

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

IN THE MATTER OF:

Mining Claims of record SSM 3018248 and SSM 3018249, Nicolet Twp, Sault Ste Marie Mining Division.

AND IN THE MATTER OF:

Filed only applications to record mining claims 4243482-485 incl., 4243488, 1234843, 3018257 and 4243148 representing overlapping and partially overlapping staking that occurred during a competitive staking race mostly on June 1, 2008 in Nicolet Twp.

AND IN THE MATTER OF:

Five Disputes filed by

ROY RUPERT

Disputant

-against mining claims staked for-

RANDALL SALO et. al. and LARRY SALO
Respondents

WHEREAS:

A hearing was held on Wednesday, July 14 2010 where the parties were provided opportunity to present material and make representations on their behalf. Having considered all the evidence,

I ORDER:

The disputes are allowed in part and dismissed in part.

And I ORDER:

1) The dispute against SSM 3018248 is dismissed, pending proceedings is to be removed from the record and 793 days are excluded and a new anniversary date is set to August 4, 2012 and all subsequent anniversary dates are now August 4.

- 2) The dispute against SSM 3018249 is allowed and the claim is cancelled.
- 3) Filed only claim 4243485 remains refused.
- 4) Filed only claim 1234843 may be recorded following compliance with a separate Recorder's order to move boundaries.
- 5) Filed only claim 4243148 remains refused.
- 6) Filed only claims 4243484, 4243482, and 4242483 may be recorded following compliance with a separate Recorder's order to move boundaries.
- 7) Filed only claim 4243488 remains refused.
- 8) Filed only claim 3018257 remains refused.
- 9) The parties are directed to identify any other filed only applications to record that remain unresolved by this decision.
- 10) The lands involved in this dispute matter are withdrawn from further staking by separate order attached.

AND PLEASE TAKE NOTICE:

Section 112 of the Mining Act provides the parties a right of appeal to the Mining and Lands Commissioner within 30 days of the date of this decision. An appeal is begun by filing the necessary documents in the office of the Mining and Lands Commissioner and serving copies in the Provincial Recording Office.

“ORIGINAL SIGNED BY ROY SPOONER”

Dated at the Provincial Recording Office
this 12th day of August 2010

Roy Spooner
Provincial Mining Recorder

BACKGROUND

Due to a corporation's failure to comply with requirements under the Business Corporations Act, land (mining rights only) in the south east part of the unsubdivided Township of Nicolet became forfeit to the Crown. The appropriate legal notices were registered in the Land Registry Office pursuant to Section 184 of the Mining Act R.S.O. 1990 (MA); (NOTE: references to the Mining Act appearing in this decision are copied from "E-Laws" and contain reference to possible changes through Bill 173, 2009 however care has been exercised to apply the MA as it was in 2008).

FORFEITED LANDS

Lands forfeited, etc., to Crown

184. (1)Where mining lands or mining rights,

- (a) are forfeited to the Crown under the *Corporations Act* or the *Business Corporations Act*, or any predecessor thereof or are forfeited to the Crown for any other cause; or

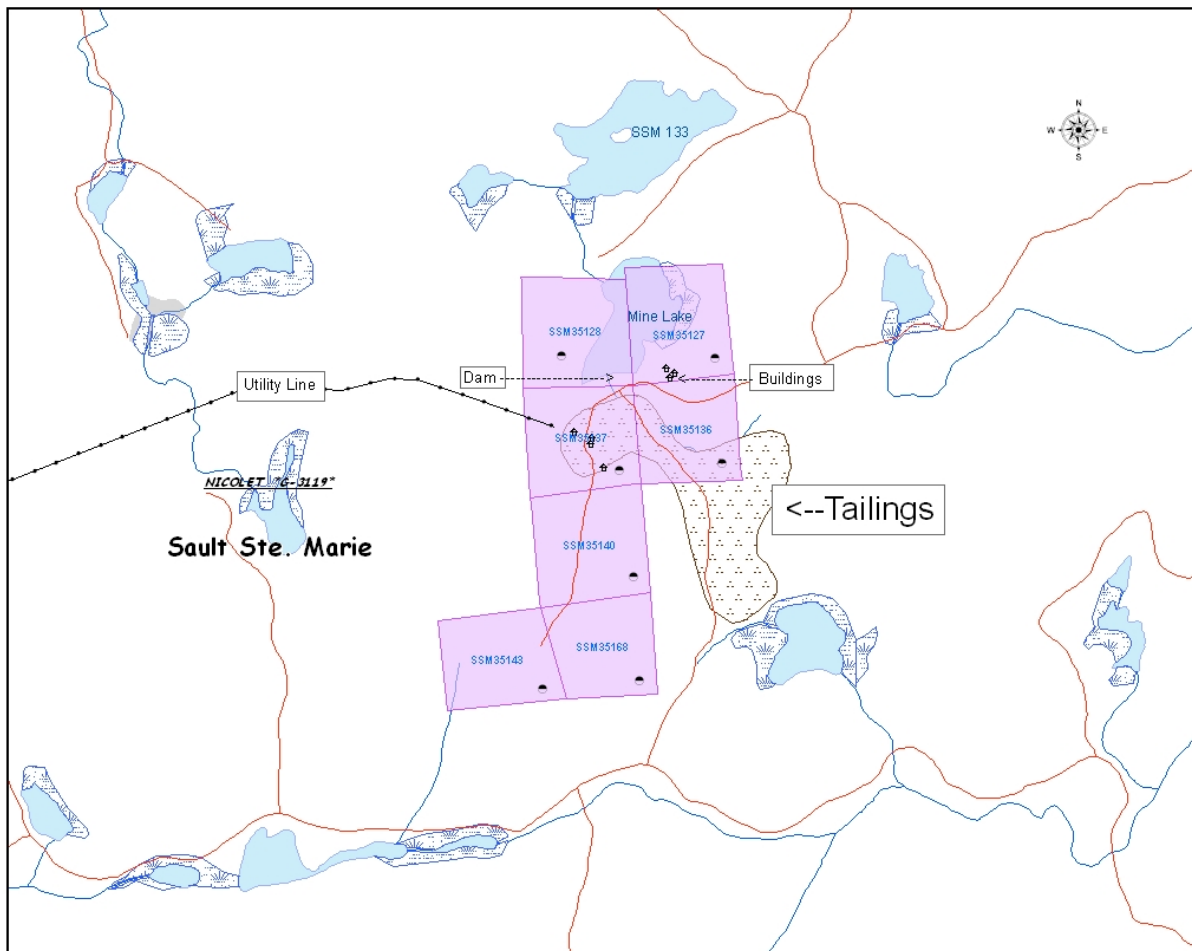
the Minister may cause to be registered in the proper land registry office a notice stating that forfeiture has been effected as mentioned in clause (a) or that the lands or mining rights have become the property of the Crown as mentioned in clause (b), as the case may be, and that by reason thereof the lands or mining rights and every interest therein are forfeited to and vested in, or have become the property of, the Crown, absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or

