

# **LAND TITLE SERVICES**

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February 16, 2007

Frank Pipgras  
Lewis/Pipgras  
1601 Response Road  
Suite 190  
Sacramento, Ca. 95815

Re: Amador County Patent Reservations

Dear Mr. Pipgras:

Pursuant to your request I have reviewed Placer Title Company report 404-7274 and the Patents supplied.

Exception number 7 of the report makes reference to reservations in the Patents for the subject property. The first reservation is for the rights of the "proprietor of any other vein, lode, or ledge, the top or apex of which lies outside of the boundary" of the land described in the patent. The second reservation is for water rights and rights to ditches, reservoirs and canals.

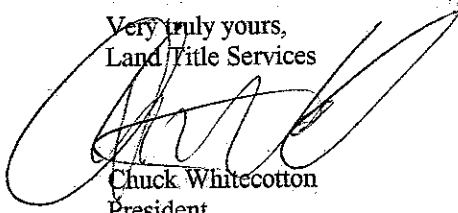
The reservation regarding proprietary rights is to protect the owner of a mining claim on an adjacent parcel where the vein, which has its apex on the adjacent parcel, to follow that vein even though it crosses into the patented land. This is a common reservation in mineral patents or homestead patents in mining areas.

Generally there are no adverse affects as a result of the reservation unless there are active mines in the area.

Enclosed are copies from the Hand Book of Mineral Lands and Ogden's California Real Property Law dealing with mining claims and the possessory title regarding mining claims.

If you have any further questions please let me know

Very truly yours,  
Land Title Services



Chuck Whitecotton  
President

ARTHUR G. BOWMAN

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*Ogden's Revised  
California  
Real Property  
Law  
Volume II*



The TI Corporation (of California)

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Berkeley, California

Co. (1941) 17 C2d 213, 218, 110 P2d 13, 16. This confirmation of pre-existing rights is reflected in *Ames*, in which the court held that mining claim rights in certain land were superior to a railroad grant of the land made after inception of the claim, even though the railroad grant was made under an act passed before the Mining Act of 1866.

b. [§26.22] Lode and Placer Mining Claims

The basic statute governing location and patenting of both lode and placer mining claims is the Act of May 10, 1872 (17 Stat 91), and its amendments. It has been modified, however, by a new policy with regard to oil lands. By the President's executive orders authorized by the Pickett Act of 1910 (43 USC §§141-143 (§143 repealed in 1960)), potential oil lands were withdrawn from entry under the mining laws. Then the Leasing Act of 1920 (30 USC §§181-287) provided that thereafter deposits of coal, phosphate, sodium, oil, oil shale, and gas could be disposed of only by lease from the United States, thereby precluding, in effect, further location and acquisition of lands containing those minerals under a mining claim, except valid claims existing on the date of the act. Other minerals, however, remained subject to acquisition under the mining laws. These statutes have been amended from time to time; when a title problem arises, the examiner must refer to the latest applicable amendment. For discussion of oil placer claims, see §26.26.

A lode mining claim is ordinarily acquired by (1) entry on unappropriated public mineral lands, (2) discovery of a vein or lode (*i.e.*, a zone or belt of mineralized rock lying within boundaries clearly separating it from neighboring rock), (3) appropriation by posting and recording a notice of location (containing name of locator, date of location, and a description of the claim by reference to some natural object or permanent monument that identifies the claim), (4) marking the claim's boundaries, and finally (5) the work of development. The claim is usually for land in the form of a parallelogram, which may extend to 1500 feet along the course of the vein or lode and 300 feet on each side of the center line (apex) of the claim as marked on the surface. Failure to record notice of location is not fatal; taking possession and working the claim may be sufficient and may result ultimately in a patent. The law requires annual assessment work on each claim of not less than \$100 worth of labor or improvements, but Congress has suspended this requirement during various periods. If the claim is located in a mining district, regulations adopted by the miners as to location, manner of recording, and work necessary to hold the claim, if not in conflict with state or federal laws, also control. 30 USC §§21-54, as amended from time to time.

