Evaluating Seniority in Mining Claims

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Several factors should be evaluated when attempting to determine the seniority of conflicting mining claims. It is important to note that generally speaking, only lode mining claims will overlap each other. Placer claims and mill sites are surficial in nature and therefore, by design will usually "go around" other claims that are senior.

One exception is the case of a placer with overlapping lode claims. Placer claims are claims to the minerals in unconsolidated or loose surficial deposits. If there are any known lodes within the placer claim the placer claimant must claim those lodes prior to applying for the patent. Otherwise, the veins or lodes are open to mineral entry by others after the date the application for patent was submitted. If there are no known lodes within the placer claim at the date of application for patent (sometimes the mineral entry date) then any unknown lodes apexing within the placer are included in the patent. In this case, there are no extralateral rights granted for the veins or lodes apexing within the placer claim boundary.

Looking at the varied cases of conflicting lode claims there are several examples. The simplest case is where the two mining claims are separate mineral surveys and both have been patented. The last clause in the main body of the patents will normally state which claim excepts and excludes the surface area and any veins or lodes apexing within that surface area from its patent. That clause is the "expressly excepting and excluding" clause in the patent.

There are examples where neither patent excludes the ground in conflict. When this occurs, the BLM will usually show the area in conflict to have both patents assigned to it. In these situations, there is no "one best solution". The dates of locations should be evaluated as well as the actions of the two lode owners. Parol evidence and subsequent deeds may also provide insights. While this case is straight forward and the simplest to evaluate, there are situations where the patent exclusions must be ignored because the exclusions are theoretical.

Patents for lode mining claims where the mineral survey was conducted between July 1899 and August 1904 require additional scrutiny. During that time, the General Land Office required U.S. Deputy Mineral Surveyors to depict the patent description positions rather than the monumented positions of prior official surveys on the plat. If the original monuments of the prior official surveys do not agree with the patent description positions, the patent exclusion is theoretical in nature. In this case, the surveyor conducting the retracement/dependent resurvey must find or set the corners of the senior conflicting claims to depict the true conflict rather than hold the ground described and expressly excluded in the patent.

The next case is a conflict between two lode claims where one claim has been patented and the other is not patented, but has a senior date of location. The patent will usually include in the "expressly excepting and excluding" clause the area in conflict with the unsurveyed lode claim. Seniority rights between lode claims are usually based upon the dates of location with the earlier location being senior in right. In situations like this, the retracement surveyor may have no evidence for the location of the unpatented senior claim. Ties to nearby claims and/or the discovery may prove helpful.

There are exceptions to this rule. For example, Lode A was located before Lode B, which crosses Lode A. The claimant of Lode A has the right to the area in conflict because of his earlier date of location. The claimant of Lode A fails to do the annual assessment work on his claim and it is abandoned. Subsequent to the abandonment, the claimant of Lode B does not act to claim the area in prior conflict. A new miner relocates Lode A and calls it Lode C. Even though Lode C's date of relocation is after Lode B's date of location, Lode C has the right to the area in conflict. In order for the claimant of Lode B to secure the right to the area in conflict, he must file an amended or additional location after Lode A was abandoned and before the relocation of Lode A as Lode C. This is one reason for there being many amended or additional location certificates dated a week to two weeks prior to the patent survey being conducted.

One thing to bear in mind regarding unpatented lode claims is that their dimensions cannot be greater than the statutory limits. In cases where the unpatented lode claim is senior to and excluded from the patent of a junior lode claim corners any excess in the unpatented lode claim should be cast off in accordance with Chapter X of the 2000 Manual of Instructions. The process is similar to the instructions that a United States Mineral Surveyor is required to follow when conducting a mineral survey and the size of the lode location exceeds that specified by the mining laws. Figure 1 shows the Two Point unpatented lode claim. The final position of the lode claim must be wholly within the six (6) claim posts (4 corner and 2 side center posts), as seen in the right sketch in Figure 1.

The third case is a senior placer claim with junior lode claims intersecting or abutting the placer claim. For the case of a known lode within a patented placer claim, the patent for the placer claim excludes those known lodes. If the placer claimant believes that there are known lodes within his claim, he must stake and claim those veins as lode claims. Otherwise, he loses his right to those lodes. With regard to what constitutes a known lode, the court rulings are a mixed bag.

The dimensions of lodes within a placer claim are a maximum of 1500 feet along the lode and usually 25 feet each side of the lode (total width of 50 feet). These lode claim dimensions are similar to lode claims staked under the 1866 Mining Law where the claimant was granted ownership of the lode with 25 feet

each side of the lode given to access and mine the lode. For cases where the junior lode claim abuts the senior placer claim, the lode claim will often be truncated along the placer boundary. This situation is similar to lode claims that abut ground patented as agricultural land. The lode claim will have a "chamfered" end line where it abuts the agricultural land. In other words, the end line does not extend into the placer claim or agricultural land, but is a broken-back end line where part of the end line is coincident with the placer/agricultural boundary line.

There are several situations where lode claims intersect a senior placer claim and claim the area in conflict. The lode claim plat may even show shafts and tunnels within the "senior" placer claim. The lode claim patent may not exclude (or even show the conflict on its plat) with the placer claim. These situations require additional research to see if there is any evidence to support which claim has the right to the area in conflict. In some instances there is no clear answer as to which claim has the senior right. Occasionally, the actions of the land owners, wording of subsequent deeds and/or parol evidence may provide a solution. Quiet title actions or boundary line agreements may also resolve the problem. In those cases, the land owner may wish to retain the services of an attorney.

