

Chapter 517

Mining and Mining Claims

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CASE CITATIONS: *Kramer v. Taylor*, (1954) 200 Or 640, 266 P2d 709.

ATTY. GEN. OPINIONS: Application of general mining laws to extracting gold from ocean beaches, 1954-56, p 109; application of mining lease statutes to lands reforested with forest rehabilitation funds, 1958-60, p 353; respective powers of board and Department of Environmental Quality, (1970) Vol 35, p 29.

517.010

NOTES OF DECISIONS

Neither federal nor state statutes provide any specific time within which the location must be made, but until the boundaries are distinctly marked, and notice posted, the location is not complete. *Patterson v. Tarbell*, (1894) 26 Or 29, 37 P 76.

Diligence in marking the boundaries of a claim, the law being otherwise complied with, will protect the rights of a discoverer of a mineral vein against a subsequent locator. *Id.*

A discovery subsequent to the posting of notice validates the claim if no adverse rights have accrued. *Id.*

A claim occupied under color of title for more than 20 years is not public mineral land of the United States. *Risch v. Wiseman*, (1900) 36 Or 484, 59 P 1111, 78 Am St Rep 783.

Failure to place monuments at the center ends of the claim is a fatal omission. *Wright v. Lyons*, (1904) 45 Or 167, 77 P 81.

This section was intended only as a means of determining the rights of conflicting claimants, and the boundaries of the claim may be marked at any time before conflicting rights attach. *Sharkey v. Candiani*, (1906) 48 Or 112, 85 P 219, 7 LRA(NS) 791.

The discovery by a qualified person of a vein of mineral-bearing rock in place on vacant land of the United States and the appropriation thereof by him by performing the acts prescribed in the statutes initiates a valid right to a mining claim. *Id.*

On land already patented no location can be made unless it has been abandoned so that it has become part of the unappropriated public domain. *Id.*

Claim of subsequent locator who attempts to locate on lands already subject to a valid location is void ab initio. *Inman v. Ollson*, (1958) 213 Or 56, 321 P2d 1043.

Discovery gives the claim owner the right to so much of the surface of the claim as is necessary to him to exploit his discovery. *Coos Bay Tbr. Co. v. Bigelow*, (1961) 228 Or 467, 365 P2d 619.

The owner of a mining claim on the public domain acquires no right to the surface of the land until he makes a discovery. *Id.*

FURTHER CITATIONS: *Steele v. Preble*, (1938) 158 Or 641,

77 P2d 418; *Kramer v. Taylor*, (1954) 200 Or 640, 266 P2d 709; *Suitter v. Thompson*, (1960) 225 Or 614, 358 P2d 267.

ATTY. GEN. OPINIONS: Mineral claims upon city-owned watershed, 1938-40, p 20; prospecting on privately-owned land subject to regulations, 1940-42, p 231; placer mining claims located under like circumstances and conditions and upon similar proceeding as vein or lode claims, 1944-46, p 420; lands upon which mining leases may be executed by the board, 1952-54, p 149; application of general mining laws to extracting gold from ocean beaches, 1954-56, p 109; State Land Board authority to make rules as to mineral leases on the ocean shore, 1956-58, p 109; right of Philippine citizens to exploit natural resources or operate public utilities, 1966-68, p 306.

517.030

NOTES OF DECISIONS

A discovery subsequent to the posting of notices of location validates the claim, if no adverse rights have accrued. *Sharkey v. Candiani*, (1906) 48 Or 112, 85 P 219, 7 LRA(NS) 791; *Kramer v. Taylor*, (1954) 200 Or 640, 266 P2d 709.

A recorded notice which does not describe the boundaries of the claim with sufficient certainty so that they could be established on the ground is ineffectual. *Strickland v. Commercial Min. Co.*, (1909) 55 Or 48, 104 P 965.

OL 7627 [ORS 517.605(1)] was not impliedly repealed by the 1901 amendment of this section. *Winters v. Burkland*, (1927) 123 Or 137, 260 P 231.

The failure to attach the affidavit may be remedied by filing proper location notices and having the same recorded. *Oliver v. Burg*, (1936) 154 Or 1, 58 P2d 245.

First locator was entitled to possession when a subsequent locator took possession of premises and first locator, because of risk of violence, failed to complete work within time provided by statute. *Inman v. Ollson*, (1958) 213 Or 56, 321 P2d 1043.

FURTHER CITATIONS: *Risch v. Wiseman*, (1900) 36 Or 484, 59 P 1111, 78 Am St Rep 783; *Oregon King Min. Co. v. Brown*, (1902) 55 CCA 626, 119 Fed 48; *Wright v. Lyons*, (1904) 45 Or 167, 77 P 81; *Griffith v. Haiford*, (1942) 169 Or 351, 128 P2d 947.

517.040

NOTES OF DECISIONS

Where assessment work by a locator had not been done, the claim is subject to relocation. *Wagner v. Dorris*, (1903) 43 Or 392, 73 P 318.

