

# Mining Laws

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## Mining Districts

1-1 When gold was discovered at Sutter's Mill in California in 1849 no provisions had been made by the Congress of the United States for the disposition of minerals on the public domain of the West. After a feeble attempt at leasing, the copper and iron deposits of the Great Lakes region as well as the lead deposits of Missouri were sold outright to the highest bidder with minimum prices set from \$2.50 to \$5.00 per acre. Consequently, the prospectors and miners of California formed mining districts to provide self-government and maintain law and order. These districts could be as small as a square mile, while others covered an area several townships in size.

1-2 The functions of a district were to provide rules governing the size of claims, manner of location and discovery requirements, recording of locations, work required to hold a claim and period of absence constituting abandonment.

The miners were not without precedents in establishing their rules. In Europe the Germanic or Prussian laws provided for the discovery and location of mineral deposits with royalties going to the crown and the surface owner. The discoverer received a larger claim than subsequent locators. Periods of idleness without cause would open the ground to relocation. A court system was provided for the mining industry.

The Prussian law was the basis for English law and subsequently Spanish and Mexican law. The Mexican law provided that three claims went to the discoverer of a vein in a new district and two claims to the discoverer of a new vein in an old district. Claims were 200 varas long and up to 200 varas wide, depending on dip, a vara being about a yard. Provision was also made for discovery work and periodic labor.

As the first claims in California were for placer gold, the miners were allowed a claim about 10 feet along the stream and as far back as the deposit ran. When lodes were discovered, the discoverer was usually allowed two claims 100 feet long along the vein and 50 feet wide; then others could stake one claim of this size on the vein. The miner could follow his vein to depth, establishing extralateral rights. Rules were made for marking the boundaries of claims and for recording them with the district recorder. Miner's courts were held to settle disputes. Thus, American Mining Law was born.

1-3 Today, the mining districts exist in name only. As county governments were set up (recording districts in Alaska which has no counties), the mining districts turned their records over to the county recorders and left the making and enforcement of local mining laws to state or county governments.

Mining districts may still be formed but any regulations that they may impose cannot be in conflict with existing law at any level of government. At this writing, none are known to exist; however, many location certificate forms call for a mining district, as well as the various forms provided by the Bureau of Land Management for the processing of mineral surveys and patents.

Each state office, except Montana, maintains a map, chart or index of mining districts although the boundaries may be vague and overlapping. These records are available to the public so that they may use a district name, if available.

If a claim is located in an area where no district exists, it is customary to state that there is no organized district or that the claim is in an unorganized mining district. There is, however, no objection to using a commonplace name as a district to aid in identification of the claim.



**THE GREGORY LODE, BLACKHAWK—CENTRAL CITY,  
COLORADO**

The first discovery of a gold vein in Colorado. (1858) Gregory, the discoverer, was allowed two claims, 50 ft. wide and 100 ft. long; others then staked claims 50 ft. wide and 100 ft. along the vein.

**Federal Mining Laws (Title 30, United States Code)**

**1-4** Act of February 27, 1865, Sec. 9 (13 Stat. 441): Recognized that the public domain was being appropriated for mining purposes but that such appropriation was by the law of possession and that the paramount title to such lands lay in the United States.

**1-5** Act of July 26, 1866 (14 Stat. 251): Declared the mineral lands of the public domain open to exploration and occupation by citizens of the United States or those who had declared their intentions to become citizens. It provided for claims 200 feet in length along the vein for each locator, with an additional claim for the discoverer, and an association could take up to 3000 feet in length. No width was specified, only sufficient ground for working the claim. Extralateral rights were granted inasmuch as the vein could be followed to any depth, with all its dips, angles and variations. The Act also

provided for obtaining patent (fee title) from the United States. It also recognized local customs, rules and mining districts, so far as they were not in conflict with the laws of the United States. This Act was repealed by the Act of May 10, 1872.

**1-6** Act of July 9, 1870 (16 Stat. 217; 30 U.S.C. 35): Provided for placer claims (not covered in the Act of 1866) which included all deposits except veins of quartz and other rock in place. They were limited in size to 160 acres, either by one person or an association of persons, subject to entry and patent, and where on surveyed lands required to conform to legal subdivisions. This Act, with modification, is still in force.

**1-7** Act of May 10, 1872 (17 Stat. 91; 30 U.S.C. Ch. 2; Title 43 C.F.R.): This Act contains the General Mining Laws which, with amendments, are still in force today. It provides in detail for discovery, location, survey and patent of both lode and placer claims; also mill

sites. It requires annual labor, or assessment work until patent. Tunnel sites for the discovery of lodes are also provided for. The succeeding pages of this manual will take up and explain the various provisions of this Act, with appropriate reference and quotations from the Code of Federal Regulations or the U.S. Code, if not covered in the C.F.R.

**1-8 Act of March 3, 1872 (30 U. S.C. 71-90):** Provided for the location and purchase of coal; not a mineral subject to the general mining laws. This Act was repealed by the Mineral Leasing Act of 1920.

**1-9 Act of May 17, 1884 (30 U.S.C. 49a-49f):** Extended the general mining laws to Alaska.

**1-10 Act of August 4, 1892 (30 U.S.C. 161):** Included building stone under the mining laws subject to the provisions governing placer mining claims.

**1-11 Act of February 11, 1897 (29 Stat. 526, 30 U.S.C. 101):** Specifically included petroleum or other mineral oils as a mineral under the general mining laws subject to the provisions governing placer mining claims. This Act was repealed by the Mineral Leasing Act of 1920.

**1-12 Act of January 31, 1901 (30 U.S.C. 162):** Included salt in any form under the general mining laws subject to the provisions governing placer mining claims, limited to one claim per person. This Act was repealed by the Mineral Leasing Act of 1920.

**1-13 Act of April 28, 1904 (30 U.S.C. 34):** The monuments on the ground shall constitute the highest authority as to which lands are patented notwithstanding a conflict with the survey record or the calls and descriptions recited in the patent. Also, in extending the public land surveys, all patented mineral claims shall be segregated from the public lands as they are monumented on the ground.

**1-14 Act of February 25, 1920 (30 U.S.C. Chapter 3A):** The Mineral Leasing Act removed deposits of oil, gas, coal, potassium, sodium, phosphate, oil shale, native asphalt, solid and semi-solid bitumen and bituminous rock, including oil impregnated rock or sands, and sulphur in Louisiana and New Mexico from the general mining laws and other laws and set up a system of leasing for these minerals.

**1-15 Act of July 31, 1947 (61 Stat. 681):** The Materials Act authorized the sale of mineral materials if the disposal of such materials was not otherwise expressly authorized by law.

