

CIRCULAR 37

MINING LAWS OF SOUTH DAKOTA

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SOUTH DAKOTA GEOLOGICAL SURVEY
SCIENCE CENTER
UNIVERSITY CAMPUS
VERMILLION, SOUTH DAKOTA
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STATE OF SOUTH DAKOTA
Nils Boe, Governor

SOUTH DAKOTA GEOLOGICAL SURVEY
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CONTENTS

	Page
Introduction.....	1
Acknowledgments.....	1
Historical development of major western systems of land tenancy with respect to the ownership and control of minerals.....	2
Mineral rights in the United States.....	8
Sources of title.....	8
Acquisition of public domain.....	8
Disposal of public domain--national policy of reserving mineral lands.....	10
School land grants.....	11
Swamp land grants.....	12
Railroad grants.....	12
Agricultural acts.....	13
Federal lands subject to mineral entry and development.....	14
Indian reservations.....	14
Military reservations.....	14
National parks.....	14
National forests.....	14
Reclamation withdrawals.....	15
Power Act reservations.....	15
Townsites.....	15
Withdrawals for power sites and conser- vation by Pickett Act of 1910.....	15
Withdrawals pursuant to the Taylor Grazing Act.....	16

	Page
"Tidelands"	16
Acquired lands	16
Public records of ownership	17
Methods of acquiring mineral interest in Federal lands	17
Lode and placer mining locations under the the Acts of 1866 and 1872	17
Qualifications of applicants	18
Requirements of a valid location	19
Rights and obligations under unpatented location	20
Proceedings to acquire patent	20
Leasing of the public domain	21
Development of leasing principle	21
Noncompetitive leases	22
Competitive leases	23
The Outer Continental Shelf Lands Act	24
Multiple mineral development of the same tract of public lands	24
Methods for acquiring mineral interests in state lands	25
Methods of acquiring mineral lands privately held	26
Certain overriding restrictions on mineral tenancies	26
Part II--1939 South Dakota Mining Code with supplements	27
Chapter 42.01	27

	Page
Mining claims.....	27
Chapter 42.02.....	31
Right of way appurtenant to mines.....	31
Chapter 127 (H.B. 589).....	34
Recodification of Mine Safety Code.....	34
Chapter 176 (H.B. 789).....	46
Amending law to provide action and recovery on release of expired mineral and other leases.....	46

INTRODUCTION

Many requests are received by the South Dakota Geological Survey and the State Mines Inspector for a copy of the mining laws of South Dakota. The purpose of this circular is to restate the laws in a form suitable for distribution.

South Dakota mining laws are found in the South Dakota Code of 1939, Volume 3, title 42, Chapters 42.01 to 42.05, pages 141-151 and Chapter 42.09, pages 153-154 in the 1960 Supplement to the South Dakota Code of 1939, Volume 1, pages 854-863.

House Bill 589 pertaining to recodification of Mine Safety Code repealed Chapters 42.03 and 42.04 of the South Dakota Code of 1939 and reenacted Chapter 42.03 providing for a Mine Safety Code. The House bill was approved February 4, 1966.

House Bill 789 amended section 42.0812 of the 1960 Supplement to the South Dakota Code of 1939 and was passed March 15, 1965.

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HISTORICAL DEVELOPMENT OF MAJOR WESTERN SYSTEMS OF LAND TENANCY WITH RESPECT TO THE OWNERSHIP AND CONTROL OF MINERALS

The use of metals in primitive societies was largely confined to the manufacture of weapons for self-preservation. The ruler's control over copper, then bronze, then iron, was essential to maintenance of his own ascendancy at home and his group's position against neighbors who had access to similar metals. Ancient societies were thus characterized by the ruling group's ownership of minerals and metals.

The Egyptian civilization, which emerged in the fourth millenium B.C. upon the agricultural subjugation of the lower valley of the Nile, was responsible for extensive development of the upper valley as a source of mineral wealth. The production of gold during the height of that civilization has been estimated at \$30,000,000 per year, thus equaling the early placers of California and Australia. The mines of Egypt were the property of the Pharaohs and were controlled at their direction.

Greek mining developed a different scheme of land tenancy which more closely resembled modern concepts. Development of mineral resources was encouraged by a liberal and universal code which extended to citizens and friendly aliens alike the right to mine what must have been regarded as state property, for the payment of a royalty of one twenty-fourth part of the net profits. Those operating the mines were looked upon as a separate class, similar to farmers and merchants, although the labor employed is believed to have been predominantly slave. A director of mines was appointed, who indicated to prospectors, on application, where they might seek ore. The location with reference to direction and extent of veins, as well as the proper distance between different claims in the same field, were all governed by specific laws. The Athenian silver mines at Laurion were operated for the state's account.

The rise of the Roman Empire and its accompanying conquests brought most of the world's known mineral sources under the domination of one sovereign and one legal system.

Roman law provided in general that ownership of the land carried with it the ownership of any minerals found therein. Because the great majority of mines and known mineral deposits outside Italy were acquired by conquest, they became the property of the republic, and later the empire. Due to this extensive state ownership of many of the important mines, the underlying theory became accepted that the state held a primary control over all mineral resources. With respect to state mines, in general only Roman citizens could acquire the right to lease mines for operation. The Institutes and Digest of Justinian in the sixth century, codifying several centuries' precedents, provided the basis for private operation of these mines through the "usufruct." Usufruct was defined as the right to use another's property and to take its fruits so long as the substance was not impaired. The usufruct could be created for the life of the usufructuary, the life of another, or for a term of years, but usually it was not regarded as alienable. However, the rights created in the usufructuary, where mines or quarries

existed on the land, were limited to the operation of those mines and quarries; the opening of new mines was prohibited as a violation of the usufruct.

The usufruct system was gradually abandoned in favor of a system of operation, in the name of the state, of mines and mineral-producing areas by regularly appointed officials. The officials were subject to extensive obligations to the state, although given the right to own and sell land. From this emerged the concept of feudal service. However, the right to explore and open newly discovered mining areas was frequently granted to persons held in high esteem by the emperor, as a reward for special service, conditioned only upon payment of royalties to the ruler.

The Arab conquests of the seventh century, which broke through the shield of the Eastern Roman Empire and enveloped the Levant, Egypt, North Africa and portions of Spain, made no important contributions to mining law except for possible effects on evolution of the law of Spain. The Arab tide of twelve centuries ago nevertheless profoundly affects the modern laws controlling much of the world's oil production because of the geographical accident that it overran areas containing some of the world's greatest known petroleum reserves, in the Mid-East and North Africa. For that reason the Eastern Roman Emperor, Heraclius, who made possible the Moslem eruption from Arabia by decimating the forces of his own frontier provinces in a religious war, is possibly the most important single figure in the history of the oil industry. As later tides of foreign domination have receded, they have left Arab successor states in physical control of those areas. The Islamic law affects the negotiation of concessions in those countries, but, so far as any written body of mineral laws appears, they are of fairly recent and extraneous origin.

In the period following the fall of the Western Roman Empire in the fifth century, the established patterns of land ownership that had arisen during the Greek and Roman civilizations were broken in Western Europe. They continued in the Eastern Roman Empire in modified form and within a gradually reduced perimeter until Constantinople fell to the Turks in 1453. The breakdown of central government in Europe was followed by the growth of independent local units connected by personal relationships. The feudal relationship, as this may be characterized, implied land holdings rather than land ownership. Until late in the Middle Ages, when the establishment of great monarchies tended to consolidate land holdings, ownership of land rested in the king or in only the most powerful noblemen. The hierarchy of nobles beneath the great lords received, in return for personal services, the right to use certain lands as tenants.

The manorial system, which characterized the secondary land holdings of the feudal system, was primarily agricultural in its nature. A few held their land in alodial tenure, or in fee absolute, and these tenures were mainly agricultural. Mining, as a pursuit, was neglected. One reason given for this is the exhaustion of the principal mines during the Roman exploitation; another reason, and perhaps more important, was the general lack of incentive in worldly pursuits, characteristic of the age, and specifically of the land holder who had no right or interest in minerals,

which were retained in the landowner--the seigneur. In Western Europe, the Romans' accumulation of metals was dissipated. For several centuries, iron weapons were so scarce as to be legendary--witness King Arthur's sword, Excalibur, in the sixth century, and Roland's magic Durandal in the eighth. Armor could be afforded only by noblemen until the fifteenth century. Probably the annual production of the mines of Western Europe prior to 1500 was worth only about \$500,000 per year. The gold stock of Western Europe had shrunk, by the year 1500, to about five dollars per head, or \$34,000,000 in all--equivalent to approximately one year's production by the Pharaohs, three millennia earlier. The sixteenth century, following discovery of the new world, was to change this: iron and steel weapons were to win more than \$175,000,000 in gold and silver in a single century from natives who knew how to mine and reduce the so-called precious metals but not the metals essential to their independence and survival. This revolution in the world's metal equation was effected under a system of mineral tenure evolved by the Spaniards; but before describing it some reference to the early German and English systems, in which the United States system is more directly rooted, is necessary to a proper perspective.

An exception to the failure of the feudal period to expand the already existing concepts of mineral land tenancy was the principle of "free mining" as it sprang up in Germany during this age.

The first records of German mining law date from the twelfth to the fourteenth centuries, where the rules adopted by the various separate localities, arising for the most part out of custom, show a remarkable similarity. Each district was administered by a mining prefect, with the help of subordinate burgomasters, who were directly responsible to the ruling prince. A lease was the only mining interest available, but it could be acquired by individuals in compliance with established rules. A discoverer was preferred and rewarded with a "head meer," measuring approximately 294 feet along the length of the vein, and 42 feet in width. Others could obtain a "regular meer" measuring 84 by 42 feet. Due to the narrowness in width, it appears that the miner was permitted an "extra-lateral right" to pursue a vein on its downward dip, regardless of the surface boundaries. An essential principle of the Germanic system was segregation of the mineral estate from the surface estate, but, since the ruling prince or noble owned both, the right to develop the segregated minerals emanated only from the state.

"Free mining" was firmly established in Germany by the end of the twelfth century, but in subsequent periods the emperor and territorial sovereigns took exception to the principle and demanded the mining royalty as their prerogative. The outcome of the struggle was a compound of mining freedom with mining royalty. The princes recognized the right of free prospecting and the right of the discoverer to the mineral deposit discovered but reserved to themselves a tribute (tithe).

In England the decline of feudalism saw the growth of the principle of individual ownership of property, which played an important part in the mining laws and the systems of land tenancy involving ownership of minerals. Unlike the Germanic system the English common law evolved the

rule that minerals were the property of the owner of the land, the property in the surface carrying with it the ownership of everything beneath and above it. There were exceptions to this rule, the most important of which was the Crown's right to gold and silver ores, whether found in public lands or private. This retained sovereign right to mines of gold and silver was apparently a direct carry-over from Roman times, and in this respect English mining law is similar to the Roman and civil law.

The royal prerogative was diminished by enactment of statutes during the reign of William and Mary, which limited Crown rights to mines containing precious metals in their pure state. Ownership of all mines and minerals of every description found beneath navigable streams, and below ordinary high water mark on the seas, belonged to the Crown. Since few such mines existed in England, the Crown rights were largely a matter of form.

The mineral rights incident to royal mines could, if the Crown so desired, be granted away but only by the use of precise words denoting the intention of the sovereign to patent the lands and mines to others, severing them forever from the Crown estates. Unless the mines were named, the gold or silver found on the lands would not pass, and this applied to lands in the colonies as well.

Apart from the Crown rights to gold and silver, the rule that the baser substances belonged to the owner of the soil was modified to a lesser extent by local customs, which grew up over a long period of time. In areas where these customs prevailed, the ownership of some baser metals was retained in the Crown, subject to the customary rights which had been confirmed by statute. The tin mines of Cornwall and Devonshire, the lead mines of Derbyshire, and the coal and iron mines in the Forest of Dean are examples of localities within which customs modified the general rule. Lindley observes that these customs originated during the Roman occupation, but they were recognized and established by acts of parliament upon the theory that they existed by virtue of some antecedent grant or concession made by the Crown. They are of interest as well because the rules themselves, lacking any theory of an antecedent Crown grant, are said to have been the basis for many of the early rules formed by miners in California.

In Cornwall, where tin was found, a "free tinner" could establish his "bound" by marking out an area (usually about an acre) with stones or pieces of turf at the four corners. His bound was then proclaimed in the stannary courts (courts having jurisdiction over miners and their property rights), where it was at later sessions again announced, and, if no opposition to the bound was heard, a writ of possession was issued by the court. The bound entitled the tinner to search for and extract ore. Various regulations placed duties on the tinner to renew his bound and work it. A royalty (called a "dish" or "toll") was payable not to the Crown but to the owner of the soil.

