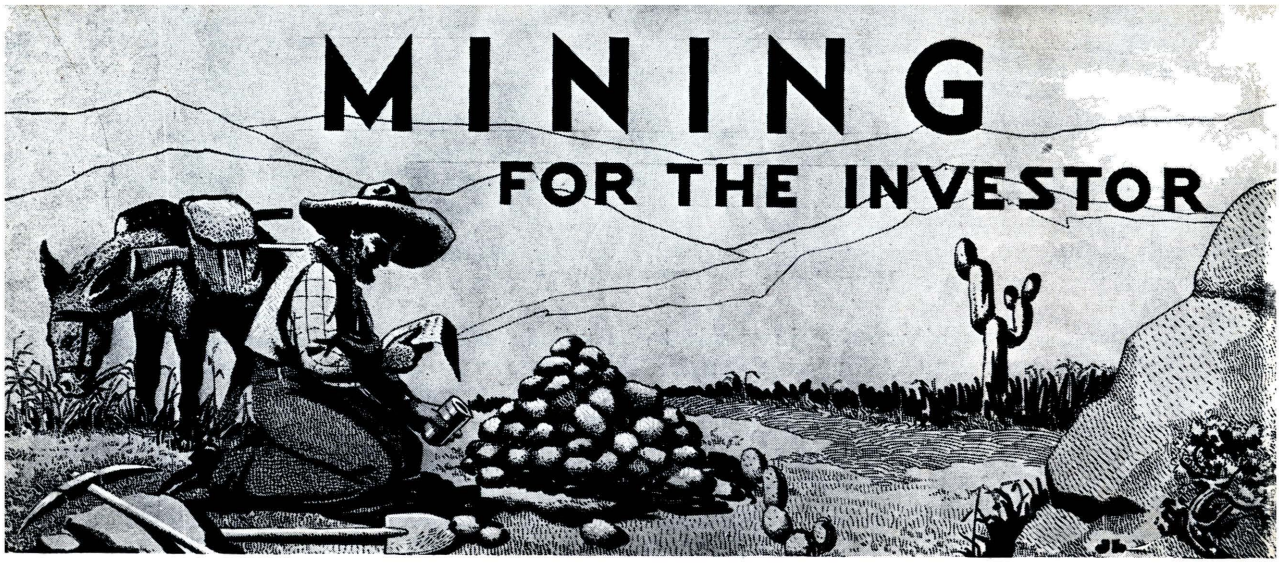


By Ralph Keeler

THE MINER AND THE LAW

Hardly less important than finding a mine, or what the finder hopes will turn out to be a mine, is the act of securing possession of it. It is the exception rather than the rule for the original discoverer of a mining property to wind up owner of it, or even of part of it. The history of mining throughout the ages is filled with examples of long-drawn-out legal wrangles over the ownership of mining properties.

Ever since the first discoveries of metals, way back a thousand or more years before Christ, it has been realized that "it is to the public interest that deposits of minerals should not be allowed to remain idle and undeveloped." *

With this in mind laws have been framed in all countries to encourage the discovery and exploitation of mineral deposits. Usually, throughout the ages, the ruler or the government has attempted to obtain a share in the profits of mining. In many cases monarchs actually worked mines for their individual profit, using slave labor. Egyptian mining was an outstanding example of forced mining labor: all mines belonged to the government, and thousands of slaves were sent on expeditions to the Sinao peninsula to obtain gold. The early Greek mines belonged to the state, and were worked by citizens who paid the government a royalty in return for the privilege of mining.

[1] The conquest by the Romans of most of the ancient world did much to advance the science of mining. The Roman legions claimed for their state the mines which they acquired as they marched into France, Spain, Britain, Africa, Egypt, Greece, and Asia Minor. The Romans farmed out some of these mines to speculators, leased some of them to people of the locality on a royalty basis, and permitted some to be held and worked privately.

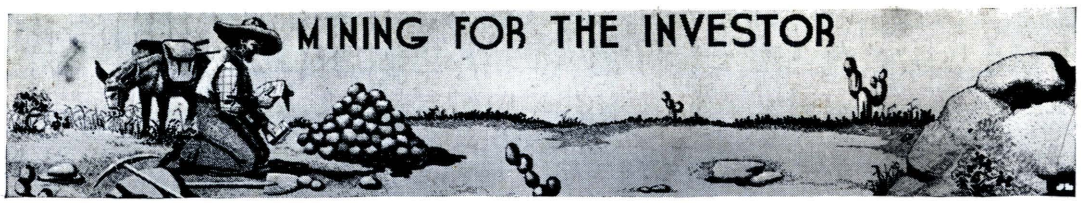
It has been proven, through years of bitter experience, that it is usually better policy for the state to extend all possible encouragement to those who would explore and develop its mineral resources. Today the mining laws of most civilized states permit free prospecting on the public lands to citizens, protect the rights of discoverers of mineral deposits, and provide for the permanent acquisition of mineral property on reasonable terms.