**1-16 Act of August 13, 1954 (30 U.S.C. 521):** Provided for multiple development of mineral deposits under the mining and mineral leasing laws. All mining claims and mill sites located after this date, and those prior to this date that did not preserve their rights, do not include leasable minerals, such minerals being subject to exploration and development under the Mineral Leasing Act.

**1-17 Act of July 23, 1955 (30 U.S.C. 601):** Removed common varieties of sand, stone, gravel, pumice (except block pumice), pumicite or cinders from appropriation under the general mining laws. Also restricted the use of the surface of unpatented mining claims to that portion necessary for the development and mining of the deposit and permitted the federal government to manage the surface and vegetative resources.

**1-18 Act of August 11, 1955 (30 U.S.C. Chapter 16):** All lands previously withdrawn for power sites, except those actually in use or being constructed upon, were restored to mining locations subject to future use for power development under the authority of the United States, without reimbursement, and subject to provisions for recording the location within 60 days from date of location and assessment work within 60 days of the expiration of the assessment year.

**1-19 Act of March 18, 1960 (30 U.S.C. 42):** Provided for the location of mill sites in conjunction with placer claims subject to the same requirements of survey as placers. This allowed location of mill sites by legal subdivisions.

**1-20 Act of September 28, 1962 (76 Stat. 652):** Provides for free use of petrified wood.

**1-21 Act of December 24, 1970 (30 U.S.C. Chapter 23):** This act provides for geothermal steam leases and should the lease be terminated, the lessee has the right to complete the location of mining claims for minerals subject to location which would constitute a byproduct if commercial production of steam continued. Conversion to a lease under the Mineral Leasing Act for lease minerals is provided for if the lease minerals are capable of being produced in commercial quantities.

**1-22 Act of October 21, 1976 (43 U.S.C. 1744; 43 C.F.R. 3833):** All unpatented mining claims, including lodes, placers, mill sites and tunnel sites located prior to this date must be recorded

with the proper state office of the Bureau of Land Management by filing a copy of the record of the location (or last amended) notice or certificate, as required by state law, together with a map showing the claim and its relation to the public land survey or protracted grid, by October 21, 1979; and also provide evidence of assessment work for the preceding assessment year, or notice of intention to hold, and thereafter prior to December 31 of each calendar year. Claims located after October 21, 1976 shall be recorded within 90 days of date of location and evidence of assessment work or notice of intention to hold, if assessment work is not required, filed prior to December 31 of each calendar year after the year of location. Change in ownership must also be recorded and (presumably) amended location certificates. If these recording requirements are not met, the claims are deemed to be abandoned.

**1-23 Reservations, Grants, Withdrawals and Severance of Minerals:** Indian and military reservations, national parks and monuments are not, as a rule, open to mineral exploration except in special instances cited in 1-24 below. National forests are open to mineral exploration, location and patent, but subject to rules and regulations of the Forest Service. National Forest Wilderness Areas are covered in 1-24 below.

Grants include the Spanish Land Grants, Railroad Grants, and School Grants (School Sections), most of which included the minerals.

At least one Spanish Land Grant, The Sangre de Christo Grant comprising Costilla County, Colorado, has its own system of mineral surveys.

Arizona has its own rules for locating mining claims on state (school) lands. Indemnity grants were made in lieu of other lands previously appropriated, including unsurveyed school sections appropriated in part under the mining laws.

The Alaska Native Claims Settlement Act of December 18, 1971 granted certain lands to the natives in Alaska and allowed owners of claims located prior to August 31, 1971 five years to proceed to patent. Regulations permitted filing an application for mineral survey to be considered an application for patent.

Withdrawals made under the authority of the President are not subject to any form of location. Withdrawals under the Act of June 25, 1910 (43 U.S.C. 141, as amended) are subject to

location for metal-liferous minerals only. The Act, known as the Pickett Act, authorized the President to make withdrawals for various purposes such as power, irrigation, classification of lands.

Withdrawals under the first form Reclamation Act of June 17, 1902 are not subject to mining location unless opened under the Act of April 23, 1932. Lands withdrawn under the second form of the Act are subject to location.

The Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1714) provides for withdrawals by the Secretary of the Interior, either on his own motion or at the request of any department or agency head, with certain restrictions and limitations. Each withdrawal and subsequent restoration must be reviewed to determine if mining locations are allowed, and under what conditions.

Severance occurs when minerals are reserved to the United States in a patent. Some of the Spanish Land Grants reserved certain minerals such as gold, silver, quicksilver and antimony.

The Act of March 3, 1891 reserved minerals from townsite entries on mineral land, but each patent should be checked; some of the early patents reserved only "known lodes."

The Act of July 17, 1914 permitted agricultural entry or purchase of lands withdrawn for phosphate, nitrate, potash, oil, gas or asphalt with a reservation of these minerals to the United States.

The Act of July 20, 1956 permitted the disposition of these minerals discovered and located prior to the Mineral Leasing Act.

The Stockraising Homestead Act of December 29, 1916 allowed entry of 320 acres rather than the 160 acre preemption homestead, but reserved the minerals to the United States, the minerals being subject to disposal under the general mining and mineral leasing laws. The surface owner is protected by the Act, and a bond must be posted with the Bureau of Land Management unless satisfactory arrangements can be made between the mineral and surface owner (43 C.F.R. 3814).

Lands patented under the Color of Title Act (43 U.S.C. 1068), by exchange under the Taylor Grazing Act (43 U.S.C. 315g) and by Forest Exchanges (16 U.S.C. 485) with mineral reservation to the United States, are subject to appropriation under the mining and mineral leasing laws.

The Atomic Energy Act of August 1, 1946 reserved fissionable source material, uranium and thorium, to the United States, but these provisions have since been rescinded and such minerals are locatable under the mining laws. Mining claims for fissionable source materials could be located on lands known to be valuable for coal under the Act of August 11, 1955 (30 U.S.C. 541 through 541i) which expired August 11, 1975.

#### 1-24 Areas Subject to Special Mining Laws:

**O&C Lands:** The Act of April 8, 1948 (62 Stat. 162) reopened the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands to exploration, location, entry and disposition under the United States Mining Laws, but imposed additional requirements regarding the filing of location certificates, affidavits of annual labor, use of timber, etc. See 43 C.F.R. 3821 for details.

**Alaska Public Sale Act of August 30, 1949 (48 U.S.C. 364a-364e)** segregated for classification and sale certain lands, but reserved the minerals for disposition under applicable law. Provided compensation to the surface owner for damage. See 43 C.F.R. 3822.

**National Forest Wilderness Areas** are open to prospecting and mining under existing laws until midnight, December 31, 1983 by which time they shall be closed except for valid existing rights. Patents will be for mineral only with title to the surface reserved to the United States, subject to certain use to facilitate mining. See 43 C.F.R. 3823.