thereto, whether existing, arising or accruing before or after such forfeiture or becoming the property of the Crown, and, subject to subsection (2), such lands shall be dealt with under this Act. R.S.O. 1990, c. M.14, s. 184 (1).

Opening forfeited, etc., lands for prospecting, etc.

(2) Mining lands or mining rights except unpatented mining claims so forfeited or that have become the property of the Crown are not open for prospecting, staking, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 184 (2); 1996, c. 1, Sched. O, s. 35; 2009, c. 21, s. 101 (4).

On May 17, 2008 the lands (mining rights only) were published in the Ontario Gazette as open for staking June 1, 2008. The following image illustrates those forfeited mining rights, involved in this issue. Mining rights only opened for staking at 8 a.m. Standard Time (as expressed in the Gazette). Note that, according to the Time Act, 8 a.m. Standard time is legally 9 a.m. Daylight saving time:



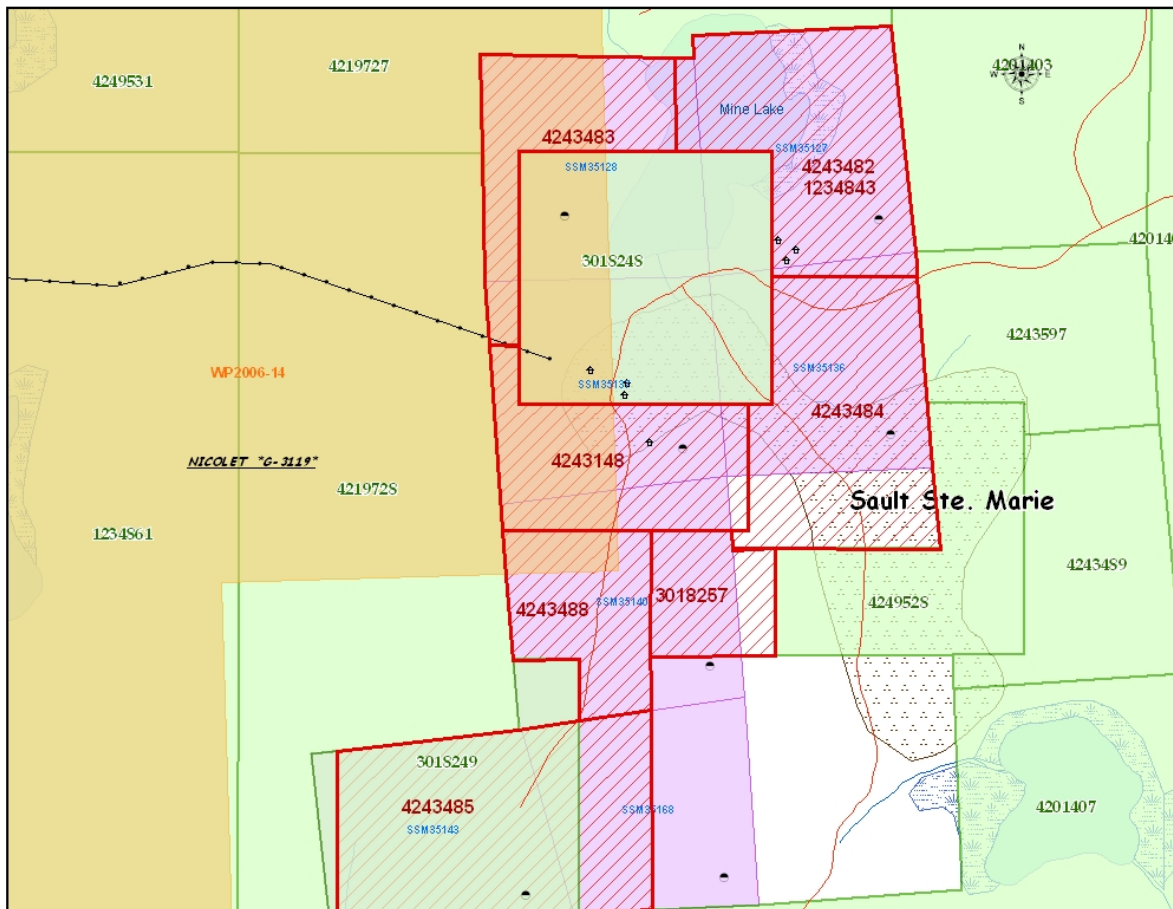
Several parties were interested in the Nicolet Township forfeited lands, formerly the “Tribag Mine” site. A competitive staking race began at the legal opening time (9 a.m.) on that June 1, 2008 morning. The competitive race involved approximately ten individual staking licensees, each assisted by a team of helpers, and all attempting to

