

Ministry of
Northern Development
and Mines

Ministère du
Développement du Nord
et des Mines

**IN THE MATTER OF THE MINING ACT BEFORE
THE PROVINCIAL MINING RECORDER**

IN THE MATTER OF: Mining claim L 3011303 intended to be staked for the south ½ of the north ½ and the south ½ of Lot 6 Concession IV Cook Township, Larder Lake Mining Division.

AND IN THE MATTER OF: A dispute filed by

**CHARLES and CHRISTINE MARSHALL
The Disputants**

-against the mining claim of record held by-

**ST. ANDREW GOLDFIELDS LTD.
The Respondent**

WHEREAS: This dispute is directly related to another dispute, filed by Charles and Christine Marshall, against claim L 3000607 immediately north of L 3011303. In that, the first matter, the dispute was dismissed. Having considered evidence submitted at a hearing for the first Marshall dispute against L 3000607,

I FIND: That the grounds for this dispute, as indicated in the second dispute document filed, has no basis in law, therefore

I ORDER: That the dispute be dismissed and that L 3011303 will remain as the mining claim of record.

THE REASONS FOR THIS DECISION FOLLOW IN SUBSEQUENT PAGES.

AND PLEASE NOTE: There is a right of appeal to the Office of the Mining and Lands Commissioner. If a party chooses to file an appeal, the necessary documents must be filed with the Mining and Lands Commissioner within 30 days of the date of this order and served in the office of the Provincial Recording office.

AND ALSO TAKE NOTE: That unless an appeal is filed within thirty days this decision is final and binding according to Subsection 110 (5) of the Mining Act R.S.O. 1990.

Dated this day of , 2004

Roy Spooner
Provincial Mining Recorder

BACKGROUND

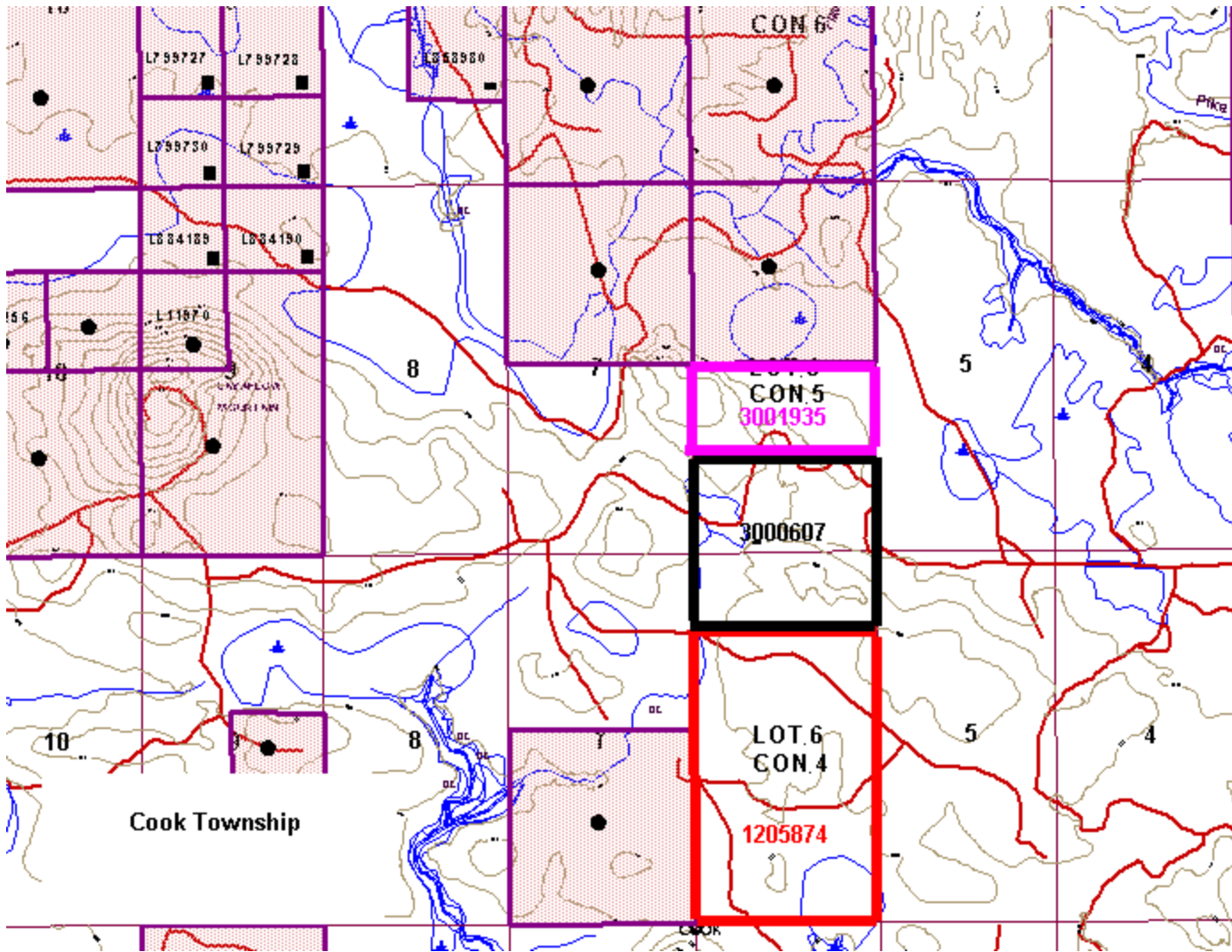
Attached to this decision (paper copy) is the first decision in the matter of Marshall vs. Royal Victoria Mines Ltd., May 20, 2004. To read the previous decision click on the following:

