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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1871.

Ordered to be printed as amended by the Senate, together with an amendment  
proposed by Mr. STEWART.

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**AMENDMENT**

Reported by Mr. STEWART, from the Committee on Mines and  
Mining, to the bill (S. 1103) to define and protect the rights  
of miners and to encourage the development of mines. Strike  
out all after the enacting clause and insert the following:

3 That the mineral lands of the public domain, both surveyed  
4 and unsurveyed, are hereby declared to be free and open to  
5 exploration and occupation by all persons, subject to such  
6 regulations as may be prescribed by law, and subject also to  
7 the local customs or rules of miners in the several mining  
8 districts, so far as the same may not be in conflict with the  
9 laws of the United States.

1       SEC. 2. *And be it further enacted,* That the miners of  
2 each mining district may determine the length of their mining  
3 claims upon veins or lodes of quartz, or other rock in place,  
4 bearing gold, silver, cinnabar, lead, tin, or copper, subject to the  
5 following limitations: Claims located previous to July twenty-  
6 six, eighteen hundred and sixty-six, shall be limited as to

7 extent along the vein or lode by the local laws or customs  
8 existing at the date of the location. Single claims located  
9 subsequent to July twenty-six, eighteen hundred and sixty-  
10 six, shall not exceed two hundred feet in length along the vein  
11 or lode, with an additional claim of two hundred feet for dis-  
12 covery to the discoverer of the vein or lode. Several persons  
13 may locate in common on a vein or lode, each person taking  
14 one claim; but no person, except the discoverer, shall locate  
15 more than one claim upon the same vein or lode; and the  
16 aggregate amount of a location in common made subsequent  
17 to July twenty-six, eighteen hundred and sixty-six, shall not  
18 exceed three thousand feet in length along the vein or lode.  
19 No claim shall extend more than three hundred feet on each  
20 side of the middle of the vein at the surface, nor shall any  
21 claim be limited by any mining regulation to less than twenty-  
22 five feet on each side of the middle of the vein at the surface,  
23 except where adverse rights existing at the passage of this  
24 act shall render such limitation necessary. The end lines of  
25 each claim shall be parallel to each other, and at right angles  
26 with the general course of the vein.

1       SEC. 3. *And be it further enacted,* That the locators of  
2 all mining locations heretofore made, or which shall hereafter  
3 be made, on any mineral vein, lode, or ledge situated on the  
4 public domain, their heirs and assigns, where no adverse claim  
5 exists at the passage of this act, so long as they comply with

6 the laws of the United States, and with State, territorial, and  
7 local regulations, not in conflict therewith, governing their  
8 possessory title, shall have the exclusive right of possession and  
9 enjoyment of all the surface included within the lines of their  
10 locations, and of all veins, lodes, and ledges throughout their  
11 entire depth, the top or apex of which lies inside of such  
12 surface lines extended downward vertically, although such  
13 veins, lodes, or ledges may so far depart from a perpendicular  
14 in their course downward as to extend outside the vertical  
15 side lines of said surface locations: *Provided*, That their  
16 right of possession to such outside parts of said veins or  
17 ledges shall be confined to such portions thereof as lie  
18 between vertical planes drawn downward as aforesaid,  
19 through the end lines of their locations, or locations in com-  
20 mon, so continued in their own direction, that such planes  
21 will intersect such exterior parts of said veins or ledges: *And*  
22 *provided further*, That nothing in this section shall authorize  
23 the locator or possessor of a vein or lode which extends in  
24 its downward course beyond the vertical lines of his claim  
25 to enter upon the surface of a claim owned or possessed by  
26 another.

1       SEC. 4. *And be it further enacted*, That where a tunnel  
2 is run for the development of a vein or lode, or for discovery  
3 of mines, the owners of such tunnel shall have the right of  
4 possession of all veins or lodes, not previously known to exist,

5 discovered in such tunnel, to the extent of five hun-  
6 dred feet on each side of the same; and locations on the  
7 line of such tunnel of veins or lodes not appearing on the  
8 surface, made by other parties after the commencement of  
9 the tunnel, and while the same is being prosecuted with rea-  
10 sonable diligence, shall be invalid.

1        *SEC. 5. And be it further enacted,* That the miners  
2 of each mining district may make rules and regulations not  
3 in conflict with the laws of the United States or with the  
4 laws of the State or Territory in which the district is situ-  
5 ated, governing the location, manner of recording, amount of  
6 work necessary to hold possession of a mining claim, subject  
7 to the following requirements: The location must be distinctly  
8 marked on the ground so that its boundaries can be readily  
9 traced. All records of mining claims hereafter made shall  
10 contain the name or names of the locators, the date of the  
11 location, and such a description of the claim or claims located  
12 by reference to some natural object or permanent monument  
13 as will identify the claim. After the passage of this act, and  
14 until a patent shall have been issued, not less than twenty-  
15 five dollars' worth of labor shall be expended or improve-  
16 ments made upon each claim of two hundred feet during each  
17 year; but claimants in common, as defined in the second  
18 section of this act, may cause all the labor to be expended for  
19 improvements to be made upon any one claim, provided

20 the aggregate amount equals twenty-five dollars a year to  
21 each claim of two hundred feet. And upon a failure to  
22 comply with this condition, the claim or mine upon which  
23 such failure occurred shall be open to relocation in the same  
24 manner as if no location of the same had ever been made:  
25 *Provided*, That the original locator has not resumed work  
26 upon the claim after such failure and before such location.