**City of Prescott, Arizona Watershed:** The Act of January 19, 1933 (16 U.S.C. 482a) restricted future mining locations to minerals only with restricted use of the surface. See C.F.R. 3824.

**Papago Indian Reservation, Arizona:** The Act of June 18, 1934 (25 U.S.C. 461-479) as amended, restores from temporary withdrawal mineral location and entry under the United States Mining Laws, but imposes additional requirements for recording locations with the superintendent of the reservation, payment of annual rental to the tribe and a fee in lieu of the annual rental at time of patent. See 43 C.F.R. 3825.

**National Park Service Areas:** National parks and national monuments are, as a general rule, closed to mining, but there are exceptions, subject to special rules, regulations, and reservations in the patent. These special areas are:

Mt. McKinley National Park, Alaska (see 43 C.F.R. 3826.1); Olympic National Park, Washington (see 43 C.F.R. 3826.2); Death Valley National Monument, California (see 43 C.F.R. 3826.3); Glacier Bay National Monument Alaska (see 43 C.F.R. 3826.4); Organ Pipe Cactus National Monument, Arizona (see 43 C.F.R. 3826.5). The Act of September 28, 1976 (90 Stat. 1342, 16 U.S.C. 1901) prohibits further mining locations in these national parks and monuments.

**King Range National Conservation Area, California:** Mining claims are not prohibited, but those located after October 21, 1970 are subject to strict regulations and inspection of all mining activity (see 43 C.F.R. 3827).

**1-25 Acquired Lands:** Minerals on acquired lands are not generally open to mineral entry. These minerals are possibly subject to leasing only (see 43 C.F.R. 3500).

**1-26 Update:** In order that mineral surveyors may keep abreast of new laws it is desirable that the Office of Chief, Division of Cadastral Survey, Washington, D.C. keep the mineral surveyors advised, furnishing copies of the Acts and pertinent regulations, so far as it is practicable to do so. Mineral surveyors may also keep abreast of new legislation through the local offices of the BLM, their congressmen and by becoming members of local mining associations and attending their meetings.

#### State Mining Laws

**1-27** Both the Acts of 1866 and 1872 provided for recognition of "*local customs or rules of miners* in the several mining districts so far as the same are applicable and not inconsistent with the laws of the United States."

(R.S. 2319, 30 U.S.C. 22). C.F.R. 3831.1 states in part "(c) *complying with the State Laws*, regarding the recording of the location in the county recorder's office, discovery work, etc. As supplemental to the United States mining laws there are *State statutes* relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims."

43 C.F.R. 3841.4-2 states in part: "... 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations of *State or Territorial laws* in force . . ." and 43 C.F.R. 3841.4-6 "the location notice must be filed for record in all respects as

required by the *State or Territorial laws*, and local rules and regulations if there be any.”

Requirements of State law as to mining locations must be complied with if they are not repugnant to the United States mining laws. *South Dakota v. Madill*, 53 I.D. 195 (1930).

It is very clear that State laws must be complied with and some states go so far as to state that if the essentials of discovery and location are not complied with, the claim shall be null and void. Also, location certificates that do not contain the information set forth in the law, including an adequate description, shall be void.

The mineral surveyors cannot ignore state law, yet there are areas where they should not force the claimant to comply, such as failure to do the necessary discovery work as long as a discovery point has been designated. In such cases the claimant should be advised of the apparent discrepancy. At his insistence, the survey should be executed and processed to show the facts and conditions as they exist, leaving the matter to adjudication during patent proceedings. On the other hand, an inadequate description in the location certificate is justification for requiring an amended certificate.

Each mineral surveyor should obtain a copy of the state mining laws as soon as possible after receiving an order for survey in that state. The Chief, Branch of Cadastral Survey of each state office should have an up-to-date copy of the laws for his state, and advise the Chief, Division of Cadastral Survey at Washington, D.C. of changes as they occur so that he may keep all mineral surveyors advised.

Copies of state laws, in pamphlet form, are usually available from the State Bureau of Mines or Geological Survey, the Secretary of State or Attorney General.

Do not confuse state laws pertaining to the location of mining claims on the public domain with state laws covering the location of state lands. Arizona, for instance, allows the staking of mining claims on state lands and publishes rules and regulations governing such appropriation. Most states, however, lease their minerals.

Following is an abstract of the state laws in force so that mineral surveyors and cadastral surveyors will have an immediate source of information. The abstract is by no means

complete, but contains only the essentials, and is not a substitute for the laws themselves.

## 1-28 ALASKA

### Lode Claims:

*Location notice* containing name of claim, name of locator(s), date of location and approximate bearings and distances between corners shall be posted at the northeast corner of the claim.

Substantial *monuments* of stone or posts not less than three feet high and three inches in diameter, marked with name of claim, position or corner number and direction of boundary lines to be erected at each corner; witness corners shall be marked to indicate position of true corner. Cut out, blaze or mark boundary lines.

*Location Certificate:* Record in recording district (Alaska does not have counties) within 90 days of posting, containing in addition to information contained in the location notice, length and width of claim and reference to a natural object or permanent monument. (Late filing prior to intervening rights renews the location.)

### Placer Claims:

*Location notice* containing same information as lodes, except giving length and width rather than metes and bounds, to be posted on one of the corners.

*Monumentation:* same as for lodes.

*Location Certificate* and recording: same as for lodes.

*Restrictions on precious metal placers* are:

1. Individual claims limited to 20 acres and 1320 feet, aggregate length.
2. Association claims limited to 40 acres and 2640 feet in length.
3. Location by agent to be supported by recorded power of attorney, limited to two principals per agent in any recording district.
4. Annual labor of \$100 for each 20 acres or excess fraction required.

### Other:

*Amended locations*, notices and certificates are provided for.

*Annual Labor:* Requirements same as federal law, except for precious metal placers, but in conflict with the Act of October 21, 1976 regarding failure to file.

*Discovery Work:* None required.

**1-29 ARIZONA****Lode, Placer and Mill Site Claims:**

*Location notice:* Containing name of claim; name and address of locator(s); date of location; length and width of claim and distance from the location monument to each end of the claim, in feet; the general course of the claim; a reference to some natural object or permanent monument; the section, township and range, if known, shall be posted on a conspicuous monument of stones not less than three feet in height, or a post at least four feet above ground, at one corner within the boundaries of the claim.

*Monumentation:* Within 90 days erect six substantial posts projecting at least 4 ft. above ground or substantial stone monuments at least 3 ft. high, one at each corner and one at the center of each end line of a lode, marked to identify the corner or end center; posts may be of any material readily distinguished as monuments and shall be no less than 1½ inches in cross section.

*Location Work:* None required after September 3, 1978.

