Appendix of *The Mining Reporter* Articles

Article List and Dates of Publication:

- **Records Vs. Monuments - December 10, 1903;**
- **The Groves Case - December 24, 1903;**
- **Land Office Rulings In Patent Cases - January 14, 1904;**
- **Land Office Ruling Of June 1899 - January 21, 1904;**
- **The Effect Of The Land Office Rulings - January 28, 1904;**
- **The Necessity Of Preserving Monuments In Good Condition - February 4, 1904;**
- **What The Government Is Actually Doing To Mineral Patents - February 4, 1904;**
- **The Standpoint Of The Deputy Mineral Surveyor - February 11, 1904;**
- **Monuments Records And The Locus Of Mining Claims - February 18, 1904;**
- **Mine Monuments - March 24, 1904;**
- **The New Mineral Law Relative To Patents - May 5, 1904;**
- **Test Suit Brought To Secure Interpretation Of New Brooks Act - May 12, 1904;**
- **Records v. Monument - August 25, 1904;**
- **Surveying For Patent - October 6, 1904**

Excerpt from *The Mining Reporter*, Vol. XLVIII, No. 23, December 10, 1903 (page 559)

RECORDS *vs.* MONUMENTS.

Prior to 1899 the practice of the surveyors general, acting under the commissioner of the general land office, was to make descriptions of mineral claims correspond to the actual boundaries as established on the ground, when it could be shown by claimant and local surveyors that the field notes sent in by the original surveyor were erroneous. In other words, the monuments and boundary lines, as appeared on the ground, were evidences that took precedence of the calls in the records. When a patent was issued and it afterwards appeared that the description called for in said patent differed from that of the ground actually covered by the location the maps and records were made to conform to the conditions established by the survey itself. This obviated conflicts that would follow if the records were allowed to represent a condition that did not exist. But a more recent ruling of the general land office decides that the records and maps in the surveyor general's office must not be altered to conform to the acts upon the ground, but shall remain as officially reported and in harmony with the descriptions named in the patent. That is, if a claim has been surveyed and its location incorrectly described in the surveyor's report to the surveyor general, and it passes to patent under the wrong description, the present practice requires that records and maps shall remain unchanged until such patent is annulled and cancelled, requiring also that the claimant have a resurvey made and advertise for a new patent to correct the error.

A test case was recently carried to the commissioner of the general land office by the Colorado Mine Operators' Association, the decision of the commissioner holding that the land described in the patent is the tract the claimant gets title to thereunder, notwithstanding the evident fact that his lode, shaft and tunnel are shown by his survey to be on an entirely different tract. The courts have always maintained that the acts on the ground are paramount and that any error in the records must give way thereto. The test case referred to was from Hinsdale county, Colorado, and was known as the Groves case. In this case the Groves claim cuts across the Silver Coin claim. The latter was patented years ago, but the patent papers assign it one position and, as is claimed, the owners show by their location stakes and survey that it was originally located in another position. Now patent was asked for the Groves claim, exclusive of that part which was in conflict with the Silver Coin claim according to the latter’s original location; but this patent was denied because, according to the patent and the records, the Silver Coin was not in the position given it in the Groves application. The case will soon be argued before the secretary of the interior and his decision will be awaited with much concern.

We do not understand that the commissioner of the general land office seeks to take issue with the courts as to the monuments on the ground taking precedence of records and patent descriptions, but believe that the policy is more to keep the department records clear and leave the adjudication of the cases that result from

errors in surveys to the courts. In reply to an inquiry as to the method to be pursued in correcting a patent the assistant commissioner sent the following reply:

"In reply I have to advise you that it is impossible to give any general rule which would govern in all cases, where a correction of a patent is desired or for the issuance of a new and correct patent, to take the place of one which contains a misdescription of the premises intended to be conveyed. The character and extent of the error is a material factor and would have considerable influence on the question as to whether or not a republication and re-posting of notice of the application for patent would be required as one of the conditions. In any case, it would be necessary for the interested parties to reconvey to the United States the land described in the patent, to surrender the patent to this office with request for its cancellation and to file a duly certified abstract of title showing the title in the party who surrenders the patent, and the freedom of the land from incumbrances of any kind. There would need to be, also, a correct survey made of the premises, under the direction of and approved by the United States surveyor general, in order to furnish the description for incorporation in the new patent."

Doubtless the intent of the land department is to inaugurate a system in its record-keeping that will be clearer and more satisfactory; and the old practice of going behind a patent to alter a record and map, making them conflict with the calls of the patent, cannot be considered a proper one so far as record-making is concerned. However, it must be admitted that the policy now being adhered to is likely to so unsettle and cloud the title to hundreds of mineral holdings as to seriously harass and injure claimants who have paid the price of that security which the government patent is presumed to stand for. It not only will do this, but by involving two tracts, where only one is applied for, it takes one of them out of the market for mineral location.

In the surveys of the public domain it is evident that many errors were made and other errors have been made by United States deputy mineral surveyors in surveying claims for patent and these complicated by mistakes in their field notes as reported to the surveyor general and upon which the records of the latter are made up. It seems to us that the whole matter requires legislation that would provide for a speedy adjudication of cases involving errors in records and patents without unjust sacrifice to the claimant. In the meantime it is to be hoped that the land department's innovation will be held in abeyance.

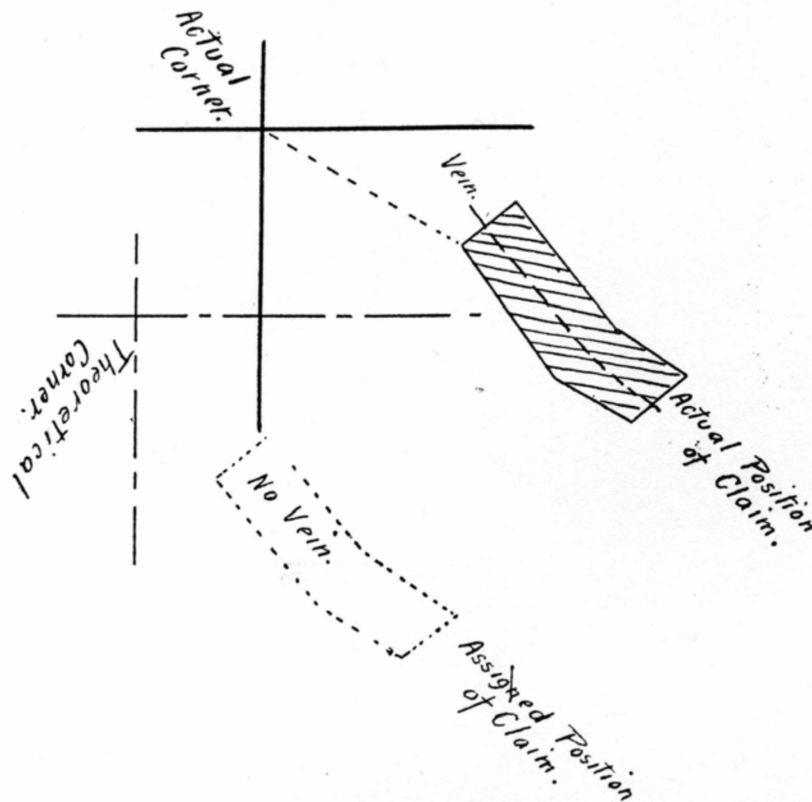
Excerpt from *The Mining Reporter*, Vol. XLVIII, No. 25, December 24, 1903 (page 617)

THE GROVES CASE

Editor Mining Reporter:

Dear Sir—The recent rulings of the Department of the Interior in regard to the status of patented mining claims have such radical tendencies, so entirely change the laws relating to mining and so completely ignore all court decisions that I think we may assume that they will never be carried into effect. Still, when those who have the best interests of the mining industry at heart and the best mining lawyers in the state of Colorado have practically stated they could do nothing with the Land Department, it behooves all those who have any mining interests to take up the matter vigorously and by concerted action compel the land office to change its position. Surely the mining industry has sufficient difficulties to contend with at the present time without having annoying doubts as to the validity of titles.