Recorder's Decision – [Christine Marshall vs Royal Victoria Minerals Ltd.](#)

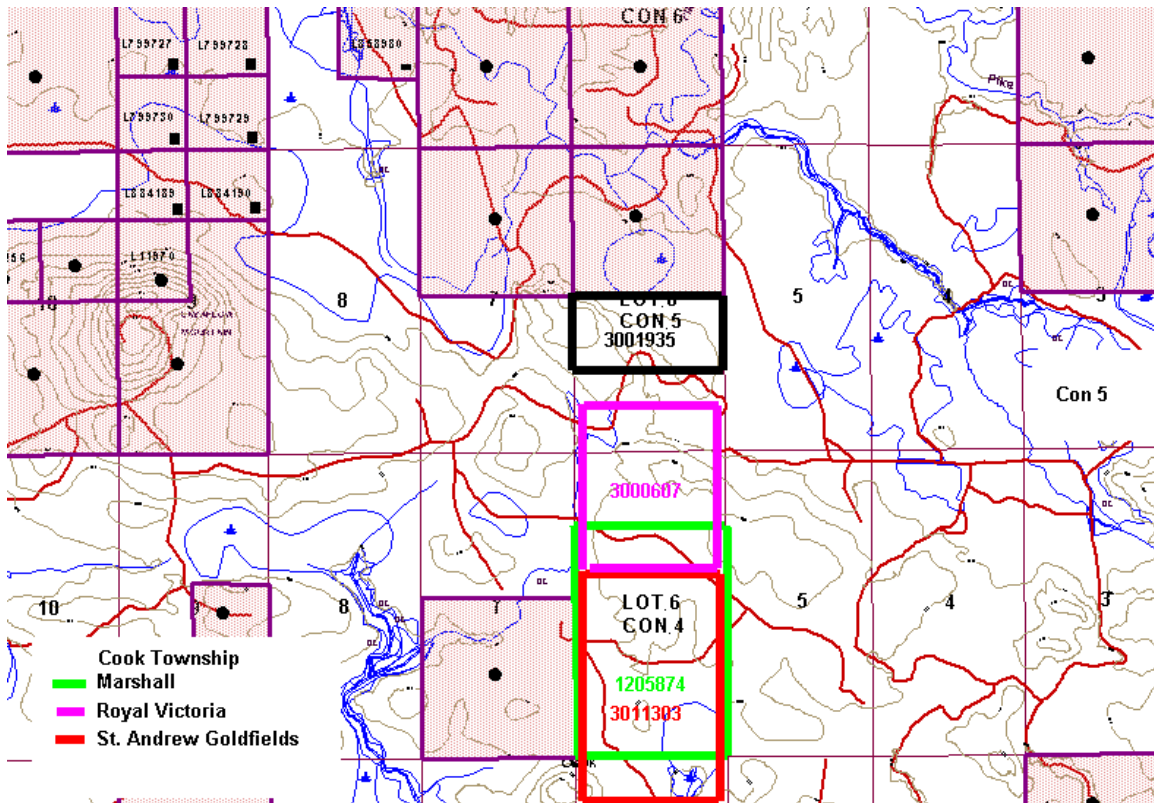
In the previous dispute Christine Marshall alleged that mining claim L 3000607 was invalid because the staking wandered substantially from the surveyed township fabric. According to the Disputant, L 3000607 was placed 600 feet (200 meters) south of where it should have been. The staking was inspected by a Ministry of Northern Development and Mines (the Ministry) Claims Inspector. I considered the evidence as presented by Christine Marshall in a hearing April 21, 2004. I also considered evidence provided in inspection report R-10/03 (recorded document I0480.00001). I found that the staking of claim L 3000607 substantially complied with the requirements of the Staking Regulation therefore the first dispute was dismissed.

