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***The Foundation for Natural Resources and Energy Law Annual and Special Institutes (formerly Rocky Mountain Mineral Law Foundation Annual and Special Institutes)*  > *Annual Institutes* > *(1977) Volume 23* > *Chapter 9 (PLACER MINING CLAIMS-SELECTED PROBLEMS AND SUGGESTED SOLUTIONS)***

**PLACER MINING CLAIMS-SELECTED PROBLEMS AND SUGGESTED SOLUTIONS**

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This paper focuses upon problems peculiar to placer mining claims, and reasonable efforts will be made to confine the discussion to placer claims. But because in the context of the lode/placer dichotomy, "placer" is defined in negative terms-that is, non-lode[[1]](#footnote-2)1-some mention of lodes seems necessary- Orderly legislative abolition of this troublesome distinction would go far toward avoiding many of the problems about to be discussed. And although we are perennially[[2]](#footnote-3)2 warned, threatened, and promised that the Mining Law of 1872[[3]](#footnote-4)3 is about to be repealed or amended beyond recognition, the lode/placer distinction will retain significance even if these prognostications come to pass- A perfected mining location is "property in the full sense of that term"[[4]](#footnote-5)4 and must be accorded due process of law.[[5]](#footnote-6)5 All legislative bills and proposals to repeal the location-patent system which have come to the author's attention recognize this property status by their inclusion of saving clauses[[6]](#footnote-7)6 and, usually, deadlines for applications for patent-[[7]](#footnote-8)7 Thus, and in view of inevitable delays between application and issuance of patent, it seems probable that the lode/placer distinction will be with us for some little time yet.

Although placer claims and lode claims have numerous problems in common, this paper will attempt to limit the discussion to those peculiar to placers. These will be considered under the general categories of: (1) problems avoidable by proper planning and location procedures; (2) problems possibly subject to curative action at later stages (assuming economics ad intervening rights are manageable); and (3) problems for which no solution readily suggests itself but to which I nevertheless invite your attention. In the latter category, if no novel techniques are inspired among the listeners, perhaps avoidance is the key.

**PROBLEMS AND SOLUTIONS**

Fortunate indeed is the mining lawyer whose client seeks his advice in advance of the location stage. Here is a rare and challenging opportunity to practice "preventive law" and guide the client over and around some of the obstacles and pitfalls of the Mining Law and the predatory regulations of the various federal, state and local agencies. Even on the infrequent occasions when this occurs, there are usually distractions. First among these, of course, is the great clamor and exhortation for urgency and great haste-the necessity to blanket that fabulous bonanza with some sort of locations, lease applications, or whatever, before the word leaks out and we are beset by a land rush of competitive claimants. Obviously, such enthusiasm must be contained, cool heads must prevail, and if there need be haste, at least let it be orderly haste. Even with such advance legal input, success cannot be guaranteed, due to the uncertainties within the present law, not to mention its present state of flux. But, given the opportunity at this early stage, the lawyer can certainly aid in minimizing the risks. The threshold problems to be evaluated and resolved at this stage may not only save much time and expense; they may well save the validity of the claims. Some of these questions are familiar ones, basic to all mineral locations:

**(1)   *Land Status*. Is the land open to mineral location?**[[8]](#footnote-9)8 **If not, efforts at staking claims under the Mining Law of 1872 will be an exercise in futility;**[[9]](#footnote-10)9 **the client must consider other means of acquiring the mineral rights-**

**(2)   *Locatability*. Is the mineral locatable?**[[10]](#footnote-11)10 **The uncertainties, confusion and frustration inherent in the nebulous locatable/leasable dichotomy have been recurring topics of presentations at these Institutes**[[11]](#footnote-12)11 **and elsewhere-**[[12]](#footnote-13)12 **If the target mineral is not locatable, claim staking again will prove futile:**[[13]](#footnote-14)13 **those minerals which have been removed from the operation of the Mining Law of 1872 must be exploited, if at all, under the appropriate leasing**[[14]](#footnote-15)14 **or disposal**[[15]](#footnote-16)15 **Acts-**

**(3)   *Discovery*. What is the likelihood of the deposit meeting the tests of discovery?**[[16]](#footnote-17)16 **Pre-location may be too early a stage for clear determination as to the more esoteric aspects of discovery,**[[17]](#footnote-18)17 **but the client should be apprised of the risks**[[18]](#footnote-19)18 **of possible invalidity of claims at this time-**

**(4)   *Lode/Placer Distinction*. Is the deposit placer-as opposed to lode-in character? A placer discovery will not sustain a lode location;**[[19]](#footnote-20)19 **nor will a lode discovery support a placer location-**[[20]](#footnote-21)20 **Consequently, the locator is compelled, at the risk of voiding his claim, to classify the deposit and implement location by appropriate placer or lode techniques.**

**LAND STATUS**

The question of land status, after adequate investigation, is one the lawyer usually can answer without undue equivocation. Methods and techniques have been thoroughly surveyed in earlier presentations at these Institutes.[[21]](#footnote-22)21 If for any reason the land is not open to entry under the General Mining Law of 1872, as amended, location considerations terminate at this point and the operator turns to other avenues for development and exploitation of this particular mineral deposit- On the other hand, if the land is open to mineral location, he is free to hazard the next hurdle: locatability.

**LOCATABILITY**

What are the criteria for determining whether a mineral is locatable, as distinguished from leasable? The starting point is Section 1[[22]](#footnote-23)22 of the General Mining Law of 1872, which in part provides:

Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase-...

As might be expected, a potent source of difficulty and consternation is the introductory clause, "except as otherwise provided." Prominent among the exceptions engrafted onto the basic policy stated in the 1872 law are the Mineral Leasing Act of 1920, as amended,[[23]](#footnote-24)23 and the Common Varieties Act of 1955, as amended-[[24]](#footnote-25)24 A departmental regulation[[25]](#footnote-26)25 attempts to summarize the net result of this legislative conglomeration:

Whatever is recognized as a mineral[[26]](#footnote-27)26 by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining laws- 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 from which ***oil*** is recoverable only by special treatment after the deposit is mined or quarried, and the deposits of sulphur in Louisiana and New Mexico belonging to the United States can be acquired under the Mineral Leasing Laws (see Section 3100.0-3 (a)(1)), and are not subject to location and purchase under the United States Mining Laws. The so-called "common variety" mineral materials and petrified wood on the public lands may be acquired under the Materials Act, as amended (see Part 3600).

This definition is helpful, but limited. In a close case one may be well advised to seek out a lawyer with an advanced degree in mineralogy or chemistry.[[27]](#footnote-28)27 Robert F- Davison[[28]](#footnote-29)28 discusses the conflicting approaches to solution of the locatable/leasable dilemma in his excellent paper, delivered at the 21st Institute of this Foundation at Rapid City. He argues persuasively that a mineral should be deemed locatable "so long as its commercial use is not dependent on the presence of [leasable minerals]".[[29]](#footnote-30)29 At the same time he identifies what he terms the "Presence Doctrine" adhered to by the Department of Interior, under which the mineral deposit is deemed leasable and not subject to location if any of the compounds of sodium or potassium listed in the Mineral Leasing Act are present-[[30]](#footnote-31)30

In his approach to solutions to these problems, Mr. Davison offers certain suggestions in which I concur. In doubtful cases, proceed under the location law. On the other hand, if the presence of a Leasing Act mineral contributes to the value of the deposit, proceed under the leasing system. In case of a hopeless dilemma, and as protection against competition for the same ground, both lease and locate. This dual approach, as Mr. Davison points out,[[31]](#footnote-32)31 will trigger royalty problems in that the locatable mineral will be deemed a "related product" and subject to a royalty under the Leasable Minerals Lease- The last word has not yet been heard on the matter of royalties where the target mineral is locatable and the leasable mineral is a waste product or impurity discarded in the recovery process.