win the race thereby establishing legal priority through first completion time. The mining claims were intended to be recorded in the names of three competing groups/teams:

- 1) Randall Salo, Michael Tremblay, Jacques Robert, and Delio Tortosa (the Randall Salo group)
- 2) Roy Rupert and the "RRS Syndicate" (the Roy Rupert group)
- 3) Larry Salo

The staking by the three groups was overlapping and partially overlapping therefore most of the applications to record were held as "filed only" pending further clarification for relative boundary location and/or compliance with the Claim Staking Regulation O. Reg. 7/96 (the Regs.). Initial review of the applications to record by the Provincial Recording Office (PRO), Sudbury, did reveal that there were two claims with clear priority by completion time. SSM 3018248 was completed by licensee Derek Reed at 9:08 a.m. and SSM 3018249 was completed by licensee Jacques Robert at 9:18 a.m. As indicated in both of those priority applications to record, the mining claims were recorded in the name of group 1) above being Messrs. Salo, Tremblay, Robert and Tortosa.

The following image illustrates how PRO drafted overlapping staking on the mining claim map for Nicolet Township (as interpreted from the individual applications to record):



Sections 44 and 46 MA were applied by PRO in an attempt to give all the applications to record a legal status allowing further consideration for any issues:

APPLICATIONS TO RECORD

Application to record mining claim

44.

Priority of completion prevails

(2) Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands. R.S.O. 1990, c. M.14, s. 44 (2).

Notice to other licensee or licensees

(3) Where one of the applications made by two or more licensees to record the staking of a mining claim is entitled to priority under subsection (2), the recorder shall cancel the other application or applications and shall by mail sent not later than the following day notify the other licensee or licensees of the recorder's action and the reason therefore. R.S.O. 1990, c. M.14, s. 44 (3); 1999, c. 12, Sched. O, s. 18 (2).

Overlapping staking

(4) Despite subsection (3) and section 46, 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 claims. 1996, c. 1, Sched. O, s. 12 (2).

Recording a mining claim

46. (1) If, in the recorder's opinion, an application to record a mining claim complies with all the requirements for staking and recording the claim, the recorder shall record the claim and file it, along with the sketch or plan and certificate. 1999, c. 12, Sched. O, s. 20.

Not recording a mining claim

(2) If, in the recorder's opinion, an application to record a mining claim does not comply with all the requirements for staking and recording the claim, the recorder shall not record the claim and, in particular, the recorder shall not record a claim relating to land that is not open to staking. 1999, c. 12, Sched. O, s. 20.

Filing application

(3) If the recorder does not record a claim under subsection (2), the applicant may, on paying the required fee, require the recorder to file the application and any question involved may be determined in accordance with section 48 or 112. 1999, c. 12, Sched. O, s. 20.

The following is a list of the applications to record that were given the "filed only" status by PRO (after consultation with the applicants):

- 1) 1234843 by Darrel Peever completed 9:12 a.m. for the Randall Salo group
- 2) 4243148 by Adam Jorstad completed 9:13 a.m. for Larry Salo
- 3) 4243484 by Lance Eden completed 9:14 a.m. for the Roy Rupert group
- 4) 4243482 by Christopher Caron completed 9:16 a.m. for the Roy Rupert group

- 5) 4243483 by Bruce Pigeon completed 9:17:20 a.m. for the Roy Rupert group
- 6) 4243485 by Stan Trudeau completed 9:19 a.m. for the Roy Rupert Group
- 7) 4243488 by Roy Rupert completed 9:35 for his group
- 8) 3018257 by Michael Tremblay completed 5:05 p.m. June 3, 2008 for the Randall Salo group

The above mentioned claims do not directly overlap each other in an orderly fashion as one can see in the image on page 4. Without analyzing the details of each and every claim with regard to their relative location, suffice to explain that Roy Rupert filed in PRO five disputes. Of course, the Rupert disputes allege that the staking of five specific claims were invalid in whole or in part for various reasons. The general idea of Mr. Rupert's disputes is to allege that staking for the Randall Salo group and Larry Salo was insufficient and that all the Roy Rupert claims should prevail. The Provincial Recorder's hearing and this subsequent decision is organized to address the allegations of each of the five disputes, one at a time.