[2] The early miners, however, were not so fortunate; most of them worked for the ruler, and the fruits of their labors

* Encyclopaedia Brittanica, 11th Edition

[1] All About Mining, W. H. Witcombe, 1937
[2] The Economics of Mining, T. J. Hoover, 1933, pp. 226-227

[The first of this series appeared in the April Magazine.]



for the most part, went to swell the royal coffers. Way back in 5200 B. C., the king of ancient Egypt sent out expeditions at regular intervals to obtain copper and turquoise from the rocky country around Mount Sinai. Officers of the king were in charge of these expeditions, and slaves of many castes, each with a special duty, performed the actual labor. Any metal recovered by these slaves, of course, went to the king. Whatever benefits the miners received for their labor depended entirely upon the good will of the king (and kings of that era were not conspicuous for their generosity).

The rich lead-silver mining district of Mount Laurion was worked by the ancient Greeks from 700 to 200 B. C. The land was considered the property of the state, but the people could lease the right to mine the minerals. It is reported that Xenophon urged the citizens of Athens to form mining companies in order to improve the finances of that city. Herodotus speaks of rich mines of gold and silver on the island of Siphnos in the Aegean, the yield from which was divided year by year among the citizens. The lessee was required to pay a large tribute to the state, and there were elaborate provisions governing the rights to mine, and for the regulation of the mining operations, which were performed entirely by slaves.

The Romans were avid seekers of minerals. They were the first to work out the theory of state ownership of mining land and embody it in numerous laws for the regulation of mining in various parts of the empire. As the Roman military machine marched over the land of other states, the conquerors took over the mines and worked them, either by leases from the State to public companies or to individuals. In some cases the government itself worked them. This idea of state ownership of minerals formed the basis of the contention of Regalian rights in Europe, and in the United States, later on.

The feudal lords of Europe, during the Middle Ages, attempted to enforce the Roman idea that the minerals in the earth belonged to the king. The right to mine was given to individuals or groups by charters, which gave the conditions and the payments under which the lease was granted. Much of the practical modern mining code was evolved during these years, the main concept being the old Roman doctrine of Regalian right.

Today there are two basic principles underlying the mining laws of the world, the leasing or concession system, or the claim system.

The leasing system provides that the state or the private owner has the right to grant leases or concessions to mine operators, as they see fit, subject, of course, to certain binding restrictions and usually to the payment of certain fees and royalties. This system originated in the Regalian idea that all mineral wealth belonged to the crown; it is in effect in practically every mining country in the world except the United States. More than five-sixths of the mining areas of the world, according to reports [1] are worked under this system. It has been found, throughout the years, that a leasing system, although subject to abuse occasionally because it often places the privilege of mining and of granting mining concessions in the hands of a few individuals, is more satisfactory than any other method yet devised.

The claim system was developed in the United States, in the western states following the gold rush of 1849 to California. It resulted from the desire of the prospector to work a mineral deposit discovered on the public lands, and to obtain legal ownership of the property.

The United States acquired, through cession, a considerable amount of land, extending from the Mississippi River

[1] The Economics of Mining, T. J. Hoover, 1933, pp. 361-362.

to the Pacific Coast. Most of this land was acquired from France and Mexico, both of which based their mining law on the Regalian doctrine. This principle was, of course, in direct conflict with the Anglo-Saxon common-law principles that were brought to the United States by the first settlers.

From 1807 to 1847 Congress leased mineral lands, but this system proved unsatisfactory when, therefore, the gold rush started in 1849, the first arrivals found that the mineral lands were unsurveyed, and that there was no attempt to control mining in any way.

