

Our Backyard

The Law

The Myth

The Nemesis

The Wayfarer

THIS LAND IS OUR LAND

The Consequences of This Valuable Property Establishing Grant

REQUIRING NO MORE PERMISSION THAN THE ACT APPROVED JULY 26, 1866,
YOUR GRANTED RIGHT OF ACCESS TO YOUR PUBLIC DOMAIN IS FOUND AT

SECTION 8

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

39TH CONGRESS,
1st Session

H. R. 365.

IN THE SENATE OF THE UNITED STATES.

JULY 19, 1866.

Ordered to be printed.

AMENDMENT

Reported by Mr. STEWART. from the Committee on Public Lands,
to the act (H. R. 365) granting the right of way to ditch and
canal owners over the public lands in the States of California,
Oregon, and Nevada, viz: Strike out all after the enacting
clause, and insert as follows:

- 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 citizens of the United
- 6 States, and those who have declared their intention to become
- 7 citizens, subject to such regulations as may be prescribed by
- 8 law, and subject also to the local custom or rules of miners
- 9 in the several mining districts, so far as the same may not be
- 10 In conflict with the laws of the United States.

- 1 SEC. 2. *And be it further enacted*, That whenever any

2 person or association of persons claim a vein or lode of quartz,
3 or other rock in place, bearing gold, silver, cinnabar, or cop-
4 per, having previously occupied and improved the same
5 according to the local custom or rules of miners in the district
6 where the same is situated, and having expended in actual
7 labor and improvements thereon an amount of not less than
8 one thousand dollars, and in regard to whose possession there
9 is no controversy or opposing claim, it shall and may be law-
10 ful for said claimant or association of claimants to file in the
11 local land office a diagram of the same, so extended laterally
12 or otherwise as to conform to the local laws, customs, and
13 rules of miners, and to enter such tract and receive a patent
14 therefor, granting such mine, together with the right to fol-
15 low such vein or lode with its dips, angles, and variations, to
16 any depth, although it may enter the land adjoining, which
17 land adjoining shall be sold subject to this condition.

1 **SEC. 3. *And be it further enacted,*** That upon the filing
2 of the diagram as provided in the second section of this act,
3 and posting the same in a conspicuous place on the claim,
4 together with a notice of intention to apply for a patent, the
5 register of the land office shall publish a notice of the same
6 in a newspaper published nearest to the location of said claim,
7 and shall also post such notice in his office for the period of
8 ninety days; and after the expiration of said period, if no
9 adverse claim shall have been filed, it shall be the duty of
10 the surveyor general, upon application of the party, to survey
11 the premises and make a plat thereof, indorsed with his ap-
12 proval, designating the number and description of the loca-
13 tion, the value of the labor and improvements, and the
14 character of the vein exposed; and upon the payment to the
15 proper officer of five dollars per acre, together with the cost
16 of such survey, plat, and notice, and giving satisfactory evi-
17 dence that said diagram and notice have been posted on the
18 claim during said period of ninety days, the register of the
19 land office shall transmit to the General Land Office said plat,
20 survey, and description; and a patent shall issue for the same
21 thereupon. But said plat, survey, or description shall in no
22 case cover more than one vein or lode, and no patent shall
23 issue for more than one vein or lode, which shall be expressed
24 in the patent issued.

1 **SEC. 4. *And be it further enacted,*** That when such
2 location and entry of a mine shall be upon unsurveyed lands,
3 it shall and may be lawful, after the extension thereto of the
4 public surveys, to adjust the surveys to the limits of the
5 premises according to the location and possession and plat
6 aforesaid, and the surveyor general may, in extending the
7 surveys, vary the same from a rectangular form to suit the
8 circumstances of the country and the local rules, laws, and
9 customs of miners: *Provided,* That no location hereafter
10 made shall exceed two hundred feet in length along the vein
11 for each locator, with an additional claim for discovery to the

12 discoverer of the lode, with the right to follow such vein to
13 any depth, with all its dips, variations, and angles, together
14 with a reasonable quantity of surface for the convenient
15 working of the same as fixed by local rules : *And provided*
16 *further*, That no person may make more than one location
17 on the same lode, and not more than three thousand feet shall
18 be taken in any one claim by any association of persons.