As a preliminary matter prior to the hearing, Provincial Recorder's (Recorder) correspondence to the parties dated May 26, 2010, proposed that the dispute hearing would be organized as a five part proceeding where evidence would be heard concerning one dispute (one claim) at a time. The order of proceedings was proposed as follows:

- 1) Dispute against SSM 3018248 (recorded)

Roy Rupert, Disputant vs. Randall Salo et. al., Respondents
Filed only claims 4243482 and 4243483 (staked for the Disputant)

- 2) Dispute against SSM 3018249 (recorded)

Roy Rupert, Disputant vs. Randall Salo et. al., Respondents
Filed only claim 4243485 (staked for the Disputant)

- 3) Dispute against 1234843 (filed only)

Roy Rupert, Disputant vs. Randall Salo et. al., Respondents
Filed only claim 4243482 (staked for the Disputant)

- 4) Dispute against mining claim 3018257 (filed only)

Roy Rupert, Disputant vs. Randall Salo et. al., Respondents
Filed only claim 4243488 (staked for the Disputant)

- 5) Dispute against mining claim 4243148 (filed only)

Roy Rupert, Disputant vs. Larry Salo, Respondent
Filed only claims 4243482, 4243483, 4243484 (staked for the Disputant)

The Recorder's proposed approach, as mentioned above, was more or less adopted at the hearing.

There were four other disputes filed in addition to those listed above but they were refused or discounted for the following reasons:

Roy Rupert filed additional disputes against claims 3018250, 3018258 and 4214583. Claim 3018250 was completed by Michael Tremblay at 12:07 p.m., June 1, 2008 on behalf of the Randall Salo Group. That mining claim was refused by PRO (September 29, 2008), not indicated to be "filed only" and given no further consideration.

SSM 3018258 was completed at 12:35 p.m. on that same June 1 by Randall Salo on behalf of his group. The claim was recorded after complying with a Recorder's order to move boundaries. No further consideration was given the claim.

Claim 4214583 by Adam Jorstad 9:49 a.m., June 1 was refused by PRO after the applicant failed to perfect his "faxed" application to record. The General Regulation under the MA requires the original of a "faxed" application to be deposited in PRO within ten business days of the fax transmission. The applicant failed to file the original therefore that application was deemed not to have been filed as also required by the General Regulation. Thus, the three additional disputes filed by Roy Rupert were found to be unnecessary for the various reasons just explained therefore Mr. Rupert was advised those disputes were rejected.

The fourth additional dispute was attempted by Daniel Shelly who apparently is one of Roy Rupert's partners in the "RRS Syndicate". Mr. Shelly's dispute was against recorded claim SSM 3018249 completed by Jacques Robert 9:18 a.m., June 1 for the Randall Salo group. At the time Mr. Shelly attempted to file his dispute, there already was a dispute on file (by Roy Rupert). Subsection 48 (5) (c) MA requires "leave of the Commissioner" if a dispute has already been entered against a claim. As leave of the Commissioner was not applied for, Mr. Shelly's dispute and filed only application to record for claim 1234867 were refused and given no further consideration.

Also, the following three claims were accepted for recording without issues or with minimal issues:

- 1) SSM 1243981 completed by Steve O'Leary 11:53 a.m., June 1, 2008 for Roy Rupert
- 2) SSM 3018247 completed by Michael Tremblay 12:30 p.m., June 4, 2008 for the Randall Salo Group
- 3) SSM 4243489 completed by Roy Rupert 6:00 p.m., June 13, 2008 for his group

THE HEARING

Roy Rupert for his group (Disputant)

Randall Salo for his group (Respondent)

Larry Salo in person (Respondent)

Witnesses called by Roy Rupert:

David Vallillee

Stanley Trudeau

Christopher Caron

Witness called by Randall Salo:

Jacques Robert

No witnesses called by Larry Salo

One general point was submitted by the Respondent Randall Salo. He flatly denied any business relationship between himself and his brother Larry Salo or between the Randall Salo group and Larry Salo. Larry Salo, therefore, had his staking team (Recording Licensee Adam Jorstad) competing independently against the other two groups.

There seemed to be some confusion with regard to the staking and dispute filed by Daniel Shelly. As explained on page 7, the dispute and the filed only application to record were refused as Mr. Shelly failed to obtain "leave of the Commissioner" to file a second dispute against Jacques Robert's recorded claim SSM 3018249.

The Disputant, Roy Rupert, explained that he represented a partnership identified as the "RRS Syndicate". According to Mr. Rupert, RRS holds mining claims north and west of this disputed area and the lands opened June 1, 2008 are valuable to the RRS Syndicate for continuing investment and planned exploration program.

Both the Disputant and Respondents visited the site prior to June 1, 2008 in order to strategically prepare for their staking. The Disputant emphasized in detail that alleged non-compliance by the Respondents was premeditated through site preparations prior to the staking. The Disputant contends that staking for the Respondents was not a bona fide attempt to comply but rather an unfair strategy to finish first without due regard to the staking rules.