**DISCOVERY**

Returning now to the central discussion of placer mining claims, we will proceed on the assumption that the nature of the mineral deposit is such that placer claims will be located, and next mention briefly the troublesome element of discovery. Not only is this topic beyond the scope of this paper, but it has been the subject of recent and exhaustive analysis by George E. Reeves.[[32]](#footnote-33)32 For present purposes, we shall assume that the locator has been apprised of the risks inherent in holding a mining claim which lacks discovery-[[33]](#footnote-34)33 We shall further assume that he has concluded that minerals are present in quantity and quality sufficient to justify these risks. We therefore hasten to tackle the lode/placer distinction.

**LODE/PLACER DISTINCTION**

We will not dwell over long upon the lode/placer dichotomy. That area has previously been dissected and analyzed ably and in depth at earlier Institutes of this Foundation and elsewhere by such distinguished scholars as Don H. Sherwood and Gary Greer,[[34]](#footnote-35)34 and George E- Reeves.[[35]](#footnote-36)35 Howard A. Twitty in his article entitled "Amendments to the Mining Laws"[[36]](#footnote-37)36 advocates elimination of the distinction between lode and placer locations, pointing out the frequent difficulty of classifying the deposit as one or the other and cautioning that "[u]nless care is exercised, any amendment eliminating this distinction may create more serious problems than it solves-"[[37]](#footnote-38)37 I refer you to those sources for the full treatment. It will suffice here to remind you that lode locations must be predicated upon "veins or lodes of quartz or other rock in place"[[38]](#footnote-39)38 and that all forms of deposits which are not veins are placers-[[39]](#footnote-40)39

True, the statutory definitions[[40]](#footnote-41)40 state that if it isn't a vein then it must be a placer; however the law neglects to define a vein- Nor is it particularly helpful that most decisions discussing what is or is not a vein or lode or rock in place deal most often not with the lode/placer distinction, but rather with issues of priority of discovery[[41]](#footnote-42)41 or extralateral rights[[42]](#footnote-43)42 and, where the courts adopt or develop definitions, they tend to favor the conceptions and usages of the practical miner and to reject the technical refinements of learned experts in the fields of geology, mineralogy and engineering-[[43]](#footnote-44)43 Thus, the locator, in reaching his decision to stake the deposit as a placer rather than a lode, should stress the practical miner's conception of the deposit's character, and downplay the refined technicalities of the erudite professional.

In the rare case where the mineral deposit is, by statute, placer in character, the lode/placer dilemma self-destructs. In Nevada, the 1957 Legislature added to the Mining Code a section[[44]](#footnote-45)44 which provides that tailings deposited upon the unappropriated public domain and remaining unworked for ten successive years are prima facie abandoned and subject to location under the placer claim laws- This statute appears to codify a holding of an early federal case in Nevada.[[45]](#footnote-46)45

Other forms of deposits, which at one time by statute may have been classifiable as placer in character, now seem to have been effectively removed from the locatable category. Foremost among these is, of course, petroleum, which early cases held locatable under the placer laws.[[46]](#footnote-47)46 The ***Oil*** Placer Act of 1897[[47]](#footnote-48)47 expressly made "lands containing petroleum or other mineral ***oils***, and chiefly valuable therefor, [locatable] under the provisions of the laws relating to placer mineral claims-..." The Mineral Leasing Act of 1920[[48]](#footnote-49)48 repealed the ***Oil*** Placer Act of 1897; and since then petroleum has been withdrawn from location and made leasable only. A minor exception, of diminishing significance, preserves valid ***oil*** placers existing on February 25, 1920 and thereafter validly maintained.[[49]](#footnote-50)49

Another mineral once locatable, but now subject to disposal only under the Mineral Leasing Laws, is salines-[[50]](#footnote-51)50

Building stone, once locatable under the Building Stone Law of 1892,[[51]](#footnote-52)51 has been effectively withdrawn from location by the Multiple Surface Use Act of 1955,[[52]](#footnote-53)52 as Section 3[[53]](#footnote-54)53 of that Act was construed by the Supreme Court of the United States in the *Coleman* case-[[54]](#footnote-55)54 As observed by Reeves,[[55]](#footnote-56)55 this construction "seems to have left little, if any, scope for the operation of the Building Stone Law-"

What remains, then, in practical terms, of the former list of statutory placer deposits, is abandoned tailings on unappropriated public domain. Though useful where applicable, this classification is not expected to be available in many cases.

Some aid in resolving the lode/placer issue may be found in the customs and practices prevalent in the particular mining community.[[56]](#footnote-57)56 In *Bowen v- Sil-Flow Corporation*, the court approved a locator's reliance upon "a custom in this mining district to locate similar ore under the lode statute,"[[57]](#footnote-58)57 and quoted with approval the following passage from 1 American Law of Mining, § 5.20 (1968):

A locator who makes a good faith location in reliance upon past practice should be protected regardless of the court's view as to what might have been the most appropriate form of location.

Operational precedence may be instructive in the case of shallow, flat-bedded deposits, so-called blanket veins, horizontal lodes, and subterranean placers.[[58]](#footnote-59)58

If the choice proves too difficult, and particularly if one suspects the presence of both placer and lode formations in the same ground, "double staking" may offer the solution- Double staking, if implemented, should be carried on in the proper sequence.[[59]](#footnote-60)59 The correct sequence is: placer first; lode second.[[60]](#footnote-61)60 The proper sequence of location is imperative; reverse sequence may be viewed as a confession that the earlier lode claim was invalid or is being abandoned-[[61]](#footnote-62)61 Conversely, lodes within placers are clearly contemplated by the statute;[[62]](#footnote-63)62 thus a junior lode claim may coexist with a senior placer-

In certain instances, claimants have "top-located" lode claims over their own placer claims for the stated purpose of precluding others from overlaying the placers with adverse lode locations.[[63]](#footnote-64)63 Arguably, the double staking technique may be advocated as the wise and useful precaution in every doubtful case, again taking care to observe the proper sequence-

**ESTABLISHING BOUNDARIES - DESCRIPTION**

If the deposit is determined to be placer in character, we must utilize placer location procedures to appropriate it.[[64]](#footnote-65)64 The basic federal requirements for placer locations closely parallel those for lode locations,[[65]](#footnote-66)65 except that "where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands," and "as near as practicable with the United States system of public-land surveys, and the rectangular subdivision of such surveys-..."[[66]](#footnote-67)66 Where the lands are unsurveyed, or it is impossible or impracticable to conform the placer claims to legal subdivisions, the exterior boundaries may be modified to exclude adjoining senior claims,[[67]](#footnote-68)67 or non-mineral ground-[[68]](#footnote-69)68 The statute[[69]](#footnote-70)69 authorizes the subdivision of 40-acre legal subdivisions into 10-acre tracts, and departmental policy exhorts that placer claims be "as compact and regular in form as reasonably practicable"[[70]](#footnote-71)70 and sternly discourages "locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts-"[[71]](#footnote-72)71

Straightforward though these basic guidelines may seem, problems emerge around latent ambiguities inherent in "legal subdivisions," "conform as near as practicable," and even "United States survey." The regulations state that the 10-acre tracts authorized by 30 U.S.C. § 36 (1970) "should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such 10-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat,"[[72]](#footnote-73)72 and that such 10-acre subdivision may be described in terms of aliquot parts of legal subdivisions of the public survey-[[73]](#footnote-74)73 This information appears to be, and occasionally is, helpful.