As part of a standard operating procedure, correspondence was mailed to the parties after Christine Marshall had filed the first dispute. The Ministry correspondence, July 23, 2002 (copy attached to first decision, attachment #2) advised the claim holder, Royal Victoria, that a dispute had been filed against claim L 3000607. Also, the parties were cautioned against disturbing any evidence of the staking. The Disputant misunderstood the Ministry correspondence. The Disputant thought that the Ministry letter prohibited anyone from entering on claim L 3000607. There was no such prohibition.

Claim 3000607 was intended to be staked for parts of Lot 6 Concessions IV and V, Cook Twp. Initially Charles Marshall held a claim for the remaining part of Lot 6 Concession IV immediately south of L 3000607. Mr. Marshall's claim was L 1205874. Below is an illustration of the two claims as they were intended to be staked.



On the following page (page 4) there is another illustration that illustrates how the Marshalls contend claim boundaries exist on the ground:



In this second dispute filed by Christine and Charles Marshall April 22, 2004 the Disputants now challenge the validity of claim L 3011303 on the following grounds:

- The claim holder was given a letter from the Mining Recorder that directed “...not to go on the ground until dispute was settle...”
- The land was not open for staking according to Subsection 30 (1) (f) of the Mining Act

REASONS

In this dispute against mining claim L 3011303 the Disputants indicate, “... This ground should revert back to Charles Marshall.” As explained in my first decision, May 20, 2004, the Mining Act does not provide for the Provincial Mining Recorder (recorder) to take the claim away from one party and award the claim to another. The dispute against L 3011303 is filed as a legal right provided in Section 48 of the Mining Act R.S.O. 1990 (MA). Section 48 MA allows a person to allege that a mining claim is illegal or invalid in whole or in part. The role of the recorder is to decide if L 3011303 is a valid, legal mining claim. The authority for the recorder to decide the matter is provided in Sections 110 and 111 MA. Generally, where the recorder interprets that a disputed mining claim is invalid, the mineral rights in the ground do not automatically revert to the Disputant. In *Dupont v. Inglis* (3 M.C.C. 237, [1958] S.C.R. 535) the Supreme Court of Canada said this:

It was urged that the issue was in reality between the respondents and the individual appellants, but that confuses the matter. The question is the validity of the alleged first staking and that is a matter between the licensee and the Crown. Its adjudication may affect a subsequent staking by another licensee; but there is no vinculum juris and no lis between the two licensees, and the disputant is before the tribunal only as he is permitted by the statute to have the claim of another put in question before the recorder. In the enquiry the subsequent staking is irrelevant, and the decision should be the same as if no such action had taken place.

Using the same language as the Supreme Court of Canada above, St. Andrew Goldfields Ltd. holds the “first staking” being mining claim L 3011303. Charles and Christine Marshall have a right to put in question L 3011303 before the recorder. Charles and Christine Marshall do not have “ subsequent staking ”. Although there is a right to challenge L 3011303, should that claim be cancelled, the ground would be opened for any licensee to stake according to Subsection 71 (1) MA :

Deemed abandonment of claim

Non-compliance by the licensee or holder of a mining claim with any requirement of this Act or the regulations as to the time or manner of the staking out and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefor, shall be deemed to be an abandonment, and the claim shall, without any declaration, entry or act on the part of the Crown or by any officer, unless otherwise ordered by the Commissioner, be forthwith opened to prospecting and staking out. R.S.O. 1990, c. M.14, s. 71 (1).