Unless it has been abandoned, so that it has again become part of the unappropriated public domain, no location can be made on land already patented. *Sharkey v. Candiani*, (1906) 48 Or 112, 85 P 219, 7 LRA(NS) 791.

Where the appearance of a mining claim indicates an abandonment for many years, and no monuments mark the boundaries, another location thereon is authorized. *Strickland v. Commercial Min. Co.* (1909) 55 Or 48, 104 P 965.

ATTY. GEN. OPINIONS: Applicability of this section to the removal of minerals from tidelands, 1954-56, p 109.

517.065

NOTES OF DECISIONS

Subsection (1) of this section was not repealed by the 1901 amendment of OL 7619 and OL 7620 [ORS 517.020 and 517.030]. *Winters v. Burkland*, (1927) 123 Or 137, 260 P 231.

517.080

NOTES OF DECISIONS

Prior to the enactment of this section, the interest of a locator in possession was held to be personalty. *Duffy v. Mix*, (1893) 24 Or 265, 33 P 807; *Allen v. Dunlap*, (1893) 24 Or 229, 33 P 675; *Herron v. Eagle Min. Co.*, (1900) 37 Or 155, 157, 61 P 417.

Upon the death of the owner, a mining claim passes to the heir. *Lohmann v. Helmer*, (1900) 104 Fed. 178.

A verbal option cannot create an interest in a mining claim. *Grand Prize Hydraulic Mines v. Boswell*, (1917) 83 Or 1, 17, 151 P 368, 162 P 1063.

Oral evidence of an agreement to purchase a mining claim is inadmissible. *Hinderliter v. McDonald*, (1917) 84 Or 251, 254, 164 P 378.

Cotenancy in a mining claim does not make the tenants joint venturers. *Suitter v. Thompson*, (1960) 225 Or 614, 358 P2d 267.

Confirmation of sale on execution of placer mining claims and pipe lines and tools thereon in one unsegregated bid and for a lump sum was erroneous, since the judgment debtor may redeem realty but not personalty. *Roseburg Nat. Bank v. Camp*, (1918) 89 Or 67, 173 P 314; *Dixie Meadows Independence Mines Co. v. Knight*, (1935) 150 Or 395, 45 P2d 909.

517.090

NOTES OF DECISIONS

An interest in a ditch used for mining purposes must be transferred by deed. *Mattis v. Hosmer*, (1900) 37 Or 523, 62 P 17, 632.

Oral proof of an agreement to purchase an interest in a mining claim is inadmissible. *Hinderliter v. McDonald*, (1917) 84 Or 251, 254, 164 P 378.

517.210

NOTES OF DECISIONS

Where assessment work by a prior locator has not been done within the claim's limits, the claim is subject to relocation. *Wagner v. Dorris*, (1903) 43 Or 392, 73 P 318.

Failure to perform the annual labor on a claim does not work a forfeiture, and the original locator's claim is not divested until there has been a peaceable entry for perfecting a relocation. *Cooperative Copper Co. v. Law*, (1913) 65 Or 250, 132 P 521.

The burden of providing a forfeiture for failure to do the work required is upon the party asserting such forfeiture, and a finding against forfeiture by the trial court will not be disturbed on appeal unless the evidence clearly fails to support it. *Kramer v. Taylor*, (1954) 200 Or 640, 266 P2d 709.

517.220

NOTES OF DECISIONS

A showing that no proof of performance of assessment work was filed constituted prima facie evidence that the work was not done. *Schlegel v. Hough*, (1947) 182 Or 441, 186 P2d 516, 188 P2d 158.

517.300

LAW REVIEW CITATIONS: 42 OLR 232.

517.420

NOTES OF DECISIONS

The State Land Board is not authorized to execute mining leases on lands held by State Highway Commission. *State Hwy. Comm. v. Rawson*, (1957) 210 Or 593, 312 P2d 849.

Discovery gives the claim owner the right to so much of the surface of the claim as is necessary to him to exploit his discovery. *Coos Bay Tbr. Co. v. Bigelow*, (1961) 228 Or 467, 365 P2d 619.

The owner of a mining claim on the public domain acquires no right to the surface of the land until he makes a discovery. *Id.*

ATTY. GEN. OPINIONS: Lands upon which mining leases may be executed by board, 1952-54, p 149; application of general mining laws to extracting gold from ocean beaches, 1954-56, p 109; State Land Board making rules as to mineral leases on the ocean shore, 1956-58, p 109; application of mining lease statutes to lands reforested with forest rehabilitation funds, 1958-60, p 353; authority of State Land Board to lease offshore lands for oil exploration, 1960-62, p 99; construing "right to lease" in subsection (2); authority to determine right, 1966-68, p 110.

517.430

ATTY. GEN. OPINIONS: Application of mining lease statutes to lands reforested with forest rehabilitation funds, 1958-60, p 353; authority of State Land Board to lease offshore lands for oil exploration, 1960-62, p 99.

517.510 to 517.550

ATTY. GEN. OPINIONS: Respective powers of board and Department of Environmental Quality, (1970) Vol 35, p 29.

517.520

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517.530

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517.540

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