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A *placer* mining claim includes all forms of mineral deposits, except veins of quartz or other rock in place. It is acquired in the same manner as a lode claim, but in size and form it includes not more than 20 acres located according to legal subdivisions when the public land surveys extend over the land, although a claim by an association of persons may include as much as 160 acres. 30 USC §§35-36.

A mining claim may be lost by abandonment or forfeiture, *e.g.*, when another person enters on the location, after the locator fails to perform the required annual assessment work, and completes an adverse location before resumption of work or a relocation by the delinquent owner. The United States Supreme Court has held, however, that mere failure to perform work does not ipso facto forfeit the claim. Under the mining laws, the claim owner is permitted to resume work if the claim has not been lost by relocation by another, and "such resumption does not restore a lost estate . . . it preserves an existing estate." *Wilbur v U.S. Ex Rel Krushnic* (1930) 280 US 306. Therefore, it seems clear that, absent relocation by another, a mining claim cannot be regarded as lost by abandonment or forfeiture merely because the original claimant has not been in possession of the location or performed development work for any period of time.

c. [§26.23] Nature of Title

The owner of a valid mining claim has in effect a vested, possessory title, regarded as an estate in fee against all parties except the United States; the interest is real property and may be transferred or encumbered as such. This title embraces the land (not merely the minerals), including the right to possession and enjoyment of the surface within the lines of the claim and, in the case of a lode claim, including also all veins and lodes throughout their entire depth, the top and apex of which lie within the surface lines, but restricted by the claim's end lines. When a valid location has been made and kept alive by performance of all required work, a subsequent patent of land based on entry under an agricultural land law (see §26.8) has been held to convey no title to the portion within the mining location. *Brown v Luddy* (1932) 121 CA 494, 9 P2d 326 (stock-raising homestead).

The owner of a mining claim may obtain a patent from the United States that conveys legal title in fee to the land within the surface lines described and, as to lode claims, as much of the lode as has its apex within the claim's exterior surface boundaries and the right to follow the lode or vein along its dip. 30 USC §26. A lode claim patent may also include not more than five acres of nonmineral land not contiguous to the claim and used by the claimant for mining or milling purposes. 30

USC §42. Although the mining laws do not require the claimant to patent his claim, a patent is essential to a perfect and insurable title.

## 2. Mining Claims: Title Practice

### a. [§26.24] Unpatented Claims

Title to a mining claim cannot be determined from examination of public records. Documents affecting such a title may be recorded, but the record is rarely a complete chain of title or determinative of the claim's true ownership. In fact, title to a claim may be acquired or lost without any record evidence. In addition, descriptions in mining claim documents (*e.g.*, notice of location) are usually so indefinite that the claim cannot be identified from record data as covering any particular parcel of land. Tracing title of a mining claim is a task requiring consideration primarily of the parties' acts, in addition to those disclosed by the public records (including the records of any mining district within which the claim is located), and the facts of possession.

As a consequence, title coverage of ownership of an unpatented mining claim should be limited to a report or abstract of the particular matters shown by the title company accounts for a specified parcel of land and, if requested, those matters disclosed by the indexes in the recorder's office under the names of the parties designated, and, perhaps, under the name of the claim. When title to land is insured, standard coverage policies carry a mining claim exception. In extended coverage policies (*e.g.*, ALTA loan policy), a mining claim exception is inserted unless the probability of such a claim is remote, *e.g.*, subdivided urban land. A mining claim exception is unnecessary in a policy covering lands within a confirmed Mexican grant, because only public lands can be the subject of a mining claim.

Periodically, some general principles of mining law applicable to unpatented mining claims prove useful to the title examiner. It is important, for example, to recognize that a valid mining claim serves in effect to withdraw the claimed land from the public lands subject to disposition under agricultural land laws (see §26.8), and that it has priority over a subsequent agricultural patent (see §26.23). When the title insurer considers elimination of the general policy exception of mining claims, knowledge of certain rules of mining law (see §§26.21-26.23) is desirable and perhaps essential in appraising title hazards.