The dispute process provided in Sections 48, 110 and 111 MA does not provide the Marshalls with an opportunity for relief from forfeiture. Claim L 1205874 automatically forfeited on February 11, 2003 as Mr. Marshall failed to file assessment work. The Disputants propose that L 1205874 revert back to Mr. Marshall. The recorder has no authority to make it so and St. Andrew Goldfields hold a new mining claim where Mr. Marshall’s rights were extinguished automatically by Subsection 72 (1) (b) MA:

Forfeiture of mining claim

Except as provided by section 73, all the interest of the holder of a mining claim before a lease has issued ceases without any declaration, entry or act on the part of the Crown or by any officer, and the claim is open for prospecting and staking out,

(b) if the prescribed work is not duly performed and reported as required by section 65 unless an application and payment for a lease of the mining claim is made under section 81. R.S.O. 1990, c. M.14, s. 72 (1).

Subsection 30 (1) (f) MA indicates land is not open for staking while proceedings are pending before the recorder:

Lands upon which claim may not be staked out

No mining claim shall be staked out or recorded on any land,

(f) while proceedings in respect thereto are pending before the Commissioner or a recorder or until those proceedings are finally determined; or

Referring to the sketch on page 4, the Marshalls have determined that their mining claims were not staked in the same place as were claims staked on behalf of Royal Victoria Minerals Ltd. and St. Andrew Goldfields Ltd. The Royal Victoria claim L 3000607 may have been staked so that it overlapped the former Marshall claim L 1205874. The Disputants take it that Section 30 (1) (f) MA applies to the area of land contained within the staked boundaries of L 3000607. That is not so. In a subdivided township the legal rights align with the township fabric and not necessarily with the area between the four claim corner posts. Refer to Subsection 5 (11) (a) & (b) of O. Reg. 7/96 Claim Staking:

Every survey of a mining claim,

(a) must describe the parts of the lots or sections shown in the original township survey that are included within the perimeter of the claim, together with their areas;

(b) is governed by the lot and concession lines established by an existing survey and not by the location of corner posts and line posts; and

Mining claims staked in a subdivided township align themselves legally with the surveyed lot and concession lines. As long as the claim has been staked in substantial compliance with the Claim Staking Regulation, a claim holder's rights fall within the parts of the lot they intended to stake. Likewise, the mechanics of the Mining Act, (e.g. Subsection 30 [1] [f] MA) align themselves to the township fabric.

When the first dispute was filed against L 3000607, Subsection 30 (1) (f) MA applied only to the south ½ of the south ½ Lot 6 Concession V and the north ½ of the north ½ of Lot 6 Concession IV Cook Township wherever that may be found on the ground.

The dispute against L 3000607 did not restrict staking anywhere except for the land described in the above paragraph. Claim L 3011303 was not intended to be staked in the area of land affected by the first Marshall dispute. L 3011303 was intended to be staked in the south ½ of the north ½ and all of the south ½ Lot 6 Concession IV Cook Township. That area of land became open for staking on February 14, 2003 after Mr. Marshall's claim L 1205874 automatically forfeited. The subsequent staking that occurred on behalf of St. Andrew Goldfields Ltd., June 12, 2003, is in no way affected by Subsection 30 (1) (f) MA.

The Staking Regulation requires that mining claims be staked so that they align themselves with the survey fabric where there are lots and concessions. In Cook township the survey is approximately 100 years old, the surveyor used wooden posts to monument lot corners and there has been logging activity in the area. It is understandable that the staking may not be exactly where it is intended. Section 43 MA indicates that substantial compliance as nearly as circumstances will reasonably permit is sufficient. In the first dispute I did determine that L 3000607 was staked in substantial compliance. That does not mean that the corner posts are placed exactly where they should be. The only dependable method of determining legal boundaries

for the mineral rights is through the efforts of an Ontario Land Surveyor. In Summary:

- **The staking of L 3011303 (S ½ N ½ & S ½ Lot 6 Con IV Cook Township) was not restricted by the dispute against L 3000607 (S ½ S ½ Lot 6 Con V & N ½ N ½ Lot 6 Con IV)**
- **Subsection 30 (1) (f) did not restrict the staking of L 3011303**
- **The Ministry correspondence of July 23, 2002 did not prohibit entry on any Crown Land**
- **The recorder does not have authority to arrange that L 1205874 revert back to Charles Marshall**
- **The only dependable method of determining where the lot and concession lines are located on the ground is through the work of an Ontario Land Surveyor**

Roy Spooner