In the absence of state law requiring the staking of boundaries of placer claims on surveyed lands, taken up and described as aliquot parts of legal subdivisions of the public survey, no monumentation of the claim, beyond the discovery monument, nor tracing of boundaries on the ground is required.[[74]](#footnote-75)74 This rule is codified by statutes in California,[[75]](#footnote-76)75 Nevada,[[76]](#footnote-77)76 and Oregon-[[77]](#footnote-78)77 In terms of convenience and economy, the advantages of locating placer claims by legal subdivisions is obvious. However, what constitutes a "legal subdivision" is not always selfevident.

To avoid erroneous descriptions and claims of questionable validity, prior examination of the survey status of the subject land is advisable. Have the lands in fact been "previously surveyed by the United States"?[[78]](#footnote-79)78 If not, boundary staking and metes and bounds description will be necessary in any event- At the same time, if the Cadastral Branch of the Bureau of Land Management has filed a protraction diagram covering the target area, conformity to rectangular subdivisions based upon that diagram seems advisable, to the extent practicable.[[79]](#footnote-80)79 Such use of protraction diagrams appears to be the only escape from the otherwise hopeless dilemma presented by the regulations.[[80]](#footnote-81)80 The author's experience indicates that it is well worthwhile to obtain, in the case of surveyed land, copies of the official survey plats including all supplements and resurveys; and, in the case of unsurveyed lands, protraction diagrams if applicable- And, although mineral deposits are notorious for their disregard for public land surveys and rectangular subdivisions thereof, conformity, within the limits of practicability, should be attempted. Where survey with regular subdivisions exists, the use of legal subdivisions by aliquot parts should present few problems. Where there is no official survey, there obviously can be no legal subdivisions, but an approach to the conformity demanded by subsection (a) of Section 3842.1-5 of Title 43, Code of Federal Regulations, can be accomplished by rectangular locations conforming to theoretical subdivisions predicated upon the protraction diagram, or by rectangular claims with boundaries running in cardinal directions.

Even where the United States survey has been extended over the target lands, it is not always possible-or practicable-to conform placer claims to the survey. Rectangular surveys upon a spherical plane introduce additional problems to complicate placer locations. The rules for the system of surveys require that the public lands be divided by north and south lines running according to the true meridian ("range lines") and by others crossing them at right angles ("township lines") so as to form townships six miles square and that the townships be divided into sections containing, as nearly as may be, 640 acres each. To alleviate irregularities caused by the convergency of meridians, and to cause the sections to form mile-square areas to the extent practicable, the meridional lines are run parallel to the east boundary, and from south to north a distance of five miles from the south boundary, as true lines. The remaining section lines are true or random, as the case may be, between established section corners. The result is twenty-five regular sections of 640 acres each. The eleven sections along the north and west boundaries are subdivided to include "government lots" of irregular area and dimension to distribute errors induced by convergency of meridians and deficiency or excess in measurements. Each of these sections contains a maximum number of 160, 80 and 40-acre regular subdivisions describable as aliquot parts of the section. The remaining area is platted as government lots whose area and dimensions are computed in accordance with field measurements.[[81]](#footnote-82)81 A typical result of such subdivision and platting is illustrated in Figure 1[[82]](#footnote-83)82 delineating Sections 5, 6, 7 and 8, forming the northwestern part of a hypothetical township- The absorbence of irregularities by lotting along the north and west boundaries is readily apparent.

One practical problem confronting the placer locator in areas surveyed as government lots is that of legal description. Referring to Section 6 as shown in the lower left of Figure 1, the southeast quarter of the northwest quarter, a regular subdivision properly describable by aliquot parts of the section presents no problem-it may be appropriated with two 20-acre placer claims described as (a) either the north half or the east half of that 40-acre subdivision and (b) the corresponding south half or west



half thereof,[[83]](#footnote-84)83 but an individual claimant, limited to the use of 20-acre locations, cannot properly appropriate Lot 3 with two claims described as "the N 1/2 (or W 1/2) of Lot 3" and "the S 1/2 (or E 1/2) of Lot 3-" Not only is such description ambiguous,[[84]](#footnote-85)84 but the fractional lot is not a "legal subdivision". Recognized by the Cadastral Branch[[85]](#footnote-86)85 as a possible solution to this problem is the preparation and filing of a supplemental plat by the Cadastral Branch- This technique I have used, to the mutual advantage of the locator and the government, more than once. Essential to its success, of course, is the cooperation of the Cadastral Branch which, in my experience, has been readily extended. In addition to good personal rapport with the chief of the Cadastral Branch, it is helpful to have firm plans to take the claims to patent. Government cooperation is here motivated in large part by the burdens imposed upon it by mineral surveys. If placer claims are susceptible of description by legal subdivisions, no mineral survey is necessary as a prerequisite to patent.[[86]](#footnote-87)86 Thus, if the problem can be solved by a supplemental plat, economic advantages inure to both the locator and the government.

The supplemental plat entails no field surveying, but is accomplished entirely on the basis of records already on file with BLM. It delineates a revised subdivision of one or more sections without change in the section boundaries and without other amendment of existing records.[[87]](#footnote-88)87 This process is illustrated in Figure 2,[[88]](#footnote-89)88 a representation of Section 19 of hypothetical township- On the original survey of this section, the area loosely described as the NW 1/4 of the SW 1/4 was platted as government lot 3; the area loosely described as the SW 1/4 of the SW 1/4, as government lot 4. In the supplemental plat, two new regular 20 acre subdivisions are created in the E 1/2 of the W 1/2 of the SW 1/4 of the section; and the remaining areas of former lots 2 and 3 are now platted as lots 5, 6 and 7, containg 20.16 acres, 10.12 acres and 10.14 acres, respectively. Obviously, these new subdivisions readily lend themselves to 20-acre[[89]](#footnote-90)89 placer locations.

If the supplemental plat is filed before the locations are made, the original notices and/or certificates of location should describe the claims in terms of legal subdivisions; that is, by government lots or aliquot parts of the section, as the case may be. If the locations are made first, and described erroneously as aliquot parts or by metes and bounds, amended certificates of location, describing the claims in terms of the subdivisions established by the supplemental plat, should be recorded.[[90]](#footnote-91)90 As to the wisdom of postponing location pending preparation and approval of the supplemental plat, I defer to the particular facts and circumstances in each individual case- Security considerations may dictate immediate location using descriptions then known to be stopgap and temporary at best. If location can be postponed safely, the time and expense of amendment may be saved.



In Alaska, some 313 millions of acres of land, or about 85% of its area, remains unsurveyed.[[91]](#footnote-92)91 Consequently, mineral surveys to support applications for patent to placer claims will be the rule, and not the exception, in that state- In the author's limited experience with applications for patent of creek (or "gulch") placer claims situated in unsurveyed territory on streams in the interior of Alaska, the Department has issued survey orders for claims described by metes and bounds oriented generally in cardinal directions, but conforming, as near as practicable, to the mineralized zones along the stream channel. This often results in the group of claims forming a long narrow strip or "shoestring," which apparently is permissible under Departmental policy in such cases.[[92]](#footnote-93)92

If and when the Department can devise a method of conforming natural mineral occurrences to compact forms and to rectangular subdivisions of the public survey, it will be simpler to locate placer claims in conformity with the regulations.