The Disputant submitted a great deal of evidence through witness David Vallillee who had been contracted by Mr. Rupert to carry out an independent third party inspection. The inspection occurred between June 5 and June 17, 2008. Mr. Vallillee's notes and sketches were submitted as exhibits. Mr. Vallillee is well qualified as an expert witness with regard to inspections and inspection reports. I accept his personal evidence without reservation. Some of the exhibits, however, were difficult to understand as they were illustrations of the staking extrapolated from Mr. Vallillee's field notes and not prepared by Mr. Vallillee himself. In reference to Mr. Vallillee's evidence, this decision relies mostly on his oral evidence at the hearing and "Exhibit #three" that purports to be the Vallillee data gathered by him personally in the field.

To summarize the allegations by the Disputant:

- 1) SSM 3018248 staked by Reed for the Randall Salo Group

According to the application to record, two witness posts were used for the number one corner. The evidence from Mr. Vallillee indicates the starting time for the staking was inscribed on the witness post on the east shore of Mine Lake (witnessed 25 meters north) but the completion time (9:08 a.m.) was on a second witness post located on the west shore (witnessed 215 meters east). According to the Disputant the staker did not complete the staking as he did not return to the first witness post. Mr. Rupert referred to

Subsection 10(3) of the Staking Regulation as an absolute requirement to place both the start and completion time on “one of the corner posts”.

The Disputant also indicates that SSM 3018248 is undersized. The allegation is the application to record by Reed is misleading and that generally the Randall Salo group knowingly prepared undersized claims in order to follow a strategy to unfairly stake less area as quickly as possible in order to gain priority by completion time.

2) 1234843 staked by Peever (filed only) for the Randall Salo Group

The application to record, signed by Darrell Peever, illustrates the #four corner post witnessed so that the corner is located somewhere in the bed of Mine Lake. The corner is witnessed from the south shore (320 meters north) and from the east shore (150 meters west, 40 meters south and 40 meters west). There is a “jog” in the claim at the #4 corner thus the three part witness inscription on the second witness post. I note the “jog” resembles the survey plan for patented claim SSM 35127 (mining rights only forfeited and opened for staking June 1, 2008; see image on page 4).

Mr. Rupert points to evidence that the witness post on the south shore of Mine Lake falls due south of a point of land in the lake. The point of land interrupts the line of site due north of the witness post location. The allegation is that there is a serious defect in the staking as the #four corner is witnessed from the wrong location. Where the western boundary crosses land, blazing was required but was not done. The proper location of the witness post would have been on the north side of the point of land. This alleged error in the staking represents an unfair advantage taken by the Randall Salo group to minimize the time necessary to stake the claim. The Disputant suggests that the #four corner cannot be witnessed from the post location as found by Mr. Vallillee therefore the #four corner is missing.

Once again the Disputant suggests this claim (1234843) is purposely laid out to be undersized and the application to record does not reflect the actual dimensions on the ground. The staking of less area takes less time therefore unfair advantage was taken by designing smaller claims. Also, water boundaries take less time as they are witnessed across the lake and the blazing of boundary line is eliminated. Perhaps that would be an acceptable strategy if the witness post location was legitimate (if the projected boundary line does not cross any land).

The Disputant’s arguments included the following overview of the two most northerly claims staked by Mr. Reed and Mr. Peever on behalf of the Randall Salo group. Although the two claims were staked for the same group, the boundaries partially overlap each other. To overlap each other in this fashion contravenes the intent of the MA and demonstrates the premeditated collusion utilized to finish first. Mr. Rupert submits that, under the direction of Randall Salo and partners, the staking of the two most northerly claims seems to represent an east west dimension of 800 meters when there is only 700 meters or less available. The evidence of the available staking area can be measured on the claim map, the plans of survey for forfeited patents and on the ground between easily found claim boundaries for pre-existing mining claim of record as well as survey monuments. Actual measured dimensions, of the two claims on the ground, is proof that the claims were designed to be less than 16 hectares. The Claim Staking Regulation O. Reg. 7/96 makes it mandatory to stake a 16 hectare mining claim.

Mr. Rupert points to an amended Subsection 2 (1) (b) of the Regs:

CLAIM STAKING IN UNSURVEYED TERRITORY

2. (1) Subject to subsections (2) and (3), a mining claim in unsurveyed territory must be staked so that it,

- (b) has a contiguous area of not less than 16 hectares and not more than 256 hectares;

The original Claim Staking Regulation O. Reg. 115/91 was worded as follows: “2. (1) (b) “... has a contiguous area of not less than 16 hectares, more or less...” According to Mr. Rupert, by dropping “...more or less...” from the regulatory language, the requirement for staking a mining claim containing no less than 16 hectares became mandatory.

With regard to the two most northerly claims for the Randall Salo group, Mr. Rupert argues there was “cooperation and collusion amongst the staking team”. The two claims overlap each other when it was not necessary. Mr. Rupert could not find any “precedence” where the same team overlapped their staking but he insists to do so is contrary to the intent of the Mining Act that requires 16 hectare claims. The overall planning utilized by the Randall Salo group was designed to use Mine Lake in order to “cut” staking time. According to Roy Rupert, his group and their staking was in complete compliance by fair planning and staking of 16 hectare rectangles that did not overlap.

- 3) SSM 3018249 staked by Robert for the Randall Salo group.