The fourth case involves two or more overlapping claims that are part of the same mineral survey. In this case, the overlapping claims are owned by the same party. The claimant may hold the dates of location as the determining factor to claim seniority. However, the General Land Office permitted the claimant to decide the order of seniority among his several contiguous claims. The general rule was that the U.S. Deputy Mineral Surveyor would list the lode claims in the field notes by seniority, with the most senior being the first lode described in the field notes and the most junior being the last lode listed in the field notes. This order of seniority was usually confirmed in the "Area" computation section of the field notes (the order should match). During the time periods where net areas were included in the field notes, seniority was also indicated by when conflicts were excluded in the "Area" computations. Regardless of the dates of location and/or the order of the lodes described in the field notes, if the area computation for a given lode in a mineral survey with multiple lodes excludes other lodes within the survey, it is usually regarded as junior.

This last case has one additional caveat to consider. When the patent is issued any indication of seniority in the field notes may be superseded by subsequent actions of the owner. The deed(s) may include the area of the lode claim. If it matches the net area computed in the "Area" section of the official field notes then the seniority of the claim order in the field notes is usually held. If there are no acreages in the deed(s) then perhaps the acreages assigned by the county assessor can be informative. It may be necessary to have a title abstract prepared before the intent of the owner(s) is known.

Another case is when improvements lie within the area of conflict. Any accrued unwritten rights may be determinative. For example, the county assessor levies taxes for a cabin/cottage that lies within the area of conflict to one of the owners and that owner has paid the annual taxes on the cabin for a sufficient time period. If the current land owners are agreeable, a quiet title action or boundary line agreement may be the best options to resolve the latent ambiguity.

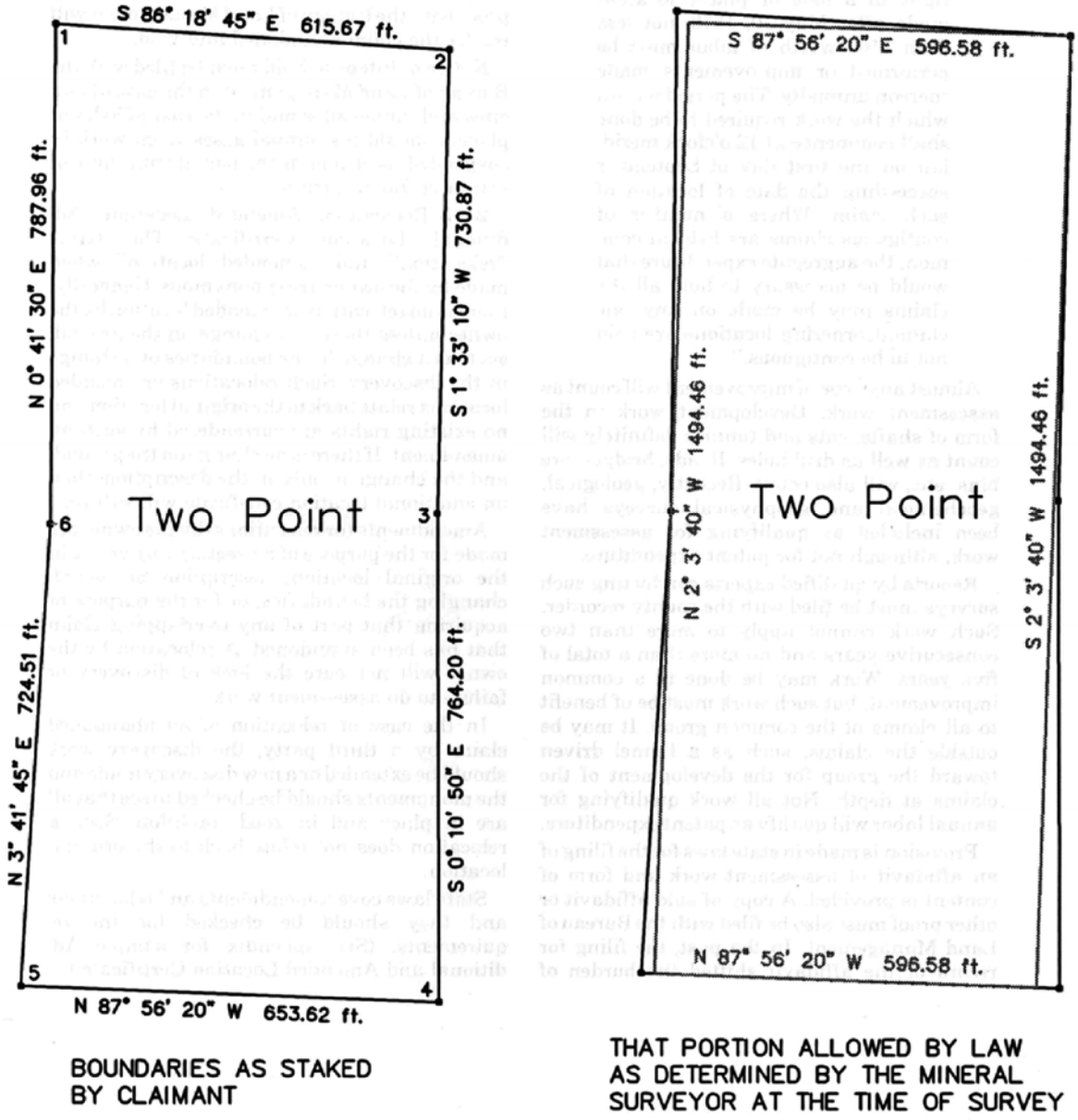

Figure 1. Casting off excess