### b. [§26.25] Patented Claims

When a patent for a mining claim has been issued by the United States, problems related to acquisition and perfection of the claim are

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resolved, the claim's boundaries are identified, and title to the land becomes the subject of title examination and insurance in the same manner as other patented land. The title examination must, however, extend beyond that customarily followed. The initial examination must include an index search in the recorder's office for the years before issuance of the patent, under the name of the patentee and any other parties found to have an interest in the claim. The purpose of this search is to locate instruments and matters affecting the title that may not have been posted to the property accounts. For example, the title acquired under the patent might have inured to the benefit of a prior grantee, or might be subject to liens or encumbrances created or suffered before the patent. In addition, ownership of mining land by cotenants is subject to special rules governing mining partnerships. See §6.85 for rules. Finally, the title examiner must recognize that some rights and reservations established by law are peculiar to mining claims and may or may not be reflected in the patent. These rules on searching and examining, as well as the policy forms that should be used, are prescribed by uniform rules of title practice, evidenced generally by a title company's manual or other company publication.

### 3. [§26.26] Oil Placer Claims

Oil placer claims differ in certain respects from true mining claims. By statute in 1897, the placer mining laws were made applicable to acquisition of oil-bearing lands. 29 Stat 526. A mining claim's validity depends on discovery. With oil placer claims, however, discovery of oil normally does not occur at the time of location. Rather, the claimant has a right of possession to pursue diligently his endeavors to make discovery; he has no mining title before discovery. Lack of diligence in seeking discovery results in loss of the claim, *i.e.*, lapse of a considerable period without oil discovery or without evidence of a continuing effort to make discovery would be strong evidence of abandonment of the claim. On discovery, however, the oil placer claim becomes a vested mining title, subject to performance of annual assessment work and other regulations, with the right to obtain a patent conveying, as with other mining claims, fee title to the land, including all minerals, described in the claim.

Many locators, aware of the limitation of an oil claim before discovery, followed the practice of filing placer claims on potential oil lands based on discovery of gypsum or some other common mineral, thus acquiring a true mining claim and a vested mining title, subject to compliance with mining laws (*e.g.*, performance of annual labor). Failure to

# **Handbook of Mineral Law**

*Field Edition*

by  
**TERRY S. MALEY**

Mineral Land Publications  
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# POSSESSORY TITLE

## A Claim Is Property

The discovery of a valuable mineral deposit within the limits of a mining claim located on the public lands in conformance with state and Federal statutes validates the claim; and the locator acquires an exclusive possessory interest in the claim. The classic statement on a mining claim as property is found in the United States Supreme Court case of *Wilbur v. U.S. ex rel. Krushnic*, 280 U.S. 306 (1930). The Supreme Court said:

When the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term; and may be sold, transferred, mortgaged, and inherited without infringing any right or title of the United States. The right of the owner is taxable by the state; and is "real property," subject to the lien of a judgment recovered against the owner in a state or territorial court. The owner is not required to purchase the claim or secure patent from the United States; but so long as he complies with the provisions of the mining laws, his possessory right, for all practical purposes of the ownership, is as good as though secured by patent.

This possessory interest may be asserted against the United States as well as against third parties,<sup>1</sup> and may not be taken from the claimant by the United States without due compensation,<sup>2</sup> or be declared invalid except in accordance with due process.<sup>3</sup> Fee title remains with the Federal Government until patent issues. The owner of an unpatented claim is entitled to mine, remove and sell all valuable mineral deposits within his claim boundaries that are not subject to extralateral rights of adjacent claim owners. The claimant is also entitled to surface rights necessary for mining operations.

## Quiet Title and Trespass Actions

Quiet title actions and trespass actions apply to mining claims as they do real estate.<sup>4</sup> Furthermore a mining claim comes under the statute of limitations.<sup>5</sup>

## Transfer of Mining Claims

Mining claims may be transferred by deed.<sup>6</sup> And a locator may convey any portion of a mining claim.<sup>7</sup>

## Surface Rights

The Multiple Surface Act of July 23, 1955, was enacted to provide a means for the Federal Government to obtain management rights to surface resources on mining claims locate both before and

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after the Act. As a result any use of the surface of an unpatented claim for purposes unrelated to mining is unauthorized and subject to trespass action by the surface management agency.

### **Rights of Co-owners**

Where two or more persons locate a mining claim, a tenancy in common arises and each locator has the same rights in respect to his share as a tenant in severalty. But any one of the locators holds his interest independently of the other(s) and may transfer, devise or encumber it separately without the consent of the other co-tenants.<sup>8</sup> Where a mining claim is owned by two or more persons the possession of one is the possession of all, and there can be no abandonment by one owner so long as his co-owner continues in possession.<sup>9</sup>

### **Inheritance of Mining Claims**

Upon the death of the owner of a mining claim, the identical rights and interests of the claimant passes to his heirs by descent. These interests may be sold as other property by an executor or administrator.<sup>10</sup>

### **Mining Claims Are Subject to Liens**

Unpatented mining claims are real property, and as such, are subject to liens.<sup>11</sup>

### **Due Process**

The courts and the Department of the Interior have consistently maintained that a mining claim is an interest in and a claim to property and may not be declared invalid except in accordance with due process.<sup>12</sup> Due process means more than notice and opportunity for hearing. It requires the application of fixed, objective rules to facts, and requires that the claimant have a hearing before being deprived of that right. The Bureau of Land Management must apply the Administrative Procedures Act, sections 551 et seq. and 701 et seq. of Title 5, which also governs the right to judicial review.<sup>13</sup>

### **Taxes on Ores**

When ore becomes detached from the earth, it becomes the personal property of the mine owners and is free from any title of the United States. However, the extracted ore may be subject to taxation by the state and the collection of taxes may be enforced by sale as is any other property.<sup>14</sup>

A state does not have the power to make a lien for taxes levied on ore to be a lien on a mining claim, if such lien in any way affects the title of the United States. A state tax levied on a property right of the United States is void. However, if the tax is levied on the possessory right of the locator and can be collected without affecting title of the United States, it is proper for the state to collect the tax.<sup>15</sup>

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### **Holder of Valid Mining Claim Has Right to Patent**

Upon satisfaction of the requirements of the statute, the owner of a valid mining claim has an absolute right to a patent from the United States conveying fee title to the land within the claim. The actions taken by the Secretary of the Interior in processing an application for patent by such claimant are not discretionary and the issuance of a patent can be compelled by court order.<sup>16</sup> Also, the patent may contain no conditions not authorized by law.<sup>17</sup>

There is no requirement for a claimant to apply for a patent to preserve his property right in the claim, but he may continue to extract and remove the locatable minerals until the claim is exhausted, without ever having acquired full legal title to the land.<sup>18</sup> The patent, if issued, conveys fee simple title to the land within the claim, but does nothing to enlarge or diminish the claimant's rights to the locatable mineral reserves.

### **Until Patent Issues, Government Has Right to Enter Lands**

Unless and until the lands within a mining claim are patented to the claimant, they are Federal lands, and the Government retains the right to enter the lands at any time without search warrants, including the right to remove samples from the claim in order to determine whether the land is mineral in character.<sup>19</sup>

### **References - Possessory Title**

1. *Best v Humboldt Placer Mining Co.*, 371 U.S. 334, 336 (1963).
2. *U.S. v. North American Transportation & Trading Co.*, 253 U.S. 330 (1920).
3. *Cameron v. U.S.*, 252 U.S. 450 (1920).
4. *Block v. Elkhorn Mining Co.*, 49 F. 549, 552 (1892), affirmed, 163 U.S. 443.
5. *Lavagnino v. Uhlig*, 71 P. 1046 (1903), affirmed, 198 U.S. 443.
6. *Roseville Alta Mining Co. v. Iowa Gulch Mining Co.*, 24 P. 920 (1898).
7. *St. Louis Mining Co. v. Montana Mining Co.*, 171 U.S. 650 (1898).
8. *Union Oil Co. of California*, A-29560 (Supp.) (July 30, 1965), 72 ID 313.
9. *Alaska Dome Mines*, 52 L.D. 550.
10. *O'Connell v. Pinnacle Gold Mines Co.*, 140 F. 854 (1905).
11. *Bradford v. Morrison*, 212 U.S. 389 (1909).
12. *Cameron v. U.S.*, supra.
13. *Adams v. Witmer*, 271 F.2d 29 (CA Cal. 1959).
14. *Forbes v. Gracey*, 94 U.S. 762 (1877).