*Recording:* Within 90 days record in the office of the County Recorder a copy of the location notice containing the section, township and range (protracted, if unsurveyed), to which has been attached a map based upon a survey commensurate with the ability of the locator, no more than 8½ by 14 inches in size at a scale of one inch equals not more than 2000 feet, containing:

1. The name of the claim.
2. Whether the claim is a lode, placer or mill site.
3. The locality, giving the section, township and range with tie to a monument of the public survey, or if unsurveyed to a survey monument of a U.S. Government Agency or U.S. Mineral Monument, or, if none can be found, to a prominent natural object or permanent monument.
4. The scale of the map.
5. The county in which the claim is situated.
6. A north arrow.
7. The type of corner and location monuments used.
8. Bearing and distance between corners.
9. If a placer or mill site described by legal subdivisions, the map shall give the legal description instead of items 3 and 8 above.

**Other:**

*Abandonment:* Failure to perform all the acts of location within the specified time constitutes abandonment.

*Annual Assessment Work:* Same as Federal, with form of affidavit given, to be recorded by December 31 of the assessment year.

*Relocation,* by owner and of abandoned claims, provided for, using the map instead of location work.

*Existing claims:* Owner may file map by October 21, 1980 which shall constitute a rebuttable presumption that the claim was monumented on the ground so that its boundaries could readily be traced.

**1-30 ARKANSAS**

No state laws.

**1-31 CALIFORNIA****Lode Claims:**

*Location notice* containing name of claim, name and current mailing or residence address of the locator(s), *length* claimed along the course of the vein each way from the *point of discovery* and *width* claimed on *each side of the center* of the claim, in feet, general course of vein, date of location (being date of posting) and reference to a natural object or permanent monument, shall be posted in or on a substantial monument at the point of discovery.

*Monumentation:* Conspicuous and substantial monuments consisting of a wooden post or stone structure not less than three and one-half inches diameter, or metal post not less than two inches diameter, set at least one foot in the ground and projecting at least three feet above ground, or stone mound at least three feet high, with sufficient marks to designate the corner and name of claim, shall be erected at each corner and center of each end line within 60 days from date of location. Witness corners provided for.

*Recording:* Within 90 days of posting, record a true copy of the location notice with the county recorder with a statement by the locator of the monumentation and markings together with the section, township, range and meridian.

**Placer Claims:**

*Location notice* same as for lodes except for description which shall be the number of feet or

acreage claimed with a description referenced to some natural object or permanent monument, posted on a substantial monument at the point of discovery.

**Monumentation:** Mark the boundaries and erect at each corner a substantial monument as specified for lodes, except where described by legal subdivisions, such description being deemed the equivalent of marking. (No time limit given, other than the 90 days for recording.)

**Recording:** same as for lodes.

### **Tunnel Right:**

**Location notice:** Same as for lodes except for description which shall be the proposed course of the tunnel and a description referenced to some natural object or permanent monument, posted on a substantial monument at the face of the tunnel. (No name for the tunnel is called for.)

**Monumentation:** Same monuments as for lodes placed along the lines of the tunnel on the surface no more than 600 feet apart from the face to the terminus of 3000 feet therefrom.

**Recording:** same as for lodes.

### **Mill Sites:**

**Location and claim boundaries marked as for placer claims,** except that location monument may be anywhere within the claim.

**Recording:** same as for lodes.

### **Other:**

**Amended location and notice and relocation** provided for.

**Annual Labor, remonumentation and remarking of corners:** Affidavit of labor as required by federal law must be filed within 30 days of the time limit for performance (end of assessment year) and, in addition to the usual statements and descriptions, a statement that all corners and notices are in place and are properly marked; an additional 30 days is allowed for a supplemental affidavit if the original was filed by someone other than the owner. Failure in such case constitutes *prima facie* presumption of abandonment.

**Survey and monumentation** by a United States Mineral Surveyor or land surveyor licensed in California together with filing of field notes for record with the location notice, constitutes *prima facie* evidence of the facts therein.

**Penalties** are provided for false statements and removal or destruction of monuments.

**Location (Discovery) Work:** None required (law amended in 1965 for placers, 1972 for lodes), except in the case of a tunnel right.

**Survey of Location:** United States Mineral Surveyors are permitted to make and record location surveys.

## **1-32 COLORADO**

### **Lode Claims:**

**Location notice** or plain sign to be posted at the point of discovery on the surface containing name of the lode (claim), name of locator(s), and date of discovery.

**Discovery (Location) Work** in the form of a shaft ten feet deep or deeper if necessary for discovery, or open cut, crosscut or tunnel which cuts a lode ten feet beneath the surface, or adit at least ten feet in along lode from point of discovery to be completed within 60 days from date of discovery, or file a map with the location certificate based on an actual ground survey (see below).

**Monumentation:** Surface boundaries to be marked by six substantial posts, hewed or marked on the sides facing the claim, set in the ground (or in a mound of stones on bedrock) one at each corner and one at the center of each side line. Witness corner, suitably marked, may be used as necessary.

**Recording:** Within three months from date of discovery, file with the county recorder a location certificate containing the name of the lode (claim), name of locator(s), date of location, the number of lineal feet claimed on each side of discovery shaft (similar working as provided above, or discovery point), the general course of the lode and such description as shall identify the claim with reasonable certainty.

**Field Survey and Map:** In lieu of a discovery shaft (or similar working) and within the time required for filing the location certificate, attach to the location certificate for recording a map at a scale of 1" = 500' prepared from an actual ground survey showing the name and address of the discoverer of the claim, the legal subdivision upon which the claim is located if on surveyed land, courses and distances of the boundaries with tie to the nearest section or quarter section corner or permanent monument if on unsurveyed land, thus readily identifying the claim.

### **Placer Claim:**

**Location notice** or sign same as lode but also giving number of acres or feet claimed.

*Discovery (Location) Work:* None.

*Monumentation:* At each angle point (corner) of claim, substantial posts as called for under lodes.

*Recording:* Within 30 days from date of discovery file with county recorder, containing name of claim, name of locator(s), date of location, number of acres or feet claimed and description referenced to natural object or permanent monument.

**Mill Sites:** Mill sites are simply auxiliary to the working of mineral claims and the location for a mill site should be made in substantially the same manner as that of a lode or placer claim. There must be satisfactory proof that land claimed as a mill site is not mineral in character. No assessment work is required on mill sites but without patent they can only be held by using them for the purposes for which they were located.

**Tunnel Claim:** Record, specifying the place of commencement and termination with names of interested parties.

**Other:**

*Relocation* (Amended and Additional) by owner, and relocation of abandoned claims provided for.

*Annual Labor:* As required by federal law, affidavit may be filed within six months of the end of the assessment year.

**1-33 FLORIDA**

No state laws.