Alaska statutes applicable only to placer deposits containing precious metals[[93]](#footnote-94)93 limit the length of claims to 1,320 feet, unless the claim "lies between and adjoins two or more validly located claims-..",[[94]](#footnote-95)94 and limit association placer claims to 40 acres with maximum length of 2,640 feet.[[95]](#footnote-96)95 A companion section makes void a placer mining claim attempted to be located in violation of these limits-[[96]](#footnote-97)96 These limitations would appear inconsistent with the supervening federal law.[[97]](#footnote-98)97 The validity of such state legislation has been called into question-[[98]](#footnote-99)98

**RULE OF APPROXIMATION**

As illustrated in Figure 2, a placer claim described as a legal subdivision of the public survey may enclose an area larger than the statutory maximum-for example, Lot 5 of Section 19 contains 0.16 acres more than permitted for an individual claim. Rather than reducing the area of the claim, and thereby failing to conform with rectangular subdivisions of the survey, the locator may avail himself of the Rule of Approximation,[[99]](#footnote-100)99 under which a placer claim located in conformity with rectangular subdivisions of the survey and encompassing an area larger than the statutory maximum may retain the entire rectangular subdivision if the excess over the statutory maximum does not exceed the deficiency which would result if ten acres (the smallest legal subdivision) were dropped- Consequently, a placer claim covering a rectangular subdivision of the public survey may be as much as five acres oversize.[[100]](#footnote-101)100

**ASSOCIATION PLACER CLAIMS**

**Advantages of the Association Placer**

Many clients have a strong affinity for association placer claims-particularly 160-acre association placer claims- and are alarmed and dismayed when their lawyers counsel against the location or acquisition of such claims, except under the most ideal circumstances. The alleged advantages usually cited are:

**(1)   A single discovery will support a 160-acre association placer claim as well as the 20-acre claim of the individual.**[[101]](#footnote-102)101 **(This advantage is limited by the requirement that each ten acre subdivision be mineral in character-**[[102]](#footnote-103)102**)**

**(2)   Where the land is surveyed, the burdens of monumenting, marking boundaries, description, and recording are greatly reduced, with corresponding reduction in costs. 160-acre association placers enhance this saving by a factor of eight over individual 20-acre placers.**

**(3)   $100 in annual assessment work is as effective to hold a 160-acre association placer claim**[[103]](#footnote-104)103 **as a 20-acre individual placer claim, thereby again realizing an eight-fold saving- (In Alaska, this advantage is nullified by a statute.**[[104]](#footnote-105)104**)**

What, then, really is so bad about association placer mining claims?

My wariness of association claims stems from considerable unhappy experience and continuing concern for my clients' security of possessory title. The validity of an association claim, in addition to the other usual criteria for validity of any unpatented placer mining claim, depends upon location by a bona fide association.[[105]](#footnote-106)105 And in practice the locators (or their successors in interest), must bear the burden of proof of the association's good faith-[[106]](#footnote-107)106 Too often this task will prove impossible. A few typical case histories will illustrate some of the problems.

***Case A:***

In the early 1940's a corporation acquires from individual locators a number of lode mining claims and locates several additional lode claims in its own name. At the same time, and in an area in close proximity to the lode group, two 160-acre assocation placer claims were purportedly located by an association of eight individuals, all of whom were shareholders, officers, directors or employees of the corporation. Although no conveyance transferring the association claims out of the locators was ever recorded, the corporation and its successors included the claims in proofs of annual labor, recorded on behalf of the "owner" of all such claims, over the years. Little or no mineral extraction took place within the placer claims; some of the ground therein was used for waste dump and tailings disposal purposes. By the time my client acquired interests in the properties in the late 1960's, a majority of the individuals comprising the association had died, the area had been explored and found to be non-mineral in character, and the client needed sufficient security of title in the ground to justify the installation of a multi-million dollar surface plant.

***Case B:***

The client had acquired a large block of association placer claims, mostly 160-acre but some smaller, from a remote grantee of the locator association. Sufficient time had elapsed between location and the time of our client's acquisition that any reliable assessment of the good faith of the association and the facts surrounding the conveyances from the associations to individuals or to corporations was impracticable or impossible. Moreover, there was little or no reliable evidence that discovery had been made prior to such conveyances. Our client, however, had accomplished discovery, complied with the Ten Acre Rule and now wanted to take the claims to patent.

***Case C:***

On July 4, 1931, a group of nine individuals, *A, B, C, D, E, F, G, H*, and *J* purport to locate nine 160-acre placer claims to be known as the Art, Bob, Cal, Don, Ed, Fred, Gil, Hal and Jim association placer claims. For this purpose, they organized themselves into nine separate associations. Eight of the nine individuals formed the membership of each association; however, no two associations had the same membership. The table in Figure 3 shows the composition of the respective associations purporting to locate each of the claims. On October 1, 1931, seven members of each association executed and delivered to the eighth member all of the grantors' right, title and interest in and to the respective claims, thus constituting *A* the sole owner of the Art association placer; *B* the sole owner of the Bob association placer, and so on.

At this point, for simplicity, we will concentrate our attention on the Bob association placer, whose owner *B* records proof of annual assessment work sporadically until his death in 1948. In 1951, the administrator of *B*'s estate conveys to *M* all of the estate's right, title and interest in and to the Bob association placer. Noting that no proof of annual assessment work was filed on behalf of the Bob during the years *B*'s estate was in probate, *M* records documents denominated "Notice of Location" whereby *M* purports to "relocate" the Bob association placer claim embracing 160 acres. Shortly thereafter *M* quitclaims the Bob association placer to *Q* Mining Corporation which in turn quitclaims to our client. By this time, a substantial part of the Bob association placer is overlaid with adverse lode locations. No substantial mineral production was ever carried out, but at the time of original location, and at the present, the land is potentially valuable for agriculture and other nonmineral development. The client requests a title opinion.

**LOCATORS-ASSOCIATION MEMBERSHIP**

*Claim*

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Art | A | B | C | D | E | F | G | H |
| Bob | B | C | D | E | F | G | H | J |
| Cal | C | D | E | F | G | H | J | A |
| Don | D | E | F | G | H | J | A | B |
| Ed | E | F | G | H | J | A | B | C |
| Fred | F | G | H | J | A | B | C | D |
| Gil | G | H | J | A | B | C | D | E |
| Hal | H | J | A | B | C | D | E | F |
| Jim | J | A | B | C | D | E | F | G |

**FIGURE 3**

What are the possibilities for curative action in these three cases? The facts of Case A, taken from an actual case handled by my firm, are fairly typical of misguided efforts on the part of corporations to locate claims larger than legally permissible.[[107]](#footnote-108)107 The deliberate use of this technique will render the location void-[[108]](#footnote-109)108 Morrison reported that in his time "The names of nominal parties are often used to locate placer ground, and such nominal association is not questioned in land office proceedings, but its validity may well be doubted when contested in court."[[109]](#footnote-110)109 From the shocked and indignant protests registered by my clients when I counsel against the use of association placers by a corporation (at least after the corporation has been formed and has issued shares) I suspect that they may have been reading Mr- Morrison. However, Mr. Morrison had neither the occasion to ponder the retentionist policies now prevalent in the tribunals of the Department of the Interior,[[110]](#footnote-111)110 nor the opportunity to review *United States v. Toole* in which the court held invalid a 160-acre association placer, saying:

Any claim of the defendants must be based upon the location filed by the eight individual locators. The corporation could not itself have filed the claim. It would appear from all of the evidence that dummy locators were used in acquiring the property for the corporation and its principal stockholders.[[111]](#footnote-112)111

An established corporation, particularly if widely held, may not locate placer claims larger than twenty acres;[[112]](#footnote-113)112 and it is difficult for a corporation to acquire by conveyance and hold association placer claims, except under very special circumstances- It may be possible for a bona fide association of eight locators to perfect (including discovery and compliance with the Ten-Acre Rule) and thereafter organize a corporation, contributing their respective interests in the claim to the corporation as capital, with each locator taking back 12 1/2% of the corporation's shares, authorized, issued and outstanding, thereby retaining, through the agency of the corporation "the exact interest in the land which he acquired under his location."[[113]](#footnote-114)113 If an established corporation is to acquire association placer claims, it will do well to document the transaction thoroughly, particularly to show that each locator received equal consideration for the transfer[[114]](#footnote-115)114 and that the location was complete prior to transfer-[[115]](#footnote-116)115

In Case *A*, the missing link in the chain of title may be supplied by proceedings under 30 U.S.C. § 38 (1970) or by appropriate quiet title litigation pursuant to state law. However, even if the client in Case *A* makes a valid discovery after acquiring the claim, the validity will extend only to the 20 acres immediately surrounding the discovery;[[116]](#footnote-117)116 otherwise, the claim, like any other claim lacking valid discovery, will be void in its entirety-

The solution to Case *A*: acquire title to the association placer claims pursuant to 30 U.S.C. § 38 (1970), or quiet title action under state law in order to safeguard against claims by heirs of the locators, and restake as much of the area as necessary with millsite claims[[117]](#footnote-118)117 to accommodate the plant site-

In Case *B*, you will recall, we had the advantages of a complete chain of title and the fact that the client had accomplished discovery within the boundaries of each association placer and had established the mineral character of each 10-acre subdivision. A conference of counsel resulted in the following plan of action:

**(1)   An updated title search and field reconnaissance to determine land status and to detect and assess intervening rights of third parties, if any.**

**(2)   If the lands remain open to mineral location, and intervening rights present no insurmountable problems, amend the existing association placer claims in such a manner as to reduce each claim to a 20-acre area immediately surrounding the original point of discovery (or, if such point of discovery was unknown, the 20-acres immediately surrounding the original location monument) and, simultaneously, relocate the remaining area of the original association location with new 20-acre placer claims.**

The land status check, the title examination and field reconnaissance fortunately produced no insoluble problems. The land remained open to location; the few claimants of intervening rights and claim conflicts were handled by negotiation and settlement. The amendment-and-relocation plan was implemented.

In carrying out the amendment-and-relocation program, careful planning and organization proved necessary to avoid confusion and to prevent the various steps from being carried out in the wrong order, thus casting doubt on the validity of some of the claims. Maps delineating the amended and new locations were prepared, location documents were drawn, and monumentation accomplished in advance of posting. In this manner, reduction of area of the original association claim to twenty acres and relocation of the land thus dropped could be accomplished almost simultaneously, thereby precluding adverse relocations of any of the same ground. The history and purpose of the amendment, together with a reference to the statute[[118]](#footnote-119)118 authorizing amended locations, were succinctly set forth in the Certificates of Amended Location; and these documents recited, alternatively, (1) the dates of original location and asserted priority based thereon, preserving all rights, pursuant to the statute, and (2) a new location based on discovery as of the date of amendment- The names of new 20-acre placer claims located on land originally embraced by the association claim were coined to link these new claims with the amended claim and at the same time to avoid confusion of identity of any of the claims. Their Certificates of Location announced that the claims covered ground formerly embraced within the association claim. The geographic layout of this system is illustrated in Figure 4.

Numerous placer claims with a history parallel to that given in Case *B* (including the amendment and relocation just described) are included in pending mineral patent applications. These applications have cleared the publication period, adjudication, and Final Certificate has been issued.[[119]](#footnote-120)119

In 1965, the Associate Director of the Bureau of Land Management, addressing this Institute at Salt Lake City in 1965 stated:

The times require that we [BLM] have convincing proof that the land preempted for mining use is mineral land and that the claimant has made a valuable mineral discovery- We would like assurance that he intends to devote the land to mining. The $2.50 and $5.00 per acre price tags affixed in 1872 never really expressed the true value of the land, but they came much closer to doing so in 1872 than they do today. We have pending applications to patent placer claims of 160 acres each, which have a value exceeding $3,000 per acre for surface nonmineral development. Naturally, if the mining law can be used to turn this kind of profit, a lot of people will suddenly and temporarily become "miners."[[120]](#footnote-121)120

Reviewing the fact pattern of our hypothetical Case *C*, we note a marked similarity to the situation described by the Associate Director in the foregoing quotation. In addition, if in Case *C* the BLM suspected that nominal or



"dummy" associations were being used for the acquisition of 160-acre placer claims by individuals, such suspicion seems justified. And, at this late date, the circumstances suggested by the official record will likely carry more weight than any other available evidence as to the good faith of the association, or the issue of discovery prior to conveyance.

Obviously, *M* did not help matters by purporting to "relocate" 160-acre placer claims in his individual capacity. With the benefit of sound legal advice-and, of course, hindsight-*M* might have done better to resume annual assessment work, a procedure which might have resurrected[[121]](#footnote-122)121 some part of the claims if they could be resurrected at all (perhaps along lines described for Case *B*)- But attempt to relocate the association placer claims *M* did, and the client is saddled with the consequences: it acquired nothing by the conveyance from *M* because *M* had nothing to convey. The solution? Negotiation with rival claimants, perhaps, and if all requisite conditions are present, new locations.

The legitimate, good-faith use of the placer mining claim laws imposes upon the claimant certain burdens of inconvenience, expense, and technical compliance. In order to gain the benefits of these laws, the claimant must shoulder these burdens. BLM's Associate Director in 1965 pointed out that "[M]odern-day pressures on the public lands and resources require even more stringent applications of the rules."[[122]](#footnote-123)122 That trend remains with us in 1977, undiminished and more conspicuous- Good faith requires that the mining laws be applied to the purposes for which they were intended-mining purposes-and the abuse of the placer mining claim laws by those whom they were intended to benefit can only result in the failure of the law and the failure of the claimant's purpose.

**GENERAL OBSERVATIONS AND RECOMMENDATIONS**

There is nothing very new or profound in the foregoing. It represents an effort to collect some of the legal authorities, earlier scholarship and the author's practical experience into a nuts-and-bolts discussion. As practical suggestions, I offer the following:

**(1)   Prior to location, review land status, including survey plats and protraction diagrams.**

**(2)   Plan compliance with requirements for boundaries, descriptions, compactness and the Ten-Acre Rule.**

**(3)   Examine local law carefully, and investigate local customs and practice.**

**(4)   If the character of the deposit-lode versus placer- is doubtful, consider multiple staking or, as the practice is sometimes called, top-locating.**

**(5)   Be wary of locating or acquiring association placer claims; consider possibilities for amendment/relocation.**

Finally, bear constantly in mind the fact that your image and credibility, your clients' or your employers' image and credibility, and, indeed, the image and credibility of the entire minerals industry is on the line whenever you are implementing procedures under the placer mining claim laws. Avoidance of techniques which carry the badge of fraud, and constant adherence to the requirements of good faith will go far toward advancing our image and our credibility in the professional and industrial world, and in the eyes of government.

