Proposed Legislation to Enlarge Prediscovery Rights of Mineral Locators

G. H. Ladendorff
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MINERAL LOCATORS

G. H. LADENDORFF*

INTRODUCTION

Under the mining laws of the United States a discovery of mineral is the foundation of all rights in a mining claim, and the locator's rights date from the mineral discovery.¹ This requirement presented no great problem in the early days of mining activity in the West, when the prospector relied upon a finding of mineral in outcroppings or other surface showings for his discovery, and many valuable mines were discovered in this manner. However, it is now the consensus of geologists that the easily found ore bodies, being those susceptible of discovery at or near the surface, have been found.² The discovery and development of new mines will depend largely upon the discovery of hidden ore deposits, those lying under cover of surface material which may vary in depth from a few feet to several thousand feet.³

The technology of exploration has advanced, particularly with respect to the search for hidden ore deposits, and today prospectors have available to them many devices with which to search for hidden ore bodies which were not available in earlier times. Geiger counters and scintillators have become dramatized in popular magazines and are well-known throughout the West as instruments for the discovery of uranium and other radioactive minerals. Less well known, but very important in the discovery of hidden ore bodies, are such techniques as geological and geophysical surveys, which are usually made over large areas and are often the prelude to actual discovery of mineral at depth by drilling. Unfortunately, the law has failed to keep abreast of geological developments. The prospector in his search for hidden deposits of mineral finds himself on the horns of a dilemma: he cannot expect to make a discovery unless he is willing to use processes which usually involve the expenditure of substantial amounts of money and require months or even years of time; at the same time he has no assurance under existing law that during his search he will be protected in his possession, except for the limited and inadequate protection afforded by the doctrine of pedis possessio.

* Member of the Arizona bar.
3. Ibid.
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The problem has been recognized for some time. Almost fifteen years ago a bill was introduced in the United States Senate to provide for the location of geological, geochemical, and geophysical mining claims, and similar bills were introduced in 1947, 1949, 1956 and 1959, the most recent being S.572, introduced January 20, 1959, by Senator Murray of Montana. While the objective was desirable, unfortunately the bills contained provisions which were considered undesirable, and the proposed legislation met with little favorable response from the mining industry. In recent years the problem has received serious consideration by the Hard Minerals Committee of the Section of Mineral and Natural Resources Law of the American Bar Association, the Public Lands Committee of the American Mining Congress, and numerous other organizations. A proposal for an amendment to the general mining laws of the United States has now evolved from these studies. The purpose of this proposal is to encourage the discovery and development of the mineral wealth remaining in the public domain by assuring to prospectors the exclusive right, subject to certain restrictions, to prospect for hidden ore deposits and to locate mining claims based upon a discovery resulting from such prospecting.

The primary purpose of this article is to analyze the proposed legislation. Since some knowledge of the rule of discovery and of the doctrine of pedis possessio is relevant, a brief review of these legal principles will precede a discussion of the proposed legislation.

THE PROBLEM OF MINERAL DISCOVERY

The federal mining law requires a discovery of mineral as a prerequisite to the location of a valid mining claim. Section 2 of the Act of May 10, 1872, provides in part as follows:

4. Id. at 395.
9. Ibid.
10. Ibid.
11. The undesirable features of the bill are discussed in Ladendorff, Enlarging Prediscovery Rights of Mineral Locators, 6 Rocky Mountain Mineral Law Institute 1, 22-25 (1960). See also note 2 supra.
12. Ibid.
13. See Appendix.
14. A more detailed discussion of the legal principles may be found in Ladendorff, Enlarging Prediscovery Rights of Mineral Locators, supra note 11; Holbrook, Legal Obstacles to Uranium Development, 1 Rocky Mountain Mineral Law Institute 325 (1955); Moran, Mineral Discovery and Geophysical Instruments, 4 Rocky Mountain Mineral Law Institute 103 (1958); Kastler, Validity of Geological and Geophysical Methods of Discovery, 30 Rocky Mt. L. Rev. 172 (1957); Waldeck, Discovery Requirements and Rights Prior to Discovery on Uranium Claims on the Colorado Plateau, 27 Rocky Mt. L. Rev. 404 (1955); Waldeck, Recent Developments in Mineral Discovery Requirements, 31 Rocky Mt. L. Rev. 33 (1958); and Reports of the Committee on Hard Minerals, Section of Mineral and Natural Resources Law, ABA (1958-1960).
no location of a mining claim shall be made until the discovery of the
vein or lode within the limits of the claim located.\(^1\)

This requirement has been recognized by state statutes which supplement
the federal mining law. For example, Arizona law provides as follows:

§ 27-201. Location of mining claim upon discovery of mineral in
place

Upon discovery of mineral in place on the public domain of the
United States the mineral may be located as a lode mining claim by
the discoverer for himself, or for himself and others, or for others.\(^2\)

What constitutes a discovery of mineral sufficient to meet the requirements
of the statutes has been the subject of many decisions.\(^3\) The courts have strained
to keep abreast of changing conditions and some recent decisions have displayed
great liberality in determining whether or not a discovery has been made.\(^4\)
However, the rule as stated by the United States Supreme Court is as follows:

Where minerals have been found, and the evidence is of such a
character that a person of ordinary prudence would be justified in
the further expenditure of his labor and means, with a reasonable
prospect of success, in developing a valuable mine, the requirements of
the statute have been met.\(^5\)

That the general mining law contemplated the discovery of mineral at or
near the surface, with little deep excavation, is apparent from supplementary
state statutes of some of the mining states which require the sinking of a dis-
covery shaft as part of the location work.\(^6\) For example, the Arizona statute
provides that the locator of a lode claim shall have ninety days from the date
of the location in which to record a copy of the location notice, monument the
claim on the ground, and

Sink a discovery shaft on the claim to a depth of at least eight feet
from the lowest part of the rim of the shaft at the surface or deeper,
if necessary, to a depth where mineral in place is disclosed in the
shaft.\(^7\)

\(^{17}\) See cases cited to 30 U.S.C.A. § 23 (1942, Supp. 1959) in annotations under “Dis-
covery.”
\(^{18}\) Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958); Rummel v. Bailey,
\(^{19}\) Chrisman v. Miller, 197 U.S. 313, 322 (1905).
The problems confronting some western states in recent years arising out of discovery shaft requirements have been directly related to the fact that, for the most part, discoveries of ore bodies can no longer be made at or near the surface. Some states, like New Mexico, have attempted to meet this problem by providing that in lieu of a discovery shaft, the locator may sink a drill hole.\textsuperscript{22} Colorado, recognizing the value of a discovery shaft in identifying the claim and preventing "floating" claims, has adopted a statute providing for the filing of a plat in lieu of sinking a discovery shaft.\textsuperscript{23}

The requirement that a locator sink a discovery shaft on each claim to a depth necessary to find mineral, which may be several thousand feet below the surface, is unrealistic and in many cases practically impossible of performance. While a number of western states have met this specific problem by new legislation,\textsuperscript{24} such legislation has not and by its nature cannot meet the basic problem of how to protect the explorer in his possession during the relatively long and costly period of exploration which may precede a discovery of mineral.

While the so-called "geological, geochemical and geophysical mining claims bills" were unacceptable for various reasons, the draftsmen of these bills did recognize the basic problem. Section 2(a) of S.572 provided:

\textit{Notwithstanding the provisions of section 2320 of the Revised Statutes, a location of a geological mining claim may be made on lands belonging to the United States prior to the discovery of a vein or lode or other mineral deposit within the limits of the claim located, and upon which a mining claim may be based under the provisions of such section. (Emphasis added.)}\textsuperscript{25}

The Hoover Task Force Report recognized the problem more than ten years ago, and proposed certain revisions of the mining law which were never accomplished. In reviewing the general mining law of 1872 the report concluded: "The system has worked well, and the committee favors the retention of location and patenting for the mineral deposits to which it now applies."\textsuperscript{26} However, the report did point out certain inadequacies in the law, including the following:

The inapplicability of the law to concealed deposits because of its requirement of exposure of valuable minerals in order to establish a valid claim. Most of the valuable minerals with surface exposure have probably already been discovered; however, concealed deposits of unknown but possibly great proportions remain to be explored and utilized.

\textsuperscript{24} Note 22 supra; Nev. Rev. Stat. § 517.040 (1960).
\textsuperscript{25} See note 8 supra.
\textsuperscript{26} Commission on Organization of the Executive Branch of the Government, Task Force Report on Natural Resources (1949). App.L. 53. This report is herein referred to as the Hoover Task Force Report.
Lack of provisions for adequate protection of the heavy investment required for subsurface exploration during a period of sufficient length to establish clear title.27

It is obvious that the discovery requirement is at the root of the problem. However, mining lawyers generally do not favor the extensive liberalization of the discovery requirement, for it is the key to good faith in the location of mining claims on the public domain.28 A more practical approach is to enlarge present prediscovery possessory rights, thus paving the way to greater mineral development without sacrificing the protection of the discovery requirement.

**PEDIS POSSESSIO**

The courts, in attempting to keep pace with changing conditions that confront prospectors, have enlarged in some cases the protection afforded by the doctrine of pedis possessio.29 The prospectors themselves have gone even further, but without the sanction of Congress or the state legislatures and without judicial approval.30 However, the doctrine of pedis possessio as construed by most courts affords very limited protection to prospectors.

Technically the doctrine of pedis possessio protects a prospector only to the extent of the area which he actually occupies.31 The term "pedis possessio" means "actual possession" as distinguished from constructive possession which follows title.32 In following what might be termed the narrow or conservative view, it has been said that the possession of a prospector extends only to the area immediately surrounding the place where the prospector is working.33 Specifically, these decisions hold that the possession does not extend to the entire twenty-acre tract which may be encompassed within a lode or placer mining claim. Other courts take a more liberal view and hold that the possessory right extends to the entire surface of the claim.34 It is interesting to note that some of the liberal decisions involved placer claims which had been located for oil, and that the practical problem of making a discovery was very similar to that existing today in connection with the search for hidden ore bodies.35 Even if it is assumed that the prospector will be protected in his possession of the

27. Ibid.
33. Gemmel v. Swain, 28 Mont. 331, 72 Pac. 662 (1903).
35. Miller v. Chrisman, 140 Cal. 440, 75 Pac. 1083 (1903), aff'd, 197 U.S. 313 (1905).
entire surface of the claim, such protection will not be sufficient for prospectors who desire to make a geophysical survey of a large area. The better reasoned cases make it clear that the prospector will be protected only during such time as he is in actual occupation of the identical claim and engaged in diligent and persistent exploratory work thereon. A recent case decided by the New Mexico Supreme Court states the rule very well:

The law requires a discovery and the requisite location acts on each claim. Likewise, the possession of each claim, where no valid location has been perfected within the statutory time, must be protected by actual occupation of that identical claim and the diligent and persistent exploratory work thereon. If the occupation is relaxed under those circumstances, another may take possession of the claim if he can do so peaceably. The occupation of the second occupant, in that event, will be protected so long as he abides by this same rule. (Emphasis added.)

Modern exploration techniques such as geophysical surveys usually involve large areas, all of which, as a practical matter, cannot be actually occupied at all times during the exploration process. The wide use of aerial surveys raises the question as to whether and to what extent an aerial survey constitutes actual occupancy of the ground. Will the prospector who is making a geophysical survey of an area five miles square be required to patrol the boundaries of the entire area to prevent other prospectors from making a peaceable entry upon his possession? The conflict between the U.S. Steel Company and the Kaiser Steel Company which arose from an effort of both parties to explore certain mineralized lands in California at the same time is graphic evidence of the need for some kind of legislation which will protect a bona fide prospector in entering the public domain and exploring for hidden ore deposits.

PROPOSED LEGISLATION

While there has been a great deal of thought given to the problem for many years, efforts to formulate a specific amendment of the general mining law to accomplish change along the lines of the present proposal date from a panel discussion which was conducted at a meeting of the Public Lands Committee of the American Mining Congress at Los Angeles, California, in 1956. The meeting, in which three mining lawyers and two geologists participated, was

conducted under the chairmanship of Mr. Elmer F. Bennett, Under Secretary of the Department of the Interior. Subsequent to that panel discussion, the panelists and other interested persons gave further study to the problem. Further discussions were had, particularly at meetings of the Public Land Committee of the American Mining Congress, the Hard Minerals Committee of the Section on Mineral and Natural Resources Law of the American Bar Association, the Public Land Committee of the Mining and Metallurgical Society, and the Rocky Mountain Mineral Law Institute. The proposals for legislative amendments which resulted from these studies were considered in July, 1960, at the Sixth Annual Rocky Mountain Mineral Law Institute at Boulder, Colorado. Since that time further studies have been made, particularly by members of the Hard Minerals Committee of the Section on Mineral and Natural Resources Law of the American Bar Association, who gave the matter serious thought during the American Bar Association Convention in Washington, D.C., in August, 1960. The subject was further studied at a meeting of the Public Lands Committee of the American Mining Congress during the meeting of the Mining Congress at Las Vegas, Nevada, in October, 1960, and the results of these studies were presented with a proposed draft of legislation to the Mining Congress at a meeting sponsored by the Public Lands Committee. The proposal discussed in this article is the product of these deliberations and represents contributions by many of the leading mining lawyers of the country.

An examination of the provisions of the proposed Exploration Claims Act of 1960 will reveal that the provisions of the act are basically consistent with the provisions of the general mining law except, of course, for the fact that a discovery of mineral is not required. For example, rights under the act would be initiated by the posting of a notice of location, with the further requirement that within 180 days thereafter the claim must be monumented and the notice of location recorded. Annual labor would be required. A claim could not exceed 160 acres in size which is, of course, the maximum size of an association placer claim. The bill follows the pattern of the general mining law in other respects.

The following comments are offered for a better understanding of the proposed law. In considering them, it should be borne in mind that the primary purpose of the proposed legislation is to give locators of exploration claims the exclusive right to explore for mineral on the land covered by the claims for a limited time and to occupy the land for that purpose, while guarding against the fraudulent holding of large areas of public domain by speculators.

A. Land subject to location: Exploration claims could be located upon any land which is open for location of conventional mining claims. For example,

40. Note 11 supra.
41. See Appendix.
43. Section 3(a) of the proposed bill.
land which has been withdrawn from location under the mining laws for national defense purposes would not be open to location of exploration claims. On the other hand, land withdrawn for federal power sites would be open to location of exploration claims subject to the limitations of the Mining Claims Rights Restoration Act of 1955.44 Land covered by valid mining claims which have not been abandoned or which are not open to relocation for failure to perform annual labor would not be open to location of exploration mining claims.

There is one important exception to this general provision. For purposes of determining whether land is open to the location of exploration claims, no location of a mining claim would be deemed invalid solely because of failure to make a discovery. The draftsmen believed that it would be unfair to give the locator of an exploration claim the exclusive right to explore land on which another prospector had located a mining claim in good faith, on which he had performed annual labor, and on which he was diligently working in search of minerals, even though no discovery had been made. As between the locator of an exploration claim and the prior locator of a mining claim who had not made a discovery, it was felt that the locator of the mining claim should have the same right to hold the land without a discovery as the locator of the exploration claim. Of course, as between the locator of such mining claim and the United States of America and all parties other than the locator of an exploration claim purporting to cover the same land, a mining claim upon which a discovery had not been made would have no validity and the locator thereof would have no rights other than the rights he might have under the doctrine of pedis possessio.

The locator of an exploration claim would have no rights to any land purportedly covered by an exploration claim which was not open for location. However, the fact that the land covered by an exploration claim was found to contain mining claims (with or without a valid discovery) or any other areas not open to location would not affect the validity of the claim as to those portions of it which covered land open to location.

B. Size and number of exploration claims: The maximum acreage of an exploration mining claim would be 160 acres, except that where the exploration claim covered a quarter section of publicly surveyed land in excess of 160 acres the exploration claim could contain the same number of acres.45 This would permit location of claims according to the public survey. There is no provision for a minimum acreage. There is no provision to require a locator of an exploration claim to conform his claim to the public survey, because there can be no assurance that an area of possible mineral value will follow public survey lines. Therefore, the locator of an exploration claim should be free to locate the claim wherever he desires, and in whatever shape he desires, so long as the land upon

45. Section 4(a) of the proposed bill.
which the exploration claim is located is open to location of mining claims. However, the draftsmen recognized the possibility of the fraudulent location of a long, narrow exploration claim as a nuisance claim in a large area of possible mineral value. As an illustration, a nuisance locator could locate an exploration claim or claims 100 feet wide and several miles long in an area of some potential mineral value for the sole purpose of selling the claim to a bona fide prospector interested in making a geophysical survey of the entire area. This presents a very difficult problem, and it may be that no attempt to deal with it would be entirely successful. The bill does contain a provision that the greatest length of an exploration claim shall not be in excess of four times its greatest width.

It is provided that a locator may locate as many exploration claims as he chooses, but not in excess of 5,120 acres in any one state at any one time. Because of the lack of a discovery requirement, it is vital that there be some limitation on the acreage that can be held by any one locator or holder at any one time.

C. Location of exploration claims: Exploration claims could be located by any person who is permitted to locate a conventional mining claim under the general mining law. For example, the statutory requirements as to citizenship which are applicable to locators of conventional mining claims would be applicable to locators of exploration claims. There is one important limitation, other than those already mentioned, which should be noted. The draftsmen contemplated that an exploration claim would be property in the sense that a conventional mining claim is property, i.e., that it would be alienable. However, because no discovery is required, its life would be limited to a maximum of five years. Without some restriction, a locator could simply relocate an exploration claim every five years. To prevent the holding of a tract of land as an exploration claim for an indeterminate period of time without a discovery, the bill provides that any land covered by an exploration claim shall not be subject to location as an exploration claim by the same locator or by any person who at any time held an interest in any such exploration claim for a period of two years from the date of expiration of rights with respect to such land under the exploration claim. This would be true whether the rights expired by the expiration of the five-year period, by failure to perform annual labor, or otherwise.

Rights under the Explorations Claims Act would be initiated by posting a notice of location upon an exploration claim monument at any corner of the exploration claim. The notice of location would be very simple and would be required to contain only the name and address of the locator, the date of location (which would be the date of posting) and a general description of the claim by reference to a natural object or a permanent monument, including the

46. Section 4(a) of the proposed bill.
47. Section 4(b) of the proposed bill.
48. Sections 3(a) and 2(c) of the proposed bill.
50. Section 4(c) of the proposed bill.
51. Section 5(a) of the proposed bill.
approximate number of acres. Note that four notices posted on one monument located at the center of a section would be sufficient to initiate rights to the entire section.52

Within 180 days the locator would be required to complete his location by having the claim surveyed and erecting a monument on each corner of the claim. In addition, the locator would be required to record in the appropriate county office a signed copy of the notice of location, to which would be attached a plat of the survey signed by the surveyor. As an added precaution against fraud, the locator would be required to file with his notice of location and plat a sworn statement that the locator has not, during the preceding two years, located or held an interest in an exploration claim covering any of the land described in the notice of location and that the locator claims no rights under any exploration claim covering land in excess of 5,120 acres in any state in which the land described in the notice of location is situated.53

The requirement of a survey would serve the double purpose of assuring an exact description of the land claimed, and at the same time protecting against fraud by requiring what would be in some cases a substantial expenditure of money for a survey. It was recognized that in very rough country ninety days might be insufficient time for a survey, so this period was fixed at 180 days instead of the usual ninety days prescribed by state laws.54

It was contemplated that as a practical matter locators of exploration claims would desire to locate their claims along legal subdivision lines. It was further contemplated that a locator might inadvertently post his claim near a subdivision corner but not precisely on it. In that event he would be permitted to move his original location monument to coincide exactly with the nearest corner of a public survey provided, of course, that rights of others were not affected thereby. No other changes would be permitted in the posting of the notice of location of an exploration claim monument because that posting and monumenting would fix the rights of a locator, with the one exception here mentioned.55

It will be noted from the provisions of Section 5 of the proposed act that unlike the general mining law, a failure to complete location work within 180 days would forfeit all rights in the claim. It is recognized that the mining law generally permits the holder of a mining claim to hold his claim, except as to intervening claimants, until location work is completed and that unless rights of others have intervened such work will relate back.56 It was the belief of the draftsmen that because the discovery requirement would be eliminated, it would be desirable to make the performance of the surveying, monumenting and recording requirements within the time prescribed an absolute condition to any rights under the act.

52. Section 5(a) of the proposed bill.
53. Section 5(b)3 of the proposed bill.
55. Section 5(b) of the proposed bill.
Consistent with existing law and practice, the bill provides that if the monument upon which the notice of location is posted is situated not more than two miles from a section corner or a quarter corner, the survey shall be tied to a corner of a public survey. In all other cases it shall be tied to a United States mineral monument or some other natural object or other permanent monument. The words "natural object or permanent monument" are well defined in the cases and well understood in practice and it was the intention of the draftsmen to follow as closely as possible existing law and practice consistent, of course, with a precise description of the area claimed.

D. Rights granted: The purpose of the bill is to give the locator of an exploration claim who complies with all the requirements of the act the exclusive right to occupy the land covered by the exploration claim for the purpose of exploring for minerals locatable under the general mining law, and when found to locate conventional mining claims on such land. As such, the locator of an exploration claim would have the rights and be subject to the limitations of a locator of a mining claim with one exception, which is that the locator or holder could not remove mineral from the claim or sell or otherwise dispose of any mineral or mineral-bearing earth or rock from the claim except for sampling, assaying or testing purposes. If a locator discovers a valuable mineral deposit and wishes to mine it he must locate conventional mining claims and thereafter proceed under the general mining law.

No attempt is made to set out in the bill all of the limitations, restrictions and reservations applicable to the use of land covered by an exploration claim. As already noted, the locator or holder of an exploration claim would be in the same position, except for the right to actually mine an ore body, as the locator of a mining claim. By the provisions of Section 7(b) of the bill the locator or holder would be subject to all such limitations as those contained in the Multiple Use of Surface Act, the Mining Claims Rights Restoration Act, grazing rights under the Taylor Grazing Act, and all other limitations, restrictions and reservations of every kind applicable to locators or holders of conventional mining claims.

E. Duration of rights: All rights under an exploration claim would terminate not later than five years from the date of posting of the notice of location, but rights could terminate at an earlier date either by voluntary act of the locator or holder of a claim or by failure to perform certain acts required by the

58. Section 7(a) of the proposed bill.
61. Note 44 supra.
proposed law. As already noted, failure to survey, monument, and record a copy of the notice of location within 180 days after the initial posting would terminate all rights under the act. The practical effect of this provision is that the locator of an exploration claim could hold an area of up to 5,120 acres for a period of 180 days merely by posting notices of location, and in some situations this would require erection of as few as eight location monuments. This would permit occupation of large tracts of land for six months at very small expense, but available information indicated that six months would be required in most cases to make an accurate survey.63

Another limitation is that if a locator or holder of an exploration claim failed to perform annual labor and file reports thereof as required by the act, his rights thereunder would terminate.64 This, of course, is contrary to the rule of the general mining law which permits a locator or holder of a mining claim to occupy the land without performance of annual labor, subject only to the rights of others to locate claims covering such land.65 As the right to explore on land held under the act would be limited to five years at the most, and since the right to hold beyond three years would be conditioned upon the performance of an increased amount of annual labor, the draftsmen believed that any locator or holder of an exploration claim who was engaged in a bona fide search for ore would be willing to perform the prescribed amount of work in each year, and that upon his failure to do so his rights under the act should terminate.