The small groups of miners of necessity had to work out their own laws. Each camp formed its own code. The rough miners, practically all of them entirely ignorant of legal procedure, got together and passed rules based on common sense and upon the needs of the moment. The term "law of the lariat" has been applied to these early codes: "With the lariat they measured the distance assigned to each miner along the gold-bearing gulch—a double portion to the discoverer, and a single portion to his successors, in the order of their coming. With the lariat, they hung, after such due process of law as was available, the rascal who stole a horse or a bag of gold-dust, or a mining claim, or killed another man without giving him a fair chance notice and a chance to defend himself." †

There are but few countries in the world that have the policy of "open door" which characterizes that of the United States. Most nations surround their mineral resources with so many fences that it is difficult enough for nationals to acquire them, to say nothing of foreigners.

The study made by J. W. Frey in 1933, as a part of "The Mineral Inquiry" organized by the American Institute of Mining and Metallurgical Engineers to make factual studies of the mineral resources of the United States and of the world in their political and international relations, is of considerable help in coming to a sensible understanding of the problems facing the mining industry of the Philippines, as well as those confronting the new government itself.

Mr. Frey's contribution to the mineral inquiry was entitled "The Open-Door Policy of Mineral Development". The vital part of it as applied to the present situation in the Philippines follows:

"The system of mining law operating in the United States is based upon the theory that the unappropriated public land belongs to the people of the nation individually and that anyone has a right to such land for minerals, and as a discoverer has a right to keep them. The owner of the land fee has been almost without any legal restrictions as to exploration and exploitations. Incidentally, this is one of the reasons why it has been extremely difficult to control the production of minerals in the United States. There are relatively few other countries in which the American policy of 'open door' exists. The degree to which the door is closed extends through a wide range from compliance with a few simple regulations to the absolute prohibition of mining by certain classes. The citation of the mining laws of a few countries will perhaps serve to indicate the difference in mining philosophy.

"The Canadian policy toward mining operations is generally regarded as liberal. Foreigners almost without exception are permitted to operate on the same terms as nationals, although in several provinces registration and special fees are required. Exploration and exploitation are carried on under a system of licenses and leases. This condition is largely traceable to the fact that mining rights exist or have existed in favor of the Crown. While exceptions may be noted, the fundamental characteristic of Canadian mining laws is that development once anticipated

† Comparison of Mining Conditions Today with Those of 1872, R. W. Raymond, Trans. A.I.M.E. Vol. 48 (1915), p. 299.

must be pursued. This is especially true on state lands. The commerce in minerals is not entirely free, for there are several that must be refined within the country. Without going into detail, it is perhaps sufficient to point out that, while there are few restrictions upon foreigners entering the Canadian mining industry, Canada should not be regarded as a country with a *laissez faire* policy.

"In Latin America most of the mining laws are based upon the theory of concession. While in almost all of the countries prospecting is declared to be free and open to citizens or aliens, the regulations are such as to restrict the class of individuals, who can engage in that activity. The restrictions on prospecting, however, would not ordinarily affect the activity of any well organized foreign company, although they would in a very large number of instances prohibit prospecting by impecunious persons. According to the United States Bureau of Mines *Information Circular* 6308 (July, 1930), 'Mining Laws of Latin America— General Summary,' Brazil alone among countries in South and Central America imposes any very serious restrictions on aliens in the matter of mine ownership. In that country it has been declared by an amendment of the constitution that mines and mineral deposits necessary to the national safety and defense, and the lands where they exists, cannot be 'interpreted' to aliens. But there is some question as to what minerals are embraced in this distinction.

"Mexico makes a distinction between individual persons and companies. A company is not permitted to acquire mining or exploration concessions from the state, either directly or indirectly, but a person may do so by renouncing the protection of his own government.

"In Columbia there is a local restriction against aliens in the public domain in several districts. But it is understood that this condition exists in anticipation of a new mining code.

"Guatemala permits none but nationals or naturalized aliens to obtain title to mining land within a narrow zone along the frontier.

"Peru has reserved a zone fifty kilometers wide along the frontier, as regards mines and fuels, land and water, but this restriction on alien ownership may be lifted in case of national necessity.

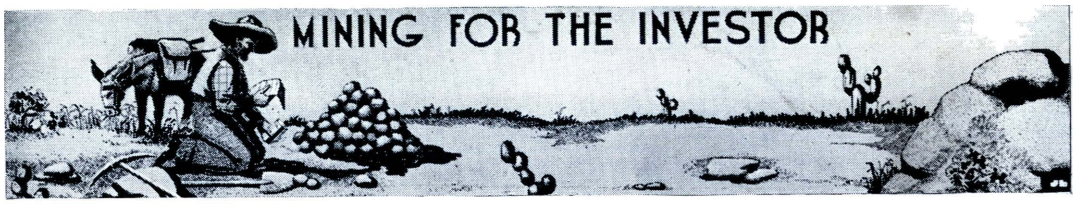
"According to the Bureau of Mines *Circular* 6308, 'any restrictions of the other countries in this regard are merely formal and apparently not designed to prevent aliens from prospecting or mining.'

