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## LAND OFFICE RULING OF JUNE, 1899.

It behooves all those who have any right, title or interest in mining property to bestir themselves before the land office ruling of 1899 becomes a permanently established practice. From the land office itself we have no hope of redress, except it can be forced by pressure of public opinion to recede from the absurd decision it has seen fit to render. The only excuse which can be offered for the land office rulings is that the department made them without due consideration of their effects and from motives of ***amour propre*** does not care to reverse itself.

In a previous communication it was stated that the interests at stake were too great to be imperiled by the hasty and arbitrary actions of the land office. That is true. Yet, unless those who are interested bestir themselves, the acts complained of will be consummated, and it will become more difficult and more expensive to straighten out matters then than it is now. In some cases it is doubtful if titles ever can be corrected if the rulings complained of actually become the permanent policy of the land office. The rulings are now, however, the established practice, and only organized public opinion will ever cause the land office to change them.

To straighten out titles, the commissioner of the land office recommends in a letter dated June 17, 1899, the following procedure:

"Where such a state of things actually exists, the owner of the new claim applied for, who desires to include an area in his claim, conveyed in a patent of an older claim, which, as a matter of fact, is not embraced in the lines of the old claim as staked upon the ground, should procure the surrender of the old patent by the proper method, through the courts if necessary, and then show in a new patent of the old claim its true position as staked and thus eliminate from the patent the areas desired not to conflict."

Was there ever more monstrous advice given by government official? Suppose the owner of the old patent refused to throw his titles into court, as is almost certain, what redress has the claimant other than to start an individual suit against the owner of the old patent, and, after carrying it from court to court, possibly to have a decision rendered against him on a **technicality**?

If, as appears to be the case, a theoretically correct plat is required by the department for the construction of patents, it is unquestionably true that no outstanding patent is correct. We, then, have a vast number of patented claims which have always been thought to be unattackable, thrown into court. The cost will be enormous. Then, too, it must be obvious that those who have no money with which to fight their cases through the courts would, in all probability, lose their property. Again, it is stated by eminent mining lawyers, that there is a probability that much of the mining litigation of Butte, which has already cost that camp millions of dollars, will be reopened.

To show actually what the department is doing, the following facts may be presented:

**Present Practice of Department.**—The surveyor generals are now preparing new maps of record, and in so doing, claims which have been patented for many years are being shifted around, thereby showing them to be occupying positions entirely at variance with the monuments on the ground. The new positions vary from a few feet up to two miles from the places where the miners actually located their claims, and where they are actually now working them.

**Effect of Ruling.**—Thus we have: (a) conflicts are created where none exist, (b) land now actually occupied is thrown open for location.

Under such circumstances a door is thrown wide open to claim jumpers and blackmailers of every description. These new maps are being constructed as fast as possible. The old maps will undoubtedly, like all disused office furniture, become lost, destroyed or defaced, and thus a tangle will be created which will be almost beyond human skill to straighten out. These new maps furnish endless material for examples of what the land office department is doing. The following are but a few instances:

**Idaho Springs.**—The patented townsite of the city itself is being replatted. Some parts of the city are shown as being public domain, and other parts of the city are moved onto ground now occupied by other patentees. In addition to these facts, it may be stated that many mining claims are being shifted.

**Boulder District, Colorado.**—Surveys 11, 198, 90, 431, 140, 114, etc., have been shifted. Survey 114, patented many years ago, has been repatented to survey 16560.

**Capitol City District.**—Many claims are shown over a mile from their true positions. Surveys 314 and 317, which are adjoining claims, **are shown on the new maps to be one and one-half miles apart.**

**Georgetown.**—One claim is moved two miles and placed in another township. Survey 371 is moved 1,500 feet. A famous old mine is moved 1.500 feet east, and is shown in conflict with four other patented claims which it does not in fact touch.

**Leadville.**—Survey 350 is moved from its position and is shown to be in conflict with three other claims, 834, 1481 and 2077 which, in fact, it does not touch. Thereby four titles hitherto supposed to be unattackable are now entirely clouded. Other claims are moved 600 feet. In this case the government apparently occupies the position of taking money under false pretenses, because we have here a case of the same ground being sold to four different parties.

**Deputy Mineral Surveyors.**—According to the Manual of Instructions issued by the land office commissioner, it is stated that the book is "issued under authority given me by the United States statutes, and is in strict conformity with the mining laws and the decisions thereunder, and supercedes all former instructions." And, further, he states, "you will be expected to strictly comply with these instructions."

It is a fact that under the rulings of the land office issued since 1899 these instructions are not complied with. It is also a fact that many deputy mineral surveyors are going out of business on the ground that by direct orders of the department they have, as one ex-deputy mineral surveyor said, to **"cook their surveys"** if their client is to stand a chance of getting the patent granted. To tamper with the ethics of an honorable profession must be admitted to be a dangerous and unwarrantable action.

**Farce of Monumenting.**—To solemnly monument a claim as specified in the mining laws of the United States, and then to absolutely disregard them in determining conflicts, etc., is the ***reductio ad absurdam*** of the whole business.

**Absurdity of Records.**—According to the new rulings of the land office and the practice of the office surveyors, it is possible to assign 156 different positions to the same claim, according to the method of construction adopted. For there are 156 different corners in a township. In many townships not one of these corners is in the actual position assigned to it by the theoretical maps of the department. By running traverses from any one corner to a given claim, and then work by course and traverse to the claim in question, it can be seen that, starting from any one of 156 corners, 156 different positions can be given to the same claim. (See Mining Reporter, December 24, 1903.)