Once again the Disputant says the claim is undersized to the point that the completion time is irrelevant. The staker used an all terrain vehicle (ATV) for the staking, therefore the Disputant submits, corners were chosen for ease of ATV access. If 16 hectares had been staked dimensions would have exceeded 400 meters therefore line posts would have been required. The dimension of the staking was designed to avoid line posts and therefore save time. The boundaries were not placed correctly and the reason for the “jog” on the north boundary was to run around a very steep hill that was exhausting for the competitors in the race.

The Disputant offered a another general summary for the three Randall Salo claims listed as 1), 2) and 3) above. According to Mr. Rupert, the area of a mining claim goes to its “substance” and to its “heart”. A failure to stake 16 hectares is a substantial non-compliance that is not just a technical matter. Professionals in “the business” clearly understand how to calculate area. The professionals in the Randall Salo group made a decision to shape their claims for minimum staking time and their plan, therefore, was not to comply with the staking requirements. All three claims should be rejected.

- 4) 3018257 staked by Tremblay (filed only) for the Randall Salo Group

Mr. Rupert did not enter any evidence against the staking of claim 3018257. He indicated that his own competing mining claim was finished two days before the Tremblay claim and therefore he withdrew this particular dispute at the hearing. Mr.

Rupert and Mr. Salo agreed to leave consideration for the recording of the two claims (3018257 for the Randall Salo group and 4243488 for the Roy Rupert group) to the Provincial Mining Recorder without argument.

5) 4243148 staked by Jorstad (filed only) for Larry Salo

The dispute issues concerning 4243148 were dealt with as an entirely different matter at the hearing. Randall Salo excused himself from the hearing while this particular matter was being heard. This portion of the proceedings, therefore, was conducted as between Roy Rupert, the Disputant and Larry Salo, the Respondent (not the Randall Salo group).

Mr. Vallillee was called as a witness. His evidence was that the boundaries for claim 4243148 seemed to be following roads and trails more than anything else. If there were straight blazed boundaries Mr. Vallillee found them difficult to follow and/or non-existent. The witness was asked, by the Recorder, if he found Exhibit #eleven to be a reasonable illustration of the Jorstad staking. Mr. Vallillee agreed that his investigation on the ground found the boundaries to be more or less the black broken meandering lines illustrated in Exhibit #eleven.

The Disputant submitted that the staking by Mr. Jorstad was done on an ATV. The boundary lines were not straight blazed or picketed boundaries but meandering lines following whatever access was best for the ATV. The Disputant therefore alleges unfair advantage in the failure to comply with requirements for proper boundary lines. The claim is "askew".

There was a theory entered by Mr. Rupert that three claims staked by Reed, Peever and Jorstad were a matter of collusion between stakers and their employers who were all related "by blood" and through employment. According to Mr. Rupert, the three claims all strategically overlap and were deliberately designed to be less than 16 hectares in order to beat the competition unfairly.

Larry Salo responded in evidence that his staking team made an honest effort to comply with the requirements. The claim was laid out from measurements on the claim map and where roads were used they were more or less "straight". There was no intent to purposely overlap. Adam Jorstad did the best he could to comply and he is very "fast". Larry Salo confirmed he is Randy Salo's brother but that they were competing against each other independently. Larry Salo denied that he was hiding anything and his evidence was that his team had made a reasonable effort in a staking rush.

At the hearing Larry Salo proposed to submit an exhibit that was identified as a detailed statement signed by the Recording Licensee for claim 4243148, being Adam Jorstad. Adam Jorstad was not present at the hearing to call as a witness.

It was explained to Larry Salo that the exhibit could be and would be accepted in evidence however there was a question of how much weight could be placed on the written statement. The statement appeared to be signed by Adam Jorstad however it was not executed as an affidavit. Mr. Salo was also advised that the hearing would be recessed in order to allow the Disputant time to consider all the evidence contained within the Jorstad statement.

There seemed to be a great deal of detail in the statement and it would be only fair that the Disputant should be allowed sufficient time to prepare rebuttal argument. Mr. Rupert

was not given opportunity to consider the details of the Jorstad statement prior to the hearing. Obviously Mr. Jorstad was not available at the hearing for the Disputant to cross-examine. Having listened to the Recorder's explanation of the caveats that applied to the Jorstad statement Larry Salo chose not to have it entered.

MY REASONS

Mr. Rupert began filing his five disputes very quickly on the heels of the staking race. (June 11, 2008). When the disputes were filed PRO had not finished considering all the complicated information in the many applications to record that began to reveal an obvious hotchpotch of overlapping and competing interests. The Provincial Recorder decided not to record any more mining claims until the disputes were considered and determined as usually provided by Section 110 MA. The situation became somewhat unusual in that disputes were filed against mining claims that were not yet recorded. Note that Section 48 MA provides for filing disputes against recorded mining claims:

DISPUTING APPLICATIONS

Dispute of recorded claim

48. (1) A dispute, verified by a detailed statement of claim and a certificate, may be filed with the recorder by a person alleging that a recorded claim is illegal or invalid in whole or in part and, if the disputant or the person in whose behalf he or she is acting claims to be entitled to be recorded for or to be entitled to any right or interest in the lands or mining rights, or in any part thereof, comprised in the disputed claim, the dispute shall so state, giving particulars, and the recorder shall receive and file such dispute, and shall enter a note thereof upon the record of the disputed claim. R.S.O. 1990, c. M.14, s. 48 (1); 1997, c. 40, s. 7; 1999, c. 12, Sched. O, s. 21 (1); 2009, c. 21, s. 26 (1).

