

(R.S. § 2346.)

## REFERENCES IN TEXT

The first session of the Thirty-eighth Congress, referred to in text, was begun Dec. 7, 1863, and ended July 4, 1864, 13 Stat. 1 to 417, contain legislation passed at such session.

## CODIFICATION

R.S. § 2346 derived from Res. Jan. 30, 1865, No. 10, 13 Stat. 567.

**§ 51. Water users' vested and accrued rights; enumeration of uses; protection of interest; rights-of-way for canals and ditches; liability for injury or damage to settlers' possession**

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 herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages 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.<sup>1</sup>

(R.S. § 2339.)

## CODIFICATION

R.S. § 2339 derived from act July 26, 1866, ch. 262, § 9, 14 Stat. 253.

Section is also set out as the first par. of section 661 of Title 43, Public Lands.

## REPEAL; SAVINGS PROVISION

Provision of this section, "and the right-of-way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages 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." was repealed by Pub. L. 94-579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System. Such repeal not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of Title 43, Public Lands.

## SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

**§ 52. Patents or homesteads subject to vested and accrued water rights**

All patents granted, or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights,<sup>1</sup> as may have been acquired under or recognized by section 51 of this title.

(R.S. § 2340; Mar. 3, 1891, ch. 561, § 4, 26 Stat. 1097.)

<sup>1</sup> See Repeal; Savings Provision note below.

<sup>1</sup> See Repeal; Savings Provision note below.

## CODIFICATION

R.S. § 2340 derived from act July 9, 1870, ch. 235, § 17, 16 Stat. 218.

Section is also set out as the second par. of section 661 of Title 43, Public Lands.

## REPEAL; SAVINGS PROVISION

Provision of this section, "or rights to ditches and reservoirs used in connection with such water rights," was repealed by Pub. L. 94-579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System. Such repeal not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of Title 43, Public Lands.

## SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of Title 43, Public Lands.

**§ 53. Possessory actions for recovery of mining titles or for damages to such title**

No possessory action between persons, in any court of the United States, for the recovery of any mining title, or for damages to any such title, shall be affected by the fact that the paramount title to the land in which such mines lie is in the United States; but each case shall be adjudged by the law of possession.

(R.S. § 910.)

## CODIFICATION

R.S. § 910 derived from act Feb. 27, 1865, ch. 64, § 9, 13 Stat. 441.

Section was formerly classified to section 690 of Title 28 prior to the general revision and enactment of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, § 1, 62 Stat. 869.

**§ 54. Liability for damages to stock raising and homestead entries by mining activities**

Notwithstanding the provisions of any Act of Congress to the contrary, any person who on and after June 21, 1949 prospecting for, mines, or removes by strip or open pit mining methods, any minerals from any land included in a stock raising or other homestead entry or patent, and who had been liable under such an existing Act only for damages caused thereby to the crops or improvements of the entryman or patentee, shall also be liable for any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals. Nothing in this section shall be considered to impair any vested right in existence on June 21, 1949.

(June 21, 1949, ch. 232, § 5, 63 Stat. 215.)

## SIMILAR PROVISIONS

Provisions similar to this section were contained in act June 17, 1949, ch. 221, § 2, 63 Stat. 201.

### CHAPTER 3—LANDS CONTAINING COAL, OIL, GAS, SALTS, ASPHALTIC MATERIALS, SODIUM, SULPHUR, AND BUILDING STONE

#### SUBCHAPTER I—COAL LAND ENTRIES IN GENERAL

- Sec.  
71. Entry of unappropriated or unreserved Federal coal lands; eligibility; application; acreage limitation; price per acre.  
72. Preference right of coal mine entry; acreage limitation.  
73. Presentation of claims.  
74. Number of coal land entries; other entries upon noncompliance with conditions.  
75. Conflicting claims upon coal lands; rules and regulations.  
76. Reservation of rights upon coal lands; sale of certain mining lands.  
77. Alabama coal lands; agricultural entry.