**1-34 IDAHO**

**All mining claim locations:**

*Location notice* to be posted at one corner of the claim containing name of locator(s), name of claim (whether lode or placer), date of location, mining district and county, directions and distances which describe claim and tie from corner where notice was posted to natural object or permanent monument as will fix and describe the site of the claim.

Substantial *monuments* or posts at least four feet in height and four inches square or in diameter, marked with the name of the claim, the position or number of the corner and direction of boundary lines shall be placed at each corner or angle. The boundary lines shall be marked so they can be readily traced. Provisions for witness corners marked to indicate true position.

*Recording:* Within 90 days file for record a copy of the location notice with the county recorder; failure to do so constitutes abandonment. Attached to notice must be an affidavit of one of the locators stating he is a citizen of the United States (or declared intention to become one), he is familiar with the ground, that it has not been previously located but if located, abandoned or defective.

**Other:**

*Annual labor* same as federal, affidavit required 60 days after end of assessment year; except patent survey with affidavit, including cost, by U.S. Mineral Surveyor may, if sufficient, be used for one year's work.

*Discovery or Location Work:* None required; law amended in 1970.

*Additional Certificate* (amended location) and *Location of Abandoned Claims* provided for.

**1-35 LOUISIANA**

No state law.

**1-36 MISSISSIPPI**

No state law.

**1-37 MONTANA**

**Lode and Placer Claims:**

*Location notice* containing name of claim, name of locator(s), date of location (posting) and dimensions of area shall be posted at the point of discovery.

*Monumentation:* Within 30 days monument each corner or angle of the claim using a tree eight or more inches in diameter, blazed on four sides, a post four inches square, four feet six inches long, set one foot in ground (or mound of earth and stone four feet or more in diameter and two feet or more high if on bedrock), a squared stump of requisite size surrounded by such mound, a stone at least six inches square, 18 inches long, set two-thirds in the ground, with mound of earth and stone alongside at least four feet in diameter, by two feet high, or a boulder at least three feet above ground. Monument to be marked with the name of claim and corner number or cardinal point. Other monuments of lesser size to be determined acceptable by a court in the event of a dispute.

*Recording:* Within 60 days, comply with the U.S. Mining Laws and record a certificate of location with the county clerk containing name of claim and whether it is a lode or a placer,

name of locator(s) with post office address, date of location and description, referenced to natural object or permanent monument and section, township and range (projected if on unsurveyed land); directions and distances from discovery point, and verified before an officer authorized to administer oaths. Within 20 days the county clerk will furnish a copy to the Department of State Lands at Helena, Montana.

#### **Mill Sites:**

Located same as lodes or placers but without discovery.

#### **Other:**

*Amended locations*, amended certificates, relocation by owner (but not to avoid annual labor) and relocation of abandoned claims provided for.

Filing of *false claims* prohibited; penalty of not more than five years in state penitentiary or not more than \$5,000 fine, or both.

Recording of affidavit of *annual labor* as required by federal law within 90 days after expiration of assessment year.

*Discovery work*: None required, law amended in 1971.

### **1-38 NEBRASKA**

No state law.

### **1-39 NEVADA**

#### **Lode Claims:**

*Location notice* containing name of claim, name of locator(s) with post office address, date of location, the general course of the vein, the number of feet claimed each way along the course of the vein from the point of discovery, and the width claimed on each side of the center of the vein, to be posted on a monument (as described below) at the point of discovery.

*Monumentation*: Within 20 days from date of posting, erect at each corner of the claim and at the center of each side line a monument consisting of a tree, with top removed, not less than four inches in diameter, blazed and marked, a rock in place with smaller stones on top having an overall height of no less than three feet, a stone no less than six inches in diameter, 18 inches long, set two-thirds in the top of a mound of earth or stone four feet diameter, two and one-half feet high; a post four inches in diameter, four and one-half feet long

set one foot in ground (except on bedrock). All trees, posts or rocks, when not four feet in diameter shall be surrounded by a mound of earth or stone four feet in diameter, two and one-half feet high. Witness corners are provided for.

*Recording*: Within 90 days of posting, record duplicate location certificates with the county recorder containing name of the lode or vein (claim), name of locator(s) with post office address, general course of the vein and number of feet claimed each way from the point of discovery together with the width on each side of the center of the vein, statement that location work consisted of making maps, and the location and description of each corner with the markings thereon.

*Maps*: Within 90 days of posting, file duplicate maps with the county recorder (one of which will be sent to the county surveyor along with the duplicate location certificate) showing the claim or claims, at a scale no less than 500 feet to an inch, the relative position and number of the corners and giving a tie by bearing and distance to a corner of the public land survey or claim location marker if no corner can be found, or if on unsurveyed land. Claim location marker shall be of rock, four feet in diameter at base and at least four feet high, or a steel post or pipe at least three inches in diameter and five feet above ground. Also show the township and range, and if surveyed, the section in which the claim and claim location marker is situated.

#### **Placer Claims:**

*Location notice*: Same as for lodes except that instead of discovery point, a location point anywhere on the north boundary, and instead of length and width from discovery point and vein, the number of feet or acres claimed.

*Monumentation*: All corners and location point with monuments as specified for lodes, except when described by legal subdivisions, only the location point need be monumented.

*Recording*: Same as for lodes, except giving number of feet or acres claimed in lieu of lode description. (Apparently no statement regarding map or corner descriptions necessary.)

*Maps*: Same as for lodes, but if described by legal subdivisions, map shall show the legal subs.

#### **Mill Sites:**

*Location notice*: Same as for placers except point of posting not designated; name of lode,

mine or mill of which locator is owner to be given.

*Monumentation:* Same as for placers (and lodes) so far as applicable.

*Recording:* Within 30 days file for record with the county recorder duplicate certificates similar in all respects to the notice posted.

*Maps:* Two copies of a map, not exceeding three by four feet in size to be filed for record with the location certificates.

### **Tunnel Rights:**

*Location notice* to be posted at the face or point of commencement containing the name of the locator(s) and post office address, proposed course or direction of tunnel, height and width thereof, position and character of boundary monuments and reference to natural object or permanent monument.

*Monumentation:* Line of tunnel to be staked at intervals of not more than 300 feet from commencement to 3000 feet therefrom; monuments to be the same as for lodes and placers.

*Recording:* Within 60 days record with county recorder (duplicate certificates) similar in all respects to notice posted.

*Maps:* File for record, with location certificate, two copies of a map as required for lodes.

### **Other:**

*Amended locations and certificates and relocation* of abandoned claims are provided for.

Affidavits of *annual labor* are provided for; to be recorded 60 days from completion of work.

*Discovery or Location Work:* None required, other than the map (law amended in 1971).

*False information* willfully made on location certificates or maps a felony punishable by no less than three nor more than ten years in the state prison.