1       SEC. 6. *And be it further enacted*, That a patent shall  
2 be obtained in the following manner: Any person, association,  
3 or corporation in possession of a mining claim or claims in  
4 common, who has complied with the mining regulations and  
5 the laws of the United States, may file in the local land office  
6 an application for a patent showing such compliance, together  
7 with a plat of the claim or claims in common; a copy of  
8 such plat, together with a notice of intention to apply for a  
9 patent, shall also be posted in a conspicuous place on the  
10 claim for the period of ninety days. The register of the land  
11 office, upon the filing of such application and plat, shall  
12 publish a notice, that such application has been made for the  
13 period of ninety days, in a newspaper published nearest to  
14 said claim, and he shall also post such notice in his office for the  
15 same period. The claimant, at the time of filing his applica-  
16 tion, or at any time thereafter within the ninety days of publi-  
17 cation, shall file with the register a certificate of the United  
18 States surveyor general that one thousand dollars' worth of labor

19 has been expended or improvements made upon the claim, by  
20 himself or grantors, that the plat is correct, with such further  
21 description by such reference to natural objects or perma-  
22 nent monuments as shall identify the claim and furnish an  
23 accurate description, to be incorporated in the patent. At the  
24 expiration of the ninety days of publication, the claimant shall  
25 file his affidavit, showing that the plat and notice have been  
26 posted in a conspicuous place on the claim during said period  
27 of publication. If no adverse claim shall have been filed at  
28 the expiration of the ninety days of publication, it shall be  
29 assumed that the applicant is entitled to a patent, and that no  
30 adverse claims exist, and thereafter no objection from third  
31 parties to the issuance of a patent shall be heard except it be  
32 shown that the applicant has failed to comply with this act.

1       SEC. 7. *And be it further enacted,* That where an ad-  
2 verse claim shall be filed during the period of publication, all  
3 proceedings except the publication of notice and making and  
4 filing of the affidavit thereof, shall be stayed, until the  
5 controversy shall have been settled or decided by a court  
6 of competent jurisdiction, or the adverse claim waived.  
7 It shall be the duty of the adverse claimant, within  
8 thirty days after filing his claim, to commence pro-  
9 ceedings in a court of competent jurisdiction to deter-  
10 mine the question of the right of possession, and prosecute  
11 the same with reasonable diligence to final judgment, and

12 a failure so to do shall be a waiver of his adverse claim.  
13 After such judgment shall have been rendered, the party  
14 entitled to the possession of the claim, or any portion thereof,  
15 may file a certified copy of the judgment roll with the regis-  
16 ter of the land office, together with the certificate of the sur-  
17 veyor general that the requisite amount of labor has been ex-  
18 pended or improvements made thereon, and the description  
19 required in other cases, and shall pay to the receiver five dol-  
20 lars per acre for his claim, together with the proper fees,  
21 whereupon the whole proceedings and the judgment roll shall  
22 be certified by the register to the Commissioner of the General  
23 Land Office, and a patent shall issue thereon for the claim, or  
24 such portion thereof as the applicant shall appear, from the  
25 decision of the court, to rightfully possess. If it shall appear  
26 from the decision of the court that several parties are entitled to  
27 separate and different portions of the claim, each party may pay  
28 for his portion of the claim, with the proper fees, and file the  
29 certificate and description by the surveyor general, whereupon  
30 he register shall certify the proceedings and judgment roll to  
31 the Commissioner of the General Land Office as in the pre-  
32 ceding case, and patents shall issue to the several parties ac-  
33 cording to their respective rights.

1       SEC. 8. *And be it further enacted,* That the descrip-  
2 tion of vein or lode claims upon surveyed lands shall desig-  
3 nate the location of the claim with reference to the lines of

4 the public surveys, but need not conform therewith; but  
5 where a patent shall be issued for vein or lode claims  
6 upon unsurveyed lands, the surveyor general in extend-  
7 ing the surveys shall adjust the same to the boundaries of  
8 such patented claim, according to the plat or description  
9 thereof, as in other cases of private claims.

