manage and dispose of the vegetative surface resources on the claim, provided that such disposal or management does not endanger nor materially interfere with the miner's legitimate operations.

A proviso in this subsection recognizes that although the purpose of the Act is to utilize simultaneously the surface and subsurface natural resources, the miner has the dominant and primary use of the location. Any government operation which would substantially hinder the miner's legitimate operations would be subordinated to the miner's interest.

Subsection (c) restricts the miner's use of the surface resources to legitimate mining and related activities. The miner is prohibited from use or removal of timber or other surface resources which subsection (b) places under management and disposition of the United States. Again there is a proviso respecting the right of the miner to use timber for construction incident to his mining operations, or to provide clearance on his claim, even when the government has dispositive powers over the surface resources.

The subsection recognizes the possible competing interests between the miner and the government, and attempts to strike a balance between the surface and subsurface uses.

Further, subsection (c) states that any timber cutting the miner does on his claim, other than to provide clearance, must be in accord with sound principles of forest management. In respect to the miner's interest, if the government, while managing the surface resources, disposes of the timber on the claim after location of the claim, and the miner requires more timber for his legitimate operations, he is entitled to it free of charge. The replacement timber is to be substantially equivalent to the timber removed by the government, and is to be cut from the nearest tract of mature timber ready for harvesting.

The rights, limitations, and restrictions delineated in this section apply only to claims located after the 1955 enactment, and do not remain in effect after a patent has been issued. When a claimant obtains a patent, he acquires complete title to the mining claim, including both its surface and subsurface resources. The Act is not designed to abrogate patent rights under the traditional mining law. However, in order to obtain a patent, the

²¹30 U.S.C. § 612.

locator must comply with the requisite mining laws concerning discovery, assessment work, payment to the United States of the purchase price, and a determination of the validity of his claim.

Section 5.²² Procedure to Clarify Claim Titles

Section 5 attempts to initiate a procedure whereby the government can expeditiously unravel title complications resulting from abandoned, dormant, unidentifiable, or invalid mining claims located prior to the Act.

Unless these title uncertainties were solved, section 4 would not have the desired effect upon surface resources, because many unpatented claims exist on federal lands, unknown even by the agency which administers these lands. The establishment of an in rem procedure permits a determination of claims which purportedly will demonstrate which are valid and which are invalid. Thus the asserted rights to surface resources may be adjudicated.

At the request of the federal agency administering an area, the Secretary of the Interior will initiate a procedure for the determination of surface rights. The claimant may still apply for his patent rights and be completely unaffected by the procedures of this Act. If the patent is granted, he will gain full title to both the surface and subsurface resources of his tract.

Subsection (a). Method of Procedure

A federal agency administering a national forest may file a request for publication of notice to mining claimants for the determination of surface rights in that forest. This request is lodged with the Secretary of the Interior. The filing of this request must be accompanied by the affidavits of responsible persons over twenty-one years of age who have examined the land to discern if any persons were working or in possession of the land in question. If any persons have been found working a claim, their names and addresses must be listed in the affidavit. It must also be noted if no one has been found at the claim location.

Along with the request and affidavits, the certificate of an attorney, title abstractor, or of a title or abstract company is sent to the Secretary of the Interior, showing the names of persons having interests in lands under unpatented mining claims, based on the examination of tract indexes in the county office of record.

Subsection (a). Notice

After receiving these instruments, the Secretary will publish notice to mining claimants in a local newspaper of general circulation in the county where the lands in question are situated. Publication will be for nine consecutive weeks on Wednesday, if published in a daily paper or on the same day of each week if in a tri-weekly, semi-weekly or weekly paper.

Persons whose names and addresses appeared in the affidavits, those whose names were discovered through examination of the tract indexes, and those filing request for notice under subsection (d) of section 5 will

²²30 U.S.C. § 613.

receive a copy of the published notice by registered mail or in person within fifteen days after the first publication.

If a claimant wishes to assert his rights to the surface resources of his unpatented claim, he must file within 150 days of the first publication, in an office specified in the publication, a verified statement setting forth the following information :

1. the date of location ;
2. the book and page of recordation of the notice or certificate of location ;
3. the section or sections of the public land surveys which embrace such mining claims ; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument ;
4. whether such claimant is a locator or purchaser under such location, and ;
5. the name and address of such claimant and names and addresses, so far as known to the claimant, of any other person or persons claiming any interest or interests in or under such unpatented mining claim.