I understand the present position of the land office to be this. The actual boundaries of patented mining claims must be actually conformable to the positions assigned to them on the land office maps regardless of the positions of the monuments on the claim. On its face the ruling seems fairly harmless, but in fact it will change positions of claims and tangle up titles to such an extent that the entire industry would be paralyzed if it is allowed to stand. The crux of the whole matter is that the official survey maps of the land office show the section and other corners to



be in certain positions. The patent survey shows the claim to have a certain course and a certain distance from the nearest public survey corner. It is platted accordingly. Now the public survey corner as set up may be, and, indeed, generally is, from a few feet up to several hundred feet out of position. Hence the deputy mineral surveyor's plat, if transferred, without correction, to the land office maps, will be in error, through no fault of his. In plain English, therefore, the land office thinks the patentee has bought from the government one piece of land, whereas the latter thinks he has patented quite a different piece. ***Who is to blame?*** The fact of the matter is that the public survey of government land has been made in a notoriously slipshod manner; much of it we believe has been done by contractors who have often adopted hasty methods in locating section and other corners. The result is that the so-called official maps are mere parodies of the actual conditions on the ground. This is a matter that the department is entirely to blame for. **To confiscate property because of a department error is working a monstrous injustice on the bona fide locator of mineral land.** Besides, the land office gives absolute instructions to its officers, the deputy mineral surveyors, to tie the mining claim to the public survey corners. In the instructions to surveyors the land office says: "Corner No. 1 of each location embraced in a survey must be connected by course and distance with nearest corner of the public survey . . . . if the claim lies within two miles of such corner." **To nullify a patent because the corner placed by the department does not conform to a certain theoretical department map seems to be as an absurd a ruling as ever was issued even by the land office.**

The basis of all mining patents is the discovery of mineral in place. Without that there can be no mineral location made. The law as interpreted by innumerable decisions throws many safeguards around the mineral discoverer. He is not required to make accurate surveys and he is even protected if the location monuments are so placed as to take in too much of the vein or land covered by such location. Provided the locator has not grossly overstepped the limits set up by the mining law. Now comes the land office and because its Jim Crow survey does not conform to certain pretty maps, declares that thousands of patented claims, also surveyed under its auspices, are in public domain and open to relocation! In many instances even the actual place of discovery is taken from the man who found the mineral, or his assignees, and given to other parties. It is a rank subversion of the mining laws or legal decisions under which all mining property has ever been acquired.

If the decision is allowed to stand no property in the West is safe. I imagine that even our large cities and farms must come under it. It would be a disaster before which all the damage caused by strikes and fake promoters would be as nothing. But it certainly cannot stand. The interests involved are too great to be imperilled by hasty and arbitrary proposals of the land office. **Right and justice must prevail.** Yours truly, A. W. WARWICK.

Denver, Dec. 21, 1903.

Excerpts from *The Mining Reporter*, Vol. XLIX, No. 2, January 14, 1904 (pp. 30-1)

DISCUSSION—LAND OFFICE RULINGS IN PATENT CASES.

Editor Mining Reporter, Denver, Colorado:

Dear Sir—With the purpose, through the medium of The Mining Reporter, of provoking the attention of those interested in obtaining primordial titles to mining lands from the United States in supposed conformity with the provisions of the Mining Acts of Congress, through the land division of the Interior Department, to the appalling condition with respect to such titles which has been occasioned by some recent rulings of the heads of the department, I wish to present the following for the admonition and consideration of those so interested.

My familiarity with the rulings and practice of the United States Land Department since 1879 enables me to assert, and, if desired, to support my assertion by repeated rulings, that prior to June 20, 1899, it was the uniform practice of those officials to endeavor to have the records and diagrams of official surveys of the public mineral lands and domain, which were prepared and preserved for the primary purpose of advising the department, and for the information of the general public, with as much exactness as practicable as to just what public mineral lands were segregated and withdrawn from location, appropriation and application for patent titles, by reason of former locating: marking and defining of the same upon the ground, followed up by applications to the government for its patent grants of title therefor; and whensoever it became apparent that error had crept into such record representation, as indicated by the "connected sheets" or "connected diagrams" of surveys in the offices of the various surveyors general with respect to the true marking of the boundaries of mining claims as the same actually occurred upon the ground, it was the uniform practice of the department to so correct and amend its records and diagrams as that they should as definitely and correctly as practicable portray and represent actual conditions of situs, location and marking of boundaries as they occurred and were established by surveys and monuments upon the ground. Such corrections having been from time to time made at the expense of applicants for patent titles, whose official surveys have disclosed such errors, and the result has been the gradual sifting out of error and the establishment of data of inestimable value. Such a course of rulings was in entire conformity with the established rules of law as uniformly enunciated by the courts of the country, and in recognition of the practical definition of what constitutes a "survey," viz.: "the work on the ground," "the original marks and living monuments on the ground * * * constitute the survey and are the highest proofs of its true location;" and of the "well-settled rule that when an actual survey has been made and monuments marked and erected, and a plan afterwards made intended to delineate such survey, and there proves to be a variance between the survey and the plan, that the survey must govern."

All went well until it came up to the honorable commissioner of the general land office (Binger Hermann) to construe what is now designated as his letter "N" of

June 17, 1899, addressed to the surveyor general of the Colorado district, and the latter's circular letter of June 20, 1899, based thereon, and directed to the United States deputy mineral surveyors of the Colorado district, which advised and instructed that "when a mining claim has been surveyed and patented in accordance therewith, the land described therein is disposed of and so long as the patent is outstanding, the jurisdiction of the department in regard to that particular tract is terminated * * * that land thus patented cannot be properly included in a subsequent patent."

The ambiguity contained in and which has led up to the subsequent astounding construction of the commissioner's letter "N," consists in the failure of the honorable commissioner to disclose the clear line of distinction which is uniformly observed by the courts of the country in defining what constitutes the "survey" of a tract of land, whether "the work on the ground" * * * "the original marks and living monuments on the ground," or the "plan," "connected sheets" or "connected diagram" of the surveyors general's offices, which are primarily made up from the field notes of official surveys as embodied in the patents issued by the department, and which sheets and diagrams were from time to time, prior to June 20, 1899, corrected to conform to and represent the actual situs of the various surveys upon the ground; and later the commissioners letter "N" has been cited as supporting various decisions which wholly ignore the distinction mentioned, and result in the adoption of the diagrams of the Land Department as controlling in the matter of the disposition of the public mineral lands, no matter how erroneous the same may be, nor to what extent the errors therein may be perpetuated and multiplied, and in the refusal to accept reports correcting such errors or showing the true locations upon the ground of lands patented, other than as theoretically shown in the patents themselves, and in the "connected sheets" or "connected diagrams" prepared therefrom, and to such an extent has this egregious error been carried and insisted upon, that orders have issued from the general land office to surveyors general requiring, and the latter at great expense are preparing for their future arbitrary guidance, a set of new or substituted "connected sheets" or "diagrams" embodying all the error which has formerly been committed in the description of surveys, and discarding all of the corrections which have been made to conform to facts in years past.

This substitution of erroneous representation for that which has formerly, and without cost to the government been yearly made to approach more nearly to accuracy, will eventually, unless checked, result not only in the non-use by the Land Department, but also in the complete loss to the general public of most valuable records and data.

The present rulings of the Land Department, so far as its records are concerned, produce confusion and chaos in the following particulars:

1. They shift patents of long standing from their true positions, making them to appear in false relation to other patented lands and to the vacant public lands.

2. They create apparent conflicts of surface areas where none actually exist upon the ground.

3. They assume to occupy with patent grants portions of the public lands which are in fact vacant and unoccupied, thus segregating and withholding from patent lands which the Mining Acts of Congress have declared to be open to location and appropriation under pledge of patent title upon compliance with certain statutory pre-requisites.

4. They assume to throw open to location appropriation and patent, tracts which are supposed to be, and by the established rulings of the courts would be deemed to be granted by former patents, thus casting clouds upon the titles to lands so patented.