Five disputes were filed yet only two of the disputed claims had been recorded (SSM 3018248 and SSM 3018249). The remaining three disputed claims were held as "filed only" as provided in Subsection 46(3) MA. The filed only applications to record were preserved through the Provincial Recorder's correspondence asserting "...the "Filed Only" status on the mining claims listed above will continue until such time that the dispute has been heard and a decision has been posted." Where it was necessary, the Recorder's correspondence prevented the filed only applications from becoming invalid and of no effect as demanded by Subsection 46(5) MA:

Invalidity of application

(5) An application filed under subsection (3) is invalid and of no effect 60 days after it is filed unless a dispute is filed under section 48 or an appeal is taken under section 112 or the Commissioner or recorder orders otherwise. 1999, c. 12, Sched. O, s. 20.

This decision is made under the authority of Section 110 MA:

Disputes

110. (1) A recorder may hear and, subject to the right of appeal provided in section 112, determine disputes between persons with respect to unpatented mining claims. 1999, c. 12, Sched. O, s. 39 (1).

Same

(2) If a dispute relates to whether the provisions of this Act regarding mining claims have been complied with, the recorder shall hear and determine the dispute unless,

- (a) the Commissioner orders otherwise; or
- (b) the Commissioner agrees to hear and determine the question pursuant to a request made by the recorder. 1999, c. 12, Sched. O, s. 39 (1).

Note of decision

(3) The recorder shall forthwith,

- (a) record a detailed note of all decisions that he or she makes; and
- (b) notify all persons affected by a decision. 1999, c. 12, Sched. O, s. 39 (1).

(4) Repealed: 1999, c. 12, Sched. O, s. 39 (2).

Finality of decision

(5) The decision of the recorder is final and binding unless appealed from as provided in section 112. R.S.O. 1990, c. M.14, s. 110 (5).

Recorder may order the removal of witness posts, etc.

(6) The recorder may make an order directing a holder,

- (a) to move, remove or alter corner posts, line posts or witness posts and the writing or inscribing thereon;
- (b) to blaze, re-blaze, move or alter existing or missing claim lines;
- (c) to place or replace metal tags that are missing or have been removed or destroyed after having been affixed to any posts; or
- (d) to place or replace missing or defective posts and to affix tags to such posts,

and the recorder shall set out in the order the time within which the work shall be completed and reported to the recorder. R.S.O. 1990, c. M.14, s. 110 (6).

Alternatively, should there be legal questions concerning the Provincial Recorder's authority in this matter, this decision also follows the Provincial Recorder's general authority to decide if and/or how a claim should be recorded, as found in Section 46 MA (see page 6 of this decision) .

In *Dupont vs. Inglis*, MCC Volume 3, page 245, the Supreme Court of Canada (S.C.R. 1958, page 535) said in part "...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..." The inference is that the Recorder has authority to conduct an enquiry regarding the validity of a mining claim whether or not a dispute is filed.

I accept from Randall Salo and Larry Salo that they had no business relationship with regard to the June 1, 2008 Nicolet Township staking race. I accept that there was competition between the two individuals. I do not accept that there was some form of “collusion” amongst the stakers and/or their employers whether or not they are somehow related.

The legal standard for the staking of mining claims is found in Section 43 MA:

43. (1) Where claims are staked by ground staking, substantial compliance as nearly as circumstances will reasonably permit with the requirements of this Act and the regulations as to the ground staking of mining claims is sufficient. 2009, c. 21, s. 21 (1).

Deemed substantial compliance

(2) The ground staking of a mining claim shall be deemed to be in substantial compliance with the requirements of this Act and the regulations even if there is a failure to comply with a number of specific ground staking requirements if,

- (a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity; and
- (b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations. R.S.O. 1990, c. M.14, s. 43 (2); 2009, c. 21, s. 21 (2).

The substantial compliance standard differs generally from the Disputant’s evidence that some staking rules are absolute requirements of the Regs. and not open to interpretation. Subject to appeal to the Mining and Lands Commissioner, the Recorder is given legal authority to interpret and apply the substantial compliance standard. Decisions of the Recorder can be objective by direct application of specific parts of the MA, and/or the Regs., or subjective as supported sometimes by previous decisions of the Mining and Lands Commissioners (or ultimately the Courts). The following is in response to some of the general evidence heard during the hearing:

- 1) Line posts are required only where the area of a claim includes two units or more (Subsection 2{4} Regs). Where the claim is less than two units, line posts are not required even if a boundary exceeds 400 meters. An exception is where the boundary is irregular (3{3} Regs.).
- 2) Regardless of the amendment to 2(1)(b) of the Regs. in 1996, there is a statutory standard long established in the now Section 43 MA. The area captured within the boundaries of a staked mining claim is required to substantially comply with the Regs. as nearly as circumstances would reasonably permit. That subjective standard is to be applied by the Recorder in the first instance. Each case is considered on its own merits but the 16 hectare minimum is not an absolute standard of its own.
- 3) The substantial compliance standard to be applied by the Recorder is not necessarily different if the recording licensee or their employer is a professional (e.g. Geologist, Engineer, Ontario Land Surveyor). The staking is not required to satisfy far more precise standards of a legal land survey as performed by Ontario Land Surveyors, for example. Also, to date there has not been any mandatory requirement to use a Global Positioning System (GPS). It is not mandatory to “tie on” to surrounding claims although it is generally prudent to do so and PRO will encourage it where ever possible. In unsubdivided townships and in unsurveyed

territory the failure to tie on to surrounding pre-existing claims is not a compliance issue found in the Staking Regs.