"In Portuguese possessions the alien must always relinquish his national jurisdiction. The ownership of mineral rights is vested in the state and the government may restrict any land with regard to prospecting rights.

"Exact information is not available concerning all the French African possessions, but in the nature of the French system of government it appears that the same type of restrictions obtain in French Africa as in France, where concessions may be granted to foreigners only with the consent of three ministerial departments. This procedure in practice is most restrictive to the foreigner. If the government does not see fit to grant a permit to explore and exploit, it is not obligated to give any reason. Where a majority of approximately two-thirds of a control of a company is French there appears to be little or no objection to the other third being foreign.

"Egypt claims exclusive ownership of all mineral substances and will not sell or grant term leases on them. Petroleum is subject to preemption or preferential purchase. Foreigners operate on the same terms as subjects if they have secured licenses or leases through the minister of finance upon the recommendation of the comptroller.

"The Belgian Congo is practically closed territory for the alien, unless it appears advisable to make concessions



under the 'royal umbrella.' Katanga and Kuri are covered by special committees in which mineral grants must be approved by the Ministry of Colonies. Typically such decrees as have permitted the introduction of alien capital have limited the percentage of foreign capital and have requested the purchase in Belgium of a very considerable part of any equipment and supplies.

"In British Africa, in the mandates of Cameroon, Togoland and East Africa, Americans by treaty have the same rights as British. In the Gold Coast, Ashanti, Nyasaland and Nigeria, no aliens are granted the right to explore for oil. Diamond mining, except alluvial, is a monopoly in all parts of British Africa. The most liberal policy as to the open door in British Africa is the Union of South Africa, where there are no discriminatory laws for aliens. In the Transvaal mining is not free and open and no land can be prospected until declared open by the Ministry of Mines, which must be satisfied that a real discovery has been made and that a reasonable basis exists that the mineral occurs in profitable quantities.

"In Guiana, when large-scale prospecting is indicated, the license, in the nature of a concession, is within the discretion of the governor, who is supposed to consider the public import or imperial utility of the proposed project. The government has a prior right to oil. In both Northern and Southern Rhodesia mining rights are vested in the British South African Company. This has been criticized as being a most unsatisfactory condition.

"Turning to Asia we find several countries that have definite closed-door policies. Japan is closed to all but subjects. In China free exploration is not permitted. All ordinary minerals, aside from building materials, in theory belong to the State, though in practice considerable bodies have been alienated. Free-simple ownership is not possible. Only citizens may explore or operate mines, but a mining company, which must be incorporated in China, may join with foreigners up to 50 per cent of its capital.

"In order to secure the right to prospect in British India, one must secure a certificate of approval and a prospecting license. These can be obtained only by British subjects or British-controlled companies.

"In the Federated Malay States there is no distinction between nationals and aliens. However, the control of mining and mining properties and the conditions required for operation insure that the British government and its citizens will not be handicapped by foreigners, and regulations have been made which require the tin produced to be smelted in the British Empire.

"The text of the Netherland Indies mining laws does not expressly discriminate against aliens. As between the United States and the Netherland Indies there is a reciprocity agreement. However, before exploration and exploitation can be carried on, legislative approval must be obtained.

"In Europe there is a considerable mixture of policy. In general the closed-door policy exists unless it is expedient for the state to rule otherwise.

"In Spain foreigners apparently are on equal terms with nationals in digging small holes, but the foreigner must receive special authorization before assuming the control of mining operations. Mining is on a decree basis, which means that the granting of mining rights ultimately reposes in the ministry.

"Norway does not specifically discriminate against foreigners, and when it appears advantageous foreigners may be granted rights. The law is, however, not specific and in consequence the government may interpret the law in its discretion.

"In Belgium foreigners and citizens are subject to the same conditions. While there are many mining regulations, they are not preferential.

"Rumania has recently liberalized its mining law and has, at least by implication, removed all discrimination against foreigners. However, in granting concessions the state may determine on a basis for royalties or partnership by the State and the leaseholder. Several Salines are state monopolies. The state has set up oil reserves.