*Survey* with field notes and certificate of survey incorporated into the record by U.S. Mineral Surveyor or land surveyor licensed in Nevada, *prima facie* evidence of the facts therein.

*Location Survey:* United States Mineral Surveyors are permitted to make location surveys.

## **1-40 NEW MEXICO**

### **Lode Claims:**

*Location Notice* containing name of locator(s), intent to locate the mining claim, (name of claim) and description by reference to natural object or permanent monument (date).

*Monumentation:* Mark the location on the ground so that its boundaries may be readily traced. Four substantial posts or monuments, one at each corner. No specifications.

*Discovery Work:* A shaft, cut, tunnel or adit at least ten feet below surface disclosing mineral in place completed within 90 days of taking possession; or a drill hole not less than one and one-half inches in diameter, ten feet or more in depth, disclosing a valuable mineral deposit in place. A substantial post or marker at least thirty inches high inscribed with the name of claim, claim owner, depth of hole and date drilled shall be placed within five feet of the hole. In addition, an affidavit by the owner giving the date of the hole, location within the claim, and mineral discovered shall be recorded in the office of the county clerk within the 90 days.

*Recording:* File for record a copy of the location notice with the county clerk within three months from date of posting.

### **Placer Claims:**

*Location notice* shall be posted at one corner stating name of claim, material located, name of locator(s), and description by legal subdivisions or metes and bounds with tie to natural object or permanent monument, if on unsurveyed lands.

*Monumentation:* A substantial wood post, four feet high, set securely in the ground; or a substantial stone monument, shall be set at each corner of the claim, regardless of whether the claim is on surveyed or unsurveyed lands.

*Discovery Work:* None required.

*Recording:* A copy of the location notice shall be recorded with the county clerk within 90 days of location and posting.

### **Other:**

*Additional and amended locations and relocations* provided for.

*Abandonment* is provided for by filing for record a statement with the county clerk.

*Penalties* are provided for falsifying location notices and affidavits, defacing and changing location notices, destruction of corners, hindering or preventing performance of annual labor and trespass, except for determining performance of annual labor or locating on government land.

*Annual labor:* Affidavit to be filed for record with county clerk 60 days from end of assessment year.

*Private Lands:* Owners may make regulations, not in conflict with laws of the United States or New Mexico; governing the location of mining claims and file for record with county clerk.

### 1-41 NORTH DAKOTA

#### Lode Claims:

*Location Notice:* to be posted at point of discovery containing name of lode, name of locator(s), date of discovery, length, in feet, each way from discovery, and width, in feet, on each side of lode. *Width limited by state law to 150 feet on each side of lode; may be modified by county.*

*Discovery Work:* Shaft, cut or tunnel at a depth sufficient to disclose the vein or lode, or adit ten feet along vein or lode, or drill hole, not less than one and one-half inches in diameter and of sufficient depth to reach, cut or expose vein or lode. Work to be completed within sixty days from time of uncovering or disclosing a lode (posting).

*Monumentation:* Eight substantial posts, hewed or blazed on the side facing the claim, marked with the name of lode and corner, end of lode, or side center sunk in ground or in monument of stone.

*Recording:* Within sixty days file for record with the county register of deeds a location certificate containing, in addition to information in location notice, the general course of the vein, and date of location.

#### Placer and Other Mining Claims:

No state law.

#### Other:

*Additional certificate and relocation,* both by owner and abandoned claims, provided for.

*Annual labor:* Provided for, but no affidavit.

*Surface owner:* May demand security from miner.

### 1-42 OREGON

#### Lode Claims:

*Location notice* containing name of lode or claim, name of locator(s), date of location, linear feet claimed each way from point of discovery along the vein or lode and width on each side of the vein or lode, and the general course of the vein or lode, defining the boundaries and reference to natural object or permanent monument.

*Monumentation:* Within 30 days after posting

mark with six substantial posts, not less than three feet above ground and not less than four inches square or in diameter, or substantial mounds of stone or earth and stone, one at each corner and one at each center end.

*Recording:* Within 60 days from posting, file for record with the county clerk a copy of the location notice.

#### Placer Claims:

*Location notice:* containing name of claim, name of locator(s), date of location, number of feet or acres claimed, and a description by legal subdivisions or with reference to a natural object or permanent monument, to be posted at some conspicuous place on the claim.

*Monumentation:* Unless located by legal subdivisions, corners shall be monumented with same size materials designated for lodes, with monuments no less than 1320 feet apart.

*Recording:* Same as for lodes.

#### Mill Sites:

*Location notice* same as for placer claims except for reference to appurtenant mining claim (lode or placer).

*Monumentation:* Same as for placers.

*Recording:* Copy of location notice to be recorded within 30 days.

#### Other:

*Amended notices* of location provided for.

*Annual labor* affidavit provided for; file within 30 days of completion of work.

*Legal Subdivision* includes a subdivision of a state survey.

*Discovery or Location Work:* None required. Law amended in 1971.

### 1-43 SOUTH DAKOTA

#### Lode Claims:

*Location notice* to be posted at the place of discovery on discovery monument, containing name of lode, name of locator(s), date of discovery, feet in length on each side of discovery and feet in width on each side of lode.

*Monumentation:* Eight substantial posts hewed or blazed on the side facing claim, one at each corner, one at each end of the lode and one at the center of each side line, sunk in the ground, or in mound of stone if on bedrock, marked with the name of the lode and the corner, end or side.

*Recording:* Sixty days from date of discovery file for record with the county register of deeds a location certificate containing the same infor-

mation as in the location notice, except date of location instead of date of discovery, and in addition the general course of the vein and a description with reference to a natural object or permanent monument.

**Placer and other mining claims:**

No state law.

**Other:**

*Additional certificate and relocation*, both by owner and abandoned claims, provided for.

*Annual labor*: Same as federal, affidavit provided for, no time limit for recording.

*Surface owner* may demand security from miner.

*Penalties* are provided for violence, threats of violence or intimidation of mining claimants or anyone at work on the claim by two or more persons.

**1-44 UTAH**

**Lode Claims:**

*Location notice* containing the name of the claim, name of locator(s), date of location, linear feet claimed each way along the course of the vein from the point of discovery, width on each side of the center of the vein, the general course of the vein and a description with reference to a natural object or permanent monument.

*Monumentation*: Must be distinctly marked on the ground so boundaries can be readily traced. (Presumably at the corners, no specification as to material and size of monuments.)

*Recording*: Within 30 days, a substantial copy of the location notice must be filed for record with the county recorder.

**Placer Claims and Mill Sites:**

Same as for lodes, except the location notice shall state the number of feet or acres claimed, instead of the length and width each way from the point of discovery.

**Other:**

*Assessment Work* (Annual Labor): Provides for posting a notice describing the work at the discovery monument and at the workings; affidavit to be filed 30 days after completion.

