

**LAW LIBRARY
ARIZONA ATTORNEY GENERAL**

February 24, 1941.

Mr. John Pintek,
County Attorney,
Bisbee, Arizona.

Dear Sir:

We have your letter of February 17th requesting an opinion from this office upon the question whether under the Federal and State law, a claim owner on a national forest who legally maintains his claims, has a legal right to lease the surface rights for grazing purposes.

We assume in rendering this opinion that the claims you have reference to are mining claims. Under the decision of the District Court of Idaho in the case of U. S. v. Rizinelli, 182 Fed. 675, it was held that a locator of a mining claim under the Federal statutes has the exclusive use of the surface of his claims for mining purposes only. This is also indicated in the case of Teller v. U.S. 113 Fed. 273; 51 C.C.A. 230.

In the later case of U. S. v. Deasy, 24 Fed. (2) 103, it would appear that he has the exclusive use of the surface for all purposes, but we believe that if that case is studied it will not appear to be in conflict with the above cited cases because there the thing in question was timber growing on the surface and was in fact held by the Court that the timber was necessary for mining and developing the claim.

It is therefore our opinion that a locator of a claim located in a National forest does not have the right to lease the surface for grazing purposes.

Very truly yours,

JOE CONWAY,
Attorney General.

E. P. CLINE,
Assistant Attorney General.

EARL ANDERSON,
Special Assistant
Attorney General.