Similar rules and regulations existed for the areas of Derbyshire where lead was mined, and the Forest of Dean, the site of coal and iron mining. The regulations in force for the Derbyshire lead mines was somewhat

complex and covered almost all phases of mining. Although these regulations appear to supply the closest existing analogy to early mining laws in the United States, there was no trace of a recognition in English law of the right to follow mineral deposits in depth outside of the boundaries marked upon the surface.

As the common law theories of land tenure developed, the right of individuals to hold property and to extract therefrom, with minor restrictions, whatever metals or minerals were contained, became well established. The owner, by contract or deed, could dispose of the minerals as he saw fit. The only vestige of Roman civil law concerning minerals that was recognized by the common law was that of Crown rights in royal mines.

A different concept of the rights of the individual to own and control minerals developed on the European continent and in the Spanish-American area. This doctrine is commonly known as the regalian theory and has as its basis or origin the civil law doctrines of Rome. As previously noted, under the empire the control of all minerals was vested in the state. If the state elected, it could award to individual citizens the right to acquire possessory ownership of land embracing imperial mines; and with respect to private mines the right to extract minerals carried with it the duty to pay royalties to the state. This basic Roman concept was the foundation for the development of Spanish mining law under which the Spaniards inaugurated their important quests for new mineral wealth, beginning in the sixteenth century.

The essence of the regalian theory of mineral tenure developed by Spanish law is the state ownership or control of mineral resources. Gamboa (Commentaries of Gamboa, Heathfield trans., vol. 1, p. 15) notes that:

"...it became an established custom in most kingdoms, and was declared by the particular laws and statutes of each, that all veins of the precious metals, and the produce of such veins, should vest in the crown, and be held to be a part of the patrimony of the king or sovereign prince."

All other minerals, mines, and quarries under the early law were considered as belonging to the owner of the soil, subject to the payment of royalties to the Crown.

On May 23, 1783, Charles III, King of Spain, published a royal mining ordinance destined to affect nearly all of the Spanish colonies in the Americas. The ordinance declared all mines to be the property of the royal Crown, without regard to type of mineral or the location thereof. Mineral and surface ownership were clearly separated.

Since an avowed purpose of the ordinance was to encourage development of mineral-producing areas, principally in the Spanish Americas, provision was made for acquisition and exploitation of mineral-bearing lands. Grants were freely made to Crown subjects, which vested in the grantee, upon compliance with certain conditions, the right to possession and occupation of the grant, with the further right to dispose of it on the same conditions as those under which it had been received. The conditions

were twofold: first, that the grantee should pay a royalty to the Crown of one-fifth of the metals or minerals produced; and, second, that the mining operations would be conducted in accordance with the regulations prescribed in the ordinances. Failure to observe the regulations caused the property to be forfeited and placed in the category of lands subject to denouncement. The regulations contained detailed provisions on the rights of subjects to discover and mine minerals. The surface owner was protected from potential damage to his property inasmuch as he was entitled to compensation for its use. In the event of conflicting claims, judicial hearings were granted to determine priority to registration and discovery. The right to denounce a mine upon the property of any individual, provided, of course, that adequate compensation was paid to the surface owner, permitted rapid and wide development of mining claims in the newly colonized areas. Old mining claims and abandoned mines were similarly capable of denouncement.

The basic theory of the regalian Spanish law, which culminated in the 1783 ordinance of Charles III, is that of state ownership of the mineral deposit. This system is sometimes designated the "Dominial" theory of the state's right. Although concessions are issued by the state, they grant only a temporary right of exploitation, the basic ownership of the mineral deposit remaining in the state.

A somewhat different regalian theory of mineral tenure is that developed in France. The Mining Law of 1810, incorporated in the Napoleonic Code, made a clear distinction between surface and subterranean proprietorship, and put the estate in minerals on a basis as secure as that of real estate. The law provided that although the ownership of the surface carried with it the right to subsurface minerals, the government, through the concept of concession, might separate the two estates, granting the estate in minerals, even in perpetuity, to one other than the owner of the estate in land, on the single condition that the latter be compensated by the payment of royalties. Mines could only be worked if actually conceded, and it was the act of concession that vested the property in the concessionaire with the power to dispose thereof in the same manner as real property, except that the area conceded could not be subdivided and sold without the consent of the Government.

The basic characteristic of the French law is that the mines constitute national wealth not owned but under the control of the state. The owner of the surface is not the owner of the deposit, which is res nullius, that is, the minerals belong to no one until they have either been discovered or reduced to possession. The state's role is to regulate the conditions upon which the mines may be exploited, by providing a registry and subsequent recognition by concession which permits the state to participate in a specified royalty percentage. The French system is sometimes referred to as the "accession" system, implying that minerals, when discovered, thereupon "accede" to the surface ownership. In practice, however, the two estates are separate and the mineral title does not derive from the surface owner. Some writers have referred to the system prevailing in the United States (see next section) as an "accession" system, but there is no real connection, historical or otherwise, between the French and

United States doctrines of mineral tenure.

The ordinance of Charles III was in effect in Mexico at the time of the Mexican Revolution of 1821, and became a part of the Mexican law. It was operative when the Republic of Texas came into being following the revolution of 1836. However, neither of the regalian systems embodied in the ordinance of Charles III or the Code Napoleon governed the development of mining law in the United States, which evolved from the radically different basic premises established by the English common law. These are summarized in the next section.

MINERAL RIGHTS IN THE UNITED STATES

Sources of Title

As will appear in succeeding paragraphs, title to the minerals in a specific tract of land in the United States may be in the Federal Government, a state, or an individual. The mineral title may be a part of the surface title, or it may have been severed. But, generally speaking (and in contrast with the systems prevailing in most parts of the world), the mineral estate is a part of the surface estate, and passes with it, unless and until severed; moreover, the original sovereign owner, whether the United States or a state, can and does transfer the mineral estate, as part of the surface estate or severed from it, to a private owner. The end result (with exceptions which relate primarily to federal lands) is that one who seeks to develop a mine, or oil or gas deposit, can acquire a mineral right that has all or most of the attributes of outright ownership--the right to sell, devise, mortgage, and so on. And this ownership, although subject to the police power of the state (or, in some instances, to similar powers of the Federal Government) in the enforcement of conservation and prevention of waste, is subject to the same constitutional protections against impairment by action of the federal and state governments as is other private property.

The importance of this nation in the world's mineral economy is founded only in part upon the magnitude of its mineral wealth: security of mineral tenure under the American legal system made possible the development of that wealth by private enterprise.

The American system of mineral tenure came about in the following way.

Acquisition of Public Domain

Rights to land in the area covered by the thirteen original colonies emanated from the colonial charters issued from England. These charters uniformly reserved to the British Crown one-fifth part of any gold and silver ore; some also reserved one-fifth of any "precious stones"; while others, such as the first Virginia Charter, reserved a "one-fifteenth part of all copper." According to English custom, the governor or company holding the charter had full ownership and control over any of the baser

metals not specifically reserved to the Crown. The Crown reservations were necessarily implied in every title to land passing to individuals, whether expressly stated or not. With the exception of the Crown reservations, mineral title followed the common law concept that the fee simple owner owned the land and all minerals therein from the center of the earth to the zenith of the sky within vertical planes through the surface boundaries. This concept provided the foundation from which later changes in mining jurisprudence developed.

The American Revolution of 1776 severed ties to the Crown and vested the colonies with the title and possession to vast quantities of "public lands" within their boundaries. The new states turned to public sales of this land by fee simple conveyances without reservation of minerals, as a means of raising cash to replenish their treasuries, depleted by the hostilities. However, a problem soon arose with respect to the large areas of lands claimed by various states in the undeveloped regions west of the Appalachian Mountains. Maryland, supported by other states lacking western claims, refused to sign the Articles of Confederation until these lands were ceded to the proposed new national government. After considerable controversy, the land-holding states reluctantly ceded their western claim, encompassing most of the area east of the Mississippi, to the national government, thus bringing into existence the first federal "public domain."

The first enacted land ordinance adopted by the Continental Congress, the famous Ordinance of 1785, provided, inter alia, that the federal public domain should be laid out in townships six miles square with 36 sections of 640 acres each. Although providing for the fee simple sale of lands, certain sections were reserved in each township for future disposition as well as "one-third of all gold, silver, lead, and copper mines." The fractional mineral reservation was a carry-over from the Crown reservations in the colonial charters. No evidence exists that these mineral reservations were ever put into use although they served as precedents for a concept of mineral reservation to be developed fifty years later.

The Federal Constitution conferred upon the Congress plenary powers over the public domain. The first exercise by Congress of its powers came in 1796 with the passage of an act adopting the main principles of the Land Ordinance of 1785. The 1796 act, however, reserved no minerals to the Federal Government (with the exception of salt springs), thus inaugurating a policy that was to last until 1841. During this time most of the transfers of lands of the public domain were classified as agricultural without regard to their mineral character.

The Federal Government acquired vast new areas of "public domain," in addition to that originally ceded. The Louisiana Purchase of 1803, the Treaty with Spain in 1819, the Treaty of Guadalupe Hidalgo with Mexico in 1848, the Gadsden Purchase from Mexico in 1853, the Northwest Compromise with Britain of 1846 and 1872, and the purchase of Alaska from Russia in 1867 added approximately 1,442,000,000 acres of "public domain" to that previously held by the national government.

One major territorial acquisition of the United States produced no federal public domain. The Republic of Texas, which had declared its independence from Mexico in 1836, retained title to all the public land within its boundaries as a condition to entering the union. Hence, none of the subsequent federal mining laws applied, and the vast mineral resources of the state have been developed solely under state law.

The acquisitions of the insular possessions--Hawaii, Puerto Rico, the Philippines (independent since 1946), Guam, the Virgin Islands, and the Canal Zone--differ from earlier acquisitions in that the new territories never became part of the public domain of the United States. Each of these presents an individual problem with respect to mineral titles.

In its growth from the original thirteen colonies to its present size, the United States has acquired lands in every instance by succession to titles formerly held by foreign sovereigns, that is, England, France, Spain, Mexico, and Russia. The diverse mineral laws of these countries operating prior to American acquisition posed a dual problem for the United States, first with regard to the continuity of law, and, second, with respect to the mineral status of already perfected land rights.

The answer to the first problem was reasonably clear. The Supreme Court in a landmark case, Pollard v. Hagan, 44 U.S. (3 How.) 212 (1845), rejected a contention that the United States succeeded to all the rights, powers, and jurisdiction of the King of Spain under the 1819 Treaty relating to the cession of Florida, stating:

"...Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it." (44 U.S. 212, at 225)

The second problem arose because of the recognition given in the various cession treaties to pre-existing rights. The most important incidents arose over prior Mexican grants covering rich mineral lands in the Southwest after the Treaty of Guadalupe Hidalgo in 1848. Under the regalian laws in force in Mexico at the date of the treaty, all minerals, whether in public or private property, belonged to the supreme government and did not pass to the grantee. If the United States recognized in the grantee only what he held under Mexican law, the United States would be successor to the "mineral estate" divorced from the Mexican grantee's overlying surface ownership. To avoid becoming thus enmeshed in a foreign mining philosophy, the United States Supreme Court ruled that the full title to all minerals passed to the grantee, along with the title to the land, upon confirmation of the validity of the grant and the issuance of a United States patent.

Disposal of the Public Domain-- National Policy of Reserving Mineral Lands

From the Land Act of 1796 to the Pre-emption Act of 1841, the policy of the United States was the outright sale of public lands to individuals for revenue. During this period the numerous sale and pre-emption laws

contained no specific reservation of mineral lands or lands containing mines, with the exception of certain known mineral lands expressly reserved by former acts.

The inauguration of the mineral reservation policy began with the Pre-emption Act of September 4, 1841, which provided that:

"...no lands on which are situated any known salines or mines shall be liable to entry under and by virtue of the provisions of this act," (5 Stat. 455)

Unlike the earlier colonial reservations carried over into the Ordinance of 1785, the 1841 Pre-emption Act reservation was not solely of minerals or mines, but of lands on which mines or minerals exist. Thus Congress rejected the segregation of the mineral estate from the surrounding surface estate, characteristic of the regalian European and Mexican law.

School Land Grants

The Land Ordinance of 1785 originally provided for the grant of section No. 16 in each new township to the state for educational purposes. (A township comprises 36 sections of 640 acres or one square mile each.) Congress, in 1848, added section No. 36 in each township to grants to newly formed states, and in other legislation made various additional educational grants to particular states. The issue arose as to whether the grants conveyed lands known to contain minerals to the states. In 1880 the Supreme Court, in Ivanhoe Mining Company v. Keystone Consolidated Mining Company, 102 U.S. 167 (1880), held that, regardless of the vagueness of the grants, Congress did not intend to depart from its then uniform policy of reserving known mineral lands (both surface and subsurface). Hence a reservation of mineral lands to the United States must be read into all state school land grants in the absence of express language including them.