*Penalty* provided for interfering with notices, stakes or monuments.

*Discovery or Location Work*: None required.

**1-45 WASHINGTON**

**Lode Claims:**

*Discovery notice* to be posted at the discovery at the time of discovery giving the name of the lode, name of locator(s) and date of discovery.

*Monumentation*: Substantial posts not less than four inches in diameter, set in the ground, not less than three feet high, or substantial stone monuments not less than three feet high, bearing the name of the lode and date of location must be set at each corner. Claim boundaries must be brushed out, and trees blazed if such vegetation exists.

*Recording*: Within 90 days from date of discovery, record in the county auditor's office a location notice containing the name of locator(s), date of location, feet in length each way from discovery, general course of the lode, and a description referenced to a natural object or permanent monument.

**Placer Claims:**

*Location notice* or certificate to be posted in conspicuous place at the point of discovery containing name of claim, name of locator(s), date of discovery and posting of notice, a description by legal subdivisions, or a description with reference to a natural object or permanent monument.

*Monumentation*: Within 30 days from discovery, including legal subdivision placers. (No specifications as to monuments, but see requirements for lodes.)

*Recording*: Within 30 days from discovery record notice or certificate of location with the county auditor.

*Development work*: Within 60 days perform labor equal to \$10 for each 20 acres, and file with the county auditor an affidavit showing performance and nature and kind of work done.

**Other:**

*Amended certificate* (location) and *relocation* provided for.

*Assessment work* (Annual Labor): Affidavit provided for, to be filed within 30 days of the expiration of the assessment year.

**1-46 WYOMING**

**Lode Claims:**

*Location notice* to be posted at the point of discovery containing the name of the lode or

claim, the name of the discoverer and locator, and date of discovery.

*Discovery work:* A shaft ten feet deep, or cut or tunnel ten feet long, disclosing the vein at a depth of ten feet; or a drill hole or holes no less than one and one-half inch in diameter, aggregating at least 50 feet deep with no one hole less than ten feet deep, to expose deposits of valuable minerals. One hole shall be designated the discovery hole and shall be marked with a substantial post or other permanent marker within five feet of the hole, firmly set in the ground and at least 30 inches above ground on which shall be placed the name of the claim, the owner, depth of hole and date of drilling. Work to be done within 60 days from date of discovery.

*Monumentation:* Boundaries to be marked by six substantial monuments of stone or posts, hewed or marked on the side facing the claim, sunk in the ground, one at each corner and at the center of each side line. Witness corners marked to indicate true point provided for.

(NOTE: The above are prerequisite to filing a location certificate.)

*Recording:* Within 60 days from date of discovery record a location certificate with the county clerk containing the name of the claim, name of the locator(s), date of location, length along the vein each way from the center of discovery shaft, the amount of surface ground claimed on either side of the discovery shaft, *the discovery shaft being always equally distant from the side lines*, and a description tied to a natural object or if on surveyed land to a section or quarter section corner, as shall identify the claim beyond question.

#### **Placer Claims:**

*Location notice* to be posted on claim containing name of claim, name of locator(s), date of discovery and number of feet or acres claimed.

*Discovery Work:* None.

*Monumentation:* Substantial posts or stone monuments to be placed at each corner of the claim.

(NOTE: The above are prerequisite to filing a location certificate.)

*Recording:* Within 90 days after date of discovery record with the county clerk a location certificate containing the name of the claim, designating it as a placer claim, the name of locator(s), the date of location, the number of feet or acres claimed and a description of the

claim by designation of natural or fixed objects as shall identify the claim beyond question.

#### **Other:**

*Additional location* certificate (amendment) and relocation provided for.

*Annual labor:* Affidavits provided to be recorded with the county clerk within 60 days after completion.

*Surface owners:* Security from the miner provided.

*Penalties* are provided for force or threats by two or more persons destroying mining property, including notices and amendments, and defrauding, cheating or swindling, the latter being a felony.

### **Survey-Legal Interrelationships**

1-47 The mineral surveyor and the cadastral surveyor responsible for processing mineral surveys must be thoroughly familiar with both federal and state law relating to the appropriation of minerals on the public domain.

The mineral surveyor may be the first detailed contact of the claimant with a government official, and he will look to the mineral surveyor for guidance through the first steps to obtaining patent, i.e., the survey, including discovery and work requirements.

If the location does not meet the requirements set forth in the law, the mineral surveyor may suggest the corrective steps necessary, including an amended location. If the location certificate is too vague, an amended certificate will be in order. If the development work includes improvements that will not count as patent expenditure or if common improvements will not meet the tests set forth in the chapter on mineral surveys in the *Manual of Surveying Instructions*, the mineral surveyor should discuss the matter with the claimant and suggest corrective measures.

The matter of a valid discovery or what constitutes sufficient mineral for patent is a complicated matter. While the mineral surveyor may discuss the subject in generalities, as set forth in the next chapter, it is not his duty to rule on it, this being a matter for the mineral examiner and adjudicators to determine. He may guide the claimant in properly locating and surveying his claims for patent.

If the mineral surveyor feels that the claimant is not justified in proceeding to patent or if he

feels that the land is being obtained for purposes other than mining, he may decline to make the survey, since it is a matter of private contract.

**1-48 Relationship of surveyor and attorney:** If the claimant has employed an attorney-at-law, the surveyor and attorney should work closely together.

The surveyor should recognize that he is not schooled in the law and should respect the attorney's opinion; on legal matters it is the attorney's responsibility.

On the other hand, the attorney is not schooled in surveying and the surveyor should guide him in technical matters. The surveyor may refuse to comply with requests that are in conflict with his requirements of survey and that of the Bureau of Land Management. Doubtful situations may be referred to the Bureau of Land Management for further instructions.

Many attorneys are not expert in mining law and may require guidance from the mineral surveyor. Should the surveyor find himself in a situation where legal advice is necessary, and the claimant has not employed an attorney, he should discuss the matter with the claimant and recommend obtaining the services of a lawyer.

**1-49 Extralateral Rights (Apex):** Both the Acts of 1866 and 1872 granted the right to follow a vein downward on its dip beyond the vertical boundaries of the claim. R.S. 2322, 30 U.S.C. 26 states in part:

"The locators of all mining locations made on any mineral vein, lode or ledge situated on the public domain . . . shall have the exclusive right of possession and enjoyment . . . of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right to possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their

locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or lodes."

Extralateral rights exist only when the end lines are substantially parallel and then only when the apex of the vein passes through at least one of the end lines.

If the vein passes through both end lines it may be followed with all its dips and variations beyond the side lines within the vertical planes of the end lines (see Claim A of Figure 1).