1 SEC. 5. *And be it further enacted*, That as a further
2 condition of sale, in. the absence of necessary legislation by
3 Congress, the local legislature of any State or Territory may
4 provide rules for working mines involving casements, drain-
5 age, and other necessary means to their complete develop-
6 ment; and those conditions shall be fully expressed in the
7 patent.

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

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

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

1 SEC. 9. *And be it further enacted*, That whenever, by
2 priority of possession, rights to the use of water for mining,
3 agricultural, manufacturing, or other purposes, have vested
4 and accrued, and the same are recognized and acknowledged
5 by the local customs, laws, and the decisions of courts, the
6 possessors and owners of such vested rights, shall be main-
7 tained and protected in the same; and the right of way for
8 the construction of ditches and canals for the purposes afore-
9 said is hereby acknowledged and confirmed: *Provided, how-*
10 *ever*, That whenever, after the passage of this act, any person
11 or persons shall, in the construction of any ditch or canal,
12 injure or damage the possession of any settler on the public
13 domain, the party committing such injury or damage shall be
14 liable to the party injured for such injury or damage.

1 SEC. 10. *And be it further enacted*, That wherever, prior
2 to the passage of this act, upon the lands heretofore designated

3 as mineral lands, which have been excluded from survey and
 4 sale, there have been homesteads made by citizens of the
 5 United States, or persons who have declared their intention
 6 to become citizens, which homesteads have been made, im-
 7 proved, and used for agricultural purposes, and upon which
 8 there have been no valuable mines of gold, silver, cinnabar
 9 or copper discovered, and which are properly agricultural
 10 lands, the said settlers or owners of such homesteads shall
 11 have a right of pre-emption thereto, and shall be entitled to
 12 purchase the same at the price of one dollar and twenty-five
 13 cents per acre, and in quantity not to exceed one hundred and
 14 sixty-acres ; or said parties may avail themselves of the pro-
 15 visions of the act of Congress approved May twenty, eigh-
 16 teen hundred and sixty-two, entitled "An act to secure
 17 homesteads to actual settlers on the public domain," and acts
 18 amendatory thereof.

1 SEC. II. *And be it further enacted,* That upon the sur-
 2 vey of the lands aforesaid, the Secretary of the Interior may
 3 designate and set apart such portions of the said lands as are
 4 clearly agricultural lands, which lands shall thereafter be sub-
 5 ject to pre-emption and sale as other public lands of the United
 6 States, and subject to all the laws and regulations applicable
 7 to the same.

Section 1 and generally Section 8

Declare the property vesting as of the date of the legislative grant, in this case 1866, upon acceptance.

This following is but one evidence that this grant of property, available to everyone today, is not subject to administrative interference or obstruction, whether or not by license, permit, other form permission, closure, or by criminal citation; the extortive utilization of which is criminal and a plain error failure of duty for any judge to disregard.

Once it is understood that Section 8 does not limit access to private inholdings, as the following case relates, or does not care about the type of vehicle used as in this case a motorcycle on a "closed" Section 8 Highway, it may be more fully appreciated that there is no limitation as to access as the following Section 1 analysis by the Court of Appeals for the Ninth Circuit confirms.

Granted Right prevails administrative authority:

50 Fed.Appx. 867, 2002 WL 31553938 (C.A.9 (Mont.))
(Not Selected for publication in the Federal Reporter)

This case was not selected for publication in the Federal Reporter. Please use FIND to look at the applicable circuit court rule before citing this opinion. (FIND CTA9 Rule 36-3.)

United States Court of Appeals, Ninth Circuit.
UNITED STATES of America, Plaintiff-Appellee,

v.
Steve A. HICKS, Defendant-Appellant.
No. 01-30146.
D.C. No. CR-00-00001-DWM.