The foregoing are among the immediate and patent incongruities of the situation.

As the errors multiply and error is builded upon error, complete chaos is bound to result, and the policies underlying congressional legislation with respect to the encouragement of the development of our mineral resources, and incidentally the sale of the public mineral domain, will necessarily be in a great measure thwarted by the acts of the public officials who have been intrusted with the control over and disposition of such lands.

It is urged by counsel who contend for the perpetuation of the complexity of errors referred to, that "under departmental decisions, stakes and monuments do not control as against the calls in a patent regularly issued," and the department continues to so hold in direct contravention of the well-established rules of law to which reference is above made.

One of the consequent effects of such ruling consists in placing the patent titles to government mineral lands upon substantially the same unstable footing with patents for mechanical inventions, which, before they can be depended upon for the protection which their terms and covenants import, must be supplemented by the adjudication of a court of competent jurisdiction, and never, even then, being rendered wholly exempt from attack by persons who are given more than a mere colorable right by the inconsistent , unreasonable and arbitrary action of the United States Land Department.

I am informed that certain United States deputy mineral surveyors of the highest standing, being prompted by good conscience, have refused further to practice, owing to these preposterous rulings, while others are forced "to compromise with their sense of professional integrity" in continuing to practice for the reason that "the department," under present rulings, "demands that an official plat, made and submitted by a deputy over his signature and affidavit, shall show conflicting claims as the records show them, irrespective of the facts," as disclosed by the actual survey.

If conflicting claims are not staked and marked upon the ground as the land office records, "connected diagrams," etc., indicate, the deputy must nevertheless report them as being so staked.

There is a case pending at the present time in the department, before the

honorable secretary of the interior, in which an effort is being made to secure an oral argument, and, if possible, a correction of these erroneous rulings, and the importance of making such correction will only be adequately understood by the department when it is shown that such influential representation of the interests affected as, for instance, the Colorado Mine Operators' Association, and like organizations are demanding such a hearing upon the matter as will insure a full, careful and discriminating investigation and the cleaning up of the situation which will necessarily follow. It would also be well to strenuously support, by bill in Congress, such an amendment of the present laws as would, in case of failure to secure proper action of the department, afford reasonable hope of legislative relief, and in view of the fact that the latter course is dilatory and uncertain, it would be wise to start a proper bill for such amendment upon its course, so that, in case the department shall fail of suitable action, the alternative course will have progressed.

January 4, 1904. GEORGE L. HODGES.

Editor Mining Reporter—I am glad to see that your Paper, as well as many others, have taken up the discussion of the stupid land office rulings in reference to mineral surveys.

I take it to be the duty of every one familiar with the subject to assist the people in demonstrating to the bureaucracy in Washington that their way of doing things is irrelevant, incompetent and abominable. The "Groves case" Is on its way to the Secretary of the Interior on appeal from the commissioner, who decided that the ridiculous ruling should stand. The press must take it up and hammer away, to convince the secretary that the ruling will lead to endless confusion, and that he should be guided, and adopt methods recommended, by men in the field and on the ground, who know and understand the conditions, and not rely upon the guesswork of his office forces.

The point at issue is: How best to fix permanently the precise locus of each and every mining claim. The ruling complained of holds that this should be done by a correct tie-line, giving course and distance to a section corner not more than two miles away. We all know that section corners are not permanent monuments, and all those familiar with conditions know that the four corners of a mining claim, the discovery shaft and other workings, the outcrop of the vein and rock ledges offer much better monuments to fix the precise locus of a mining claim than does a section corner. This is true, not only because such natural and artificial monuments are more permanent, but also because such monuments are in the immediate vicinity, and all serious errors in course and distance of a long tie-line are avoided.

The long tie-line to the section corner is desirable, as it establishes approximately the locality in which a mining claim is situate. But to use this tie-line as the basis to fix the precise locus of a mining claim is absurd, because more correct, convenient and permanent monuments exist on the very ground itself. A long tie-line must be exact in course and distance for such a requirement, and a baseline apparatus, transits reading to ten seconds, and other refinements of survey must be used to give satisfactory results.

Let the surveyor general be very strict in his instructions to deputies and require checks and proof that the claim itself and its relative position to other claims in the vicinity is correctly surveyed; let him require a connection with a section corner, as an approximate tie, and let him insist on tie-lines to some point on a ledge of rock or a deep shaft in the immediate vicinity, if there be such, and everything will work correctly. In case of error or disagreement, let him send a man from his own office to the locality to determine errors, and punish the deputy who is guilty of careless work. Such a method, or a similar one, will do good work, will be inexpensive and do justice to all in old camps and in new ones. The present method will lead to far greater expense in new camps and make endless confusion and errors in old ones.

Hammer away, Mr. Editor, and have the ruling reversed. The courts will always be with us in deciding against the long tie-line; but we want rulings that keep us out of court.

MAX BOEHMER.

Denver, Colo., January 3, 1904.

Excerpts from *The Mining Reporter*, Vol. XLIX, No. 3, January 21, 1904 (pp. 55-56)

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.

Excerpts from *The Mining Reporter*, Vol. XLIX, No. 4, January 28, 1904 (page 80)

THE EFFECT OF THE LAND OFFICE RULINGS ON THE SALE OF UNPATENTED CLAIMS.

It has been repeatedly urged that the rulings of the department since 1899 will have the effect of engendering a tremendous amount of litigation. We have intimated further that, practically, the owners of unpatented ground have unsalable property, if the rulings of the department are allowed to stand. We have made these statements as merely grave possibilities.

A case has, however, arisen recently which entirely fulfills our predictions. Litigation has arisen on the ground that the vendors of a piece of unpatented property could not secure a title from the government.

The case referred to is an action commenced in the federal court at Butte by J. A. Nelson against the Wood Placer Mining Company of Revalli county, Montana, for the recovery of $72,000. The history of the case before it came into court is yet fresh in the public memory in the Northwest. In October, 1902, a contract of sale was entered into between the Wood Placer Mining Company and J. A. Nelson, whereby the latter was to purchase certain property for the sum of $100,000. Of this sum $10,000 was paid immediately and possession of the property was given to the purchaser. On June 1st last Mr. Nelson paid an additional $30,000, leaving a balance still due of $60,000. In the meantime a sum, said to aggregate $32,000, was spent in development work. The contract of sale, as we are informed, called for the patenting of the property by the vendors.

Now when the case came up before the land office for patent, the secretary of the interior, July 16, 1903, refused to grant patent on account of the rulings so widely complained of.

The last payment fell due a short time ago and the purchaser, instead of meeting it, rescinded in writing his former contract, giving the vendors repossession of the property and making a demand for the repayment of $40,000 and the $32,000 spent, on the ground that the vendors did not own the most valuable claims. This complaint and lawsuit can only, so we believe, stand on the grounds created by the refusal of the land office to recognize ownership by the vendor.

It is unnecessary on our part to dilate further on this matter, but it seems to us that the situation created is intolerable. No one knows where he stands until the ownership of each specific piece of patented and unpatented property is adjudicated upon by the courts, or until the land office recedes from its position.

THE MEETING OF THE MINERS' COMMITTEE AND THE FEDERAL COMMITTEE INVESTIGATING THE LAND LAWS.

An opportunity arising out of the visit to Denver of a federal committee appointed to investigate the working of the land laws, it was thought desirable to have the views of the mining men of Colorado brought to the attention of the committee referred to. The Denver Chamber of Commerce, through its mining committee, took prompt action and with the assistance of Mr. George R. DeNise, on behalf of the Mine Operators' Association, and Mr. A. W. Warwick of Mining Reporter, a representative committee, composed of G. L. Hodges (chairman), G. R. DeNise, Jacob Fillius, W. V. Hodges, Max Boehmer, A. W. Warwick, L. F. Twitchell, B. C. Stimson, W. F. R. Mills, W. E. Passmore, was selected to present the views of the Colorado miners.

Mr. F. H. Newell, chief hydrographer in charge of the United States reclamation service, Gifford Pinchot, chief of the Bureau of Forestry, with Mr. H. N. Savage, consulting engineer to the reclamation service, listened to the views of the miners' committee in the directors' room of the Chamber of Commerce. At the conclusion of the hearing Mr. Newell, on behalf of the federal committee, stated that they were not wholly unfamiliar with the conditions and would by all means in their power do everything which will facilitate and make good the titles to land. As a surveyor, he had a very great respect for locations on the ground and a corresponding lack of respect for descriptions.

The salient points which were covered by the various members of the committee were as follows:

Mr. DeNise, by the assistance of certified maps, obtained by the Chamber of Commerce from the surveyor general, demonstrated the facts familiar to all readers of Mining Reporter.

Jacob Fillius stated that although there was no question but that the monuments would hold, yet extended litigation would be required to establish mining titles.

Max Boehmer held that the trouble was caused by incompetent surveyors who subdivided the land. The department now practically compelled mineral surveyors "to fudge and cook" their reports.

W. V. Hodges went into the legal and mining aspect of the Groves case and the attitude of the department in the matter.

A. W. Warwick called attention to the fact that all states are affected alike and that litigation had been caused already in consequence of the ruling.

L. F. Twitchell alluded to the fact that the department endeavored to make the ruling permanent and to the difficulty or impossibility of obtaining a patent.

Judge E. C. Stimson said there was no need to discuss the law because it was clearly on the side of the miner. He pointed out the important principle that "if an individual deeds a piece of property to you and goes and points out the property to

you and you rely on his description and pay your money for it and you subsequently discover that he deeded you another piece of property instead of the one he pointed out, the courts will make him make a conveyance of the other property he pointed out The government in common honesty ought to do the same/"

The Colorado Mine Operators' Association sent a letter reverting to the great dangers of the present system of considering mineral patents.

George S. Schneider alluded to the natural difficulties of surveying in a mountainous country and the dangers of the present situation.

The meeting closed with remarks by Mr. F. H. Newell who stated, as a former surveyor with some experience in mining, he had listened with sympathy and would do all in his power to get matters straightened out to the satisfaction of the holders of mining property.

Excerpts from *The Mining Reporter*, Vol. XLIX, No. 5, February 4, 1904 (page 106)

THE NECESSITY OF PRESERVING MONUMENTS IN GOOD CONDITION.

All judicial decisions have been along the line that as against records of surveys the authentic monuments on the ground govern in cases of conflict. It must be obvious, therefore, that it is extremely important for claim owners to see that the monuments are kept in a proper state of repair.

Where the property is of value and the monuments are falling into a ruined condition, it is proper to take steps to re-establish them. It is, however, essential that this should be done in a correct manner. If possible the surveyor, who originally established the monuments, should re-establish them in the presence of disinterested parties. Affidavits should be prepared and placed on record. This permanently establishes the facts and will tend to prevent doubt being thrown on them in the future.

The Mexican mining laws set up an excellent standard in monumenting claims. The Mexican laws call for the landmarks (mojoneras) to be solidly constructed, to be preserved in good condition, and such repairs as may be needed to keep them in such condition must be made. They further provide that the monuments must be in such convenient number and place so that in every case, from any one of them a fore sight and backsight can be made to another monument. By their form, color or in some other way they must be distinguished from neighboring landmarks.

The monuments erected in Mexico are in many respects models for us to follow. They are mostly built of masonry, sugar-loaf in shape, being commonly about three feet in diameter at the bottom and three feet in height. Generally they are plastered and finished in such a manner that they stand out white and distinct. It is no trouble to run along the boundaries of Mexican mining property.

We are urged to allude to this question of monumenting in view of the discussion now of so much interest to the mining industry as to records and monuments. In case of old claims living witnesses may not be available and hence it is highly desirable to have monuments maintained in such a manner that no question or dispute can arise over them.

WHAT THE GOVERNMENT IS ACTUALLY DOING TO MINERAL PATENTS.

The diagrams shown are reduced copies of some of those used by the Colorado Mine Operators' Association and the Denver Chamber of Commerce before the federal committee at the meeting of January 22nd. They were used for the purpose of showing the practical workings of the present departmental system, which shifts patented mining claims from their true position and confines them to land which the claims do not occupy on the ground.

Both maps are from certified copies of diagrams on file in the surveyor general's office and are, therefore, official in character. They represent section 4, township 16 south, range 69 west, in the Cripple Creek district, within a mile of the Independence mine, and plainly show the difference between the way the claims of that land section are supposed to be patented and the way the government now declares that they actually are patented.

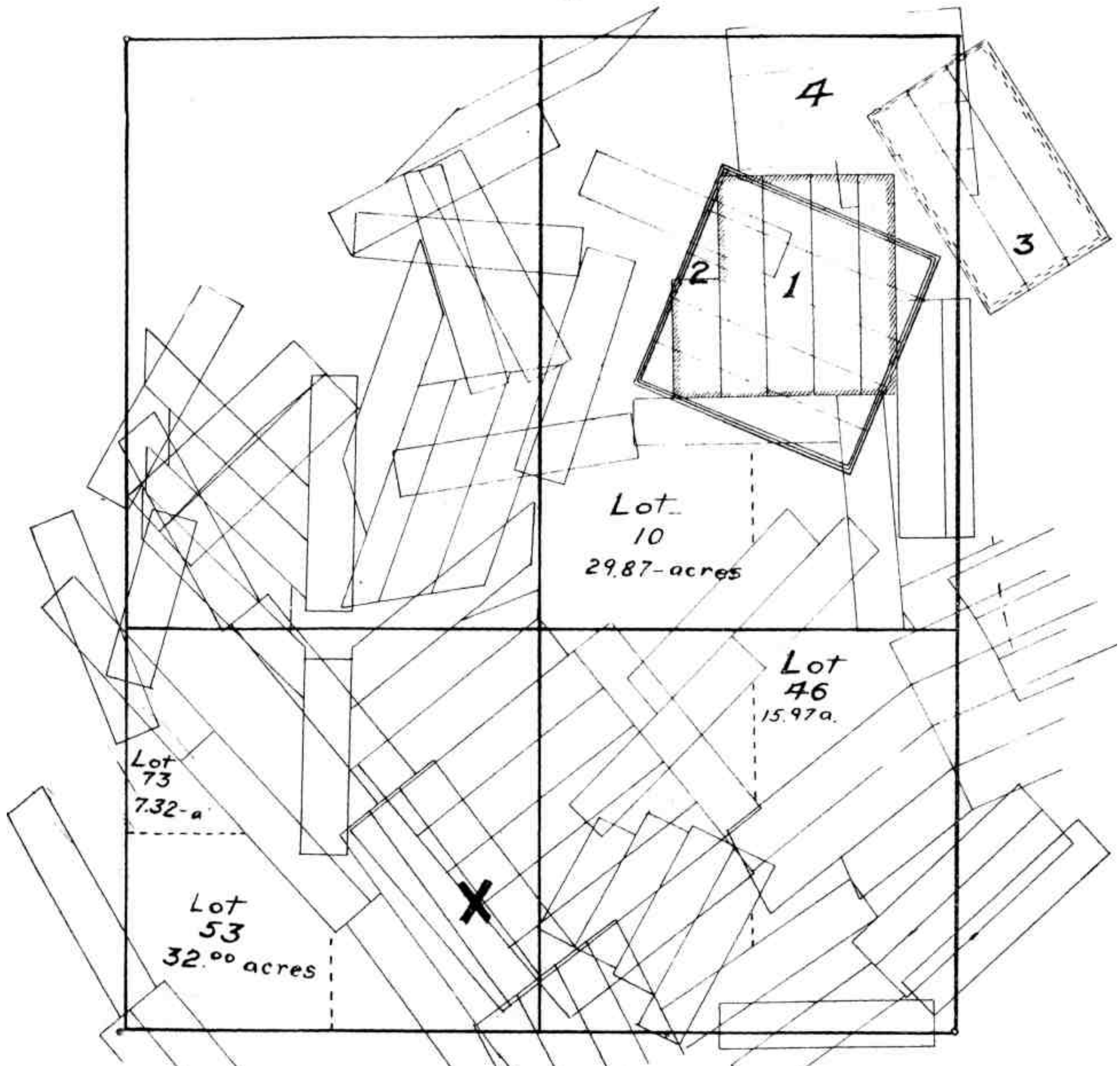
Diagram A represents section 4 as it is established on the ground by its official section corners. It also shows the various patented claims in that land section in their true relation to each other, as they are actually established by monuments and improvements and as they would be found by any one making an inspection of the ground. It shows the group marked 1 in its true relation to the group marked 2, and group 3 in its true relation to group 4; each claim is shown in correct relation to all the rest. This diagram is constructed by the surveyor general from official data reported direct from the field by the various deputy surveyors operating there; they have shown conclusively that the actual boundaries of

Map A.

Section 4, Township 16 South. Range 69 West, Cripple Creek District, showing patented claims as they are staked on the ground, according to map on file in the Mineral Division, United States Surveyor General's Office.

the land section do not constitute a parallelogram, as reported by the deputy land surveyor, but are as shown by the heavy lines of the diagram.

Diagram B is an official map of the same identical land section, showing the same claims, but in a vastly different arrangement. Group 1 is taken from its true position and placed on top of Group 2, and the owners thereof may fight it out in the the land department at Washington. Map B is substituted therefor as the official segregation sheet by which the government determine, what land is patented, what land is subject to patent and what land belongs to each respective patent; it is constructed on theoretical lines entirely, based upon original records. Map A is practice, map B is theory; map A is discarded by the land department, map B is adopted. Claims are thereby shifted about and officially anchored



Section 4, Township 16 South, Range 69 West, Cripple Creek District, showing claims as they are construed by the Department to be patented, according to the official segregation diagram in the Land Division of the United States Surveyor General's Office.

courts. Group 3 is likewise shifted and thrown on top of group 4.

Of the 100 patented claims shown there is not one which escapes the misconstruction. Lots 10, 46, 53 and 73. comprising over eighty acres, are thrown open to patent, although most of this area is at present covered by Patented claims. On the other hand, the tract marked by a cross is really unpatented, as shown on map A; but the occupants thereof are debarred from patenting for the reason that diagram B shows the tract to be occupied by various patents.

Although map A is constructed from official data procured in the field by deputy mineral surveyors it is not now the official diagram of out of position. Land which is patented is thrown open to acquirement and may be patented to outsiders. Ground which is actually unpatented and open is construed to be patented to claims which occupy entirely different tracts.

It should be stated in conclusion that the conditions which obtain as to section 4 also obtain, in varying degree, as to every one of the fifty land sections which cover the Cripple Creek situation, and as to <u>every land section in all the mineral districts of Colorado and every other mining state</u>.

THE EFFECT OF THE LAND OFFICE RULINGS ON PROSPECTING.

The rulings of the land office, if allowed to stand, must paralyze prospecting. Thus, the prospector, in addition to those difficulties created by nature, which are hard enough, has now to face a set of artificial difficulties which the prospector in the field can not possibly overcome.

It is well known to all connected with the mining industry that mineral land can only be located on public domain. The prospector, therefore, must ascertain whether or not the mineral discovery he has made is on open ground. The only method he has of doing this is by the monuments on the ground. The prospector, in his work, goes carefully over the ground, looking for stakes or monuments. Failing to find any such, he naturally concludes that the ground is open for location. Under the present rulings of the land office it is impossible to be sure of this. The department is moving patented claims to such an extent, sometimes as much as one and one-half miles, that no one can be certain as to what the department holds is or is not patented land, without making surveys and examinations of official plats.

This is no hypothetical case at all. There are numbers of such cases before the department at the present time— the notorious Groves case may be particularly mentioned. Here we have a case where the claim owner has worked a claim for many years without molestation from anyone, the monuments on the ground defining clearly the position of the Groves and contiguous patented claims. Now when the owner of the Groves asked for a patent he was confronted by maps prepared by the department which shifted the positions of the patented claims to such an extent that the main workings on the unpatented claim was awarded to one of the patented claims. This in spite of the fact that the owner of the patent did not claim such workings, because they were outside his side lines. The department absolutely refuses to grant patent to the Groves according" to the monuments on the ground.

Now, under such circumstances, how is the prospector to defend the rights given him by the federal and state mining laws? Must he not either relinquish his claim or start a law suit? Such an alternative will appall the average owner of an unpatented claim. A law suit, even if successful, means the loss of a large sum of money, or of a large interest in the claim.

Then, too, suppose, as is very likely to happen, the unpatented, claim is more valuable than the patented claim which is placed right over the former. Is it not more than likely that the patentee may endeavor to obtain the mineral discovery of the prospector on the showings of the maps of the land office?

Enough has been said to demonstrate that one of the most important interests of the mineral industry is threatened. Stop prospecting, and the mining states will suffer a severe blow. Possibly the courts may give relief, but how many prospectors want to drag their cases into the courts?

Now the matter is not irrevocable, and can no doubt be remedied by a united

effort of all interested parties to get the land office to recede from its unfortunate position. It is the plain duty of the mining population of the West to take this matter up in an unmistakable manner and get the grievous wrong remedied. Mining and commercial organizations throughout the West can and should do effective work in concentrating and crystallizing public sentiment in this matter.

Excerpt from *The Mining Reporter*, Vol. XLIX, No. 6, February 11, 1904 (pp. 135-136)

THE MINERAL SURVEYS FROM THE STANDPOINT OF THE DEPUTY MINERAL SURVEYOR.

Editor Mining Reporter:

Dear Sir—Since the public has been so ably advised through the columns of the Mining Reporter of the recent decisions adverse to mineral patents, there has been considerable inquiry as to who is to blame for the doubtful value which now attaches to patents. The question is natural, and should be answered in justice to the deputy mineral surveyor who seems to have come in for most of the blame.

The diagrams presented in your issue of the 4th inst. serve at once to illustrate the gravity of the situation which confronts mining men, and, upon proper consideration, to relieve the said deputy of all blame therefor.

These diagrams show that in the course of patenting claims in this Cripple Creek land section, the deputies proceeded in strict compliance with law and tied the various claims to the officially established monuments of section 4. There is no evidence of carelessness or incompetency in the official survey of any of the one hundred claims shown in the diagram; in fact, I have been assured that the work was uniformly well done. The accuracy and particularity of this work, however, does not save these claims from serious misconstruction which can only be straightened out in the courts; map "B," the official segregation diagram of this section, presents an entirely erroneous arrangement of the claims; each has been shifted, and assigned to a tract of land which it does not occupy.

Where is the fault? It is very plain. Diagram "A" shows the actual position of the official corner stones which bound the section, as they are established on the ground; the figure presented by these boundary lines is anything but rectangular; it is one in which the opposite sides are not parallel, and the interior angles are not right angles. The government land surveyor, however, who subdivided township 16, in which this section occurs, reported to the government under oath that the section was established on the ground in rectangular form. This report, returned long before Cripple Creek had ever been thought of, constitutes the original and official record of the Washington office, as to that land section.

In due course, Cripple Creek was discovered and deputy mineral surveyors scoured the country for section corners to which claims might be tied. They found these corners as they were officially set in the ground by the government land surveyor, and they tied their mineral surveys to them. They neither knew that the subdivisional survey had been carelessly made, nor could they have rectified it if they had known, as it would have been contrary to law. In the course of time, the surveyor general became informed of the actual position of every section corner in the district in its relation to every other corner. It has become apparent that not one of the fifty-three sections occupied by the Cripple Creek situation is laid down on

the ground as it appears on the official maps of the department; the sections, as they are thus established on the ground, are neither square nor rectangular. This is not the fault of the deputy mineral surveyor: he accepts and acts upon the situation in the field, not as it should be, but as it is. His oath of office binds him so to do.

We will all agree that it is not the fault of deputies that the Interior Department has seen fit to institute the now well established policy of disregarding official land marks, and construing all sections in accordance with the public survey reports, and determining the locus of patents thereby. A study of these diagrams will show that this is the source of the difficulty. It is not within the province of this article to discuss the merits of the present departmental system, or the difficult problems which have given rise to it. It is sufficient to say that the errors of the deputies of the present day are not a fractional part of the foundational causes of the present complications. It is doubtless true that in many cases errors have been made by deputies in running and reporting boundary and connecting lines of patented claims; the frailties of the human mind are evidenced in the work of deputies as in the work of doctors and lawyers. This is particularly true as to the early patent surveys which were frequently made with a compass and sixty-six-foot chain, before the need of accuracy had been demonstrated to be an essential element of patent work. Some of these surveys are marvels of inaccuracy and must give rise to a harvest of litigation under the present governmental system; these general conditions are not, however, justly chargable to the deputy mineral surveyor of to-day.

The only thing to be added is a word of charity and sympathy for the early land surveyor. "May he rest in peace," if it is possible to him under the circumstances. He was a pioneer, and did his work in rough pioneer fashion, little thinking, as he was pushing his party over the hills of Cripple Greek, that he was casting his careless lines upon the face of what was to prove the greatest gold camp of modern times. He could not foresee that his scheme of results, in which errors of a quarter of a mile or so were matters unworthy of serious thought, would be subjected to the scrutiny of mineral surveyors whose standards of accuracy involved the skillful use of precise instruments and steel tapes graduated to the one-hundredth part of a foot.

What is true of the general inaccuracy of the land lines in the Cripple Creek district is true of every mountainous district of Colorado and every other state.

GEORGE R. DENISE.

Denver, Colorado, February 8, 1904.

Excerpt from *The Mining Reporter*, Vol. XLIX, No. 7, February 18, 1904 (pp. 169-170)

MONUMENTS, RECORDS AND THE LOCUS OF MINING CLAIMS.

To the Editor, Mining Reporter:

Dear Sir—We have carefully read the articles in Mining Reporter of December 24 and January 14, by Mr. Warwick, Mr. Hodges and Mr. Boehmer; and your editorial of the 21st, on your request for practical suggestions.

Every patent is supposed to have two sets of ties; one to a government corner, or at least to an approved survey, and the other by local and usually shorter calls, to rocks, bearing trees, shafts, etc.

It is conceded law that where it becomes necessary to fix the locus of the ground patented and some of the ties are found to be false, such false calls do not vitiate the true calls, such false calls being treated as surplusage.

If, therefore, the false calls forced into the patent description by the land office ruling complained of, are corrected by one or more true calls for local ties, such patent will be sustained for its proper ground and the said ruling does not ultimately vitiate the title.

It is also conceded law that the actual survey and the true calls always fix the locus of the ground and the connected plat of the patent does not fix the locus of the ground, when there is a variance between them.

These two propositions are, therefore, always at hand to defend the title to the ground really located and patented or intended to be patented as the ground of the applicant.

No difference what the ultimate ruling in the Groves case, stricter attention to make sure of permanent and certain local ties will minimize the danger in future applications.

But the foregoing consolation is no excuse for the ruling of 1899, holding that the locus of the land described in the patent shall be controlled by the tie from a corner of the mining claim to a government corner, rather than by the monuments of the claim itself, if that tie be erroneous.

The desire of the land department is to keep a book of connected sheets showing the subdivision of the public domain into a geometrical checker board with every line true and every corner an exact point of contact with its adjoining townships or sections. Such connected plats would be not only neat papers, but a true representation of facts, if the township surveys on the ground were true or even approximately correct. But owing to the contract system under which the public domain is surveyed the sections as staked are nearly always out of true, and in some instances townships stand platted in the surveyor general's office and so of course on the Washington maps, when in fact no survey at all was ever made, but

field notes have been manufactured and returned and topographical report filed and, above all, the surveys paid for, when never a line of its thirty-six square miles was ever chained.

More often there has been an actual but reckless survey, and the stakes set many feet and even hundreds of feet from their proper position. But granting that the government survey is correct in the first instance, the official survey of a claim is placed upon the connected sheet according to its tie to a government corner, and if there are no conflicts with or ties to other official surveys, such tie is usually the only guide by which the surveyor general can place the claim upon his map. By a clerical error, by the substitution of one course-letter for another, by the omission of a figure in the diagram course, or by a short or long measurement, the claim is shifted and shown on the map as being hundreds of feet from its location on the ground.

Other claims in the neighborhood are later, from time to time, officially surveyed and the error in the tie is discovered, perhaps, by a tie to the first claim, perhaps by a conflict appearing on the connected sheet, when in fact no actual conflict exists on the ground. Here the department applies its ruling of 1899, and says to the applicant: "The description in the first patent controls the locus of that claim on the connected sheet, and your claim, though correctly surveyed, shows a conflict on our map with that patented claim. We know that the first patent is erroneously described, but you must exclude the conflict or compel, cajole, or persuade the first patentee to surrender his patent. We cannot change our maps to show the truth."

Where the land is agricultural and is entered in quarter sections, such errors are rarely called to the attention of the department and the patentees adjust their boundaries among themselves.

Now, what is the practical remedy? Simply the reformation by the department, of its own errors and making a connected plat recognizing the error. Whatever the error may be in the description is the error of the department, because the deputy who makes the survey and prepares the field notes is the agent of the United States and not of the applicant. Basin M. Co. v. White, 55 Pac., 1049.

Such was the remedy applied by the department prior to its ruling of 1899, i. e., the true location of the erroneously tied claim was when the error was discovered, correctly placed upon the connected map and no objection was made by the department to patenting to subsequent applicants the ground covered by the erroneous original platting. To conform the hundreds of erroneously tied mining claims in this state to a theoretically connected sheet is a physical impossibility. To make a connected sheet showing the locus of such claims on the ground is a mere matter of mathematics.

Out of the hundreds of such misdescribed claims in this state we know of only one case litigated and in that the monuments of the claim and not its defective tie to a government corner were held to control. Cullacott v. Cash M. Co., 8 Colo., 179; 15 M. R., 392.

This correction of connected plats spoils the beauty of their office work, but that is all the harm it does. Those plats are never looked at, except by parties in interest trying to fix or ascertain their true lines, and it is ethically indefensible in a government which inflicts punishment on all its subjects short on their morals, to keep a connected plat which is an official lie and known to be such by its makers.

The most serious case supposable is where a locator has a claim which he knows to be on clear ground on the public domain, but when he applies for patent finds this ground, according to the connected plat, already patented to another. The land office then refuses him a patent, because it says we have already patented that ground; we cannot help you unless the holder of that patent will reconvey to the United States, which suggestion is usually wholly impracticable. Has he then no remedy? A lawyer does not like to confess any weakness to his oft quoted maxim, "For every wrong the law affords a remedy." What then is the remedy? It is not in the courts, for the courts will neither enjoin nor mandamus the surveyor general. The remedy is the one suggested by the government itself, to wit: to stoop to the low ethical position of the land office and make the same false calls originally made in the prior patent. "You will, then," says the land office, "receive a patent with false calls for government corners, but with correct calls for local monuments, and you will then have as good a patent as the man has who occupies your ground on our connected sheets, for you will be relatively out of position no more than he is, but will have a patent which the courts hold good, and you will not spoil the looks of our official maps."

Sincerely hoping that you will succeed in the Groves Case, which has been ably argued by Mr. Hodges, we remain, Yours truly,

MORRISON & DESOTO.

Denver, Colo., Feb. 15, 1904.

Excerpt from *The Mining Reporter*, Vol. XLIX, No. 12, March 24, 1904 (pp. 297-298)

MINE MONUMENTS.

Written for Mining Reporter by A. W. Warwick.

That monuments rule in fixing the position of a claim or other tract of land is a well-established principle of law. When records and monuments are at variance, the latter must prevail in establishing the locus of the claim. Practically speaking, there is no more firmly established principle than this. All countries, and, so far as our reading goes, all ages, have agreed that monuments are more important than records. The records must conform to the facts, and not the facts to the records.

In making these statements, however, it must be borne in mind that the monuments, in order to prevail, must be well established, and must be identifiable beyond question. How important, therefore, is the correct monumenting of a claim to the owner.

The method of monumenting a claim is governed by law in almost all western states. In every case ample time is allowed for such work, and there can be no excuse for carelessness in complying with the various state regulations, when very generally three months are allowed for staking. Broadly speaking, the essential requirements of the various western states are about the same.

Of all the monuments, the discovery shaft is possibly the most important. The position of this must be established with reference to some permanent natural object, such as a mountain peak, a large boulder or United States land monument. The location stake, which bears the notice of the location, is placed close to the shaft.

In Colorado six monuments are necessary to define the lines of the claim, one at each corner and one at the center of each side line. The Colorado statutes require that each stake shall be of substantial size and hewed or marked on the side or sides in toward the claim. The statutes do not specify the size of the stakes.

In Idaho the monuments must be four feet above the ground, and if these are posts or trees, they must be four inches square or in diameter.

In Montana the size of the posts must be four inches square by 4 feet 6 inches long, one foot in the ground, and a mound of earth or stone four feet in diameter and two feet high must be placed around the post. If of stone— which is not a rock in place—it must be six inches square by eighteen inches long, set two-thirds of its length in the ground.

In Nevada 120 days are allowed for monumenting. The monuments must be three feet above the surface and if posts must be at least four inches square or in diameter.

In Oregon the post must be three feet above the ground and four inches square or in diameter.

In Washington posts or monuments shall be not less than three feet high nor less than four inches in diameter. Brush must be cut away and trees blazed along the lines of the claim.

The United States land office requires posts to be four inches in diameter, three feet in length and eighteen inches in the ground.

It would seem to us that if a claim is worth monumenting that it is worth monumenting properly and in such a manner that no question can hereafter arise as to the tract of land intended to be covered by the monuments; yet there is, on the part of the average locator of mineral land, the utmost carelessness in this respect. For example, in but few cases do the discovery shafts fulfill the requirement of the law by being ten feet deep. So fearful are some prospectors of doing any more than the law requires that they will actually make the bottom of the shaft conform to the slope of the ground, so as to take out as little as possible. The monuments are usually very carelessly placed, both in regard to distance and size. The importance of living up not merely to the letter but to the spirit of the law is becoming more and more apparent as the western country becomes more occupied. If claims are not located carefully, with so many conflicting interests in the immediate neighborhood, there is the greatest danger of men losing their property through not conforming to the very reasonable requirements laid down in the various statute books.

The law as to the matter is well laid down in Morrison's Mining Rights, tenth edition, page 53, as follows:

"As the result of carelessness, accident or defective instruments, variations between the courses called for in the records and the monuments on the ground, are matters of constant occurrence. The general rule in such cases is that the monuments control." (Here follow citations.)

"But it was held in the Hardin lode case that the monuments would not control where they varied from the kinds of monuments called for in the record. A call for a 'post' was not satisfied by a 'stump'; and, further, that in the case of possessory claims, the monuments must be kept up so as to be found upon the ground, and that otherwise, claims in the location certificate must control, observing that this rule was essential to prevent the danger of swinging locations. Once properly set, stakes have performed their original office, and their subsequent removal or obliteration, not done by the act of the party, does not vitiate the claim. (Here follow citations.)

"But where not maintained, a misdescription in the record, otherwise immaterial, may become serious, if not fatal, because to correct courses or other errors by monuments, the monuments must, in general, be found upon the ground."

It would seem to us that the United States law is defective in not providing that the monuments should be perpetually maintained in a good state of repair. Although the law in this respect is defective, still there can be no question but that the mine owner should, in every case, take care that the monuments are properly maintained, for it is notorious that in many cases the records which should establish the locus of a claim are erroneous; hence, should the monuments be

destroyed or obliterated, it will be exceedingly difficult to establish the rights of a mine owner. If we take a case where it is known that the records are in error, and which, if interpreted literally would lose the mine owner a considerable portion if not the whole of the claim, the importance of maintaining the monuments is enhanced, because where the monuments are obliterated, it is necessary to go to the records to re-establish them. In such case the mine owner, possibly a defendant in a lawsuit to establish the position of his claim, has to take up the contradictory positions that the records do not establish the position of his claim, but that they do establish the position of the monuments between themselves, a position which a very little knowledge of the law would enable one to see would be very hard to sustain.

Not only should monuments be maintained, but they should conform to the description given to them in the records, as in the citations from Morrison's Mining Rights: "If the monuments call for a post, a stump will not be accepted." An interesting case of this character is now before the Department of the Interior. In this case the calls of the record moved a patented claim a considerable distance, 100 or 200 feet. The ground thus thrown open is now claimed by a second party. The owners of the patent claim that the position of the patented ground is established by the monuments, and not by the records, and ask that the conditions of the ground should rule; that is to say, that the monuments should prevail in establishing the locus of the claim. The claimant of the new patent then brought forward facts, as he found them on the ground. He stated that he had a deputy mineral surveyor make a critical examination of the ground, and a careful search for the monuments, both natural and artificial, mentioned in the patent, and that such an examination failed to disclose any monuments corresponding with those described in the patent. He alleged that the corners now claimed by the owner of the old patent do not correspond with those described, thus: Corner No. 1 of the claim is in a dump; there is no visible mark and there is no pine tree in place where the tie in patent, by bearing a distance from stated corner, should show such tree; but that such a point would also fall into a dump. That corner No. 4 is in a railroad track and is marked by a hub, about two inches square, three and one-half inches above the ground, with a nail in it. That at corners Nos. 1 and 2 of other claims in the group is a post seven and one-half inches square and two and one-half feet above the ground, instead of a pine post four inches square, as called for in the patent. Corner No. 5 of another claim in the group is a post six inches square, partially covered by a dump. At corner No. 1 of another claim in the group is a post seven and one-half inches square and 2 feet 10 inches above the ground, instead of a pine post 4 inches square, as called for in the patent. Numerous other instances of a like character were given. It was further alleged that none of the posts referred to above and now in existence could be the ones mentioned in the patent as marking the respective corners, and that in the opinion of the examiner there was no evidence on the ground by which the description of the patent can, by the aid of the monuments, either natural or artificial, be applied to the boundaries of the tracts of the claim, under the patent; and that, in the opinion of the examiner, the only way of identifying the land

described and passed by the patent is by the course and distance given. And, finally, it is alleged that the posts referred to, as now in existence, were set in their respective places long after the making of the survey and the issuance of the patent.

This case is still before the land department, but if the claims of the appellant are allowed, then unquestionably few patents now issued will be worth anything. The importance of monuments, as repeatedly pointed out in the recent issues of Mining Reporter, has been intensified by the recent ruling of the land department. The rulings have had the effect of creating technical conflicts and have technically moved claims to such an extent that the monuments must be relied upon to establish the actual position of mining property. It is another illustration of the difficulties brought in by the new rulings of the land department.

Owners of mining claims should recognize the present position of affairs and should join in the movement to have the matter straightened out to the satisfaction of the industry. Monuments, however, will always be important. For, if the monuments are properly placed and properly maintained, they must, in every case, govern where there is conflict. But when monuments are allowed to fall into decay, or are buried by dumps, or are absolutely at variance with recorded descriptions, then there will be, in many cases, great difficulty in proving the ownership of the land rightfully belonging to the occupant. Finally, the whole matter may be summed up by saying, that in order for monuments to prevail there should be no cloud upon the monuments. A good lawyer, in trying to fight a case where monuments are important, will unquestionably first try to throw a cloud around the monuments, and mine owners, who value their claims and who wish to protect them in every way possible, will maintain their monuments and conform to the law as to the placing of these monuments.

Excerpt from *The Mining Reporter*, Vol. XLIX, No. 18, May 5, 1904 (page 444)

THE NEW MINERAL LAW RELATIVE TO PATENTS

Thursday, April 28, 1904, marks a new and important era as regards mineral patents. On that day President Roosevelt affixed his signature to the bill introduced in the House by Congressman Franklin B. Brooks of Colorado. This bill is known as House bill No. 13298. This law, carried to a conclusion, will dispel the shadow that has been hovering over mining titles for the past four years. A patented claim, under the recent practice, could be officially moved a mile—which practice under the present law is no longer possible.

The readers of Mining Reporter will recall the articles that we have published showing the unstable conditions that have existed and which the new law corrects. The new law declares that:

"The surveyors general, in extending the public survey, shall adjust the same to the boundaries of said patented claims, so as in no case to interfere with, and change the true location of such claims as they are officially established upon the ground."

The law further provides that the monuments shall, at all times, constitute the highest authority as to what land is patented.

The last mentioned provision covers the contention we have held to be the only reasonable method of determining patented ground.

In view of the increased importance of monuments, we again urge all those interested in mining properties to see to it that the monuments marking the boundaries of their claims be kept in proper repair; also that all of their corners are well referenced to natural or permanent objects; or to shafts or tunnels, so that there will never be any question as to their correct location.

It is not possible to give to each person who has assisted in this legislation the proper meed of praise. The ablest assistance was given to Congressman Brooks by Senator Teller and Congressman Bonynge, both of Colorado.

The measure had the active support of the Denver Chamber of Commerce and Board of Trade, and of the Colorado Mine Operators' Association; and to those organizations the owners of mining property owe a debt of gratitude that the years to come will only intensify.

Excerpt from *The Mining Reporter*, Vol. XLIX, No. 19, May 12, 1904 (pages 469-470)

TEST SUIT BROUGHT TO SECURE INTERPRETATION OF NEW BROOKS ACT

Suit has been brought in the United States District Court at Denver, Colorado, against E. B. Goodwin by Edward L. Parsons. Parsons is the owner of the Rusty Gold placer mine, in the Ward district of Boulder County, Colorado, which was located in 1885. The plaintiff alleges that on or about February 9th of this year Goodwin made filings of mining claims which included filings of the Rusty Gold placer property. Parsons declares that his claim was duly set up with proper monuments, but, because of discrepancies in surveys, the charts in the land office show the Rusty Gold placer claim to be in another place from where it was intended to be.

Plaintiff asks that he be given clear title to his claim and the filing of Goodwin be annulled; and further asks that judgment in the sum of $2,700 be awarded him for damages alleged to have been sustained through Goodwin's action in filing upon his claim. The complaint says: "This action arises under the statutes and constitution of the United States, and requires the interpretation of the statutes and constitution." Much interest will attach to the decision of the court, as the suit calls for an interpretation of the new Brooks bill, recently passed by Congress.

Excerpt from ***The Mining Reporter***, Volume L, No. 8, August 25, 1904 (pp. 181-182)

RECORDS *vs.* MONUMENTS.

Our readers will remember the campaign conducted during the last few months by Mining Reporter to secure a change in the procedure of the General Land Office in the patenting of claims. Under the caption of "Records vs. Monuments," etc., we published the views of the leading mining men of the West on the evils of the practice then in vogue. The articles demonstrated that unless matters were changed a patent not only gave no security of title, but would in many and possibly most cases result in protracted litigation. Although the matter was poh-poohed by a number of mining journals that should have been better informed and should have taken up the matter actively, the mining men of Colorado took hold of the business vigorously and finally secured the passage of a law amending the federal statutes, which, formally and by statute, declared that monuments prevailed in settling the locus of a claim, and not any imaginary tie lines to corners. Mining Reporter is proud to remember that it took a leading part in the fight to secure this desired end, not only in bringing the matter before the mining public, but in acting privately in an advisory capacity during the political work which was necessary to be done.

The passage of a good law is a good thing. It goes without saying, however, that a good law can often be made of no effect by departmental rulings or official ill-will. We are glad, therefore, to notice that the officials who have the administration of the law are loyally carrying into effect the new law. The Colorado surveyor general, we believe, may be depended up to adjust the new survey methods now required with as little friction as possible. Of course, at first, some little trouble will be experienced, but that will unquestionably be reduced to a minimum by the western surveyor generals. The Colorado surveyor general, John F. Vivian, issues the following circular to deputies:

Denver, Aug. 17, 1904.

To the United States Deputy Mineral Surveyors for the District of Colorado:

By departmental letter of August 8, 1904, paragraph 147 of the mining regulations is amended to read as follows:

147. If an official mineral survey has been made in the vicinity, within a reasonable distance, a further connecting line should be run to some corner thereof; and in like manner all conflicting surveys and locations should be so connected, and the corner with which connection is made in each case described. Such connections will be made and conflicts shown according to the boundaries of the neighboring or conflicting claims as each is marked defined and actually established upon the ground. The mineral surveyor will fully and specifically state in his return HOW and by what VISIBLE EVIDENCE he was able to identify on the ground the several conflicting surveys, and those which appear according to their returned tie or boundary lines to conflict, if they were so identified, and report errors or

discrepancies found by him in any such surveys. In the survey of contiguous claims which constitute a consolidated group, where corners are common, bearings should be mentioned but once. In your future work before this office you will comply in detail with the requirements contained therein.

Let us, however, issue a word of warning to our readers in this connection. **It cannot be too clearly understood that in order for monuments to prevail as against records, the monuments must be properly kept and must be identifiable beyond question.**

Excerpt from *The Mining Reporter*, Vol. L, No. 14, October 6, 1904 (pages 346-347)

SURVEYING FOR PATENT.

The Colorado Surveyor General has recently issued to the United States Deputy Mineral Surveyors for the district of Colorado the following circular, calling their attention to the requirements in order to comply with the amendment of the United States mining law, commonly known as the Brooks bill:

"The United States Deputy Mineral Surveyors for the District of Colorado:

"In your future work before this office you will comply in detail with the requirements contained in amended paragraph 147 of Mining Regulations, a copy of which was mailed you August 17th last; and, to insure uniformity in your returns, you will pay particular attention to the following instructions:

"As said amendment requires that all conflicting surveys shall be shown according to the boundaries as each is marked, defined and actually established upon the ground, without regard to whether or not patents have issued for the claims in question, you will be required to determine in each case that the monuments of conflicting claims as found upon the ground are the official monuments of the official surveys, or occupy the original positions of the same. If this cannot be determined, it will then be necessary to revert to the record and show said claims in their approved and patented positions.

A strict compliance with paragraph 149 of the mining circular, which is in part as follows, will be required:

" 'If, in running the exterior lines of a claim the survey is found to conflict with the survey of another claim, the distances to the points of intersection and the courses and distances along the line intersected from an established corner of such conflicting claim to such points of intersection should be described in the field notes.' * * *

"This will necessitate the re-running by you of each line of a conflicting survey which intersects the exterior lines of the claim being surveyed, and a report upon the course and, if necessary, the length of the same.

"The section and quarter section in which a survey is located will be determined, assuming the subdivision field notes, as returned by the deputy surveyor to be correct.

"You will further be required in the field notes, when connections are given to a conflicting or neighboring survey, to state whether or not said connection is given to the position of the claim as staked or as approved by this office.

"An additional note added at the end of the field notes, under heading 'Report,' will be required, stating:

"First—How the lines of the survey, connections to conflicting surveys and to the corner of the public survey or United States location monument, were determined.

"Second—A description of the section corner or United States location monument to which connection is given in the field notes.

"Third—A full description of all corners of conflicting claims to which connections are given in the field notes, together with a statement of how and by what visible evidence you were able to identify the same as being the official monuments of the claim in question.

"Fourth—A statement showing how the courses and lengths of the intersecting boundary lines of conflicting surveys were determined.

Very respectfully,

"JOHN F. VIVIAN, Surveyor General."

This circular finally puts into force the regulation which does away with the establishment of the locus of the claim by tie to the section corner, especially when the claim under survey conflicts with another.