Wyoming Law Journal

Volume 15 | Number 2 Article 16

December 2019

Placer or Lode and First Locator Protection

Robert M. Seipt

PLACER OR LODE AND FIRST LOCATOR PROTECTION

Valuable mineral deposits in lands belonging to the United States are open to exploration and purchase by citizens of the United States.[1] Prospectors may establish "lode" mining claims, not exceeding 1500 feet in length and 300 feet on either side of the lode or vein, upon lodes or veins of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable minerals.[2] Or they may establish claims usually called "placers" which includes all forms of deposit, excepting veins of quartz or other rock in place.[3] Within surveyed lands the placers are to conform to legal subdivisions. The direction of the sides and ends would correspond to the direction of the sections and be either in the cardinal directions or very close thereto. The distances would be proportional to the given section distances. As an example if a perfect section were assumed, a 20 acre placer claim would be described as S1/2 SE1/4 SE1/4 of that section. Translated into direction and distance this would indicate a rectangular area with its southeast corner at the southeast corner of the section and having end lines running north and south 660 feet in length and side lines running east and west 1320 feet in length. There are no such descriptive restrictions upon lode claims; but size is limited to a maximum of 600 feet by 1500 feet.

Another significant distinction between lode and placer claims is the nature of the deposit or ore body which may be the basis of the location. The importance of the distinction lies in the rule that valid lode claims cannot be made upon placer deposits, and valid placer claims cannot be made on lode deposits.[4] Legal definitions of a lode claim range from a rather strict definition calling for well defined boundaries separating the mineralized rock from the country (surrounding) rock[5] to the more liberal definition which defines the lode as an impregnation, to the extent to which it may be traced as a body of ore whether it is separated from the country rock by planes or strata visible to the eye, or is determinable in other ways, as by assays and analysis.[6]

In general, if the deposit does not fit within the lode definition, it is locatable as a placer. However, in some cases placer definitions have invaded what might be termed lode territory. In *Gregory v. Pershbaker*[7] the court held a gold deposit in an ancient stream bed to be locatable as placer even though the deposit was at considerable depth and in a cemented gravel. In a patent action it was held that sand rock or a sedimentary sandstone formation in the general mass of a mountain bearing

1. 41 Stat. 437 (1920); 30 USC § 22 (1940 ed.).
2. 17 Stat. 91 (1872); 30 USC § 23 (1940 ed.).
3. 4, 26 Stat. 1097 (1891); 30 USC § 35 (1940 ed.).
4. Webb v. American Asphaltum Mining Co., 157 F. 203 (1907). The judgment of the court in an adverse suit determines the right of possession as between the claimants but does not go beyond that, and it still remains for the land department to see that the requirements of law relative to entries have been complied with before the issue of the patent.
5. Book v. Justice Mining Co., 58 F. 106 (1893).
6. Hyman v. Wheeler, 29 F. 347 (1886).
7. Gregory v. Pershbaker, 73 Cal. 109, 14 Pac. 401 at 403 (1887).

gold is rock in place and constitutes a vein or lode. The distinction between this class of deposits is not altogether obvious.[8]

When it becomes necessary for a court to make a legal determination as to the claim characteristics of any given deposit, it has available, among other things, the testimony of experts in the field of geology. But that even the experts disagree is amply illustrated by *Titanium Acytynite Industries v. McLennan.*[9] That case involved the right of possession as between a prior placer claimant and a subsequent lode claimant. There was disagreement among the experts as to whether the area should be claimed as placer or lode. The United States Court of Appeals, Tenth Circuit, affirmed the District Court's finding that the area was placer. But the decision did not clarify the problem involved here; in the words of the court, "We think this decision goes no further than to find that there were no lodes or veins in the mineralized mass and that the entire mass of pyroxenite was not shown to be a single lode or vein." This problem is fully recognized by the Supreme Court of Wyoming.[10]

If the courts, even though they are presented with expert testimony, practical miner testimony, exploratory and development information, have difficulty in making the determination between lode and placer, the difficulty of determination by the first locator becomes apparent. He must base his determination upon only that information which is immediately available.