**Department's Defiance of Law.**—All the acts of the department complained of have been the subject of legal decisions. The department claims that it can not be governed in its general procedure by the courts, but that it is governed only by the specific decision in a specific case. Technically, we believe this to be correct. Logically, however, it can only be sustained on the ground of **pettifogging obstruction**. Practically it seems that the department desires to have 100,000 specific cases, or thereabouts, thrown into the courts, so that it may be guided by the legal decision in each. After a wrangle spread over years, and after cases have been taken from court to court, justice may be done, although we anticipate that numerous cases of injustice, tantamount to confiscation, will occur. All this fuss and bother has been caused in order to make the work of a few department clerks easier and according to academic rules.

**Necessities of the Case.**—It is a fact that some of the best legal talent in the West has been at work on the department for several years endeavoring to cause it to recede from its monstrous position, but without avail. Those who have the best interests of the mining industry at heart have decided that a quiet appeal to the department is useless, and that it is necessary to take up the matter in the most public manner possible.

It has been assumed that Colorado only is affected. Colorado has the honor of leading the fight on behalf of the industry at large. But all the states in the West are getting the same treatment, and all will suffer. It, therefore, is necessary that mining organizations all through the West take the matter up, and by united effort get this monstrous wrong righted. It will not be righted without, according to present indications.

## COMMUNICATION.—LAND OFFICE DECISION.

To the Editor, Mining Reporter:

Dear Sir—If we may speak to the public through your widely read columns it will enable us to answer many inquiries which would otherwise go unanswered concerning the controversy which is being carried on between the United States land department and the mining industry.

The subject of this contention is the very unjust, unreasonable and arbitrary series of rulings laid down by the Secretary of the Interior, directing that the position of a patented claim must be determined entirely by the section corner tie called for in the patent description. The result is that the owner of a patented claim does not know whether his patent pertains to the ground which includes his vein, and which is staked and marked by the patent corners, or whether it pertains to other land which, possibly, he has never seen. We have frequently been asked how the Colorado Mine Operators' Association happened to take up this matter, and questioned as to the present status of the case.

In the first place this association was, a year ago, apprised of these rulings, and was advised upon competent authority of their dangerous significance. At our annual meeting of April 13, 1903, this matter was thoroughly discussed as being by far the most important issue with which the mining industry was confronted. It was then and there determined to inaugurate a test case. The Executive Committee of the Colorado Society of United States Deputy Mineral Surveyors, at our request, selected a case suitable to our purpose and which was considered best adapted to the issue. The case selected was the now notorious "Groves case," which was prepared with great care, and the brief submitted to the Honorable Commissioner of the general land office for a decision. The merit of the case, however, did not save it; it met the fate of many similar cases which have been brought before the commissioner during the past three or four years.

Without going into the details, it is only necessary to state that the decision, in substance, is as follows:

The commissioner rules, in effect, that the patents in this case, which were regularly issued and have been outstanding for years, do not, and never did, cover the land which is bounded by the patent corners. A patent of twenty years' standing was construed to cover land which is in fact not patented to any one; the lines of this claim were so materially altered as to place it on top of an unpatented claim which has been held by possessory right unmolested for over ten years. Another feature of the decision is that it vacates land which is actually occupied by the patents as they are staked, throws it open to patent and awards a portion of the said land to the Groves claim, which is in the process of applying for a patent. In addition, it denies to the Groves application other land, which is conceded by all parties, to belong to the Groves claim and is otherwise unoccupied, except by the theoretical position of the oldest patent on the hill; the Groves thus loses, on a mere theoretical pretext, a tract which includes its most extensive and valuable workings. Lack of space forbids

further mention of the many complications which arise as a result of substituting for a right and simple procedure one which is wrong and infinitely complex. Suffice it to say, that six independent mine owners are forced into litigation as a result of this decision, although each has well-defined rights and is not in the least desirous of trespassing upon the rights claimed by any of the others. The department arbitrarily and needlessly forces them into the courts in order to clear their hopelessly beclouded titles. Before the Groves case can go to patent properly, the relinquishment or annulment of two outstanding patents will have to be enforced in order to clear the atmosphere for the working out of this departmental, office-bred, fledgling theory.

The Groves petition was, as stated, one of exceeding simplicity and merit, and was sufficiently well presented to call forth unsolicited praise, but was adversely decided, nevertheless. The case is now pending on appeal to the secretary; the brief and argument on appeal has been filed and an opportunity for an oral argument has been requested.

The case has been carried up to its present status under the auspices of this organization, and without cost to the public, which is being served. If the case is lost, mining companies and individual mine owners may prepare to fight endlessly for the survival of their titles, with excellent prospects for nothing but extended litigation.

This matter can be speedily and rightly settled, if every mine owner will put his shoulder to the wheel and help bear the burden and expense of the contest, and not otherwise.

Appreciating the use of your columns, Mr. Editor, and especially commending the aggressive spirit and able manner in which you are taking up this all-important subject, I am, thanking you in the name of the Colorado Mine Operators' Association, respectfully.

W. E. PASMORE.

Secretary Mine Operators' Association.

219 Boston Block, Denver, Colo., Jan. 20, 1904.