Where the vein passes through one end line and one side line, one end line is theoretically moved by protraction to the point where the vein leaves the side line, and extralateral rights apply on the vein only to the extent of the foreshortened claim (see Claim B of Figure 1).

Where the vein leaves the claim through both side lines, there are no extralateral rights and the vein may be mined only in the area contained within the vertical boundaries of the claim (see Claim C of Figure 1).

Two claims might be located along the strike of the same vein in such a manner as to produce diverging end lines as in Claims D and E of Figure 1. In this case a portion of the vein beneath the surface (F) belongs to neither claim and must be appropriated by staking claims the vertical boundaries of which will encompass the unappropriated segment.

Where veins of two different claims unite on the dip, the portion below the junction belongs to the senior claim; if the veins cross, rather than unite, the junction belongs to the senior claim.

An outcrop is not an apex in the case of bedded deposits that are tilted or outcrop on a canyon wall. Claims located on the outcrops of bedded deposits have no extralateral rights.

Where the vein is wider than patent, the extralateral rights belong to the senior claim. A claim located on the dip, though senior, loses the vein to a junior claim properly located on the apex. The latter issues have been the subject of numerous lawsuits, and there have been decisions favoring each side.

In Figure 1, Claims A, B, C, D and E were located along the apex of a vein dipping to the south in alphabetical order, "A" being the oldest claim. The portions of the vein belonging to each claim are shown by various cross-hatching.

**1-50 Riparian Rights:** Although not a general rule, occasions have arisen when a

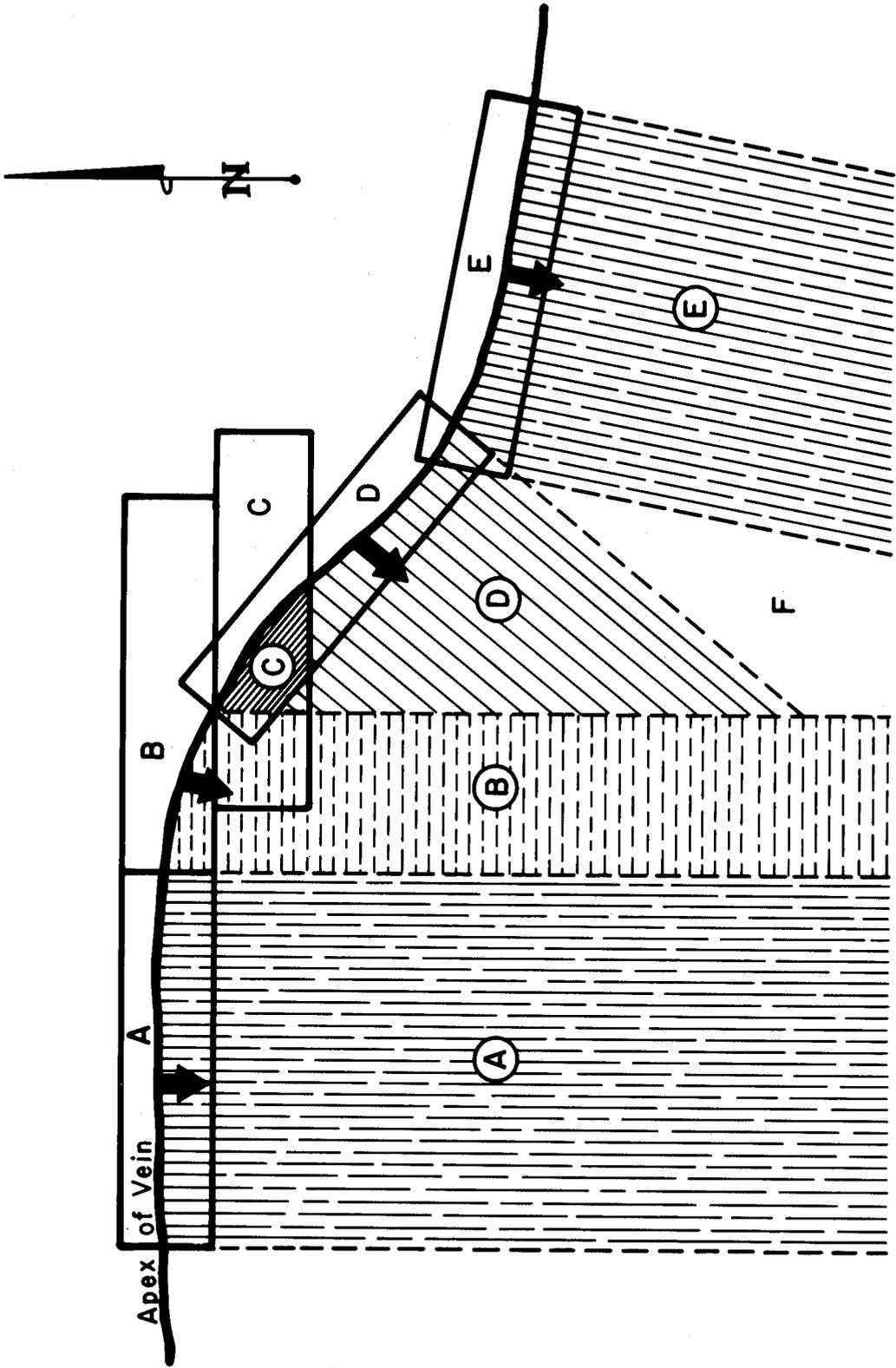


FIG. 1

mining claim adjoins a navigable body of water and the shoreline or mean high water mark becomes the boundary of the claim. In such instances it is proper to run such a boundary as a meander line and the field notes of the mineral survey should state that it is a meander line of the mean high water line and that the corners of such line are meander corners. The situation is well stated in *Alaska United Gold Mining Co. et al. v. Cincinnati-Alaska Mining Co. et al.*, decided April 18, 1916, 45 L.D. 330:

“The rule as to meander lines is applicable to mining claims, and where in the course of an official patent survey of a mining claim abutting upon a navigable body of water a meander line has been run, which follows as nearly as practicable the shore line of the water, such shore line and not the meander line, must be taken as the boundary of the claim when patented according to the plat and field notes of the survey.”

“Where one of the boundaries of a patented mining claim is a navigable body of water, all accretions formed after survey and prior to entry and patent of the tract passed under the patent, and all accretions that may thereafter form, become the property of the riparian proprietor.”

Following is an example of a mining claim with a meander line as a boundary taken from Mineral Survey 2154A Alaska. While the notes do not specifically call for meander corners, they do state that the line follows the mean high water mark of Cook Inlet (Figure 2). It is not necessary to monument the intermediate angle points along the meander line, as the example shows.

Should one entire end of a claim be delineated by a meander line, the end line will be protracted parallel to the inland end line at the farthest seaward point for the purpose of determining extralateral rights.