F. Annual labor requirements: The bill provides that during each of the first three years of the claim the locator or holder shall perform annual labor equivalent to $10.00 per acre, and that as a condition of his right to hold the land covered by the exploration claim for an additional two years he must perform double that amount of annual labor, an amount equivalent to $20.00 per acre, during the fourth and fifth years. At the end of each year he would be required to file a report in the county office where the location notice was filed, describing the work performed.66 Except for the amount of work, these requirements are similar to requirements under the general mining law.67

The draftsmen were aware of the problem of a fraudulent holding of land without any bona fide attempt to locate ore. The proposed bill provides that the requirements are double and in the fourth and fifth years they are four times the annual labor requirements applicable to conventional mining claims. The primary purpose is to assure that persons who locate or hold exploration

63. At various places where the author discussed the proposed bill, particularly at meetings of the Public Lands Committee of the American Mining Congress, Las Vegas, Nevada, October 9-13, 1960, and at a convention of the Northwest Mining Association, Spokane, Washington, December 3, 1960, suggestions were made during the question and answer periods that six months would be required to make a survey.
64. Section 11 of the proposed bill.
66. Section 10 of the proposed bill.
claims will engage in exploration work or give up the claims and permit others to explore the area.

The fact that exploration claims would be limited to five years and that the requirements would increase after the third year posed some problems. The inclination was to make the period for annual labor co-extensive with the period for annual labor to be performed with respect to conventional mining claims. However, it must be remembered that in an exploration claim there is no requirement for the sinking of a discovery shaft or other discovery work. Since the locator or his grantee may hold the claim in any event for 180 days by the simple act of posting a notice, it was felt that his annual labor requirements should begin immediately. Any attempt to follow the conventional mining law which at this time fixes the assessment year at a period ending on September first would permit a locator to locate a claim in early October and hold it for a period of two years without the performance of any annual labor. In view of the size of the claims permitted under the act and the relative simplicity of location work, as well as the fact that no discovery would be required, it seemed desirable that annual labor requirements commence immediately.

In some of the mining states the requirement of a report of annual labor (other than geological, geochemical, and geophysical surveys) is purely voluntary. For example, in Arizona and New Mexico an affidavit of annual labor is merely prima facie evidence that the work was performed, and failure to file an affidavit will not affect the validity of the claim. Because of the fraud problem, the draftsmen believed that it would be desirable to require that a report be filed. It will be noted that failure to file a report would terminate all rights under the exploration claim. This is consistent with the requirement that a report be filed when geological, geochemical, and geophysical surveys are made as annual labor on conventional mining claims. Consideration was given to the difficult problem of determining when annual labor actually performed on one claim benefits other claims in a contiguous group. Because of the nature of exploration work which is performed in connection with a search for hidden ore bodies, it was considered very important that a locator or holder of an exploration claim be permitted to perform the work on or with respect to any part of the claim, and that there be no question as to whether or not such work benefits all portions of the claim. Similarly, and even more important, work upon one exploration claim would be deemed to benefit all exploration claims in a contiguous group. For example, a locator or holder of four exploration claims covering 640 acres could perform $6,400 worth of work in any of the first three years upon any claim or any portion of any claim, and that would be sufficient to hold all of the claims for the year during which the work was performed.

71. Section 9 (b) of the proposed bill.
Of course, the report would specify the exploration claims to be protected by the annual labor described in the report.

In determining the amount of annual labor required, the total number of acres included within the boundaries of the claim would be used, and this would include conventional mining claims or other areas not open to location. Recognizing that the locator or holder of an exploration claim or claims might discover after the initial posting or surveying that areas within the boundaries of the exploration claim were not open to location, the bill provides that the locator or holder could exclude such areas by recording a notice describing the areas to be excluded. Such areas would not be considered in determining the annual labor requirement. Likewise they would not be included in determining the maximum acreage which could be held by any one locator in any one state at any one time.

**Conclusion**

Although it was adopted almost one hundred years ago, the general mining law has served and continues to serve the nation well in encouraging the development of its mineral resources, and there is understandable reluctance to change it. However, the discovery of what is generally considered to be most, if not all, of the easily-found ore bodies has presented a problem to which a solution must be found if the nation's vital mining industry is to continue to function. A discovery may still be found, but today the discovery of hidden ore bodies can require months or even years of time and the expenditure of very substantial amounts of money. The nation's existence may depend upon the discovery and development of these hidden ore bodies. Their discovery will depend upon legislation which will protect the prospector while making the heavy investment involved in his search. The proposed Exploration Claims Act is offered as a solution with the hope that its passage will stimulate the search for hidden ore deposits.

It will be noted that this act does not attempt to deal with numerous other problems which have been raised in recent years with respect to the general mining law, such as extralateral rights, the distinction between lode and placer claims, and other problems. These problems are real, but the draftsmen felt that the solution of the prediscovery problem should not await the solution of all problems which have been raised in connection with the general mining law. The urgency of the situation is such that the prediscovery problem must be solved soon. Nothing contained in the act will in any way hinder the continuing studies of the general mining law, some of which have already been undertaken.72

In the actual drafting of the proposed Exploration Claims Act many questions were raised, and an attempt was made to answer each of them. Other

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72. It is the author's understanding that the Rocky Mountain Mineral Law Institute is studying the desirability and feasibility of a uniform state law with respect to state requirements applicable to the location of mining claims.
problems may have been overlooked. Constructive criticism and suggestions are invited, with the hope that this bill, when presented to Congress, will represent as nearly as possible the ideas and judgment of the entire mining industry.\textsuperscript{73}

\textbf{APPENDIX}

\textbf{A BILL}

To provide for the location of exploration claims.