A discovery based on a surface outcrop at least gives the prospector an opportunity to determine type of claim based on elementary geology. However, a discovery as the result of deep drilling[11] makes his determination dependent upon his analysis of the recovered cuttings and his geologic theory, if any. A further burden is imposed if the drilling requires water rather than air, because then his recovered cuttings are suspended in the drill mud. At best the drill cuttings are indicative and not determinative as to the type of deposit. It is well to remember that at this time the drilling is accomplished for the purpose of discovery. Extensive drilling on a grid and core drilling are done at a later date to determine value and not satisfy discovery requirements or to determine the type of claim required. Radiometric logs give a qualitative indication of the material in place but are not definitive of the type of deposit.

And yet at this time and with this available information, the prospector must make his decision whether he will claim as a lode or placer. If the deposit is a vein or lode or rock in place, it *must* be secured by a lode claim, and it may not be claimed as a placer claim. If it is not in a vein or lode or rock in place, it must be secured as a placer claim and not by a lode claim.[12] If the prospector's claim is not to be subject to defeat, he must make the correct filing selection.

8. 2 Lindley on Mines, § 427 (3d ed. 1914).
9. Titanium Actynite Industries v. McLennon, 272 F.2d 667 (1960).
10. Globe Mining Co. v. Anderson, ___ Wyo. ___, 318 P.2d 373, n. 4. (1957).
11. Sec. 30-6 W.S. 1957.
12. Webb v. American Asphaltum Mining Co., 157 F. 203 (1907).

One way to avoid making a selection is to claim the area both as lode and placer. This is unsatisfactory from both the economic standpoint and the physical standpoint. In order for an area of 20 acres to be covered by both lode and placer, it is necessary to use three claims; one placer and two lode. The lode claims may be reduced in size to correspond with legal description lengths which means one lode claim would be 600 feet by 1320 feet and the other 60 feet by 1320 feet.

If the prospector has not protected his location by the unsatisfactory double claiming and a controversy arises between a lode and a placer claimant, the sole issue presented for judicial determination is the right of possession.[13] The judicial approach in the resolution of the question is very important to the first locator. A strict application of legal definitions can prevent him from receiving the fruits of his discovery by holding that the area he discovered and claimed was not within the definitive test of the type of claim and therefore void. This is a harsh result and places an impossible burden upon the first locator.

Basically, the mining law favors the first locator who, in good faith, occupies mineral lands and does improvement work on them as against an intruder who goes on land which he knows has been located, claimed, and occupied by another, and tries to oust him by doing discovery work of his own.[14] The same protection may be afforded a locator who is in doubt as to the type of claim to file when the court refuses to defeat the validity of a claim by technical criticism.[15] Judge Field, in *Eureka Consolidated Mining Co. v. Richmond Mining Co.*[16] gives a broad construction to the statutes concerning mining claims saying, "Those acts were not drawn by geologists or for geologists; they were not framed in the interest of science, and consequently with scientific accuracy in the use of terms. They were framed for protection of miners in claims which they located and developed, and should receive such a construction as will carry out this purpose."

If the foregoing is the basic intent and purpose of the mining laws, it would seem that the application of a "reasonable prospector" test in claim characteristic determination would be in furtherance of this purpose. The test is already applied in relation to "discovery."[17] If the first locator, from knowledge and information available to him at the time of claiming a given area, could reasonably believe that the deposit was lode in character, then his right of possession as against a subsequent placer locator, should be sustained even though there should be a conflict of opinion between other prospectors or between experts as to the character of the deposit. Such an approach does not preclude a holding that a specific location is void in the case of the obvious type of deposit, but it will ease the burden of the first locator in the questionable types of deposit.

ROBERT M. SEIPT

13. 3 Lindley on Mines, § 720 (3d ed. 1914).
14. Houck v. Jose, 72 F. Sup. 6 (1947).
15. Hagerman v. Thompson, 68 Wyo. 515, 235 P.2d 750 (1951).
16. Eureka Consolidated Mining Co. v. Richmond Mining Co., 8 Fed. Cas. No. 4548 at 819 (1877).
17. Sec. 30-6 W.S. 1957.