#### SUBCHAPTER II—COAL LAND ENTRIES UNDER NONMINERAL LAND LAWS WITH RESERVATION OF COAL TO UNITED STATES

81. Rights of entrymen of lands subsequently classified as coal lands; disposal of coal deposits.  
82. New or supplemental patents, in case of lands subsequently classified as noncoal.  
83. Homestead or desert-land and other entries.  
84. Applications for entry.  
85. Patents for lands, with reservation of coal; disposal of coal deposits.  
86. Disposition of lands in Indian reservations with reservation of coal; examination and appraisal of lands.  
87. Statements in application; patents.  
88. Disposition of coal by United States.  
89. Disposition of proceeds.  
90. Selection of coal lands by States; sale in isolated or disconnected tracts.

#### SUBCHAPTER III—PETROLEUM, OTHER MINERAL OIL, OR GAS LAND ENTRIES UNDER MINING LAWS

101. Omitted.  
102. Assessment work on contiguous oil lands, located as claims, of same owner.  
103. Patents for oil or gas lands not denied because of transfer before discovery of oil or gas; acreage limitation; nonapplication to withdraw lands.  
104. Agreements with applicants for patents as to disposition of oil or gas, or proceeds thereof, pending determination of title; Navy Petroleum Fund.

#### SUBCHAPTER IV—HOMESTEAD ENTRY OF LANDS IN UTAH, WITHDRAWN OR CLASSIFIED AS OIL LANDS

111 to 113. Repealed.

#### SUBCHAPTER V—AGRICULTURAL ENTRY OF LANDS WITHDRAWN OR CLASSIFIED AS CONTAINING PHOSPHATE, NITRATE, POTASH, OIL, GAS, ASPHALTIC MINERALS, SODIUM, OR SULPHUR

121. Agricultural entry or purchase of lands withdrawn or classified as containing phosphate, nitrate, potash, oil, or gas; reservations to United States; application.  
122. Patents; reservation in the United States of reserved deposits; acquisition of right to remove deposits; application for entry to disprove classification.  
123. Persons locating lands subsequently withdrawn or classified; patents to.  
124. Agricultural entry or purchase of lands withdrawn or classified as containing sodium or sulphur.

- Sec.  
125. Patents in North Platte Reclamation Project; mineral rights; subrogation.

#### SUBCHAPTER VI—LOCATION OF PHOSPHATE ROCK LANDS UNDER PLACER-MINING LAWS

131. Omitted.

#### SUBCHAPTER VII—PERMITS TO PROSPECT FOR CHLORIDES, SULPHATES, CARBONATES, BORATES, SILICATES, OR NITRATES OF POTASSIUM

141 to 152. Repealed.

#### SUBCHAPTER VIII—BUILDING STONE OR SALINE LAND ENTRIES UNDER PLACER-MINING LAWS

161. Entry of building-stone lands; previous law unaffected.  
162. Entry of saline lands; limitation.

#### SUBCHAPTER IX—DISPOSAL OF ALABAMA LANDS AS AGRICULTURAL LANDS

171. Disposal as agricultural lands.  
172. Certain Alabama lands subject to homestead entry.

#### SUBCHAPTER I—COAL LAND ENTRIES IN GENERAL

### § 71. Entry of unappropriated or unreserved Federal coal lands; eligibility; application; acreage limitation; price per acre

Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the register of not less than \$10 per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than \$20 per acre for such lands as shall be within fifteen miles of such road.

(R.S. § 2347; Mar. 3, 1925, ch. 462, 43 Stat. 1145.)

#### CODIFICATION

R.S. § 2347 derived from act Mar. 3, 1873, ch. 279, § 1, 17 Stat. 607.

#### AMENDMENTS

1925—Act Mar. 3, 1925, affected words which now read “upon payment to the register of not less than.” Such words originally read “upon payment to the receiver of not less than.” Such act consolidated the offices of receiver and register.

#### TRANSFER OF FUNCTIONS

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, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees.  
See also note set out under section 1 of this title.

#### INDIAN LANDS EXCEPTED

Commenting on this section and sections 72 to 76 of this title the Department of the Interior says: