

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

**IN THE MATTER OF:** Recorded mining claim SO 3014434 staked by John Charles Archibald, located in Cavendish Township, Southern Ontario Mining Division.

**AND IN THE MATTER OF:** Recorded mining claim SO 3018259 staked by Wayne F. Parnell on behalf of Regis Resources Inc.

**AND IN THE MATTER OF:** a dispute filed by:

WAYNE PARNELL for REGIS  
RESOURCES INC.

**Disputant**

- against recorded claim SO 3014434 held by:

JOHN CHARLES ARCHIBALD

**Respondent**

**UPON:** consideration of the evidence submitted by the parties,

**I ORDER:** that the dispute against mining claim SO 3014434 is hereby dismissed. .

**I FURTHER ORDER THAT:** the time for performing and reporting assessment work on the mining claim is excluded for the period during which proceedings were pending, being from June 13, 2006 to April 24, 2007.

**I FURTHER ORDER:** pursuant to 67(3) of the Mining Act, the 7<sup>th</sup> day of March 2009, be fixed as the date by which the first unit of assessment work must be performed and filed on mining claim SO 3014434 and all subsequent anniversary dates are deemed to be 7<sup>th</sup> March.

Dated at Sudbury this 24<sup>th</sup> day of April 2007.

Original signed by Dale Messenger

**Dale Messenger**  
**A/Provincial Mining Recorder**

**Note: Parties have the right to appeal to the Mining and Lands Commissioner as indicated in Section 112 of the Mining Act RSO 1990. An appeal must be filed within 30 days of the date of this decision.**

A hearing was held on February 16, 2007, in Sudbury to determine this matter.

Wayne Parnell and Eric Moeller attended in person and made submissions on behalf of the disputant.

John Archibald and Fred Archibald attended in person and made submissions on behalf of the respondent.

**BACKGROUND:**

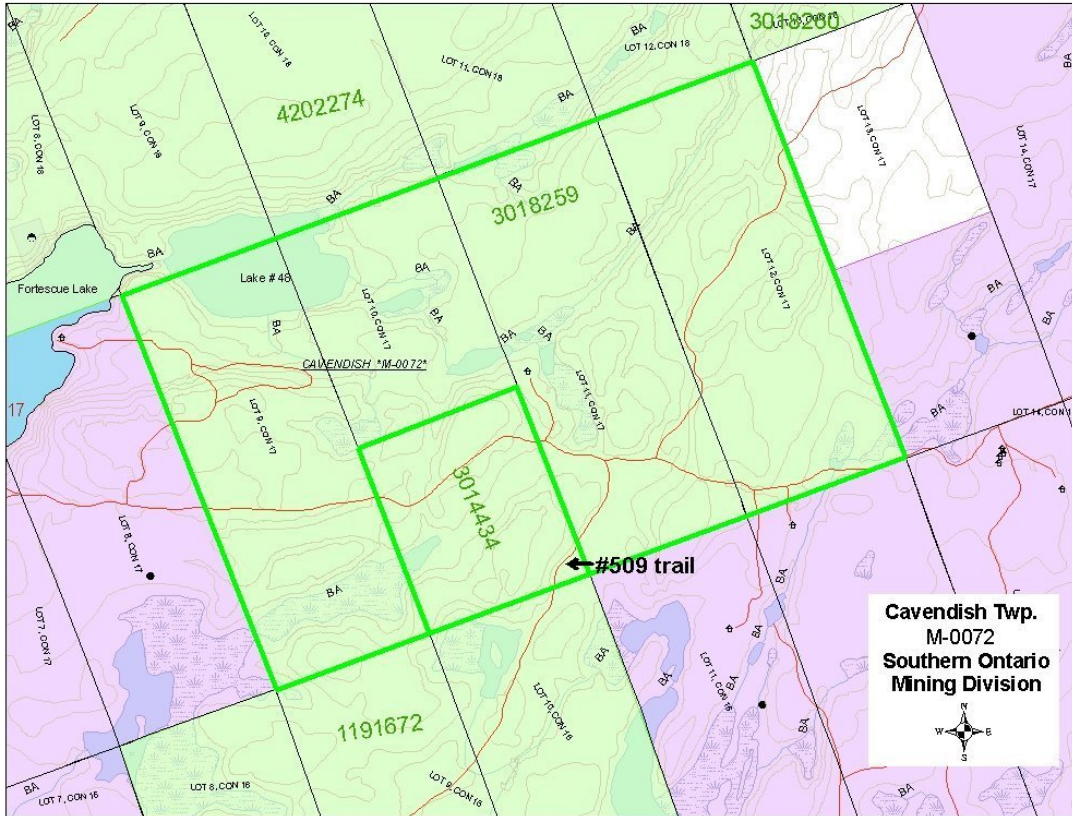
On April 18, 2006, the Ministry received an application to record mining claim SO 3018259, (8 units) being composed of Lots 9, 10, 11 and 12 Concession 17, Cavendish Township. The claim was staked by Wayne Parnell on behalf of Regis Resources Inc. The application to record indicates that staking was completed on April 5, 2006. The claim was subsequently recorded when the application to record was received by this office on April 18, 2006.