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**End of Document**

1. 1"Claims usually called 'placers', including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent...." 30 U.S.C. § 35 (1971). [↑](#footnote-ref-2)
2. 2*E.g*., Ladendorff, "Enlarging Prediscovery Rights of Mineral Locators," 6 *Rocky Mt. Min. L. Inst*. 1 (1961); Ladendorff, "Suggestions for Congressional Action Relating to the General Mining Law," 11 *Rocky Mt. Min. L. Inst*. 441 (1966); Twitty, "Amendments to the Mining Laws," 8 *Ariz. L. Rev*. 63 (1966); Edwards, "The 1969 View of the 1872 Law: Current Proposals to Modernize the General Mining Laws," 15 *Rocky Mt. Min. L. Inst*. 139 (1969); Melich, "Public Land and Mining Legislation," 17 *Rocky Mt. Min. L. Inst*. 31 (1972); Ladendorff, "The Mining Law at the Crossroads: Where Are We Going?," 18 *Rocky Mt. Min. L. Inst*. 87 (1973); U.S. Council of Environmental Quality, draft legislation circulated March, 1977 entitled "Hardrock Mineral Leasing Act of 1977"; H.R. 5806, 95th Cong., 1st Sess. (1977); S. 1248, 95th Cong., 1st Sess. (1977). [↑](#footnote-ref-3)
3. 330 U.S.C. § 21 *et seq*., 14 Stat. 86 and 17 Stat. 91 (1971). [↑](#footnote-ref-4)
4. 4Wilbur v. Krushnic, 280 U.S. 306 (1930). [↑](#footnote-ref-5)
5. 5Best v. Humboldt Placer Min. Co., 371 U.S. 334 (1963). [↑](#footnote-ref-6)
6. 6*E.g*., H.R. 5806, *supra* note 2, § 26(c)(1). [↑](#footnote-ref-7)
7. 7*E.g*., H.R. 5806, *supra* note 2, § 26(c)(2), (3). [↑](#footnote-ref-8)
8. 8*See* Sherwood, "Prospecting for Locatable Minerals on Public Lands Classified for Retention per Multiple-Use Management," 14 *Rocky Mt. Min. L. Inst*. 167 (1968); Dempsey, "Basic Problems in Locating Claims," 14 *Rocky Mt. Min. L. Inst*. 573 (1968); Seed, "Locatable Public Domain," 1 *American Law of Mining* §§ 2.2 *et seq*. (1960). [↑](#footnote-ref-9)
9. 9Mason v. United States, 260 U.S. 545 (1923). [↑](#footnote-ref-10)
10. 1043 C.F.R. § 3812.1 (1976). [↑](#footnote-ref-11)
11. 11Davison, "Determination of Whether a Mineral is Locatable or Leasable," 21 *Rocky Mt. Min. L. Inst*. 565 (1976); Vlautin, "To Lease or To Locate," 19 *Rocky Mt. Min. L. Inst*. 393 (1974); Dempsey, "Basic Problems in Locating Claims," 14 *Rocky Mt. Min. L. Inst*. 573, 576-584 (1968). [↑](#footnote-ref-12)
12. 12*E.g*., Twitty, "Amendments to the Mining Laws," 8 *Ariz. L. Rev*. 63 (1966); Senzel, "Revision of the Mining Law of 1872," U.S. Gov't Printing Office, Publication 95-11 (Apr. 1977). [↑](#footnote-ref-13)
13. 13*See* United States v. Mattey, 52 I.D. 714 (1929). [↑](#footnote-ref-14)
14. 14Mineral Leasing Act of 1920, 30 U.S.C. §§ 181-287 (1970). [↑](#footnote-ref-15)
15. 1530 U.S.C. §§ 601-615 (1970). [↑](#footnote-ref-16)
16. 16*See* Reeves, "The Law of Disocvery Since *Coleman*," 21 *Rocky Mt. Min. L. Inst*. 415 (1976). [↑](#footnote-ref-17)
17. 17*See id*. at 422 *et seq*. [↑](#footnote-ref-18)
18. 18*See* Reeves, "Liability for Mining on a Void Mining Claim," 16 *Rocky Mt. Min. L. Inst*. 505 (1971). [↑](#footnote-ref-19)
19. 19Cole v. Ralph, 252 U.S. 286 (1920); United States v. Haskins, 505 F.2d 246 (9th Cir. 1974). [↑](#footnote-ref-20)
20. 20Note 19 *supra*. [↑](#footnote-ref-21)
21. 21Ritchie, "Title Aspects of Mineral Development on Public Lands," 18 *Rocky Mt. Min. L. Inst*. 471 (1973); Bate, "Mineral Exceptions and Reservations in Federal Public Land Patents," 17 *Rocky Mt. Min. L. Inst*. 325 (1972); Dempsey, "Basic Problems in Locating Claims," 14 *Rocky Mt. Min. L. Inst*. 573 (1968); Bernfeld, "Practices and Pitfalls in the Acquisition of Minerals in the United States," 12 *Rocky Mt. Min. L. Inst*. 101 (1967); Shireman, "Mining Location Procedures," 1 *Rocky Mt. Min. L. Inst*. 307 (1955). [↑](#footnote-ref-22)
22. 2230 U.S.C. § 22 (1970). [↑](#footnote-ref-23)
23. 2330 U.S.C. §§ 181-287 (1970). [↑](#footnote-ref-24)
24. 2430 U.S.C. § 611 (1970). [↑](#footnote-ref-25)
25. 2543 C.F.R. § 3812.1 (1976). [↑](#footnote-ref-26)
26. 26In a startling decision entered May 12, 1977, the U.S. Court of Appeals for the Ninth Circuit held: (a) ground water, diverted by a well within the boundaries of Claim 22, a pre-July 23, 1955 sand-and-gravel placer location, to be a locatable mineral, (b) that the discovery of water and its use to wash sand and gravel from other claims constituted "a profitable market for the water recovered upon Claim 22," and (c) that therefore Claim 22 was valid. Charlestone Stone Products Co., Inc. v. Andrus, 553 F.2d 1209 (9th Cir., 1977). [↑](#footnote-ref-27)
27. 27*See* United States v. Union Carbide Corp., Ariz. 7435 (Int. Dept. Hearings Div., June 14, 1974); Davison, "Determination of Whether a Mineral is Locatable or Leasable," 21 *Rocky Mt. Min. L. Inst*. 565, 571, *et seq*. (1976). [↑](#footnote-ref-28)
28. 28Davison, *supra* note 27 at 571 *et seq*. [↑](#footnote-ref-29)
29. 29*Id*. at 582. [↑](#footnote-ref-30)
30. 30*Id*. at 571. As this paper was in the process of preparation, the Interior Board of Land Appeals rendered a decision, affirming the decision of the Administrative Law Judge in the *Union Carbide* case (discussed in depth by Davison in connection with the Presence Doctrine) and, in so doing, rather narrowly limited the Presence Doctrine. United States v. Union Carbide Corp., 31 I.B.L.A. 72 (June 24, 1977), GFS (MIN) 34 (1977). "But the question is whether the casual or fortuitous presence of sodium within the molecular structure causes the zeolites in the instant case to be classified as 'silicates of sodium'. We think that it does not." *Id*., 31 I.B.L.A. at 76. The Board prescribed two requirements for classifying zeolite as a silicate of sodium and thus making it leasable as opposed to locatable, (1) that "the sodium ... be present in sufficient quantity so as to be commercially valuable" and (2) that "the presence of sodium or any other material listed in the Mineral Leasing Acts [be] essential to the existence of the mineral." *Id*. 31 I.B.L.A. at 76-78. [↑](#footnote-ref-31)
31. 31*Id*. at 584. [↑](#footnote-ref-32)
32. 32Reeves, "The Law of Discovery Since *Coleman*," 21 *Rocky Mt. Min. L. Inst*. 415 (1976); and Reeves, "The Origin and Development of the Rules of Discovery," 8 *Land & Water L. Rev*. 1 (1973). [↑](#footnote-ref-33)
33. 33*See* Reeves, *supra* note 18. [↑](#footnote-ref-34)