"Bulgaria, Yugoslavia and Czechoslovakia, according to their mining laws, appear to be interested in establishing mineral enterprises of value to their national economy through the assistance of foreign capital.

"Further cataloguing of the policies of nations toward aliens would add very little to the general subject. Sufficient has been given for one to make the general statement that there are few places in the world where the door is wide open for alien capital for the development of mineral lands. In very large areas of potential mineral development the door for all practical purposes is closed. There are some areas to which acceptable enterprises are welcome if the foreign State feels justified in opening the latch after it has had a fair look at the visitor through the window, and there are some countries in which the door may or may not be closed after the miner has gained entrance."

A point about which there has been endless dispute for centuries and which even today is still the subject of much controversy, concerns the boundaries of mining properties.

The earliest miners, from all evidence that can be obtained, followed the vein wherever it led, without paying much attention to the surface rights of others. Boundaries of mining properties in ancient Greek lead-silver mines are known to have been vertical, that is, the owner or leaser had the right to mine only that area which lay directly under the surface of the property. An early Roman law in force in Spain permitted the discoverer to move his side-lines a certain number of feet for each degree of dip, so that the extension of the vein at depth could be included in the property.

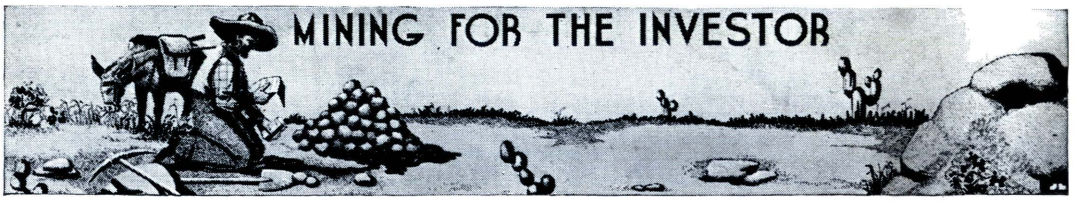
These two theories govern the right to work underground mineral deposits, then: first, that the miner can work the ore within the limits formed by planes vertical to the surface boundaries and second, that the "extra-lateral right" principle gives him the right to follow his vein on its downward courses, even if it dips beneath the surface of an adjoining claim. The first system, by its very simplicity, is easy to apply. The second has led to hundreds of disputes, for geologists seldom can agree as to the exact geneology of various veins.

The vertical side-line theory is used in practically every country except the United States, where the extra-lateral right application is generally used. A modification of this system is found in that extra-lateral right may be legally nullified by agreements among titleholders in a certain district. This practice has been adopted in some of the copper-producing areas, with general satisfaction from the adoption of vertical boundaries.

A study of the mining laws of the nations leads to the conclusion that many of them have been framed by individuals better acquainted with the business of legislation than with that of finding and developing mines, according to T. F. Van Wagenen, in his "International Mining Law". This is particularly true of the British law, but is much less the case among those of the Latin-American class.

The United States was fortunate in that its mining law were drafted by miner and explorer without the aid of either lawyer or mining engineers; the results obtained have been, on the whole, satisfactory.

A study of the mining laws of any country is of no particular help to the mining investor, except that it would be well for him to understand some of the complexities attending the acquisition



of the right to extract minerals. Most foreign laws depend upon, first, the acquisition of permission to explore mineral lands, and next, obtaining permission to work them if valuable deposits are found.

Discovery and *development* are fundamental requirements for the possession of mining rights in the United States. In other words, the miner has to find a mineral deposit, and has to do enough work on it (the national U.S. law provides for $500 worth of work) to maintain a title. In addition, he must do a certain amount of labor and improvement on it each year—this is assessment work, and $100 worth must be done annually on each claim in the United States.

Practically all of the states require a posting of a notice of the location of a claim, and the dimensions of the claim must be stated with reasonable accuracy. The recording of a notice of location is required by most states, although not by national law. These states allow from 30 days after date of discovery to 90 days after location for such recording.

Owner of a claim is conveyed by a *patent* which, in the case of a lode claim gives right to all surface land comprised in the location, and right to all veins, lodes, and ledges throughout their entire depth, whose *apexes* lie within the boundaries of the location; the right to follow the vein beyond the boundaries is subject to various restrictions in different localities. The boundaries of the patent may be invaded by a neighboring lode locator follow his own vein (presumably a different vein from that of the patent owner) on its downward course beneath the patented surface—this is the law of the apex. Patent to a *placer* claim gives the owner everything within the vertical boundaries of the claim except lodes whose apexes are within these boundaries and whose existence was previously known, and except portions of a lode underlying the placer surface which may be followed by a neighboring lode locator lawfully following his vein on its downward course.