The title to the school sections vests in the states upon the final approval and filing of the township survey or, if already surveyed, upon the date of the grant. Lands known to be mineral at that date are excluded, but, if subsequently discovered to be mineral, they pass to the state.

The school grant acts, however, made no provision for patents to the states to confirm the state title. This cast a cloud of uncertainty over state titles because of the potential threat that the lands in subsequent proceedings would be established as having been "known mineral" at the date of survey. Exactly this situation arose in West v. Standard Oil Co., 278 U.S. 200 (1928) where the Supreme Court held that the Secretary of Interior might determine the known mineral character on the date of survey in any subsequent proceeding where claims of right adverse to the state grant happened to be asserted.

The resulting confusion in state titles finally led to legislation in 1927, wherein Congress reversed its traditional policy of reserving mineral lands for disposal under the federal mineral laws, and vested title in the states to school selection lands even though known to be mineral at the critical

date (that is, the date of survey, or of grant if not surveyed). These mineral grants were conditioned, however, upon the states themselves reserving the minerals and enacting leasing laws, the proceeds to be devoted to the public schools. The act of 1927 resulted in state leasing systems for mineral school lands, enacted in conformity with the provisions of the federal act. This act failed to remedy the problem fully, however, as the "known mineral" determination still had to be made to ascertain which school lands were subject to leasing. To clear the atmosphere, Congress, in the Act of June 21, 1934, authorized issuance of patents to the states to evidence state titles under any previous school land grant.

Swamp Land Grants

Congress, in the Act of September 28, 1850, granted to the states all swamp and overflow lands within their boundaries. The purpose was to encourage the states to construct the necessary drains and levees to reclaim the land for cultivation and use. Although many of these lands have proved invaluable for farming, due to their fertility (such as the very large areas in the delta region of the Sacramento and San Joaquin Rivers in California), they have become increasingly important during recent years for a use completely unrelated to reclamation, namely, as a source of valuable minerals such as placer gold, phosphate, and petroleum. Since the granting acts were silent about minerals, the question was inherent whether minerals passed to the states with the grants or were reserved to the Federal Government.

A case arose concerning valuable petroleum deposits situated under swamp lands in Louisiana. The United States sought to withdraw these for a federal petroleum reserve on the ground that mineral lands were excepted from the grant. In Work v. Louisiana, 269 U.S. 250 (1925), affirming and modifying sub nom., Fall v. Louisiana, 287 F. 999 (O.C. Cir. 1923), the Court rejected this contention, holding that all minerals in swamp lands passed to the state. The Court reasoned that in 1849 and 1850 when Congress enacted the grants, there existed no general policy for the reservation of minerals, expressly distinguishing its contrary decision relating to the grant of school lands to California by the Act of 1853 on the ground that by 1853 Congress had adopted a mineral reservation policy in that state. This decision with respect to swamp lands is unique as an exception to the almost uniform line of cases excluding mineral lands from Congressional grants for nonmineral purposes.

Railroad Grants

During the period 1850 to 1872 Congress embarked upon a policy of liberal land grants to railroads to encourage the development of the West. The land granted for railroad construction totaled over 130 million acres, of which 90 million went direct to the railroads and 40 million to certain states indirectly for railroad aid. Approximately 100 million acres of this total was in the mining states of the West. The grants themselves, outside

of the limited right-of-way for the actual path of the tracks, customarily were of the odd-numbered sections of public land existing within ten mile strips on both sides of the line. These were called "place" lands. If these were insufficient owing to prior appropriation, pre-emption, homesteading, etc., the grants normally provided for the selection of "indemnity" lands within ten mile limits of the place limits. Congress specifically excepted all mineral lands from the operation of the grants, whether of place or indemnity lands.

Like the school and swamp land grants, the railroad acts were construed to be in praesenti grants which vested title in the railroads for place lands when the line was definitely located, and for indemnity lands when definitely selected, even though the grants provided for the subsequent issuance of United States patents. The railroads early contended that the mineral or nonmineral character of the land should be determined as of the date the title vested, similar to the rule employed with respect to school lands. However, in Barden v. Northern Pacific Railroad, 154 U.S. 288 (1893), the Court rejected this position and held that the Secretary of Interior could determine the mineral character of the lands, so as to except them from the grant, at any time prior to issuance of the patent. Any other rule would have given a windfall to the railroads and worked a substantial hardship on the countless miners who had located mining claims in the area pierced by the transcontinental railroads.

However, some finality had to be given to land titles stemming from railroad grants. In Burke v. Southern Pacific Company, 234 U.S. 669 (1913), the Court recognized the problem and ruled that the valid issuance of a patent by the Department of Interior was conclusive so that the subsequent discovery of minerals would inure to the patentee. After issuance of the patent no attack could be made on the mineral title except by the United States by direct suit to annul the patent for fraud.

Agricultural Acts

The Pre-emption, Homestead, Desert Land Entry, and Enlarged Entry Acts, designed for agricultural development of the public domain, uniformly excepted mineral lands. The same railroad grant rules respecting the reviewability of mineral content up to the date of patent, and the finality thereafter, apply. They have struck a balance between a policy favoring development of the nation's minerals under its mining laws, and a counterweighing policy favoring the quieting of titles.

In the Stock Raising Homestead Act of 1916, Congress, for the first time since the Continental Congress' Ordinance of 1785, reserved only the minerals themselves, thus separating the mineral from the surface estate. This act was a forerunner of subsequent legislation, discussed further on, designed to promote multiple use of the public domain. On nonfederal lands, however, the severance of mineral ownership from surface ownership had long become commonplace.

Scrip. Congress at various times granted the right to private individuals to select "public lands." These private acts have been generally held not applicable to permit the selection of mineral lands, even though they contain no express mineral reservation.

Federal Lands Subject to Mineral Entry and Development

As noted in the foregoing analysis of the various methods by which Congress disposed of parts of the vast federal public domain, a policy of reserving all mineral lands for development under the federal mineral laws was early adopted. Nearly all of the present federal lands, which are, or once were, part of the public domain, are open in one form or another to use for mineral production if the land is known or suspected to contain minerals, except certain classes of public land restricted against mineral entry. Thus:

Indian Reservations

At present approximately 56 million acres in the continental United States are in Indian reservations, which may not be entered under the general mining or leasing laws. However, since 1891, Indian lands have been subject to mineral leasing under special acts of Congress. Unallotted tribal lands may, with the approval of the Secretary of the Interior, be leased for mining and oil and gas purposes, by authority of the tribal council, for ten-year periods and as long thereafter as minerals are produced in paying quantities. Lands allotted to individual Indians, but held under trust or restricted patent, may also be leased, with the permission of the allottee and reservation superintendent.

Military Reservations

The same general rule excluding mining or leasing on Indian reservations equally applies to military reservations. The setting aside of a tract for special purposes takes precedence over the general mineral laws, except to the extent that prior rights under those laws may have been acquired.

National Parks

All areas included within the limits of national parks and national monuments are closed to the miner unless Congress has provided otherwise specifically, or unless his rights antedate the creation of such reserves, in which case such rights are protected.

National Forests

One of the largest classes of public lands is the national forests, administered by the Forest Service under the Secretary of Agriculture. Approximately one hundred sixty million acres, or thirty-five percent of the nation's present public lands, are included within these reservations.

The acts authorizing the withdrawal of forest reserves generally permit mineral locations therein under the mining laws the same as in unreserved portions of the public domain. However, the locators must comply with forest regulations, which restrict timber operations, and

provide as well for an investigation of each claim by forest rangers to determine whether a bona fide mineral discovery has been made. In certain designated forests any patent issued to a miner must reserve the surface estate to the Government.

Reclamation Withdrawals

Under the Reclamation Act of 1902 Congress provided for two types of land withdrawals. One, termed a "first form," covered public land prospectively required for the construction of irrigation works; "second form" withdrawals included public lands that might be irrigated from the works constructed by the Government. In the case of first form withdrawals, only valid mineral locations made prior to the withdrawal are protected, but land included within a second form withdrawal is open to mineral location.

Power Act Reservations

Section 24 of the Federal Water Power Act of June 10, 1920, as amended, reserves all lands included in any proposed project from mineral entry until otherwise directed by the Power Commission or by Congress. If the Commission finds the site will not be injured or destroyed thereby, it may declare the lands open to mineral development, subject to future power development without payment of compensation.

Townsites

Prior to the issuance of a townsite patent, lands within the town limits are open to mineral location. However, if the townsite is patented prior to discovery of minerals, the subsequent discovery of such minerals will inure to the benefit of the townsite claimant, not to the subsequent mining claimants. In this respect the townsite rules parallel those concerning railroad grants, in that issuance of a patent operates to convey a full and complete title valid as to all minerals subsequently discovered.

The amendment of August 8, 1946, to the Mineral Leasing Act prohibits leases in incorporated cities, towns, and villages.

Withdrawals for Power Sites and Conservation by Pickett Act of 1910

The Pickett Act of 1910, as amended in 1912, authorized temporary executive withdrawal of public lands to "reserve the same for water-power sites, irrigation, classification of lands, or other public purposes . . ." Prior to this act the President had withdrawn many valuable oil fields for petroleum reserves. Further oil withdrawals, including the oil shale lands, were made pursuant to the authorization in the Act. All such withdrawals were upheld as constitutional by the United States Supreme Court, with the express proviso that no retroactive effect could be given to the withdrawals to alter rights in such minerals already acquired. The withdrawn lands, however, are open to location under the mining laws for "metalliferous minerals," including uranium.

Withdrawals Pursuant to the Taylor Grazing Act

In 1934, Congress enacted the Taylor Grazing Act, providing for grazing on the public domain "in order to promote the highest use of the public lands pending its final disposal." Using this language as a directive, but basing action on the 1910 Pickett Act, the President, by sweeping Executive Orders in 1934 and 1935, "temporarily" withdrew all of the vacant, unreserved, and unappropriated public land in the twenty-four major public land states from "settlement, location, sale, or entry," for classification pending "determination of the most useful purpose to which such land may be put in consideration of the provisions" of the Taylor Act. The Taylor Act, however, provided that:

"...nothing contained in this chapter shall restrict prospecting, locating, developing, mining, entering, leasing, or patenting the mineral resources of such districts under law applicable thereto." (48 Stat., 1272)

Accordingly, the withdrawals of 1934 and 1935 did not prohibit location or leasing under the federal mineral laws. Their effect was to halt any rapid agricultural disposal of the remaining public domain, thus indirectly benefiting prospective federal mineral applicants.

"Tidelands"

The contest between the states and the Federal Government over the ownership of the valuable submerged lands (loosely referred to as "tidelands") lying seaward of the low water line marked a dramatic chapter in the history of American federalism. The states early asserted ownership of these lands, some to the three-mile mark, and others beyond, subject only to the admitted superior federal right to control navigation. The Federal Government contested these claims, after valuable oil deposits were being developed under state leases, by filing successive original suits in the Supreme Court to "quiet title" against Texas, California, and Louisiana. In each instance the Court held that the Federal Government had "paramount rights" in and to the underlying lands and resources.

Congress, however, subsequently enacted the Submerged Lands Act of 1953 which relinquished to the respective coastal states all of the United States' right, title, and interest in and to the submerged lands and the natural resources thereunder lying seaward of the mean high tide mark out to the states' historic boundaries (their boundaries at the time they entered the union, or that were thereafter approved by Congress) with a limit of three miles in the Atlantic Ocean or the Pacific Ocean, and three marine leagues (10.35 miles) in the Gulf of Mexico. Beyond these limits the lands were to remain in federal control subject to special leasing by the Secretary of the Interior.

Acquired Lands

Within the last fifty years the Federal Government has acquired, by purchase or exchange, approximately fifty-eight million acres of lands formerly held by private individuals or states.

Acquired lands are not "public domain" and accordingly not available for mineral entry under the general mining laws. The Mineral Leasing Act for Acquired Lands, however, authorizes the Secretary of the Interior to issue permits and leases for deposits of oil, gas, oil shale, phosphate, sodium, and potassium in certain acquired lands subject to the same terms and conditions as exist in the general mineral leasing act. All other minerals are subject to lease by the Secretary only if the act under which the lands were acquired authorized leasing. Exclusive of lands acquired for military or naval purposes, probably more than eighty percent of acquired lands administered by the Department of Interior are subject to statutes which contain authority for leasing such other minerals.