On April 26, 2006, the Ministry received an application to record mining claim SO 3014434, (1 unit) being composed of the South ½ of Lot 10 Concession 17, Cavendish Township. The claim was staked by John Archibald and the application to record indicated a completion date of April 1, 2006.

Given the above information the Archibald claim has priority pursuant to subsection 44(2) of the Mining Act.

The map on the next page (Figure 1) illustrates the location of the mining claims.

**Figure 1**



Priority of Completion

Subsection 44(2) MA states that: *Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or part of the same lands.*

When it was determined by Provincial Recording Office staff that the Archibald claim SO 3014434 had priority over the Regis Resources Inc. claim SO 3018259, and that the claims were overlapped, a Recorder's Order was sent to Regis Resources Inc. directing post and boundary movement in order to have the Regis claim tie-on to the boundaries of the Archibald claim. Compliance with the Recorder's Order was received on June 6<sup>th</sup>, 2006.

Overlapping Staking

Subsection 44(4) MA states that: *If the other application or applications to record a mining claim cover any land that is not part of the mining claim that is entitled to priority under subsection (2), the recorder may record a mining claim with respect to that part of the land and shall amend the application or applications with respect to the land covered by the previously completed claim.*

On June 13, 2006, Wayne Parnell on behalf of Regis Resources Inc., filed a dispute against mining claim SO 3014434, alleging that the field work (setting of claim posts and making of lines) was not completed on April 1, 2006. During the staking of SO 3018259 on April 4<sup>th</sup> and 5<sup>th</sup> 2006, Mr. Parnell did not see any evidence of the staking of SO 3014434.

## **EVIDENCE**

### **Disputant**

1. The disputant submitted a decision of the Mining and Lands Commissioner dated February 22, 2000, where the Commissioner had dismissed a matter between Regis Resources Inc. and Fred and John Archibald. The Commissioner dismissed the matter because both parties had made submissions requesting a dismissal. The mining claims in question were subsequently transferred from Fred Archibald to Regis Resources Inc. The mining claims were in Cavendish Township but located a few kilometers from the claim currently under dispute.
2. The disputant also submitted a copy of an action commenced with the Ontario Superior Court of Justice between Regis Resources Inc. and Fred and John Archibald among others.

Both of these exhibits have no connection to the current dispute and were reportedly submitted to show that the two parties have a history of disagreements/disputes and that this shows the respondents would have had motive for staking their single unit claim inside the disputants claim. The Disputant suggested in the hearing that this was intended simply as an irritant to Regis Resources Inc.

3. An unsigned letter dated April 23, 1999, that basically says that in exchange for certain monies a transfer sheet could be back dated in order to cut Regis out of a deal. The letter was to Elliot from Fred.

This again apparently relates to another disagreement dating back to 1999, and is not related to this dispute.

4. A Transfer/Deed of Land form dated February 17, 2006, indicating that Eric Moeller purchased 200 acres of land in Cavendish Township. Including all of Lots 11 and 12 Concession 15 and part of Lot 13 Concession 16.

Mr. Eric Moeller resides on this property which is just south and adjacent to the lands currently under dispute.

5. A copy of an undated application to record mining claim SO 3014434 submitted by John Archibald on April 26, 2006.

The Disputant purchased a copy of the application to record from the Provincial Recording Office the morning of February 16, 2007, the morning of this hearing. Unfortunately the clerk neglected to provide the amended version. Upon receiving the application in April staff in PRO noticed the application had not been dated. This deficiency was subsequently corrected.

During the hearing the Disputant stated numerous times that they found it surprising that John Archibald could have staked this single unit claim in 1 ½ hours as shown on his application to record.

6. A GPS map showing the location of mining claims SO 3014434 and SO 3018259.
7. A picture taken February 15, 2007, reportedly showing the loose line post for mining claim SO 3014434, located just to the north of snowmobile trail # 509.
8. A picture taken February 15, 2007, showing the # 3 post of SO 3014434 in close proximity to the 400 metre line post (East from the # 3 post) of SO 3018259.

Both of the above photos were taken approximately 10 ½ months after John Archibald staked mining claim SO 3014434.

9. Field notes dated January 8, 2007, signed by Wayne Parnell.

### **Respondent**

1. Application to record mining claim SO 1212828, recorded holder Teck Exploration Ltd., received November 13, 1996, encompassing Lots 9 and 10 Concession 17, Cavendish Twp.

This claim which is now cancelled included all of the land currently under dispute within mining claim SO 3014434.

2. Diary of Events/field notes for April 1<sup>st</sup> and 6<sup>th</sup>, 2006.
3. Application to record mining claim SO 1191672, recorded by John Archibald dated October 15, 2002.

This claim ties-on to the south boundary of claim SO 3014434 also staked by John Archibald and currently under dispute. This exhibit was submitted to show the Archibald's have an interest in the area.

4. Application to record mining claims SO 1203130 (8 units) and SO 1203131 (9 units) dated January 29, 2004, recorded in the name of 3814793 Canada Inc.

Both mining claims cancelled on March 31, 2006. Claim SO 1203130 encompassed the same area later staked for Regis Resources Inc. on April 4<sup>th</sup> and 5<sup>th</sup>, 2006, and the area now included in SO 3014434.

Note: The 8 unit claim was staked in 6 1/2 hours and the 9 unit claim was staked in 7 hours and 40 minutes.

### **FINDINGS:**

During the hearing the Disputant made the following arguments:

1. The Respondent staked mining claim SO 3014434 after Regis Resources recorded SO 3018259 on April 18, 2007, and that it was done simply as an irritant or annoyance relating it back to previous disputes between the two parties.

I find no evidence to substantiate this claim. In fact the Archibald's have been active in the area for many years prospecting and staking claims. John Archibald stated in the hearing that a few years back he assisted a friend with the preparation of an OPAP report relating to the same area of land where their claim SO 3014434 currently sits. Through his involvement with the preparation of this report he new there was a rusty sulphide showing (geologically interesting) in the north part of the claim. This knowledge and the fact that he is the recorded holder of claim SO 1191672 directly south would explain why John Archibald may be interested in the area and in staking SO 3014434.

2. The Respondent's claim SO 3014434 could not have been staked on April 1, 2006, as shown on the application to record because both Mr. Moeller and Mr. Parnell had been in the area shortly thereafter and did not see any evidence of staking.

