

**§ 30. Adverse claims; oath of claimants; requisites; waiver; stay of land office proceedings; judicial determination of right of possession; successful claimants' filing of judgment roll, certificate of labor, and description of claim in land office, and acreage and fee payments; issuance of patents for entire or partial claims upon certification of land office proceedings and judgment roll; alienation of patent title**

Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the register of the land office, together with the certificate of the Director of the Bureau of Land Management that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the register \$5 per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the register to the Director of the Bureau of Land Management, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the Director of the Bureau of Land Management whereupon the register shall certify the proceedings and judgment roll to the Director of the Bureau of Land Management, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever.

(R.S. § 2326; Mar. 3, 1925, ch. 462, 43 Stat. 1144, 1145; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

**CODIFICATION**

R.S. § 2326 derived from act May 10, 1872, ch. 152, § 7, 17 Stat. 93.

**AMENDMENTS**

1925—Act Mar. 3, 1925, affected words, in third and fourth sentences of text, now reading "United States

supervisor of surveys", and words, in third sentence of text, now reading "pay to the register \$5 per acre." Such words formerly read "surveyor-general", and "pay to the receiver five dollars per acre", respectively. Such act is treated more fully in notes under section 29 of this title.

**TRANSFER OF FUNCTIONS**

Director of the Bureau of Land Management substituted for United States Supervisor of Surveys following the words "certificate of the" in sentence beginning "After such judgment" and following the words "description by the" in sentence beginning "If it appears". In the establishment of the Bureau of Land Management by Reorg. Plan No. 3 of 1946, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees, the office of Supervisor of Surveys was abolished and the functions and powers were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director of the Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of the Chief Cadastral Engineer was abolished, and the functions of that office have been delegated to the Director of the Bureau of Land Management. See 43 C.F.R. § 9180.0-3(a)(1).

"Director of the Bureau of Land Management" was substituted for "Commissioner of the General Land Office" following the words "register to the" in sentence beginning "After such judgment" and in sentence beginning "If it appears" following the words "judgment roll to the" on authority of Reorg. Plan No. 3 of 1946, set § 403, set out in the Appendix to Title 5. Section 403 of Reorg. Plan No. 3 of 1946, abolished the office of the Commissioner of the General Land Office and consolidated the functions of the General Land Office with the Grazing Service to form the Bureau of Land Management.

Office of register of district land office abolished and all functions of register transferred to Secretary of the Interior, or to officers and agencies of Department of the Interior as Secretary may designate, by Reorg. Plan No. 3 of 1946, § 403, set out in the Appendix to Title 5.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

**§ 31. Oath: agent or attorney in fact, beyond district of claim**

The adverse claim required by section 30 of this title may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or of the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory.

(Apr. 26, 1882, ch. 106, § 1, 22 Stat. 49.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in title 16 section 460mm-1.

**§ 32. Findings by jury; costs**

If, in any action brought pursuant to section 30 of this title, title to the ground in con-

troverſy ſhall not be eſtabliſhed by either party, the jury ſhall ſo find, and judgment ſhall be entered according to the verdict. In ſuch caſe coſts ſhall not be allowed to either party, and the claimant ſhall not proceed in the land office or be entitled to a patent for the ground in controversy until he ſhall have perfected his title. (Mar. 3, 1881, ch. 140, 21 Stat. 505.)

SECTION REFERRED TO IN OTHER SECTIONS

This ſection is referred to in title 16 ſection 460mm-1.

**§ 33. Existing rights**

All patents for mining claims upon veins or lodes iſſued prior to May 10, 1872, ſhall convey all the rights and privileges conferred by ſections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and ſection 661 of title 43 where no adverſe rights exiſted on the 10th day of May, 1872.

(R.S. § 2328.)

REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and ſection 661 of title 43, referred to in text, were in the original "this chapter", meaning chapter 6 of title 32 of the Revised Statutes, conſiſting of R.S. §§ 2318 to 2352.

CODIFICATION

R.S. § 2328 derived from act May 10, 1872, ch. 152, § 9, 17 Stat. 94.

Proviſion of this ſection reſpecting proſecution of applications for patents for mining claims in General Land Office, pending May 10, 1872, was omitted from the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This ſection is referred to in ſections 24, 29, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 ſection 460mm-1; title 25 ſection 640d-10; title 43 ſections 1712, 1714, 1732.

**§ 34. Description of vein claims on surveyed and unsurveyed lands; monuments on ground to govern conflicting calls**

The deſcription of vein or lode claims upon ſurveyed lands ſhall deſignate the location of the claims with reference to the lines of the public ſurvey, but need not conform therewith; but where patents have been or ſhall be iſſued for claims upon unſurveyed lands, the Director of the Bureau of Land Management in extending the public ſurvey, ſhall adjust the ſame to the boundaries of ſaid patented claims ſo as in no caſe to interfere with or change the true location of ſuch claims as they are officially eſtabliſhed upon the ground. Where patents have iſſued for mineral lands, thoſe lands only ſhall be ſegregated and ſhall be deemed to be patented which are bounded by the lines actually marked, defined, and eſtabliſhed upon the ground by the monuments of the official ſurvey upon which the patent grant is baſed, and the Director of the Bureau of Land Management in executing ſubſequent patent ſurveys, whether upon ſurveyed or unſurveyed lands, ſhall be governed accordingly. The ſaid monuments ſhall at all times conſtitute the hiſheſt authority as to what land is patented, and in caſe of any conflict between the ſaid monuments of ſuch pat-

ented claims and the deſcriptions of ſaid claims in the patents iſſued therefor the monuments on the ground ſhall govern, and erroneoſ or incoſiſtent deſcriptions or calls in the patent deſcriptions ſhall give way thereto.

(R.S. § 2327; Apr. 28, 1904, ch. 1796, 33 Stat. 545; Mar. 3, 1925, ch. 462, 43 Stat. 1144; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

CODIFICATION

R.S. § 2327 derived from act May 10, 1872, ch. 152, § 8, 17 Stat. 94.

AMENDMENTS

1925—Act Mar. 3, 1925, affected words now reading "United States ſuperviſor of ſurveys" in firſt and ſecond ſentences of text. Theſe words formerly read "the ſurveyor-general." This act aboliſhed the office of ſurveyor general, and transferred to and conſolidated with the Field Surveying Service, under the jurisdiction of the U.S. Supervisor of Surveys, the adminiſtration, equipment, etc., of ſuch office.

TRANSFER OF FUNCTIONS

Director of the Bureau of Land Management, ſubſtituted for United States Supervisor of Surveys wherever appearing. In the eſtabliſhment of the Bureau of Land Management by Reorg. Plan No. 3 of 1946, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, ſet out in the Appendix to Title 5, Government Organization and Employees, the office of Supervisor of Surveys was aboliſhed and the functions and powers were transferred to the Secretary of the Interior, to be performed by ſuch officers or agencies of the Department as might be deſignated by the Secretary. Under that authority, the functions and powers formerly exerciſed by the Supervisor of Surveys were delegated to the Chief Cadaſtral Engineer, ſubject to the ſuperviſion of the Director of the Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of the Chief Cadaſtral Engineer was aboliſhed, and the functions of that office have been delegated to the Director of the Bureau of Land Management. See 43 C.F.R. § 9180.0-3(a)(1).

See alſo note ſet out under ſection 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This ſection is referred to in ſections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 ſection 460mm-1; title 25 ſection 640d-10; title 43 ſections 1712, 1714, 1732.

**§ 35. Placer claims; entry and proceedings for patent under provisions applicable to vein or lode claims; conforming entry to legal subdivisions and surveys; limitation of claims; homestead entry of segregated agricultural land**

Claims uſually called "placers," including all forms of deſiſit, excepting veins of quartz, or other rock in place, ſhall be ſubject to entry and patent, under like circumſtances and conditions, and upon ſimilar proceedings, as are provided for vein or lode claims; but where the lands have been previously ſurveyed by the United States, the entry in its exterior limits ſhall conform to the legal ſubdiviſions of the public lands. And where placer claims are upon ſurveyed lands, and conform to legal ſubdiviſions, no further ſurvey or plat ſhall be required, and all placer-mining claims located after the 10th day of May 1872, ſhall conform as near as practicable with the United States ſys-