Public Records of Ownership

The ownership and status of any particular tract of land situated in the United States may be determined from one or both of two sources: First, the records of the United States kept by the Bureau of Land Management, which include tract books, serial register books, survey plats, and case files; second, the county land records of the particular state in which the lands are situated. The latter have superseded and absorbed the early "mining district" records. The state laws uniformly require recording of all private titles and interests in real estate. It may be necessary to rely upon both for a complete analysis of the ownership status of any particular lands, because federal law, in general, provides for no central federal registry of mining claims pending issuance of patent. Whereas other private rights which are less than patented title are recorded on the federal books (for example, homestead entries and right-of-way), mining claims are not, and the Federal Government has no inventory of them.

Methods of Acquiring Mineral Interest in Federal Lands

Mineral interests in federal lands may now be acquired by three methods. Each relates to different groups of minerals, and each was occasioned by a changing national policy with respect to the nation's minerals.

Lode and Placer Mining Locations Under the Acts of 1866 and 1872

As already noted, beginning with the Pre-emption Act of 1841, Congress inaugurated a policy, with certain exceptions, of reserving mineral lands in the various statutes disposing of the public domain. Until the mining acts of 1866 and 1872, however, Congress took no action to recognize any general development and use of the nation's mineral wealth.

But the miners did not wait. In 1848 gold was discovered in California and the "El Dorado" fever brought thousands of prospective miners from all over the world to the West. They occupied the federal land, technically as trespassers, but with federal acquiescence, the United States military governors making no serious effort to control their settlement. The miners, however, soon saw the need for regulation. Districts were organized and local rules adopted, based on an amalgamation of the previously existing

Spanish-Mexican law with customs brought by miners coming from the lead and tin mines of Devon and Cornwall in England, as well as new ideas to meet the Western situation. Colonel Mason, a military governor, issued a proclamation on February 12, 1848, abolishing Mexican laws and customs. Certain principles emerged. The right of property in mines was made to depend upon discovery and development; discovery was the source of the right, but its continuance was conditioned upon working and developing the mine.

Another important development to come out of the rules promulgated by the California miners was recognition that a right existed to work a vein down dip to an indefinite depth without regard to lateral surface boundaries or the occupation or possession of any surface underneath which such a vein might be followed. This principle, known as the extra-lateral right, was not recognized by the existing Mexican mining ordinance nor was it in vogue in any other contemporaneous mining systems with the exception of the lead mine customs in Derbyshire.

California became a state, without passing through territorial status, in 1850. After sixteen more years in which the unauthorized extraction of minerals from the public domain was governed by only de facto local customs and regulations and state legislation of uncertain effect, Congress enacted the Act of 1866. This first general United States mining act confirmed the existing fait accompli in announcing three important principles:

First, that all mineral lands of the public domain should be free and open to exploration and occupation.

Second, that rights in the public domain acquired under local rules, where there was apparent acquiescence and government sanction, should be recognized and confirmed.

Third, that upon compliance with certain statutory procedures, title to these mineral deposits might ultimately be obtained.

This inauguration by Congress in the 1866 Act of a definite policy for the free and open development of mineral lands, which jettisoned the idea of exacting royalties on the products of the mines, undoubtedly stimulated and encouraged the development of the mining industry in the West.

Experience gained under the Act of 1866 led to certain changes incorporated into the Act of 1872. This act deals with the patenting of both lode and placer mining claims and has remained, to this date, for over three-quarters of a century, the basic law governing acquisition and maintenance of title to mining claims for metalliferous minerals, including uranium, on the public domain. In essence the act continued unchanged the basic policy of free and open exploration and mining on the public domain. It recognized local and state laws, but only to the extent that they do not conflict with the provisions of the superior federal law.

Certain requirements must be met for perfecting a valid lode or placer claim:

Qualifications of Applicants

Congress, in the Act of 1872, proclaimed that only "citizens of the United States, and those who have declared their intention to become such" may acquire rights to public mineral lands. Domestic corporations

are considered citizens. Although an alien can acquire no title by patent, he may locate, inherit, or purchase an unpatented claim, which is subject to question only by the Federal Government, not by third parties. After patent, the property rights are subject to any state laws regarding alien rights.

Requirements of a Valid Location

The heart and source of all rights to a mineral location depend upon, and date from, a valid discovery. In general, the principle of priority of discovery governs as between conflicting locators. A "discovery" is generally defined as proved:

"...where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success..." (Castle v. Womble, 19 L.D. 455)

Minerals may be discovered in veins or "lodes" or they may be found loose in beds of gravel or dirt, termed "placer" discoveries. This factual distinction between lodes and placers is important, for each involves different rights under the mining law. The distinction met a test in the case of Eureka Consol. Mining Co. v. Richmond Mining Co., 8 Fed. cas. 819 (No. 4548) (C.C.D. Nev. 1877), aff'd 103 U.S. 839 (1881). A discovery had been made in Ruby Hill, Nevada, of a wide zone of limestone in which at various scattered places mineral was found "appearing sometimes in a series or succession of ore bodies more or less closely connected, sometimes in apparently isolated chambers, and at other times in what would seem to be scattered grains." The court, composed of three eminent mining judges, Field, Sawyer, and Hillyer, ruled that the mining acts were not drawn "by geologists or for geologists" but were framed for the protection of miners, in whose eyes "a continuous body of mineralized rock lying within any other well-defined boundaries on the earth's surface and under it, would...constitute...a lode."

If a deposit is established as a "lode" or "vein" the mining law requires that a valid location can be made only of the top or apex of the vein. Without an apex within vertical planes drawn through the surface boundaries, no lode location is valid, at least as against a subsequent locator properly including the apex. Similarly the extralateral right to pursue the vein on its downward dip through the side lines of the location under adjoining property depends on proper location of an apex. No apex is required for a placer claim. Likewise placers have no extralateral right.

One of the most difficult phases of the complex law of the apex is to distinguish the side of a vein, which is not an apex, from the top of a vein, which is an apex. Where the side is exposed, it can often easily be mistaken for the apex; nevertheless, in legal effect, the apex is not to be confused with an outcrop.

The next step after discovery is marking its "location" on the surface. A placer location must include no more than twenty acres for each

individual claimant or 160 acres for associations, and should conform "as near as practicable" to the surveyed legal subdivisions of the public lands. If the lands are unsurveyed or the placer claim cannot be conformed to the federal surveys, a special survey and plot are necessary.

Under the Act of 1872, each lode location may not exceed 1,500 feet in length along the vein or lode, nor more than 300 feet on each side of the vein at the surface. State laws may restrict this permissible width and require additional steps to perfect a location. Chief of these is the requirement of a "discovery shaft." In staking out the location, it should be along the course of the vein with parallel end lines, for if the end lines diverge, no extralateral right will be allowed to follow the vein on its dip outside of the side lines. Where the location is erroneously laid across a vein rather than along a vein, the side lines become end lines for the purpose of determining the extralateral right.

For both lode and placer locations the only federal requirement is the marking of the location on the ground so that its boundaries can be easily traced. Although it is the general practice, made mandatory by many state statutes, to record mining locations in the local county recorder's office, there is no federal recordation with the exception of that required under the multiple use acts discussed later. Accordingly, the Federal Government has no firsthand knowledge as to what areas of public domain have been validly located, which injects a serious unknown into all public land administration by the Government.

The number of mining claims that may be located by an individual, corporation, or association is unlimited provided each contains a discovery. This is true with the exception of saline and placer claims in Alaska which are limited.

Rights and Obligations Under Unpatented Location

Once a valid discovery and location have been made, the locator acquires a vested interest in the mining claim and may extract minerals therefrom. Many unpatented mining claims are commercially worked for years. Although title remains in the Federal Government, the Supreme Court has held that a valid unpatented mining claim gives an exclusive right of possession and is property in the fullest sense.

However, to keep the claim alive the Act of 1872 provides that at least \$100 worth of annual development work must be done. The performance or nonperformance of the annual work is not a question in which the Government is directly concerned and the principal effect of the failure to perform the work is to allow a relocation of the claim by an adverse claimant.

Proceedings to Acquire Patent

To obtain title to lands covered by the location, the locator must seek a patent from the United States. A number of procedural steps must be followed in patent application proceedings, including a threefold posting of notice--on the claim, in the Land Office register, and in newspapers; proof of citizenship; an official survey; proof of mineral character; proof

of \$500 worth of improvements; and presentation of an abstract of title. All of these proceedings are in the Bureau of Land Management of the Department of the Interior, initiated in its local land offices. But should an adverse claim of right by another claimant arise, the mining laws provide for contest proceedings in any federal or state court of competent jurisdiction to determine which of the claimants has a superior right of possession. The Federal Land Office then merely suspends patent proceedings until the outcome is resolved and thereafter follows the court's ruling. This suspension of administrative proceedings for contested patents under the mining law is unique, as all other contested proceedings relating to dispositions of the public domain are adjudicated completely by the Department of the Interior and its subordinate bureaus, the jurisdiction of the courts being evoked only by a rejected applicant on appeal from a final administrative order.

After all the preliminary procedures have been completed pursuant to the statutory and regulatory requirements, the applicant pays the purchase price of \$5.00 an acre for lode claims or \$2.50 an acre for placer claims and receives a final receipt or certificate which has the effect of vesting equitable title to the property in him. Subsequent issuance of the patent vests complete title, legal and equitable, in the claimant, and relates back to the inception of the right, that is, to the date of discovery and location. After a patent is issued, the locator takes title not only to the mineral estate but to the surface as well, and he can make whatever use he wishes of either, including the logging of timber on the premises or converting the property to agricultural pursuits.

Leasing of the Public Domain

The first general mining laws of the country, just discussed, incorporated in the Acts of 1866 and 1872, provided for the free and open exploration and location of the public domain with the issuance of a final title by patent from the Federal Government upon the single purchase payment of either \$5.00 or \$2.50 per acre, regardless of the mineral value of the lands or their productivity. The lands thereupon passed from federal control with no provision for any royalty interest. But federal leasing acts enacted in the early twentieth century ended this dual policy of (1) no royalties and (2) issuance of patents passing full title and control, with respect to certain designated nonmetallic minerals.

Development of Leasing Principle

Leasing of mineral lands was first attempted in the United States long prior to the general mining policy adopted by the Acts of 1866 and 1872. In the Act of March 3, 1807, Congress set forth a plan for leasing lead mines in the Indiana Territory. The leases were to be given under the supervision of the War Department for tracts of three square miles, later changed to one square mile, binding the lessees to work the mines with due diligence and to give the United States six percent of all ores recovered. The act proved a failure in operation. The leasing principle was thereafter

abandoned in favor of outright sale and unlimited patents under the mining law, until revived in the twentieth century.

The first leasing measure subsequently to be enacted was the Alaska Coal Lands Act of 1914. It provided for coal leases not exceeding 2,560 acres at a minimum royalty of two cents per ton and an initial annual rental of 25 cents per acre increasing to \$1.00 per acre. The Alaska Coal Lands Act provided a legislative precedent for the important Mineral Leasing Act of 1920.

The Mineral Leasing Act of 1920, as amended. This act covers all "deposits of coal, phosphate, sodium, potassium, oil, oil shale, or gas" and remains today the basic law governing acquisition of these nonmetallic minerals located on the public domain. (Sulphur land in Louisiana and New Mexico was also included by act of Congress in 1926.) Prior to 1920, the conservation movement had precipitated withdrawal by the Presidents of substantially all of the unappropriated public domain from nonmetalliferous mineral entry or location under the general mining laws. No development of oil, gas, and other strategic nonmetalliferous minerals on these lands was possible. The Mineral Leasing Act of 1920, in providing for the leasing of these lands, effected a complete change of policy in respect of the disposition of lands containing deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas. Such lands were no longer to be open to location and acquisition of title, but only to lease.

Many important amendments affecting oil and gas have been made to the 1920 Act. The Act of August 21, 1935, granted the right to prospect for oil and gas under a lease rather than a prospecting permit, and the Acts of August 8, 1946, and August 2, 1954, liberalized the provisions of the Act of August 21, 1935, to encourage prospecting on the public domain and the discovery of new sources of oil and gas.

Although different provisions of the act and applicable regulations govern the different minerals, a review of those covering oil and gas leases demonstrates the operation and scope of the act.

Under the leasing act, as amended, the basic requirements for obtaining a leasehold interest in oil and gas on the public domain fall into two classifications, depending on whether the land sought lies within or without the known geologic structure of a producing oil or gas field. Lands lying within the geologic structure of a producing field are subject to lease only by competitive bidding, whereas all other lands may be prospected by noncompetitive "wildcat" leases, which are issued to the first applicant.