Mr. Moeller stated that on April 2, 2006, in preparation to have claims staked, he visited the area and actually walked down the # 509 snowmobile trail. He estimated there to be 1 or 2 feet of snow in the bush and stated that a fresh skiff of snow had fallen the previous night. He did not see any tracks or other evidence to indicate recent staking. He did note however that he did see what looked to be an older claim post just north of the trail. (**Location A, Figure 2**) He did not however walk off the trail to look at the post and obtain a claim number.

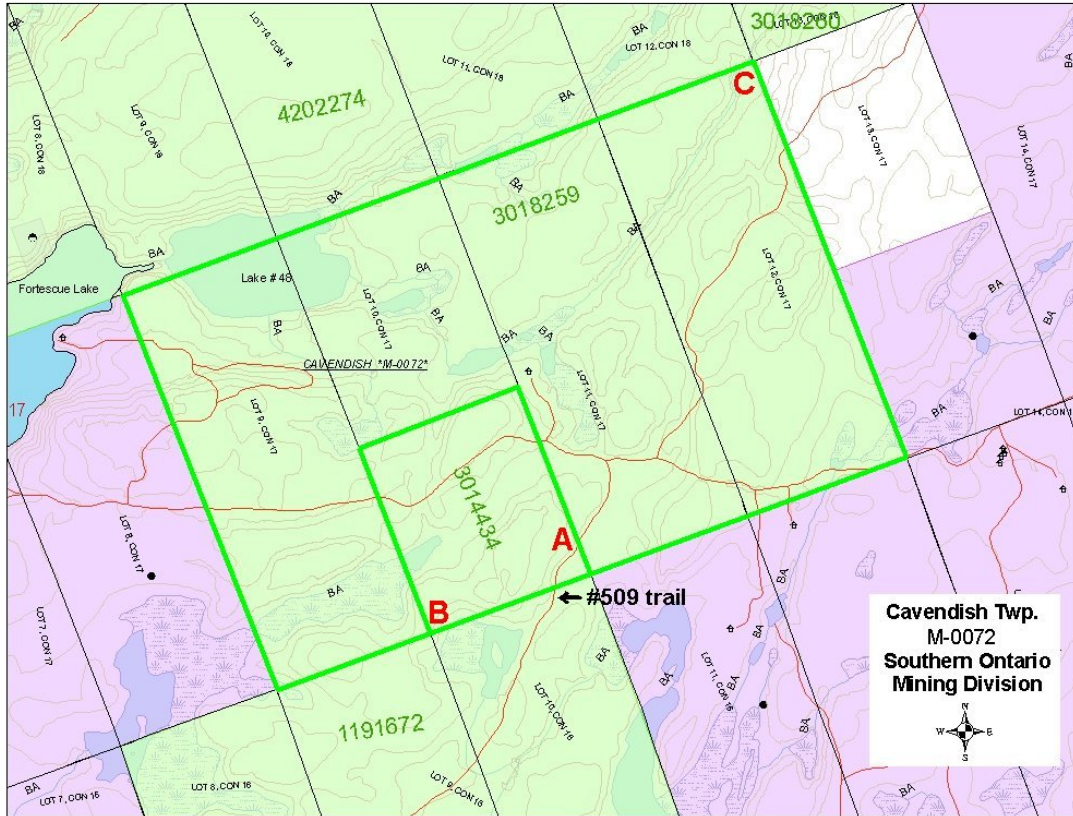
On April 4, 2006, in preparation to stake mining claim SO 3018259 for Regis Resources, Mr. Parnell stated that he walked down trail # 509 in order to find the southern boundary of the concession. He stated that he did not see any tracks in the snow or evidence of staking activity; however he also stated that he had seen the claim post just north of the trail at **Location A**. Strangely enough he also did not bother to walk off the trail in order to inspect the post and take down a claim number etc. Mr. Parnell stated that he continued south to the concession line and commenced staking SO 3018259, walking in a westerly direction. When he arrived at what turns out to be the # 3 corner of SO 3014434 he erected a line post for claim SO 3018259 (**Location B, Figure 2**). During the hearing he stated he specifically noted while at this location that there were no other claim posts and that there was no blazed line going north.