1       SEC. 9. *And be it further enacted*, That sections one,  
2 two, three, four, and six of an act entitled "An act granting  
3 the right of way to ditch and canal owners over the public  
4 lands, and for other purposes," approved July twenty-six,  
5 eighteen hundred and sixty-six, are hereby repealed, but such  
6 repeal shall not affect existing rights, or prevent claimants  
7 now prosecuting their claims for patents from proceeding un-  
8 der said act: *Provided*, That this act shall be enforced as to  
9 such claims where it is not inconsistent with the act approved  
10 July twenty-six, eighteen hundred and sixty-six, aforesaid.

1       SEC. 10. *And be it further enacted*, That the "Act to  
2 amend an act granting the right of way to ditch and canal  
3 owners over the public lands, and for other purposes," ap-  
4 proved July nine, eighteen hundred and seventy, shall be  
5 and remain in full force, except as to the proceedings to ob-  
6 tain a patent, which shall be similar to the proceedings pre-  
7 scribed by sections six and seven of this act for obtaining  
8 patents to vein or lode claims; but where said placer-claims  
9 shall be upon surveyed lands, and conform to legal subdivis-



10 ions, no further survey or plat shall be required, and joint en-  
11 tries shall be allowed for contiguous claims, as provided in said  
12 act: *Provided*, That proceedings now pending may be prose-  
13 cuted to their final determination under existing laws; but the  
14 provisions of this act, when not in conflict with existing laws,  
15 shall apply to such cases.

1       SEC. 11. *And be it further enacted*, That where the same  
2 person, association, or corporation is in possession of a placer-  
3 claim and also a vein or lode included within the boundaries  
4 thereof, application shall be made for a patent for the placer-  
5 claim, with the statement that it includes such vein or lode,  
6 and in such case (subject to the provisions of this act and the  
7 “ Act to amend an act granting the right of way to ditch and  
8 canal owners over the public lands, and for other purposes,”  
9 approved July nine, eighteen hundred and seventy) a patent  
10 shall issue for the placer-claim, including such vein or  
11 lode, upon the payment of five dollars per acre for such vein  
12 or lode claim, and one hundred feet of surface on each side  
13 thereof. The balance of the placer-claim shall be paid  
14 for at the rate of two dollars and fifty cents per acre, and  
15 where a vein or lode, such as is described in the second sec-  
16 tion of this act, is known to exist within the boundaries of a  
17 placer-claim, an application for a patent for such placer-claim  
18 which does not include an application for the vein or lode  
19 claim, shall be construed as a conclusive declaration that the

20 claimant of the placer-claim has no right of possession of the  
21 vein or lode claim; but where the existence of a vein or lode  
22 in a placer-claim is not known, a patent for the placer-claim  
23 shall convey all minerals within the boundaries thereof.

1       SEC. 12. *And be it further enacted,* That the surveyor  
2 general of the United States may appoint in each land  
3 district containing mineral lands as many competent  
4 surveyors as shall apply for appointment to survey  
5 mining claims. The expenses of the survey of vein  
6 or lode claims and the subdivision of placer-claims into  
7 smaller quantities than one hundred and sixty acres, together  
8 with the cost of publication of notices, shall be paid by the  
9 applicants, and they shall be at liberty to obtain the same at  
10 the most reasonable rates, and they shall also be at liberty to  
11 employ any United States deputy surveyor to make the sur-  
12 vey. The Commissioner of the General Land Office shall  
13 also have power to establish the maximum charges for surveys  
14 and publication of notices under this act; and in case of ex-  
15 cessive charges for publication, he may designate any news-  
16 paper published in a land district where mines are situated  
17 for the publication of mining notices in such district, and fix  
18 the rates to be charged by such paper; and to the end that  
19 the Commissioner may be fully informed on the subject, each  
20 applicant shall file with the register a sworn statement of  
21 all charges and fees paid by said applicant for publica-

22 tion and surveys, together with all fees and money  
23 paid the register and receiver of the land office,  
24 which statement shall be transmitted with the other papers  
25 in the case to the Commissioner of the General Land Office.  
26 The fees of the registers and receivers shall be the same as  
27 in other cases for similar services. But nothing in this act  
28 shall be construed to repeal, impair, or in any way affect the  
29 provisions of the "Act granting to A. Sutro the right of way  
30 and other privileges to aid in the construction of a draining  
31 and exploring tunnel to the Comstock lode, in the State of  
32 Nevada," approved July twenty-five, eighteen hundred and  
33 sixty-six.

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## AMENDMENT

Proposed by Mr. STEWART, viz: Insert at the end of the bill the following:

1 *Provided*, That nothing in this act shall be construed to  
2 enlarge or affect the rights of either party in regard to any  
3 property in controversy at the time of the passage of the act  
4 entitled "An act granting the right of way to ditch and canal  
5 owners over the public lands, and for other purposes," ap-  
6 proved July twenty-six, eighteen hundred and sixty-six, nor  
7 shall this act affect any right acquired under said act.

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