As each step in obtaining a patent is taken without contest, the claim to a title grows in strength. A lode claim in the United States may be 1,500 feet along the vein or lode discovered, and 300 feet on each side of the middle of the vein at the surface. When improvements to the amount of $500 have been made on a claim, and an affidavit to that effect filed in the record office, a patent may be applied for. This improvement must be for the purpose of developing the property with the idea of extracting minerals; labor must be employed for sinking a shaft, driving a tunnel, or cutting trenches. It cannot be the clearing of land, sawing timber, or building houses.

A patent is the deed or grant which the United States grants through the Land Department, conveying legal title to the location. It is obtained by applying to the United States surveyor general of the district, and by complying with certain requirements. After all papers have been filed, and the area surveyed by governmental officials, copies of a report on the application is filed in a conspicuous place on the claim, and is published in the newspaper nearest the claim. If at the end of 60 days no adverse claim has been filed with the land office, it is assumed that the applicant is entitled to a patent, upon payment of five dollars an acre.

A bitter legal battle is being waged in the Philippines now as to whether or not the new Philippine government will recognize the rights of locators of claims located prior to November 15, 1935, the date on which the new constitution went into effect. Some 110,000 mining claims were located in the Islands prior to November 15, 1935. Of these but 149 were patented, although many applications for patents had been filed.

It has been held in the United States that the location and recording of a mining claim on the public domain by a qualified person constitutes a con-

tract with the government. Mining operators in the Philippines thus declared that their location and recording of mining claims prior to November 15, 1935, constitute a contract which must be kept by the new government. They base their contention on the fact that in the Act of Congress of July 1, 1902, in the Jones Law, and in the Tydings-McDuffie Act there are provisions to the effect that no law shall be enacted in the Islands which deprive any person of life, liberty, or property without due process of law, and that no law impairing the obligation of contracts shall be enacted.

Administrative officials of the Philippine government, however, have seen fit to interpret the provisions of section 68 of Commonwealth Act 137, which governs the acquisition by qualified persons of leases of mineral lands, to apply not only to claims acquired under that act, that is, since November 15, 1935, but also to those acquired under the old law. It has been necessary for owners of "old claims" to institute suits to establish their rights. Several such suits are now pending in the Manila courts, and have been for months—the legal department of the new government is obviously reluctant to make a definite decision.

The claim system brought about endless confusion during the Philippine mining boom of 1935 and 1936. Only a small portion of the mineral lands of the Islands have ever been surveyed carefully, and existing records were extremely vague. Claims were frequently located by individuals who were never within miles of their location. In the Paracale district claims were staked three and four deep—at one time the number of claims staked in Camarines Norte was about four times the entire area of the whole province. Most of such claims turned out to be worthless, and were not worth fighting over. In spite of that, however, there are many legal tangles in that region and elsewhere which will be a long time in the untangling.

(To be continued)

SAN MAURICIO MINING COMPANY

Another new monthly production record was made during May by San Mauricio, with an output of ₱348,433.44 from 9,527 tons of ore treated. Recovery per ton averaged ₱36.57, while extraction was 93.4%.

Development work amounted to 1,019 feet, of which 688 feet were capital and 331 feet operating advance. Of the capital development 157 feet were in ore, as were 209 feet of the operating development.

Results of development work were very encouraging. The Tacoma development on the 300 level continues in extremely high grade ore although width are narrower. The Tacoma No. 3 north drift was driven 78 feet during May, with high assays showing from a stringer opened up in the footwall. Crosscut east 1490 north on the 400 level is going ahead at good speed and should cut the Tacoma No. 3 vein about June 15.

At the Santa Ana mine all raises are in ore. Stope preparation is well under way on the 300 level.

The drainage adit was advanced 136 feet and continues in very bad ground, with 124 feet to go to connect.

Stope operations were normal during the month, with all stopes in good condition. A large amount of stope preparation is being done. The mine is in very good condition with ore plentiful.

The ore bins, pockets, and skips at the main shaft are ready for use. The ore passes and the pocket are being filled preparatory to changing over to the central hoisting plant.

The installation of Allen Diesel engine No. 5 was completed during the month. Work on the installation of the double drum Hendy hoist was starting at Santa Ana.

Reuben M. Austin, American shift boss, died at his home from heart failure on May 19.