**\*Note:** It seems odd that he would not have seen the boot tracks of Eric Moeller who testified that he walked the same trail two days earlier.

Also there seems to be a discrepancy between evidence given at the hearing by Mr. Parnell and information entered on the application to record SO 3018259. The application indicates that he commenced staking at the #1 post location at 7 am on April 4, 2006 (**Location C, Figure 2**). However, during the hearing Mr. Parnell stated that on April 4, 2006, he walked down the # 509 snowmobile trail in order to intersect the southern boundary of the cancelled claim. After finding the south boundary he commenced blazing the south boundary by walking westerly until he got to the lot intersection and erected a line post for the claim (**Location B**).

Also during the hearing Mr. Parnell stated that while at **Location B** on April 4, 2006, he specifically noted that there was no blazed line to the north. Why would he even be looking for a blazed line to the north? (The line between Archibald's #3 and #4 posts for SO 3014434.) On April 4 they were not even aware of the Archibald staking and in fact did not know of the staking until May 13, 2006, when they received the Recorder's Order to move off and tie-on to the claim with priority, SO 3014434.

Figure 2



It should be noted that the application to record the Regis Resources mining claim SO 3018259, shows the east and west boundaries to be a distance of only 800 metres and not the 1000 metres which is the distance between concessions in this area. Initially I thought this may explain why the disputant did not see the Archibald mining claim. However a look at topographic features seems to conclude that their claim lines would have been in the same general location. The 800 metre figure is either an error or the result of poor measurement/pacing during the staking process.

3. Throughout the hearing both Mr. Moeller and Parnell stated numerous times that they thought it to be virtually impossible to stake a 1 unit claim in 1.5 hours.

It is my experience that it would not be unreasonable for an experienced staker to stake a 1 unit claim in 1.5 hours, especially in an area where the topography is relatively flat, as in this case. Also, during the hearing John Archibald stated that there was a hard crust on the 1 foot or so of snow left on the ground. This apparently allowed Mr. Archibald to

stake the claim the morning of April 1, 2006, without breaking through the snow. Mr. Archibald also brought two commercial 4x4 posts with him. This eliminated the need to cut two posts.

Also as a comparison and as previously noted, cancelled mining claim SO 1203130, the 8 unit claim that was previously at the same location as the current Regis Resources Inc. claim SO 3018259, was staked in only 6.5 hours.

In order to confirm the snow conditions in the area I accessed records from weather offices in both Haliburton and Bancroft. These records confirm that the weather conditions leading up to April 1, 2006, were very conducive to the formation of a crust on the remaining snow. From March 25 to the 31<sup>st</sup> the temperatures averaged 9.5 degrees Celsius during the day to - 7 degrees Celsius during the night.

From March 31<sup>st</sup> on the temperatures during the day warmed up significantly and on April 1, 2006, the Haliburton weather office reported only 8 cm of snow on the ground. At first glance this seems to contradict the snow depths reported in the hearing however one has to remember that snow conditions in the bush would be much different than those gathered in town at a weather station.

Given the above information I find it very plausible that John Archibald was able to stake his claim the morning of April 1, 2006, while leaving very little evidence of boot tracks in the snow because of the hard crust.

Furthermore having inspected many mining claims in the past I know how easy it is to not see or miss a claim line or post in the bush. The disputants were only in the general vicinity of the south boundary of SO 3014434 and at the time were not even aware that it had been staked. This makes it even more conceivable how the staking evidence could have been missed.

The tribunal concludes that based on all of the evidence submitted it finds no conclusive proof to suggest that mining claim SO 3014434, was not in fact staked on April 1, 2006. The dispute in this matter is therefore dismissed.

Dated at Sudbury, this 24<sup>th</sup> day of April, 2007.

Original signed by Dale Messenger

Dale Messenger  
A/Provincial Mining Recorder