Argued and Submitted Nov. 5, 2002.
 Decided Nov. 14, 2002.

Corporate employee was convicted in the United States District Court for the District of Montana, Donald W. Molloy, Chief Judge, of operating motorcycle in area of National **Forest** closed to motor vehicles by **Forest Service** closure order, and he appealed. The Court of Appeals held that employee of corporation that owned subsurface mineral rights in national **forest** was not subject to **Forest Service** closure order that exempted landowners.

Reversed and remanded.

Woods and Forests 411 8

411 Woods and Forests 411k8 k. Forest Reservations, Preserves, or Parks. Most Cited Cases
 Corporation that owned subsurface mineral rights in national **forest** was "landowner," and thus corporate employee was not subject to **Forest Service** closure order that exempted landowners from prohibition against operating motor vehicles in national **forest**. 36 C.F.R. § 261.55(b).

***867** Appeal from the United States District Court for the District of Montana, Donald W. Molloy, Chief District Judge, Presiding.

Before TROTT, T.G. NELSON and THOMAS, Circuit Judges.

MEMORANDUM FN*

FN* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

****1 Steve A. Hicks** (" **Hicks**") appeals pro se the district court's affirmation of his conviction in magistrate court for operating a motorcycle in an area of Lolo National **Forest** closed to motor vehicles by a **Forest Service** closure order, in violation of 36 C.F.R. § 261.55(b). **Hicks** drove a motorcycle on a **Forest Service** trail while acting as an agent of Kenton Lewis ("Lewis"), an owner of subsurface mineral rights in Lolo National **Forest**. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we reverse because **Hicks's** conviction is based upon a plain legal error.

1. Standard of Review

This court reviews for plain error when an appellant raises an issue on appeal that the appellant did not raise before the lower court. Jones v. United States, 527 U.S. 373, 388, 119 S.Ct. 2090, 144 L.Ed.2d 370 (1999). The **Forest Service** closure order exempts landowners from its provisions, but **Hicks** did not rely upon the landowner exemption before the magistrate court. Hence, we review for plain error. This court has discretion to grant relief under the plain error standard if there has been (1) an error; (2) that is plain; and (3) ***868** affects substantial rights. Id. at 389, 119 S.Ct. 2090.