34. 34Sherwood and Greer, "Mining Law in a Nuclear Age: The Wyoming Example," 3 *Land & Water L. Rev*. 1 (1968). [↑](#footnote-ref-35)
35. 351 *American Law of Mining* § 5.9A (1975). [↑](#footnote-ref-36)
36. 36Twitty, "Amendments to the Mining Laws," 8 *Ariz. L. Rev*. 63 at 82 (1966). [↑](#footnote-ref-37)
37. 37Twitty, *supra* note 36 at 82. [↑](#footnote-ref-38)
38. 3830 U.S.C. § 23 (1970). [↑](#footnote-ref-39)
39. 3930 U.S.C. § 35 (1970). [↑](#footnote-ref-40)
40. 40"Claims usually called 'placers,' including all forms of deposits, excepting veins of quartz or other rock in place...." 30 U.S.C. § 35 (1970). [↑](#footnote-ref-41)
41. 41*See* Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373 (1957). [↑](#footnote-ref-42)
42. 42*See* Eureka Consol. Min. Co. v. Richmond Min. Co., 8 F. Cas. 819 (C.C.D. Nev. 1877) (No. 4,548). [↑](#footnote-ref-43)
43. 43*E.g*., the Eureka case, *supra* note 42; United States v. Iron Silver Min. Co., 128 U.S. 673, 679 (1888): "[G]round within defined boundaries which contains mineral in its earth, sand or gravel; ground that includes valuable deposits not in place, that is, not fixed in rock, but which are in a loose state and may in most cases be collected by washing or amalgamation without milling." [↑](#footnote-ref-44)
44. 44Nev. Rev. Stat. § 517.115 (1973). [↑](#footnote-ref-45)
45. 45Ritter v. Lynch, 123 F. 930 (C.C.D. Nev. 1903); *see also* Rogers v. Cooney, 7 Nev. 213 (1872). [↑](#footnote-ref-46)
46. 46Samuel E. Rogers, 4 L.D. 284 (1885); Piru ***Oil*** Co., 16 L.D. 117 (1893); Gird v. California ***Oil*** Co., 60 F. 531 (C.C.S.D. Cal. 1894). [↑](#footnote-ref-47)
47. 47Act of February 11, 1897, ch. 216, 29 Stat. 526. [↑](#footnote-ref-48)
48. 4830 U.S.C. §§ 181 *et seq*. (1970). [↑](#footnote-ref-49)
49. 4930 U.S.C. § 162 (1970). [↑](#footnote-ref-50)
50. 50For a concise discussion of the history of this transition, *see* 1 *American Law of Mining*, § 5.21B (1975). [↑](#footnote-ref-51)
51. 5130 U.S.C. § 161 (1970). [↑](#footnote-ref-52)
52. 5230 U.S.C. §§ 601-615 (1970). [↑](#footnote-ref-53)
53. 5330 U.S.C. § 611 (1970). [↑](#footnote-ref-54)
54. 54United States v. Coleman, 390 U.S. 599 (1968). [↑](#footnote-ref-55)
55. 551 *American Law of Mining*, § 5.21 (1975). [↑](#footnote-ref-56)
56. 56Bowen v. Sil-Flow Corp., 9 Ariz. App. 268, 451 P.2d 626 (1969). [↑](#footnote-ref-57)
57. 57*Id*. at 634. [↑](#footnote-ref-58)
58. 58*See* Iron Silver Min. Co. v. Mike & Starr Gold & Silver Min. Co., 143 U.S. 394 (1892). [↑](#footnote-ref-59)
59. 59*See* 1 *American Law of Mining* § 5.9A (1975), citing Palmer, "The Acquisition of Uranium Mining Rights," 32 *Dicta* 167, (1955) and "The Impact of the 'Uranium Boom' on the Mining Law," 4 *Utah L. Rev*. 239, 244 (1954); Harris, "The Law of Mill Sites", 9 *Nat. Res. Lawyer* 103, 120 (1976); Shireman, "Mining Location Procedures", 1 *Rocky Mt. Min. L. Inst*. 307, 312 (1955). Examples of cases where classification of the deposit may be difficult and double staking useful may be found in such decisions as E. M. Palmer, 38 L.D. 294 (1909) (sand rock or sedimentary sandstone containing gold was held not properly located as a placer claim); Gregory v. Pershbaker, 73 Cal. 109, 14 P.401 (1887) (ancient stream bed beneath 200 feet of lava containing gold was held properly located as a placer claim); and Jones v. Prospect Mountain Tunnel Co., 21 Nev. 339, 31 P. 642 (1892) (mineralized bed of gravel several hundred feet below the surface and surrounded by hard rock held "rock in place" and properly locatable as a lode). [↑](#footnote-ref-60)
60. 60*See* authorities cited in note 59. [↑](#footnote-ref-61)
61. 61Reeves, *supra* note 59. [↑](#footnote-ref-62)
62. 6230 U.S.C. § 37 (1970). [↑](#footnote-ref-63)
63. 63"[Contestee's counsel] stated that the lode claims embrace the same ground as the placer location and that the only reason the lode locations were made was to prevent others from top locating over the placer." United States v. Union Carbide Corp., Arizona 7345, (Int. Dept. Hearings Div. June 14, 1974). [↑](#footnote-ref-64)
64. 64A placer discovery will not sustain a lode location, nor will a lode discovery sustain a placer location. Cole v. Ralph, 252 U.S. 286 (1920); United States v. Haskins, 505 F.2d 246 (9th Cir. 1974). [↑](#footnote-ref-65)
65. 6530 U.S.C. § 35 (1970) "[Placer claims] shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims...." [↑](#footnote-ref-66)
66. 66*Ibid*. [↑](#footnote-ref-67)
67. 67Stenfjeld v. Espe, 171 F. 825 (9th Cir. 1909); *See* Porter v. Tonopah North Star Tunnel & Dev. Co., 133 F. 756 (C.C.D. Nev. 1904), *aff'd* 146 F. 385 (1906), *cert. denied*, 207 U.S. 586 (1907); 43 C.F.R. § 3842.1-5(b) (1976). [↑](#footnote-ref-68)
68. 68Young v. Papst, 148 Or. 678, 37 P.2d 359 (1934); Price v. McIntosh, 1 Alaska 286 (1901). [↑](#footnote-ref-69)
69. 6930 U.S.C. § 36 (1970). [↑](#footnote-ref-70)
70. 7043 C.F.R. § 3842.1-5(a) (1976). [↑](#footnote-ref-71)
71. 71*Id*., citing Snow Flake Fraction Placer, 37 L.D. 250 (1908). [↑](#footnote-ref-72)
72. 7243 C.F.R. § 3842.1-3 (1976). [↑](#footnote-ref-73)
73. 7343 C.F.R. § 3842.1-4 (1976). [↑](#footnote-ref-74)
74. 74***Kern*** ***Oil*** Co. v. Crawford, 143 Cal. 298, 76 P. 1111 (1904); Pidgeon v. Lamb, 133 Cal. App. 342, 24 P.2d 206 (1933). [↑](#footnote-ref-75)
75. 75Cal. Pub. Res. Code § 2303(b) (West 1972). [↑](#footnote-ref-76)
76. 76Nev. Rev. Stat. § 517.090(2) (1975). [↑](#footnote-ref-77)
77. 77Or. Rev. Stat. § 517.046(2) (1975). [↑](#footnote-ref-78)
78. 7830 U.S.C. § 35 (1970). In Nevada, for example, some 19 million acres of land remain unsurveyed. Pamphlet, "Bureau of Land Management-Nevada Statistics 1976" (NSO Pub. 5, revised 1976), p. 28. [↑](#footnote-ref-79)
79. 79Note 80, *infra*. [↑](#footnote-ref-80)
80. 80"All placer-mining claims located after May 10, 1872 shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, *whether the locations are upon surveyed or unsurveyed lands*." 43 C.F.R. 3842.1-5(a), (1976) (emphasis added). The source statute (30 U.S.C. § 35) omits the emphasized phrase; its inclusion in the regulation appears unwarranted. [↑](#footnote-ref-81)
81. 81"Manual of Surveying Instructions", note 82, *infra*, at 9. [↑](#footnote-ref-82)
82. 82Figure 1 is reproduced from "Manual of Surveying Instructions, 1973" (BLM Technical Bulletin 6, U.S. Gov't. Printing Office Stock No. 2411-0037), at 82. [↑](#footnote-ref-83)
83. 83In a proper case, the 40-acre tract described as the SE 1/4 of the NW 1/4 may be appropriated by a 40-acre association placer claim. See discussion at note 105 *infra*. [↑](#footnote-ref-84)
84. 84The position of the boundary between the "north half" and the "south half" of the lot cannot be determined-are the halves predicated on area or distance? [↑](#footnote-ref-85)
85. 85Interviews with Lacel E. Bland, Chief, Cadastral Branch, Nevada State Office, BLM, Reno, Nevada, (1975, 1976). [↑](#footnote-ref-86)
86. 8630 U.S.C. § 35 (1970). [↑](#footnote-ref-87)
87. 87"Manual of Surveying Instructions", *supra* note 82, at 205. [↑](#footnote-ref-88)
88. 88Figure 2 is taken from "Manual of Surveying Instructions", *supra* note 82, at 205. [↑](#footnote-ref-89)
89. 89The excess over 20 acres in Lot 5 and in Lots 6 and 7 combined is of no moment. *See* discussion of Rule of Approximation, note 99 *infra*. [↑](#footnote-ref-90)
90. 90For a detailed discussion of recording requirements under Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744, and other recent legislation, *see* Sherwood, "Recording of Mining Claims: The Bell Tolls for Me and Thee", 23 *Rocky Mt. Min. L. Inst*.- (1977); and Miller, "Recordation and Surface Management Regulations Affecting Mining in the National Forests, the National Park System, and on the Public Domain", 23 *Rocky Mt. Min. L. Inst*.-(1977). [↑](#footnote-ref-91)
91. 91Pamphlet, "Public Land Statistics-1975" (U.S. Bur. of Land Mgt.-Gov't Printing Office, 1975), at 139. [↑](#footnote-ref-92)
92. 92William F. Carr, 53 I.D. 431 (1931); 1 *American Law of Mining* § 5.24 (1975). [↑](#footnote-ref-93)
93. 93Alaska Stat. Ann. § 27.10.090 (1962). [↑](#footnote-ref-94)
94. 94Alaska Stat. Ann. § 27.10.100 (1962). [↑](#footnote-ref-95)
95. 95Alaska Stat. Ann. § 27.10.110 (1962). [↑](#footnote-ref-96)
96. 96Alaska Stat. Ann. § 27.10.140 (1962). [↑](#footnote-ref-97)
97. 9730 U.S.C. § 22 (1970), providing that mineral deposits in public lands shall be open to entry, according to local law "so far as the same are applicable and not inconsistent with the laws of the United States"; 30 U.S.C. § 36 (1970), authorizing location of placer claims of up to 160 acres by associations of eight persons; *c.f*. Barton v. DeRousse, 91 Nev. 347, 535 P.2d 1289 (1975). [↑](#footnote-ref-98)
98. 98*See* Price v. McIntosh, 1 Alaska 286 (1901); 1 *American Law of Mining* § 5.72 (1975). [↑](#footnote-ref-99)
99. 99*See* Henry P. Sayles, 2 L.D. 88 (1883). [↑](#footnote-ref-100)
100. 100Ventura Coast ***Oil*** Co., 42 L.D. 453 (1913). [↑](#footnote-ref-101)
101. 101Hall v. McKinnon, 193 F. 572 (9th Cir. 1911), United States v. Bunkowski, 79 I.D. 43 (1972); United States v. Mineral Ventures, Ltd. 80 I.D. 792 (1973); 43 C.F.R. 3842.1-1 (1976). [↑](#footnote-ref-102)
102. 102United States v. Bunkowski, 79 I.D. 43 (1972). [↑](#footnote-ref-103)
103. 10330 U.S.C. § 28 (1970); Reeder v. Mills, 62 Cal. App. 581, 217 P. 562 (1923); McDonald v. Montana Wood Co., 14 Mont. 88, 35 P. 668 (1894). [↑](#footnote-ref-104)
104. 104Alaska Stat. Ann. § 27.10.130 (1962). [↑](#footnote-ref-105)
105. 105Rooney v. Barnette, 200 F. 700 (9th Cir. 1912); Chittim v. Belle Fourche Bentonite Products Co., 60 Wyo. 235, 149 P.2d 142 (1944); Mitchell v. Cline, 84 Cal. 409, 24 P. 164 (1890); Durant v. Corbin, 94 F. 382 (C.C.D. Wash. 1899); Centerville Min. & M. Co., 49 L.D. 508 (1923). [↑](#footnote-ref-106)
106. 106*See* Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), *cert. denied*, 393 U.S. 1025 (1969). [↑](#footnote-ref-107)
107. 107*See* United States v. Toole, 224 F. Supp. 440 (D.C. Mont. 1963); Chanslor-Canfield Midway ***Oil*** Co. v. United States, 266 F. 145 (9th Cir. 1920); Cook v. Klonos, 164 F. 529 (9th Cir. 1908); Centerville M. & M. Co., 49 L.D. 508 (1923). [↑](#footnote-ref-108)
108. 108United States v. Toole, 224 F. Supp. 440 (D.C. Mont. 1963); Mitchell v. Cline, 84 Cal. 409, 24 P. 164 (1890); Centerville Min. & M. Co., 49 L.D. 508 (1923). [↑](#footnote-ref-109)
109. 109Morrison, *Mining Rights on the Public Domain* (16th Ed.-De Soto, 1936) at 262. [↑](#footnote-ref-110)
110. 110*See generally*, Hochmuth, "Government Administration and Attitudes in Contest and Patent Proceedings," 10 *Rocky Mt. Min. L. Inst*. 467 (1965). This policy of retention, long held by many to contravene clear congressional intent, now finds legislative sanction in the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq*. (Supp. 1976), in which "[t]he Congress declares that it is the policy of the United States that (1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest...." [↑](#footnote-ref-111)
111. 111*Supra* note 108. [↑](#footnote-ref-112)
112. 112Within the meaning of 30 U.S.C. § 35 (1970), a corporation is an individual claimant. Gird v. California ***Oil*** Co., 60 F. 531 (C.C.S.D. Cal. 1894). [↑](#footnote-ref-113)
113. 113*See* Borgwardt v. McKittrick ***Oil*** Co., 164 Cal. 650, 130 P. 417, 419 (1913). [↑](#footnote-ref-114)
114. 114*Toole, supra*, note 107. [↑](#footnote-ref-115)
115. 115*See* U.S. Borax Co. v. Ickes, 98 F.2d 271 (D.C. Cir.), *cert. denied*, 305 U.S. 619 (1938). [↑](#footnote-ref-116)
116. 116*Ibid*. [↑](#footnote-ref-117)
117. 117For a detailed analysis of millsite law, *see* Greer, "Millsites: Non-mineral Mining Claims", 13 *Rocky Mt. Min. L. Inst*. 143 (1967), and Harris, "The Law of Millsites: History and Application," 9 *Natural Resources Lawyer* 103 (1976). [↑](#footnote-ref-118)
118. 118Nev. Rev. Stat. § 517.200 (1975). The decision whether, in a given case, to amend or to relocate a mining claim, is itself frequently crucial. Useful guidance may be found in Reeves, "Amendment v. Relocation", 14 *Rocky Mt. Min. L. Inst*. 207 (1968). [↑](#footnote-ref-119)
119. 11943 C.F.R. §§ 3862.4-6 and 3863.1 (1976). [↑](#footnote-ref-120)
120. 120Hochmuth, *supra* note 110 at 488. [↑](#footnote-ref-121)
121. 12130 U.S.C. § 28 (1970); Ickes v. Virginia-Colorado Dev. Corp., 295 U.S. 639 (1935); Wilbur v. Krushnic, 280 U.S. 306 (1930); *but see* Hickel v. ***Oil*** Shale Corp., 400 U.S. 48 (1970). For a definitive treatment of assessment work requirements, *see generally*, "Annual Assessment Work Manual", Rocky Mtn. Min. L. Foundation (1972). [↑](#footnote-ref-122)
122. 122Hochmuth, *supra* note 110 at 489. [↑](#footnote-ref-123)