\textit{Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:}

Section 1. This Act may be cited as the “Exploration Claims Act of 1960.”

Section 2. As used in this Act: (a) The term “exploration claim” means any claim located pursuant to the provisions of this Act.

(b) The term “mining claim” means any unpatented mining claim located under the mining laws of the United States, other than an exploration mining claim.

(c) The term “locator” means any person who is permitted to locate mining claims under the mining laws of the United States.

(d) The term “exploration claim monument” means a wooden post extending at least three (3) feet above the surface of the ground and at least four (4) inches in diameter, or a concrete post extending at least three (3) feet above the surface of the ground and at least four (4) inches in diameter, or a mound of rocks at least two (2) feet high.

(e) The term “exploration work year” means the period commencing at noon on the date of location of an exploration claim and ending at noon on the same date of the immediately following calendar year, and also each subsequent identical yearly period during the term of the exploration claim.

Section 3. (a) Except as limited by the succeeding sentence, a locator may locate an exploration claim or claims upon any land which is open for location of mining claims. For the purpose of Section 3 of this Act, but not otherwise, no location of a mining claim shall be deemed invalid for failure to make a discovery of valuable minerals.

(b) To the extent that an exploration claim purports to cover land which is not open for location under the provisions of this Act, it shall be void; provided, however, that nothing contained herein shall be construed as in any manner limiting the rights of the holder of an exploration claim as to that portion of land covered by such exploration claim which is open for location under the provisions of this Act; and provided further that the tracts of land covered by an exploration claim or exploration claims shall not be deemed to lack contiguity solely because of the existence thereon of a mining claim or mining claims.

Section 4. (a) The area contained within the exterior boundaries of an exploration claim shall contain not more than one hundred sixty (160) acres,

\textsuperscript{73} Comment and suggestions may be submitted to Mr. Julian Conover, American Mining Congress, Ring Building, Washington 6, D.C.
except that where the boundary lines of the exploration claim coincide with the boundary lines of a quarter section of publicly surveyed land which contains more than one hundred sixty (160) acres, such exploration claim may contain the number of acres contained in such quarter section. The tracts of land covered by any one exploration claim shall be contiguous. The greatest length of an exploration claim shall not be in excess of four times the greatest width of such exploration claim.

(b) A locator may locate or hold any number of exploration claims; provided, however, that the area contained within the exterior boundaries of all exploration claims located by any one locator or in which any one locator has any interest, but not including areas excluded pursuant to the provisions of Section 12 hereof, shall not exceed five thousand one hundred twenty (5,120) acres in any one state at any one time.

(c) Any land covered by an exploration claim shall not thereafter be subject to location as an exploration claim by the same locator or by any person who at any time held an interest in such exploration claim, for a period of two (2) years from the date of expiration of rights with respect to such land under such exploration claim.

Section 5. (a) An exploration claim shall be located by erecting at any corner thereof an exploration claim monument in or upon which there shall be posted a notice of location of exploration claim, which notice shall contain the following statements:

1. The name and address of the locator.
2. The date of location, which shall be the date of posting the notice of location.
3. A general description of the location of the exploration claim monument by reference to a natural object or permanent monument, and a general description of the boundary lines of the area claimed. Such description shall be sufficient if it includes a statement of the approximate number of feet between each corner of the claim, commencing with the corner at which the notice of location is posted, and the general direction of each such boundary line. Such description shall also contain the name of the county and state in which the claim is located, and where known, the section, township and range.
4. The approximate number of acres of land included within the boundaries of the exploration claim.

(b) Within one hundred and eighty (180) days after the posting of the notice of location of exploration claim the locator shall:

1. Cause such exploration claim to be surveyed by a qualified surveyor.
2. Erect an exploration claim monument on each corner of the exploration claim.
3. Record in the office in which notices or certificates of location of mining claims located in the same county are required by state law to be
recorded or filed a signed copy of the notice of location of exploration claim, to which shall be attached a plat of the survey thereof, which plat shall show courses, distances, and ties, which shall be certified as accurate and signed by the surveyor who made the survey of the exploration claim. There shall also be attached to and filed with the notice of location of exploration claim a statement signed by the locator and sworn to before a Notary Public or other person authorized by state law to administer oaths that the locator has not during the preceding two (2) year period located or held an interest in an exploration claim covering any of the land described in the notice of location, and that such locator does not claim any rights under an exploration claim covering land in excess of five thousand one hundred twenty (5,120) acres in any state in which the land described in said notice of location is situated.