2. Both Lower Courts Committed A Plain Error By Determining The Landowner Exemption Did Not Apply To Hicks

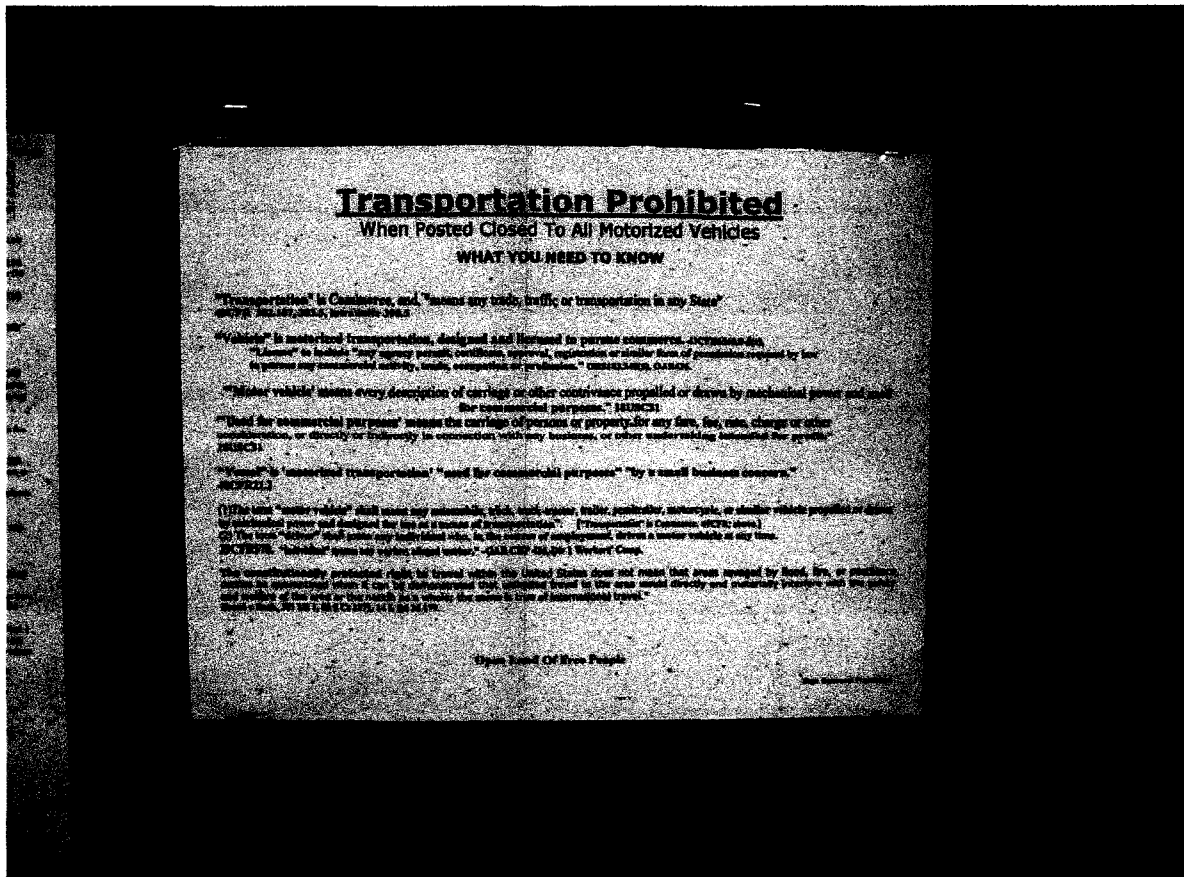
Mineral rights are ownership in land, and therefore Lewis is a landowner. See, e.g., United States v. Shoshone Tribe of Indians of Wind River Reservation in Wyo., 304 U.S. 111, 116, 58 S.Ct. 794, 82 L.Ed. 1213 (1938) (with respect to question of ownership, "[m]inerals ... are constituent elements of the land itself"); British-American Oil Producing Co. v. Bd. of Equalization of State of Mont., 299 U.S. 159, 164-65, 57 S.Ct. 132, 81 L.Ed. 95 (1936) (finding a mineral estate an estate in land); Texas Pac. Coal & Oil Co. v. State, 125 Mont. 258, 234 P.2d 452, 453 (1951) ("[l]ands as a word in the law includes minerals"). We need not decide whether the term "landowner" as it is used in Forest Service regulations and orders always includes owners of mineral estates. Here, the government conceded at oral argument that Lewis is a landowner under the terms of the closure order before us and thus exempt from this closure order. The landowner exemption in this closure order must necessarily apply to agents of landowners. For example, corporate landowners can only access their land through agents. Hicks, as Lewis's agent, is therefore also exempt.

Because the trial courts did not recognize mineral rights as ownership in land, and because this error adversely affected Hicks's entitlement to the landowner exemption, we exercise our discretion to correct this plain error.

REVERSED AND REMANDED WITH AN INSTRUCTION TO ENTER A JUDGMENT OF NOT GUILTY.

C.A.9 (Mont.),2002.
U.S. v. Hicks
50 Fed.Appx. 867, 2002 WL 31553938 (C.A.9 (Mont.))

END OF DOCUMENT



Read Closely.
"Transportation" may be prohibited, but the right of ingress and egress by private entry cannot be.

Executive Summary
The Mining Law: The Extent of Federal Authority Over Public Domain
Exec_Summary.pdf
316.9 KB



Ascend

Copyright 2015. Granted Right. All rights reserved.