Noncompetitive Leases. -- Acquisition of a noncompetitive lease is relatively simple. By filing an application with the Bureau of Land Management under the supervision of the Secretary of the Interior, a prospector may acquire the exclusive right to conduct explorations on a specified tract for a period of five years and as long thereafter as oil or gas is produced in paying quantities. Only citizens of the United States, associations of such citizens, or corporations organized under the laws of the United States, a state or territory thereof, are eligible to hold a lease. A ten dollar filing fee and the payment of the first year's rental of fifty

cents an acre must accompany each application. There is no rental for the second and third years; during the fourth and fifth years it is twenty-five cents per acre, and in the sixth and succeeding years fifty cents per acre. Special rentals apply to co-operative or unit plans. No lease may exceed 2,560 acres, but the act as amended in 1954 permits a person, association, or corporation to hold any number of oil or gas leases, up to 46,080 acres in any one state.

If oil or gas is not produced in paying quantities during the five-year period of the lease, and the land is still not within the known geologic structure of a producing oil or gas field, the record title holder thereof is entitled to one extension of the lease for five years and so long thereafter as oil or gas is produced in paying quantities. If the lands are within the known geologic structure of a producing oil or gas field, the lease may be extended for a period of two years and so long thereafter as oil or gas is produced in paying quantities.

Once a noncompetitive lease is acquired, development and operation thereunder are regulated by further provisions. The lease applicant must agree to a royalty of $12\frac{1}{2}$ percent to be paid to the Government upon any oil or gas production under the lease. A lease may be assigned in whole or in part by the lessee, but only with the approval of the Secretary of Interior who requires the same qualifications of the assignee as for an original applicant. The lessee may enter into a contract with a third party to develop the oil and gas potential of the lands, termed "an operating agreement," which also must be approved by the Secretary or his delegated representative, to be effective. An operator under an operating agreement is merely permitted to prospect, produce, and develop the oil and gas on the premises covered by the lease. The lessee normally reserves "an overriding royalty" to himself, which the regulations restrict to no more than five percent if the production of the well does not exceed fifteen barrels of oil or 500,000 cubic feet of gas a day.

Under the amendatory Act of August 8, 1946, the use of "options" was first recognized. These permit an operator to engage in large scale geophysical explorations over a large area of land by obtaining options from lessees or owners of land in the area.

Competitive Leases. --Leases for lands lying within the known geologic structure of a producing oil and gas field may be issued under the statute only by competitive bidding. Bids are invited and the highest qualified bidder (cash bonus) must agree to pay the royalty rate, specified in the notice inviting bids, on all oil and gas produced. Royalties payable to the United States vary from $12\frac{1}{2}$ to 25 percent for oil, and from $12\frac{1}{2}$ to $16\frac{2}{3}$ percent for gas. The annual rental is at the rate of \$1.00 per acre. If the producing field produces only gas, the rental is \$.25 an acre as long as the land is valuable only for gas, but is raised to \$1.00 per acre on the discovery of oil.

Leases within the geologic structure of a known producing field may be issued for twenty years, in units of not exceeding 640 acres, with a preference right of renewal for successive ten year periods.

Section 17 (b) of the Mineral Leasing Act authorizes lessees and their representatives to agree with other lessees or private owners collectively to develop and operate a common pool or field under a co-operative or unit plan of development, for the purpose of conserving natural resources. Before any such unit or co-operative plan may be put into operation, it must be approved by the Secretary of the Interior.

No oil and gas lease for land from which oil and gas is produced may be canceled except by judicial proceedings.

Although the lessee acquires by the terms of the lease, whether competitive or noncompetitive, ownership of the mineral production of the lease, his rights to the surface area are specifically limited to the use of that area necessary to his mineral operation, and the United States reserves the right to dispose of the remaining surface area by sale, lease, or other manner. At the expiration of the lease, the lessee must restore the surface of the lands embraced therein, and he may be required to pay damages for crops or timber destroyed or streams polluted.

The Secretary of the Interior is authorized to incorporate in the lease provisions ensuring the exercise of reasonable diligence, skill, and care in the operation of the property, and for the prevention of waste. The lessee is obligated to keep records, including a daily drilling account, logs, and reports of well surveys and tests of subsurface investigations. Production records are required as well, showing both quantity and quality of oil and gas produced.

The Outer Continental Shelf Lands Act

The competitive leasing principle was extended to the outer continental shelf by Congress under this Act, approved August 7, 1953. The Secretary of the Interior was thereby given wide range to prescribe such rules and regulations as he believes advisable with respect to leasing the oil and gas or other minerals of the outer continental shelf. The granting of leases covering submerged lands of the outer continental shelf is by competitive bidding on the basis of a cash bonus with a royalty fixed by the Secretary at not less than $12\frac{1}{2}$ percent in amount or value of the mineral production. The act does permit the Secretary, at his discretion, to fix the cash bonus and allow competitive bidding on the amount of royalty, but so far (1958) only competitive bidding on the cash bonus with a fixed royalty has been used.

Multiple Mineral Development of the Same Tract of Public Lands

A third major federal policy relating to mineral development of federal lands was established by Congress in the Multiple Use Acts of 1954 and 1955. These acts provide for the maximum mineral use of the same tracts of public lands by permitting joint use thereof for development of the respective minerals covered by the various federal mineral laws.

The purpose of the Act of August 13, 1954, was to:

"...resolve conflicts between the mining laws of the United States and the Mineral Leasing Act which have prevented mineral development of the same tracts of the public lands from going forward under both systems...

"[It] would permit the development of mineral resources of the public lands, including uranium, to go forward on the same tracts of land under both systems. It would thus be a step forward in the development of the natural resources of the nation. An immediate effect would be the opening of some sixty million acres of the public lands, now under oil and gas lease, to location for uranium and other minerals. At the same time, it would stimulate oil and gas development on the public lands by authorizing operations for leasable minerals on lands open to location under the mining laws, and by establishing a means for determining the validity of any rights claimed for Leasing Act minerals under patented mining claims located prior to the effective date of this act." (S.Rep.No. 1610, 83d Cong., 2d Sess.)

The Act of July 23, 1955, provided for multiple use of the surface of the same tracts of public lands with respect to "borderline minerals," which were becoming increasingly important, and with respect to timber production. The Secretary of the Interior was authorized to dispose by sale of deposits of sand, stone, gravel, pumice, pumicite, cinders, clay, and vegetative materials including yucca, manzanita, mesquite, cactus, and timber or other forest products. The 1955 act expressly declares that these materials shall not be considered a valuable mineral deposit within the meaning of the mining laws of the United States and provides that the surface of unpatented mining locations is subject to entry therefor. Mining locators after the date of the act and prior to patent are prohibited from using the land for any purpose other than prospecting, mining processing operations, and uses reasonably incident thereto, the claim being subject to the right of the Secretary to manage and dispose of the nonmineral surface materials.

With respect to unpatented mining claims in existence on the date of the act, the Secretary may dispose of the listed surface materials upon request. The act requires publication of notice and a title search of the county records for unpatented mining claims by the person or corporation desiring to purchase sand, stone, etc., under the act. If mining claimants fail to file a statement of a conflicting interest in the lands within 150 days after notice, they are considered to have waived objection to any institution of rights under the Multiple Use Act. The act provides for a hearing as to the validity of any mining claim conflicting with use permitted under the act.

Methods for Acquiring Mineral Interests in State Lands

As already pointed out, the states, under the school land grants, the swamp land grants, and other special grants from Congress, acquired title to what were previously public lands of the Federal Government. Of course, in the original thirteen states, the Federal Government owned no land, the states being vested with all the Crown or public lands acquired after the Revolution. For the most part, state-held lands have been disposed of without reservation of minerals.

In some instances, however, state lands valuable for minerals have been made subject to lease or other special provisions governing disposal. Congress has on one occasion encouraged state mineral leasing laws. In the Act of January 25, 1927, Congress, in granting to the states "known mineral lands" included within the designated school sections on public lands, provided that each state shall reserve "all the coal and other minerals in the lands so sold...together with the right to prospect for, mine and remove the same." The states were empowered to lease these mineral deposits "as the state legislature may direct," the proceeds to go to the support of public schools. This act resulted in state leasing systems for all minerals in school section lands not previously disposed of by the states.

The State of Texas, unlike all the other states joining the union, was permitted to retain "all the vacant and unappropriated lands lying within its limits." The Texas Constitution makers in 1866 relinquished all minerals to the landowners:

"...the convention put an end to the operation of Spanish and Mexican mineral law in Texas and thereby renounced the principles that land grants did not include minerals, that minerals were reserved in lands although there was no express reservation in the grant, and that state ownership was preferable to private ownership of minerals." (Hawkins, El Sal del Rey, p. 57)

Methods of Acquiring Mineral Lands Privately Held

For those lands not owned by the Federal Government or the state governments, a prospective mineral developer thereof must turn to the private owner, whether an individual, association, or corporation. The United States is one of the few countries of the world in which title in fee simple to mineral resources may be privately held. Transfer of mineral rights and titles among private owners is accomplished within the legal framework of each state relating to property titles, sales and conveyances, leases, licenses, and contracts.

Certain Overriding Restrictions on Mineral Tenancies

The states, in the exercise of their reserved police powers, and the Federal Government, acting pursuant to its constitutional power over interstate commerce, taxation, or national defense, have from time to time enacted laws placing certain important restrictions upon the private use and enjoyment of mineral rights.

Examples of state law restrictions are those governing subsidence control and zoning. Underground mining, especially if the workings are not properly reinforced, can cause great damage to surface buildings and property through subsidence. Under some statutes mineowners are required to make mines secure by leaving certain supporting pillars or employing props. The growth of zoning controls, designed to restrict the use of land to commercial or residential purposes, can present problems to the mineral developer if his proposed use conflicts with an established zoning restriction.

PART II

1939 SOUTH DAKOTA MINING CODE WITH SUPPLEMENTS

Chapter 42.01

Mining Claims

Section

- 42.0101 Mines and mills not susceptible of homestead.
- 42.0102 Dimensions of lode claim.
- 42.0103 Certificate of location and record thereof.
- 42.0104 Location certificate void, when.
- 42.0105 Recording fee.
- 42.0106 Certificate limited to single location.
- 42.0107 Manner of locating claim.
- 42.0108 Marketing surface boundaries.
- 42.0109 Dimensions of cut or adit.
- 42.0110 Time allowed for sinking shaft.
- 42.0111 Location includes what.
- 42.0112 Limits of claim.
- 42.0113 Security to owner of land.
- 42.0114 Amended certificate.
- 42.0115 Annual work required.
- 42.0116 Abandoned claim; relocation.
- 42.0117 Disputed property; survey.
- 42.0118 Affirmative relief by injunction.
- 42.0119 Open pits: protection of livestock.

Cross-references: § 38.0405, as to right of tenant to work mines and quarries; Ch. 39.07, as to miner's lien; Ch. 15.14, State School of Mines; title 55, "State Government," chapter "State Property" etc., as to reservation of mineral rights on sales and leases of state-owned land.

42.0101 Mines and mills not susceptible of homestead. No lode mining claim embracing any gold or silver mine, nor any gold or silver mill, nor any mill, smelter, or machinery intended or used for the reduction or milling of gold or silver ores shall be susceptible of being claimed or set off as exempt as a homestead.

Source: § 460 Rev. Code 1919, revised.

42.0102 Dimensions of lode claim. The length of any lode claim hereafter located within this state may equal but shall not exceed fifteen hundred feet along the vein or lode.

The width of a lode claim shall be three hundred feet on each side of the center of the vein or lode, provided that any county may, at any general election, determine upon a width less than three hundred feet but not less than twenty-five feet on each side of the vein or lode.

Source: §§ 8726 and 8727 Rev. Code 1919, revised and combined to unite connected subject matter.

42.0103 Certificate of location and record thereof; discovery necessary. The discoverer of a lode shall within sixty days from the date of discovery record his claim in the office of the Register of Deeds of the county in which such lode is located by a location certificate which shall contain:

- (1) The name of the lode;
- (2) The name of the locator or locators;
- (3) The date of location;
- (4) If a lode claim, the number of linear feet in length claimed along the course of the vein each way from the point of discovery, with the width claimed on each side of the center of the vein, and the general course of the vein or lode as near as may be, and such a description of the claim located by reference to some natural object or permanent monument as will identify the claim.
- (5) No location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located.

Source: § 1, Ch. 152, 1955.

42.0104 Location certificate void, when. Any location certificate of a lode claim which shall not contain the matters specified in section 42.0103 shall be void.

Source: Part of § 8729 Rev. Code 1919, revised.

42.0105 Recording fee. The register of deeds shall be entitled to receive the sum of one dollar for each location certificate recorded and certified by him and shall furnish the locator or locators with a certified copy of such certificate when demanded, for which he shall be entitled to receive fifty cents.

Source: § 8741 Rev. Code 1919.

42.0106 Certificate limited to single location. No location certificate shall claim more than one location whether the location be made by one or several locators. If it purports to claim more than one location, it shall be absolutely void except as to the first location therein described, and if they are described together or so that it cannot be told which location is first described, the certificate shall be void as to all.

Source: § 8740 Rev. Code 1919, revised in form.

42.0107 Manner of locating claim. Before filing such location certificate the discoverer shall locate his claim:

- (1) By erecting a monument at the place of discovery and post thereon a plain sign or notice containing the name of the lode, the name of the locator or locators, and the date of discovery, the number of feet claimed in length on either side of the discovery, and the number of feet in width claimed on each side of the lode; and
- (2) By marking the surface boundaries of the claim.

Source: § 2, Ch. 152, 1955.

42.0108 Marking surface boundaries. Such surface boundaries shall be marked by eight substantial posts, hewed or blazed on the side or sides facing the claim and plainly marked with the name of the lode and the corner, end, or side of the claim that they respectively represent and sunk in the ground; one at each corner and one at the center of each side line and one at each end of the lode. When it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.

Source: § 8731 Rev. Code 1919.

42.0109 Repealed by § 3, Ch. 152, 1955.

42.0110 Repealed by § 3, Ch. 152, 1955.

42.0111 Location includes what. The location or location certificate of any lode claim shall be construed to include all surface ground within the surface lines thereof and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of such lines extended vertically with such parts of the lodes or ledges as continue by dip beyond the side lines of the claim but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

Source: § 8734 Rev. Code 1919.

42.0112 Limits of claim. If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior.

Source: § 8735 Rev. Code 1919.

42.0113 Security to owner of land. When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused, may enjoin such miner from working until such security is given.

Source: § 8736 Rev. Code 1919.

42.0114 Amended certificate. If at any time the locator of any mining claim heretofore or hereafter located or his assigns shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing or shall be desirous of changing his surface boundaries or of taking in any part of an overlapping claim which has been abandoned and he shall be desirous of securing the benefit of this chapter, such locator or his assigns may file an additional certificate subject to the provisions of this chapter. Such relocation does not interfere with the existing rights of others at the time of such relocation

and no such relocation or the record thereof shall preclude the claimant from proving any such title as he may have held under any previous location.

Source: § 8737 Rev. Code 1919, revised in form.

42.0115 Annual work required. The amount of work to be done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States, to wit: one hundred dollars annually. The period within which such work shall be required to be done annually on all unpatented claims so located shall commence on the first day of September succeeding the date of location of such claim.

Source: Ch. 243, 1959.

42.0116 Abandoned claim: relocation. The relocation of an abandoned lode mining claim shall be by fixing new boundaries in the same manner as if it were the location of a new claim, or the relocater may erect or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new discovery monument shall be erected. In any case whether the whole or part of an abandoned claim is taken, the location certificate must state that the whole or any part of the new location is located as abandoned property.

Source: § 4, Ch. 152, 1955.

42.0117 Disputed property: survey. In all actions in any Circuit Court of this state wherein the title or right of possession to any mining claim shall be in dispute the court or judge thereof may, upon application of any of the parties to such suit, enter an order for the underground as well as surface survey of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor not related to any of the parties to such suit or in anywise interested in the result of the same; and upon the application of the party adverse to such application, the Court may also appoint some competent surveyor to be selected by such adverse applicant whose duty it shall be to attend upon such survey and observe the method of making the same at the cost of the party asking therefor. It shall also be lawful in such order to specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, who shall be allowed to enter into such property and examine the same. Such Court or Judge thereof may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of such property when such removal is shown to be necessary to a just determination of the question involved. No such order shall be made for survey and inspection except in open Court or in chambers upon notice of at least six days, and not then except by agreement of parties or upon the affidavit of two or more persons that such survey and inspection is necessary to the just determination of the suit, which affidavits shall state the facts in such case and wherein the necessity for survey exists; nor shall such order be made unless it appears that the party asking therefor has been refused the privilege of survey and inspection by the adverse party.

Source: § 8742 Rev. Code 1919, revised in form.

42.0118 Affirmative relief by injunction. The Circuit Court or any Judge thereof shall have power to issue writs of injunction for affirmative relief having the force and effect of a writ of restitution restoring any person to the possession of any mining property from which he may have been ousted by force and violence or by fraud, or from possession of which he is kept by threats, or whenever such possession was taken from him by entry of the adverse party on a Sunday or legal holiday or while the party in possession was temporarily absent therefrom; the granting of such writ to extend only to the right of possession under the facts of the case in respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had issued.

Source: § 8743 Rev. Code 1919, revised in form.

42.0119 Open pits: protection of livestock. Every person, firm, association or corporation who may hereafter make or sink discovery shafts, open cuts, adits or equivalents thereto, upon any mining claim, or on any mineral property, ground or premises shall forthwith, while using the same, make them secure and safe in a manner, either by means of a substantial fence or otherwise, so as to guard against the possibility of livestock falling into or in any manner becoming injured or destroyed by reason of such openings; and before abandoning the same, shall fill in or slope such openings, as a further precaution.

Source: § 1, Ch. 153, 1955.

Chapter 42.02

Right of Way Appurtenant to Mines

Section

- 42.0201 Right of way.
- 42.0202 Petition to Circuit Court for right of way.
- 42.0203 Proceedings upon filing of petition.
- 42.0204 Hearing upon petition and appointment of commissioner's to assess damages.
- 42.0205 Assessment of damages by commissioners.
- 42.0206 Report of commissioners: may be set aside by Court.
- 42.0207 Use of right of way on paying or tendering damages assessed.
- 42.0208 Appeals from assessment.
- 42.0209 Trial on appeal.
- 42.0210 Appeal not to delay work.
- 42.0211 Respondent to pay costs, when.
- 42.0212 Costs and disbursements.

42.0201 Right of way. The owner of a mine or mining claim, whether patented under the laws of the United States or held under the local laws and customs of this state, whenever such mine or claim is so situated that it cannot be conveniently worked without a road thereto or therefrom or without a ditch, cut, or flume to convey water thereto or water and tailings therefrom or without a shaft or tunnel thereto or therefrom which road, ditch,

cut, flume, shaft, or tunnel would necessarily pass over, under, through, or across any lands or mining claims owned or occupied by others under a patent from the United States or otherwise shall be entitled to a right of way for such road, ditch, cut, flume, shaft, or tunnel over, under, through, and across such other realty upon compliance with the provisions of this chapter.

Source: §§ 8744 and 8745 Rev. Code 1919, revised and combined.

42.0202 Petition to Circuit Court for right of way. Whenever the owner of any mining claim shall desire to work the same and to enable him to do so successfully and conveniently it is necessary that he have a right of way for any of the purposes mentioned in section 42.0201, and such right of way shall not have been acquired by agreement between him and the owner of the claim over, under, across, or upon which he seeks to establish such right of way, he may present to the Judge of the Circuit Court of the county in which the desired right of way or some part thereof is situated, and file with the clerk of said Court a petition praying that such right of way be awarded to him. Such petition shall be verified and contain a particular description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim or claims on lands to be affected by such right or privilege, with the names of the occupants or owners thereof; it may also set forth any tender or offer hereinafter mentioned and shall demand the relief sought.

Source: § 8746 Rev. Code 1919, revised in form.

42.0203 Proceedings upon filing of petition. Upon the filing of such petition with the clerk of such Court, the Judge shall direct an order to issue to the owners named in the petition of mining claims and lands to be affected by the proceeding, directing each of them to appear before the Judge on a day therein named, which shall not be less than ten days from the service thereof and show cause why such right of way should not be allowed as prayed for. Such order shall be served on each of the parties in the manner prescribed by law for serving summons in a civil action.

Source: § 8747 Rev. Code 1919.

42.0204 Hearing upon petition and appointment of commissioners to assess damages. Upon the return day of the order or upon any day to which the hearing shall be adjourned the Judge shall proceed to hear the allegations and proofs of the respective parties; and if upon such hearing he is satisfied that the claim of the petitioner should be worked by means of the privilege prayed for, he shall make an order adjudging and awarding to the petitioner such right of way, and shall appoint three commissioners who shall be disinterested residents of the county to assess the damage resulting to the lands or claims affected by such order.

Source: § 8748 Rev. Code 1919.

42.0205 Assessment of damages by commissioners. The commissioners so appointed shall be sworn or affirmed to discharge their duties faithfully and impartially, and shall proceed without unreasonable delay to examine the premises and shall assess the damage resulting from such right or privilege prayed for and report the amount to the Judge appointing them; and if such right of way shall affect the property of more than one person or company, such report shall contain an assessment of the damages to each company or person.

Source: § 8749 Rev. Code 1919, revised in form.

42.0206 Report of commissioners: may be set aside by Court. For good cause the Judge may set aside the report of such commissioners and appoint three other commissioners whose duties shall be the same as provided in section 42.0205.

Source: § 8750 Rev. Code 1919, revised in form.

42.0207 Use of right of way on paying or tendering damages assessed. Upon the payment of the sum assessed as damages to the persons to whom it shall be awarded or a tender thereof to them, the person petitioning shall be entitled to the right of way prayed for in his petition and may immediately proceed to occupy the same and to erect thereon such work and structures and make thereon such excavations as may be necessary to the use and enjoyment of the right of way so awarded.

Source: § 8751 Rev. Code 1919.

42.0208 Appeals from assessment. Appeals from any assessment of such commissioners may be taken and prosecuted in the proper Circuit Court by any party interested at any time within ten days after written notice of the filing of the report of the commissioners, and a written notice of such appeal shall be served upon the respondent in the same manner as a summons is served in civil actions. The appellant shall file with the clerk of the Court to which the appeal is taken a bond with sureties to be approved by the clerk in the amount of the assessment appealed from, conditioned that the appellant will pay any costs that may be awarded to the respondent and abide any judgment that may be rendered in the cause.

Source: § 8752 Rev. Code 1919, revised in form.

42.0209 Trial on appeal. Such an appeal shall bring before the Court only the propriety of the amount of damages and shall be tried by a jury unless a trial by jury be waived as in other civil cases.

Source: § 8753 Rev. Code 1919, revised in form.

42.0210 Appeal not to delay work. The prosecution of any appeal shall not hinder, delay, or prevent the respondent from exercising all the rights and privileges mentioned in section 42.0207, provided that the respondent shall file with the clerk of the Court in which the appeal is pending a bond with sufficient sureties to be approved by the clerk in double the amount of the assessment appealed from, conditioned that the respondent will pay to the appellant whatever amount he may recover in the action, not exceeding

the amount of such bond.

Source: § 8754 Rev. Code 1919, revised in form.

42.0211 Respondent to pay costs, when. If the appellant recover fifty dollars more damages than the commissioners shall have awarded or the respondent shall offer to allow judgment against him to be taken, the respondent shall pay the costs of the appeal; otherwise the appellant shall pay such costs.

Source: § 8755 Rev. Code 1919.

42.0212 Costs and disbursements. The costs and expenses under the provisions of this chapter, except as herein otherwise provided, shall be paid by the party making the application. If the applicant shall, before the commencement of such proceeding, have tendered to the parties owning or occupying such lands or mining claims a sum equal to or more than the amount of damages assessed by the commissioners, all of the costs and expenses shall be paid by the party or parties owning the lands or claims affected by such right of way and who appeared and resisted the claim of the applicant.

Source: § 8756 Rev. Code 1919, revised in form.

Chapter 127
(H. B. 589)

Recodification of Mine Safety Code

AN ACT Entitled, An Act to repeal chapters 42.03 and 42.04 of the South Dakota Code of 1939, and all acts amendatory thereof, and reenact chapter 42.03, providing for a Mine Safety Code for mines to be administered by the State Mine Inspector; granting power to such Inspector to issue safety rules and regulations to prevent accidents and injuries; providing for the appointment of the State Mine Inspector, qualifications, tenure of term, salary and removal, defining his powers and duties as an administrative officer; defining his powers and duties relating to accident and injury prevention in mines; providing for enforcement of safety rules and regulations issued by the State Mine Inspector; providing for cost of administration to be provided for by legislative appropriation.

Be It Enacted by the Legislature of the State of South Dakota:

Section 1. That chapter 42.03 and chapter 42.04 of the South Dakota Code of 1939 and all acts amendatory thereof be, and the same are hereby, repealed.

Section 2. That chapter 42.03 of the South Dakota Code of 1939 be, and the same is hereby, reenacted to read as follows:

42.0301 Definitions; mines. For the purpose of this chapter, the term "mine" shall include all underground, strip, open pit, open cut workings, tunnel or caisson operations and placer mines within this state.

42.0302 Operator. The term "operator" as applied in this chapter shall mean and include owner, operator, lessee, manager, superintendent, agent, receiver or trustee operating any mine.

42.0303 Inspector. The term "Inspector" means the person commissioned by the Governor as State Inspector of Mines to have supervision of mines.

42.0304 Working place. The term "working place" shall mean a chamber, stope, room, breast, slope, drift, crosscut, entry, shaft, raise, or place where one or more men are employed.

42.0305 Creation of office; appointment; term. The Governor by and with the advice and counsel of the Senate shall appoint an Inspector of Mines. Such Inspector shall be a qualified elector of this state, over thirty years of age and practically acquainted with the operation of mines and mining in all its branches. He shall hold office for two years unless sooner removed by the Governor. He shall not during his term of office be an officer, director, or principle owner of any mining company or an employee of an operator of any mine in South Dakota.

42.0306 Qualifications. No person shall be appointed as Inspector of Mines unless he has the basic qualifications of at least seven (7) years practical underground mining experience, at least three (3) years of which shall have been in a supervisory capacity in which he exercised independent judgment in connection with the enforcement and administration of safety regulations and other mine work or, in the alternative, the Inspector of Mines shall be a graduate of an accredited mining college and also have had at least four (4) years of practical underground mining experience in a supervisory capacity as hereinbefore set forth in this section.

42.0307 Vacancy. If a vacancy occurs in the office of Inspector of Mines for any cause and the Senate be not in session, the Governor shall have the power to fill such vacancy until the next session of the Legislature, when the appointment so made shall be submitted to the Senate for confirmation or rejection.

42.0308 Oath of office; form. The Inspector of Mines shall, before entering upon his duties, take and subscribe an oath in the following form:

I, _____, of the county of _____, do solemnly swear that I will support the Constitution of the United States and of this state and faithfully discharge every duty required of me as Inspector of Mines of South Dakota; that I will at all times while acting in such official capacity fulfill the duties of such office according to the law and to the best of my skill and understanding; that I will never at any time while I hold the office of Inspector of Mines disclose to anyone, directly or indirectly, under any circumstances whatsoever, any information relative to the value of any mining property that may have come to me in any visit to, or examination of, or knowledge of any such property within the state of South Dakota, while I am acting as such official; that I will never in any way take advantage of, or suffer any one else to take advantage of, any knowledge that I may acquire relative to the value of any ore or mineral in any mine as a result of any examination of any mine or shaft, or tunnel connected with any mine, or of any ore or mineral that I may see within any mine; that I will never deal in any mining properties, directly or indirectly, by bargain or sale, wherein I may have occasion to make any examination or while I am acting as such Inspector of Mines; nor will I impart or express to any person any opinion I may form of the value of any mine; that I shall consider this obligation as binding upon me while I am not acting as Inspector as I shall while I am acting in such official capacity. To all of which I pledge my sacred honor so help me God.

42.0309 Seal of office. The Inspector of Mines shall have a seal bearing the words "Inspector of Mines, South Dakota" which shall be kept by him exclusively for the use of his office and such seal shall be affixed to official documents only.

42.0310 Salary and expense of Inspector. The Inspector of Mines shall receive a salary of \$6,000.00 per year and his actual and necessary traveling, hotel and other expenses not to exceed \$1,500.00 per annum incurred in the discharge of his duties, the same to be paid out of money appropriated for that purpose from the general fund and to be reimbursed at the same rates established by the Board of Finance for other regular state employees.

42.0311 Bond of Inspector. The Inspector of Mines, before entering upon the duties of his office, shall give a good and sufficient bond in the penal sum of Five Thousand Dollars (\$5,000) to be approved, recorded, and filed as the official bonds of other state officers, conditioned for the faithful performance of his duties.

42.0312 It shall be the duty of the State Mine Inspector.

- (1) To make a careful and thorough inspection of every mine operated in the state as often as in his opinion may be necessary, but at least once yearly;

- (2) proceed without delay to any mine within the state when he learns of any explosion or other catastrophe therein by which lives of men are jeopardized or in which fatalities have occurred, and render such aid as he can in the rescue of persons within the mine and in the protection of rescuers from danger;
- (3) give written notice to the operator of any mine wherein he shall find improper construction, or improper machinery and appliances endangering the safety of employees that the mine is unsafe, stating in what particulars the mine is unsafe, and shall require the operator to correct any unsafe condition as soon as practicable;
- (4) inspect and pass upon the adequacy and safety of all hoisting apparatus in mines and may demand a test of safety catches or clutches upon the hoisting apparatus as often as once in every three months or whenever he may believe the hoisting apparatus to be defective;
- (5) arrange a uniform system of mine bell signals and furnish a copy of the signal system to each mine operator within the state;
- (6) the Inspector of Mines shall from time to time issue such reasonable rules and regulations as in his judgment may be necessary to prevent injuries or to correct hazardous and unsafe conditions which, in his opinion, may endanger the lives or cause serious personal injury to persons working in the mines of this state subject to the rights of appeal as hereinafter provided.

42.0313 Right of entry and inspection. It shall be the duty of the Inspector of Mines to enter and examine any mine for the purpose of ascertaining the condition of the same in regard to its safety. The Inspector shall have full power and authority at all reasonable hours to enter and examine any and all mines in this state including any and all mine stopes, levels, winzes, tunnels, shafts, drifts, crosscuts, workings, open cuts, open pits, and machinery for the purpose of such examination in such manner as not to impede or obstruct the operation of the mine, to make inquiry into the state of the mine, works and machinery thereof, the ventilation and mode of lighting the same, and all matters and things connected with and relating to the safety of the employees in and about the mine and especially to the end that the provisions of law shall be complied with by the operators and employees thereof; to require that some person of practical experience and responsibility representing the mine operators shall accompany the said Inspector upon such trips of inspection through the mine in order that the Inspector may point out and specify any defects in the mine, equipment and construction thereof which may violate any of the provisions of law or the rules and regulations issued by said Inspector. The examination and inspection shall not be at the expense of the owner or operator of the mine being examined,

but the operator shall render the Inspector such assistance as may be required by the Inspector of Mines to enable him to make a full, thorough and complete examination of each and every part of such mine. Upon the refusal by any operator of the right of entry hereinbefore provided to the Inspector of Mines, application may be made by the Inspector to the Circuit Court of the county in which the mine is located for an order directing the operator to permit entry and examination of such mine.

42.0314 Refusal; misdemeanor. Refusal of any operator of any mine to allow the Inspector of Mines access to the same or to any part thereof, as provided in section 42.0313, shall be a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than Fifty (\$50) nor more than Two Hundred Dollars (\$200), or by imprisonment in the county jail for not less than ten (10) nor more than thirty (30) days, or by both fine and imprisonment.

42.0315 Duty to investigate complaints of dangerous condition. Whenever the Inspector of Mines shall receive a formal complaint in writing, signed by three or more persons, setting forth that the mine in which they are employed is dangerous in any respect, he shall in person visit and examine such mine. Every such formal complain shall, in all cases, specifically set forth the nature of the danger existing at the mine and shall describe with as much certainty as is possible how such hazard renders such mine dangerous, the time such danger was first observed, and shall distinctly set forth whether or not any notice of such danger has been given by the complainants or anyone else to their knowledge to the operator of such mine; and, if no such complaint has been made to such operator, the reason it has not been made. After such complaint shall have been received by the Inspector of Mines, it shall be the duty of such Inspector to serve a certified copy thereof, but without the names of the complainants, upon the operator of such mine at any time before he visits the same, and as soon as possible to visit such mine. If from examination he shall ascertain that such mine is from any cause in a dangerous condition, he shall at once notify the operator thereof; such notice to be in writing and to be served by copy on such operator in the same manner as provided by law for the serving of legal notices or process; and such notice shall state fully and in detail in what particular manner such mine is dangerous or insecure, and shall require all necessary changes to be made without delay for the purpose of making such mine safe for the laborers employed therein; and in case of any criminal or civil procedure at law against the person or persons so notified on account of loss of life or bodily injury sustained by any employee subsequent to such notice and in consequence of a neglect to obey the Inspector's requirement, a certified copy of the notice served by the Inspector shall be prima facie evidence of the culpable negligence of the person or persons upon whom the complaint was served. Nothing in this section shall be so construed as to give the control of any mine to the Inspector or allow him to interfere with the working of any mines.

42.0316 Notice of dangerous condition discovered by Inspector. Whenever the Inspector of Mines from his inspection or examination of any mine shall find the same to be in an unsafe condition, he shall at once serve written notice of such dangerous condition upon the operator thereof in the form and manner provided in section 42.0315.

42.0317 Accidents in mines; notice to Inspector; procedure thereon. Whenever a serious or fatal accident shall occur in any mine in this state, it shall be the duty of the operator in charge of such mine to immediately and by the quickest means notify the Inspector of Mines; and upon receiving such notice the Inspector in person shall at once repair to the place of the accident and investigate fully the cause of such accident; and whenever possible to do so the Inspector shall be present at the coroner's inquest held over the remains of the person or persons killed by such accident and shall testify as to the cause thereof and shall state whether, in his opinion, the accident was due to the negligence or mismanagement of the operator of such mine, or the manager or person in charge of such mine. If the Inspector cannot immediately be present in case of a fatal or serious accident occurring, it shall be the duty of the operator of such mine to have written statements made by those witnessing the same and duly sworn to. In case of no person being present at the time of the accident, the statement of those first present and the employee's immediate supervisor shall be taken, which statements shall be sworn to before some person qualified to administer oaths; and such sworn statements shall be placed in the hands of the Inspector upon the demand of that officer.

42.0318 Exemptions from provisions. The provisions of this chapter shall not apply to mines in which no person other than the owner, or owners, or lessees, thereof is permitted to work.

42.0319 Record of inspection; copy for operator. The Inspector shall make an entry of record in his office of the time, and material circumstances of each inspection and shall promptly transmit to the operator a copy thereof.

42.0320 Removal of hazardous conditions. Whenever a portion of a mine or machine, device, apparatus or equipment pertaining thereto, in the judgment of the Inspector, is in so dangerous a condition from any cause, or creates such a hazard, as to jeopardize life or health, he shall at once direct the manager or operator of the mine to remove the dangerous condition or safeguard the equipment forthwith. Should the Inspector during his inspection of the mine, find such dangerous condition existing therein, that, in his opinion any delay in removing the workmen from such dangerous places might cause loss of life or serious personal injury to the employees, the Inspector shall have the right to require the representative of the operator accompanying the Inspector to immediately withdraw all persons from such dangerous places. In the event the operator of the mine or his representative fails or refuses to immediately comply with the requirements or instructions

of the Inspector, then, and in that event, the Inspector may issue an order closing any portion of the mine to regular operations. Such an order based on any one cause shall expire within twenty-four (24) hours, Sundays and holidays excepted, unless the Inspector shall have applied to the Circuit Court of the county in which the mine is located for a restraining order or injunction.

42.0321 Records of Inspector of Mines. The Inspector of Mines shall carefully keep in his office the complete record of all mines examined showing:

- (1) The date of examination;
- (2) The condition in which the mines were found;
- (3) The extent of compliance with safety regulations, rules or orders;
- (4) What recommendations, if any, were made by the Inspector of Mines.

42.0322 Compilation of mining data. In addition to the duties of the Inspector of Mines arising from the power and authority conferred upon him by this chapter, the Inspector of Mines shall also have the duty to collect information, data and statistics relative to mines, mining and the raw mineral resources of the state. In his annual report the Inspector of Mines may make recommendations or suggestions to the Industrial Development Expansion Agency or the Governor of this state for the greater utilization and development of such raw mineral resources.

42.0323 Registration. Each mine in this state shall register with the State Mine Inspector the name of the operator, post office address, location of the property, the type of operation, whether underground or open pit, and the kind of mineral to be produced. It is the duty of every mine operator to notify the Inspector of Mines in writing of the suspension of operations whether of a temporary or permanent nature. Upon reactivating the mine or any mine which may have been shut down three (3) months or more, the operator, ten days prior to reactivation thereof, shall notify the State Inspector of Mines in writing of intention to reactivate the mine, giving information as to the name and location of the property and the name and address of the party who will be in charge of the work.

42.0324 Production information. Each mine shall furnish to the Mine Inspector on or before February 15 of each year information regarding total tonnage produced in the preceding year, the value thereof, the number of men employed, and any other information which might reasonably be required under the safety rules and regulations issued by the Inspector.