If the exploration claim is located on publicly surveyed land, the location of the exploration claim monument upon which the notice of location is posted may be changed at any time during such one hundred eighty (180) day period to the extent necessary for the location of such exploration claim monument to coincide exactly with the nearest corner of a public survey, but only if rights of others are not affected thereby.

(c) The rights of a locator of an exploration claim shall commence at the time of posting the notice of location as required by Section 5 (a), but failure to perform all of the acts required by Section 5 (b) within the time therein specified shall be deemed an abandonment of the claim, and upon such failure all of the locator's rights under the exploration claim shall terminate.

Section 6. Where the exploration claim is located on land which has been publicly surveyed, or on land which has not been publicly surveyed and the exploration claim monument upon which the notice of location is posted is situated not more than two (2) miles from any section corner or quarter corner of publicly surveyed land, the survey shall where practicable be tied to a corner of a public survey. In all other cases such survey shall, where practicable, be tied to a United States mineral monument, and when no United States mineral monument exists within two (2) miles of the exploration claim monument upon which the notice of location is posted, or such mineral monument cannot be found, such survey shall be tied to some other natural object or permanent monument.

Section 7. (a) During the time when rights exist under an exploration claim the holder thereof shall have the exclusive right to occupy the land covered by the exploration claim for purposes of exploring thereon by any method for minerals locatable under the mining laws of the United States and the exclusive right to locate mining claims thereon; provided, however, that the holder shall not remove therefrom or sell or otherwise dispose of any mineral or mineral-bearing earth or rock except to the extent that it may be necessary to remove such mineral or mineral-bearing earth or rock for the purposes of metallurgical testing or assaying or otherwise analyzing the mineral contained therein.
(b) Except as herein otherwise specifically provided, the right to occupy and
explore the land covered by an exploration claim shall be subject to all limita-
tions under existing laws applicable to the location of mining claims.

Section 8. All rights under an exploration claim, if not earlier terminated
under the provisions hereof, shall terminate not later than five (5) years from
the effective date prescribed by Section 5 (c).

Section 9. (a) In each exploration work year during the first three (3)
years of the term of the exploration claim, there shall be expended for explora-
tion work upon or for the benefit of the land covered by such exploration claim
not less than an amount which is equivalent to Ten Dollars ($10.00) for each
acre or fraction thereof in such exploration claim (or the equivalent value in
labor if performed by the locator). In each exploration work year during the
last two (2) years of the term of the exploration claim, there shall be expended
for exploration work upon or for the benefit of the land covered by such explora-
tion claim not less than an amount which is equivalent to Twenty Dollars
($20.00) for each acre or fraction thereof in such exploration claim (or the
equivalent value in labor if performed by the locator). Exploration work shall
be required only with respect to land contained within the exterior boundaries
of the exploration claim which has not been excluded from the exploration claim
under the provisions of Section 12 hereof.

(b) Only annual labor or improvements of a nature which, if performed on
or for the benefit of a mining claim, would meet the requirements for annual
labor or improvements applicable to mining claims, shall qualify as exploration
work under the provisions of this Act. Exploration work may be performed
upon or for the benefit of any part of an exploration claim or any one or any
part of any one of a contiguous group of exploration claims and such exploration
work shall be deemed to be for the benefit of each such exploration claim and
all of the exploration claims in a contiguous group of exploration claims.

Section 10. On or before thirty (30) days after the end of the exploration
work year, the locator of an exploration claim shall file or cause to be filed in
the office where the notice of location of the exploration claim is recorded a veri-
ified report of the exploration work performed with respect to each such claim
during the immediately preceding exploration work year as follows:

(a) Where the work performed was a geological, geochemical, or geo-
physical survey under the provisions of Public Law 85-876, September
2, 1958, 72 United States Statutes at Large 1701, a report shall be
filed in accordance with the requirements of said Public Law 85-876.

(b) Where the exploration work performed is other than a geological, geo-
chemical, or geophysical survey, the report shall contain the following
information: The name of the locator, the date of location of the
exploration claim and the place in the official records where the loca-
tion certificate of such claim is filed; the amount of money expended
in exploration work or the value of labor performed with respect to
such claim; the places where such work was performed; and the
nature of the work actually performed.
Section 11. In the event that a holder of an exploration claim fails to perform labor or expend amounts for exploration work in connection with any exploration claim as required by the provisions of Section 9 hereof, or fails to file reports of such work as required by Section 10 hereof, all rights as a holder hereunder shall be terminated.

Section 12. By recording a notice thereof in the office where the notice of location is recorded, a holder of an exploration claim may exclude from the exploration claim such tracts of land as may be designated in such notice. Such notice shall include any areas covered by mining claims located by the holder of the exploration claim within the boundaries of the exploration claim. The land covered by such notice shall be described in the same manner as the land is described in the notice of location, and a plat of such description shall be attached to such notice.

Section 13. Exploration claims may be located and utilized only for the purpose of mineral discovery and the location of mining claims.