Subsection (b). Consequence of Failure to File Verified Statement

If any person who asserts his rights to an unpatented mining claim fails to file the verified statement required by subsection (a), he is conclusively deemed :

1. to have waived and relinquished any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to hereafter located unpatented mining claims ;

2. to have consented that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 as to hereafter located unpatented mining claims ; and

3. to have precluded any right in himself thereafter, prior to issuance of patent, to assert any right or title to, or interest in or under, or in conflict with the limitations or restrictions specified in section 4 of the Act as to hereafter located unpatented mining claims.

Hence the consequences of failure to file the verified statement within the 150 day deadline may be rather serious.²²

Subsection (c). Hearing

If a claimant of an unpatented mining claim, located prior to the passage of the 1955 law, files the required verified statement, and the

²²It is possible that this procedure may give rise to some dispute. The Supreme Court has said that an unpatented but perfected mining claim is "property in the fullest sense of the word." *Wilbur v. United States ex rel. Krushnic*, 280 U.S. 306, 316 (1929). Whether or not the mere publication of notice as provided by the Act can divest a claimant of such property without working a denial of due process is an open question under this statute.

appropriate government agency decides to contest his right to hold his claim free of the restrictions set forth in section 4, he is entitled to a hearing.* The hearing will follow the general procedures and rules of practice of the Department of the Interior.

If the decision is in favor of the claimant, he retains the same surface rights he originally had under the mining laws. If decided against the claimant, then the United States obtains the same right to manage and dispose of the vegetative surface resources and to manage other surface resources on the claim that it has on claims located after July 23, 1955. The claimant retains all of the mining rights he previously had, plus the right to patent the claim under the mining laws in effect at the time of his location.

Subsection (d). Request for Notice

Subsection (d) allows a claimant to protect himself against unintentional waiver of rights by filing a request for notice even before a proceeding is initiated in an area affecting his claim. He may file, in the county office where his claim is recorded, a request for a copy of such notice, giving his name, address, and the following information for each unpatented mining claim under which he asserts any rights:

1. the date of location ;
2. the book and page of the recordation of the notice or certificate of location ; and
3. the section or sections of the public land surveys which embrace such mining claim ; or if such claims are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

By utilizing this procedure the claimant is assured in advance of receiving personal notice when the examination of land titles in his area is initiated.

Subsection (e). Failure to Give Notice

Publication will not affect any person entitled to be served with, or to be mailed a copy of, the published notice, if the notice is not in fact so served or mailed to him.

Section 6.³⁰ Waiver of Rights

A claimant who desires to avoid controversy and wishes to cooperate with the administering federal agency may, under section 6, relinquish any of his surface resource rights which are contrary to or in conflict with the

*Subsection (c) of section 5 provides for a "hearing to determine the validity and effectiveness of any right or title to, or interest in or under such mining claim, which the mining claimant may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims." Precisely what must be established to entitle the claimant to hold his claim free of the restrictions of section 4 is not clearly set forth. However, it would appear that proof of a valid "discovery" and "location" will suffice. See H.R. REP. No. 730, note 10 *supra*.

³⁰30 U.S.C. § 614.

limitations and restrictions of section 4. He would then have the same rights after his waiver as locators establishing claims after enactment. Of course, the waiver has no relation to the validity of the claim, and its acceptance by the government does not operate as a concession of its validity or date of priority.

Section 7.³⁰ Restatement of the Act

Section 7 makes it clear that the Act is not intended to limit or restrict existing rights in legitimate unpatented mining claims, except as these rights are limited by proceedings under section 5, or as a result of waiver and relinquishment under section 6. Further, after enactment no limitations or restrictions not otherwise authorized by law will be included in patents issued to mining claimants.

CONCLUSION

Efficient management of many millions of acres of federal public lands, including the discovery and development of new or known mineral resources, is in the public interest. Legitimate miners and prospectors should be encouraged in their work, not hindered. However, widespread abuses under the existing mining laws whereby government lands are acquired for other than mining purposes must be stopped.

This new legislation is designed to balance the interests in developing both surface and subsurface resources. It has as its direct objectives the prohibition of mining claim locations for any purpose other than prospecting, mining, processing or related activities; the better utilization and conservation of timber, forage, and other surface resources on mining claims; and the accomplishment of these ends without substantially altering the general mining laws.

The basic provisions of the new legislation are simply stated and clearly understandable. Common varieties of non-metallic minerals are removed from the purview of the general mining laws and are subject to disposal under the Materials Act of 1947. Mining claims located after enactment of the bill cannot, before the patent is issued, be used for other than mining purposes; and these locations are subject to the right of the government to manage and dispose of the surface resources. The use of the surface by the United States must not interfere with the mining operations. An in rem procedure permits titles to be quieted to locations made prior to the new legislation and permits the locator to either waive his right to the surface resources, or contest the validity of the government's right to management of surface resources in judicial hearings.

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³⁰U.S.C. § 615.