

Mining Act of 1866

An Act granting the Right of Way to Ditch and Canal Owners over the Public Lands, and for other Purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States, and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.

Sec. 2. *And be it further enacted,* That whenever any person or association of persons claim a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, or copper, having previously occupied and improved the same according to the local custom or rules of miners in the district where the same is situated, and having expended in actual labor and improvements thereon an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant or association of claimants to file in the local land office a diagram of the same, so extended laterally or otherwise as to conform to the local laws, customs, and rules of miners, and to enter such tract and receive a patent therefor, granting such mine, together with the right to follow such vein or lode with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition.

Sec. 3. *And be it further enacted,* That upon the filing of the diagram as provided in the second section of this act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the register of the land office shall publish a notice of the same in a newspaper published nearest to the location of said claim, and shall also post such notice in his office for the period of ninety days; and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the surveyor-general, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officer of five dollars per acre, together with the cost of such survey, plat, and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days, the register of the land office shall transmit to the general land office said plat, survey, and description; and a patent shall issue for the same thereupon. But said plat, survey, or description shall in no case cover more than one vein or lode, and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued.

SEC. 4. *And be it further enacted,* That when such location and entry of a mine shall be upon unsurveyed lands it shall and may be lawful, after the extension thereto of the public surveys, to adjust the surveys to the limits of the premises according to the location and possession and plat aforesaid, and the surveyor-general may, in extending the surveys, vary the same from a rectangular form to suit the circumstances of the country and the local rules, laws, and customs of miners: *Provided,* That no location hereafter made shall exceed two hundred feet in length along the vein for each locator, with an additional claim for discovery to the discoverer of the lode, with the right to follow such vein to any depth, with all its dips, variations, and angles, together with a reasonable quantity of surface for the convenient working of the same as fixed by local rules: *And provided further,* That no person may make more than one location on the same lode, and not more than three thousand feet shall be taken in any one claim by any association of persons.

SEC. 5. *And be it further enacted*, That as a further condition of sale, and in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

SEC. 6. *And be it further enacted*, That whenever any adverse claimants to any mine located and claimed as aforesaid shall appear before the approval of the survey, as provided in the third section of this act, all proceedings shall be stayed until a final settlement and adjudication in the courts of competent jurisdiction of the rights of possession to such claim, when a patent may issue as in other cases.

SEC. 7. *And be it further enacted*, That the President of the United States be, and is hereby, authorized to establish additional land districts and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this act.

SEC. 8. *And be it further enacted*, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

SEC. 9. *And be it further enacted*, That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed: *Provided, however*, That whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 10. *And be it further enacted*, That wherever, prior to the passage of this act, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the said settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty-acres; or said parties may avail themselves of the provisions of the act of Congress approved May twenty, eighteen hundred and sixty-two, entitled "An act to secure homesteads to actual settlers on the public domain," and acts amendatory thereof.

SEC. 11. *And be it further enacted*, That upon the survey of the lands aforesaid, the Secretary of the Interior may designate and set apart such portions of the said lands as are clearly agricultural lands, which lands, which lands shall thereafter be subject to preemption and sale as other public lands of the United States, and subject to all the laws and regulations applicable to the same.

APPROVED, July 26, 1866.