42.0325 Reports of Inspector. On February 15 of each year, the Inspector of Mines shall file with the Governor a report setting forth:

- (1) A list of all fatal accidents that have occurred in the year immediately preceding and the nature and cause of same, together with the names of the persons fatally injured.

- (2) A summary of compensable accidents that have been reported to the Inspector during the year immediately preceding.
- (3) The number of mines visited or examined during the preceding year, the number of mines currently in operation, the number, names and locations of mines that have become idle during such period, and the total number of men currently employed.
- (4) The name, location and address of each currently active mine in the state which has been examined and from which the Inspector of Mines has received a report as provided in 42.0324, together with data as to the manner of working same, the number of men currently employed, and the products produced or being developed for production.
- (5) The number and character of notices served upon mine operators together with suggestions and recommendations made by the Inspector and the manner in which such suggestions and recommendations were complied with.
- (6) The number of complaints received and the action therein.
- (7) The number of prosecutions for neglect or refusal to comply with notices.
- (8) A summary of the reports received from mine owners.
- (9) A full statement containing all available statistical and other information calculated to exhibit the mineral resources of the state and to promote the development of the same.

42.0326 Applicability of chapter to smelters and ore reduction plants. All of the provisions of this chapter defining and prescribing the duties, powers and authority of the Inspector of Mines to enter and examine all mines in this state are hereby extended to smelters and dry crushing reduction works so as to authorize and empower the Inspector of Mines to enter and inspect and examine all smelter and dry crushing reduction works, plants and mills in this state.

All the requirements, duties, penalties and obligations imposed upon operators or employees of mines in this state in this chapter are hereby extended to operators and employees of all smelters and dry crushing reduction works.

42.0327 Ventilation of smelters; failure as negligence; duty of Inspector. Any person operating any smelter or dry crushing reduction works shall install therein exhaust fans and dust chambers or some other suitable contrivance for the removal of all harmful gases, dust, fumes, and other impurities that accumulate at all times in the operation of such works.

The failure of any such operator so to do shall be prima facie evidence of negligence on his part. The Inspector of Mines is authorized and required to visit such works as often as necessary and at least once annually and to enforce compliance with the requirements of this section.

42.0328 Compliance with orders. The operator of every mine shall observe and comply with all reasonable orders and written notices issued by the State Mine Inspector in accordance with the provisions of this act within a reasonable time.

42.0329 Safety measures required to operators. Every mine operator shall furnish such employment and such place of employment as shall be reasonably safe for the employees therein, and shall furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety and welfare of such employees.

42.0330 Presence of official with complete authority required. The mine operator shall at all times during the operation of the mine have a person on the ground with authority over all branches and phases of the operation of the mine during the time he is on duty.

42.0331 Safety devices and orders; employee's duty. No mine employee or other person shall remove, displace, damage, destroy, carry off, or fail to use any safety device, safeguard notice or warning, provided for use in any mine employment or place of mine employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any mine employee in such employment or place of employment, or fail or neglect to follow and obey safety orders promulgated by the mine operator or the Mine Inspector, and to do every other thing reasonably necessary to protect the life, health, safety, and welfare of employees including himself.

42.0332 Misdemeanors, punishment, intoxicants, damage to equipment, violation of danger signs and unauthorized travel prohibited. Any employee violating the provisions of section 42.0331 shall be deemed guilty of a misdemeanor punishable by fine or imprisonment or both as set forth in section 42.0314 of this chapter. No miner or other person shall carry into a mine intoxicating liquids or alcoholic beverages or enter the mine under the influence of intoxicating liquids; he shall not destroy any part of the machinery or equipment of the mine; no unauthorized person shall enter any part of a mine.

42.0333 Operator's report of compensable mine accidents, contents. A report in writing shall be made to the Mine Inspector of each compensable mine accident. Such reports shall give the name, age and occupation of the injured person, the date of the accident, the actual work being performed when injured, nature of result of injury, probable length of disability; this report shall be made quarterly in each particular year.

42.0334 Required escapements. Every underground mine employing more than ten men underground on any shift must, as soon as practicable, have two or more adequate ways of escape to the surface, so arranged and equipped that men can escape quickly. Provided further, that a reasonable time may be allowed the mine operator in which to provide an additional adequate escape way in the case of development work in mines and exploration in new mines.

42.0335 Fire fighting organizations; control plans. All mines employing more than fifty men shall have a fire fighting organization of employees for fire prevention, fire control and the rescue of men. The person in charge of each such mine shall make plans in writing for fighting of surface and underground fires. Every mine shall provide adequate fire protection equipment.

42.0336 Ladderways; manways. All ladderways, manways and platforms shall be substantially constructed and maintained in a good state of repair.

42.0337 Hoistway clearance; devices to prevent overwinding and overspeeding. In shafts and inclines where men are hoisted or lowered, there shall be at least twenty feet of hoistway clearance above the landings at which men enter or leave the cages, skips or cars; and, at mines in which over twenty-five men are employed underground on any shift, there shall also be approved overwinding and overspeeding devices connected with the hoist equipment.

42.0338 Hoisting cages; construction. Cages, when used for hoisting men, shall have strongly constructed bonnets extending over the spaces on which the men stand and shall have approved metal or wire mesh sides extending not less than five feet above the floor of the cage, or floor of each deck of a multiple deck cage. When a shift of men are being hoisted or lowered, cages shall have gates or doors closing the entrances to each deck when used by men. The cage doors must be kept closed while hoisting or lowering men. Cages used for hoisting or lowering men shall be provided with approved safety catches capable of bringing to a stop the fully loaded cage or skip in any part of the shaft or headframe in case the rope or rope connection shall break.

42.0339 Hoisting ropes; safety factor and inspection. No rope or cable shall be used for hoisting or lowering men when the wires on the crown of the strands are worn to less than sixty-five percent of their original diameter or when inspection indicates a dangerous amount of corrosion or distortion, or broken wires.

When persons are lowered or hoisted in any mine, the following safety factors for hoisting ropes and cables shall be maintained:

Length of rope or cable in feet:	Minimum safety factor for new rope or cable:	Minimum safety factor when rope or cable must be discarded
500 or less	8	6.4
500 to 1,000	7	5.8
1,000 to 2,000	6	5
2,000 to 3,000	5	4.3
3,000 or more	4	3.6

The safety factor of a rope or cable is the rated breaking strength divided by the applied load. The applied load includes the dead load, the load due to acceleration of the dead load and load caused friction.

42.0340 Hoist operator. Every mine hoist operator who operates a hoist which carries men shall have a complete physical examination made annually by a licensed physician. Every mine operator shall require every mine hoist operator to post on the hoist platform a certificate stating he is in good physical condition certified by such physician.

42.0341 Ventilation requirement. Each mine shall be so ventilated as to supply to the workers a quantity of air ample for the needs of men and capable of rendering harmless any gases produced during mine operation.

42.0342 Distribution of air; methods. Means of distribution of air to workers may consist of splitting of air currents and driving of connections between levels and may include the use of doors, overcasts or undercasts, bulkheads, regulators, brattices, and auxiliary compressed air or electrically driven fans or blowers with tubing, and compressed airlines.

42.0343 Air unfit for workers; determination. The air in any unsealed place shall be considered unfit for men if it shall be found to contain less than nineteen percent oxygen, more than one percent carbon dioxide or a harmful amount of poisonous gas, and men shall be prohibited from working in such place except for the purpose of rendering it safe and fit.

42.0344 Ventilating fans; mechanical ventilation. In all mines in which twenty-five or more men are employed on any shift or in any mine more than one thousand feet in vertical depth or in any mine in which men are employed in workings more than two thousand feet from the nearest surface opening, the operator shall provide on the surface or underground a fan or other mechanical means for producing and controlling the air circulation within the mine, capable of delivering fresh air into the mine at the rate of three hundred cubic feet per minute per man except where natural ventilation is sufficient and approval of such has been given by the Inspector of Mines in writing.

In any underground uranium mine producing radioactive ores in which radon gas is present, the operator shall provide, on the surface or underground, a fan or other mechanical device for producing and controlling

air circulation within the mine capable of delivering fresh air at the rate of five hundred cubic feet per minute for each man or at a higher rate where it is necessary to reduce to acceptable levels the danger from radon gas encountered where men are working. For this purpose the Inspector of Mines may, in his discretion, prescribe the rate or rates for the delivery of fresh air by mechanical means for any such time or any particular workings therein.

42.0345 Support of openings. Where necessary to assure adequate protection for persons working within a mine, every shaft, incline, winze, adit tunnel, level or drift in every working place in a mine shall be sufficiently timbered or supported with timber, roof bolts, steel, concrete, or other approved material, as necessary to adequately protect persons therein from injury caused by falling material in accordance with a proper and systematic method of timbering or other support which shall be adopted for each mine or section of a mine. It shall be the duty of the mine operator to carry out the provisions of this section, but nothing contained herein shall be construed to relieve the miner from the duty of caring for his own working place.

42.0346 Instruction of new employees. Every miner when first employed shall be instructed in safety practices including testing of back by a responsible mine official or a responsible man designated by him.

42.0347 Open holes. Winzes, chutes, manways or other openings in the bottom of a level, drift or stope shall be adequately covered or guarded when not in use.

42.0348 Examination and safeguarding of working places by workmen. Each underground employee shall inspect his working place for bad ground, bad timber, or any loose material that may fall. This shall be done upon return to a working place after blasting, when changing from one working place to another, and as soon thereafter as necessary loose or dangerous rock shall be immediately barred down or supported. Suitable bars should be used in prying down loose material. Any unusual hazards found shall be reported to an official who will give instruction as to the proper procedure.

42.0349 Inspection of working places. Every active working place in a mine shall be inspected as to safety by an official or other designated person at least once in each working shift except in case of emergency when such inspection may be temporarily waived.

42.0350 Dust in metal mines. No operator or person in charge of any underground metal mine shall cause to be drilled or bored by machinery, nor shall any mine employee drill or bore by machinery, a hole or holes in any working place in ground that causes dust from drilling, unless the drilling machine is equipped with a water jet or spray sufficient to allay dust from drilling, or unless some other means equally effective are used to prevent the inhalation of dust.

42.0351 Moving machinery, stairs and dangerous places, guards and rails. All fly wheels, gears, drive belts and all exposed moving machinery parts that are liable to cause injury, or dangerous parts of machinery used in and about a mine shall be appropriately guarded to prevent injuries to attendants or other persons. All stairs in or about the mine shall be provided with suitable handrails. Platforms in or about the mine shall be provided with suitable rails or fences. Dangerous walks less than eight feet in width, in or about the mine shall be provided with suitable gates, rails or fences.

42.0352 Protective hats or caps, goggles or eye shields.

All underground workers and all persons allowed below the collar of the shaft shall be compelled to wear approved protective hats or caps.

All mine workers whose duties subject them to danger of flying particles shall equip themselves with goggles or eye shields and shall wear them when doing work determined by the Inspector of Mines, in his discretion, as requiring such protection and such as may be provided in regulations to be issued by him.

42.0353 First aid. At every mine the operator shall endeavor to have all officials and employees trained in first aid regardless of the number of men employed at a particular mine. Every mining operation shall have one or more first aid cabinets containing first aid material. At or in every mine there shall be, in addition to a first aid cabinet, splints, a stretcher, blanket or blankets, all of which shall be protected from moisture.

42.0354 Right of appeal. Every owner, operator or employee of any mine shall have a right of appeal to the Circuit Court in the county wherein such mine is located and from such Circuit Court to the Supreme Court of this state as to the necessity or reasonableness of any order or requirement which the Inspector of Mines seeks to impose upon such person under the provisions of this chapter.

Approved February 4, 1966.

Chapter 176
(H. B. 789)

Amending Law to Provide Action and Recovery on
Release of Expired Mineral and Other Leases

AN ACT Entitled, An Act to amend section 42.0812 of the 1960 Supplement to the South Dakota Code of 1939, by adding thereto a new paragraph, relating to release of oil and gas and other mineral leases of record upon expiration.

Be It Enacted by the Legislature of the State of South Dakota:

That SDC 1960 Supp. 42.0812 be, and the same is hereby, amended by adding thereto a new paragraph reading as follows:

The owner of said land or the owner of the mineral rights may, after thirty days have expired from the time of the service of the demand as hereinbefore set forth, in lieu of the filing of his affidavit, commence an action against the owner of such lease upon his neglect or refusal to execute a release as provided by this act in any court of competent jurisdiction, to obtain such release, and he may also recover in such action of the lessee, his successors or assigns, together with court costs including a reasonable attorney's fee for preparing and prosecuting the suit, in addition to the damages suffered by him as the proximate result of such neglect or refusal to execute a release as herein provided.

Approved March 15, 1965.