- 4) Priority, in competitive staking, is not established by those who stake the best claims. In *Meunier vs. Larche et.al.*, MCC Volume V, 1979, page 506, Commissioner Ferguson said:

*“...Similarly this tribunal is not aware of any case that has applied the best staking principle. The recording of the mining claim is a very determining factor. I held on the authorities therein discussed in the case of *Hussey et al. v. Bradshaw et al.*, 5 M.C.C. 326 that while no priority arises from section 81 of the Mining Act in respect of recording, the recorded holder enjoys a procedural advantage in that the tribunal cannot cancel his recording unless a priority of some other nature is established or it is established that his staking is invalid. If the staking is valid either in itself or through the curative doctrine, there is no method of striking down the staking merely because another has staked in a manner that may be more perfect than the adequacy of the staking of the recorded holder...In the view of this tribunal there is no principle, or basis for a principle, that might be referred to as the best staking principle.”*

- 5) Subsection 10(1)3. of the Regs. does not apply a great deal in this case as that rule applies to staking of land open for more than twenty-four hours. Applied together with Subsection 9(2) and 10(1)1. of the Regs., 10(1)3. generally requires that the completion time be inscribed by any one of the staking licensees on any one of the four corner posts (verses a line post that may bear the start time as allowed by 10(1)1.).

The exception is where the land is open for less than twenty-four hours (June 1, 2008, Nicolet Township) In this case Subsection 10(2)3. of the Regs. applies. The start and finish time is required to be inscribed on the #one corner post by the Recording Licensee. The statutory standard of substantial compliance applies to 10(1)(3) as well as 10(2)(3) however the special rules for competitive staking in the first twenty-four hours should be adhered to carefully in order for the Recorder to find that there was a fair and level playing field.

- 6) There are two cases of the Mining and Land Commissioner that clearly establish what stakers are to do in a competition in order to substantially comply with the requirement to stake approximately 16 hectares. In those two case the Commissioners explained that the competitors are required to cross each other's boundaries in order stake a claim of an acceptable area. In those cases the situation was similar to this matter where the same staking team placed their claims adjacent to each other. The team members were expected to cross even their team member's boundary lines where necessary to stake reasonably close to 16 hectares. Those two cases are unreported: *Moneta Porcupine Mines Inc.* and *Thomas O'Connor vs. Michael Tremblay*, MA 016-98, February 4, 1999; also *Frank Racicot vs. MNDM and Reginald James Charron*, Party of the Third Part, MA 025&026-97, November 23, 1999. (Moneta and Racicot)
- 7) Should there be an appeal of this decision, the parties to that hearing should pay heed to the Commissioner's words in the unreported case of *Royal Oak Mines vs. Strike Minerals* (MCC MA 012-98, Oct. 1998, Pages 20 and 21):

“Findings

The written evidence and submissions made in this matter warrant comment. It

*cannot be sufficiently stressed that the tribunal requires facts, as opposed to opinions, accusations and rhetoric upon which to reach its findings. It is not sufficient to say that one staked in accordance with the requirements of the **Mining Act**. Rather, one can describe the actual steps which were taken. It will be the decision-maker, either the Provincial Mining Recorder or the Commissioner, who will ultimately determine whether the **Act** has been complied with to a degree to constitute substantial compliance or deemed substantial compliance, within the tests outlined in section 43.”*

Also, Commissioner Kamerman made the following comments in another unreported case (MCC MA 014-97 March 27, 1998, Royal Oak Mines Inc. vs. Alexander Harris Clark, page 23):

“In addition, the tribunal would require detailed evidence from the staker concerning what occurred on the ground. A seven minute staking is considered extreme, in terms of the degree of physical ability of the staker, coordination of helpers, as well as amenability of the ground such as density of bush, type of ground and the like, to bringing the facts of the particular case within the realm of believable. The tribunal does not hesitate in finding that a seven minute staking is one in which the staker must make a thorough and organized effort at convincing the tribunal that the staking took place within the time frame recorded. In so doing, the tribunal would require extensive details of the staking with satisfactory answers to all questions put to him or her, before the tribunal will consider the evidentiary burden on the staker favourably discharged.”

Response evidence from Randall Salo (the Respondent) is not mentioned a great deal in **THE HEARING** portion of this decision. Generally Randall Salo was succinct with his case. Where it is appropriate Randall Salo’s arguments are mentioned in this portion of the decision.

1) SSM 3018248

The claim is indicated on Derek Reed’s application to record to be completed at 9:08 a.m. The recorded holders are the Randall Salo group. The crux of this matter is whether or not Mr. Reed was required to return to his first witness post in order to complete the staking. Subsection 10(2)3. of the Regs. requires both the start and completion time to be inscribed on the #one corner post. The Regs. are silent on this situation where the #one corner is witnessed in water. The corner was witnessed from two different posts in order to comply with 12(1)2. of the Regs. Yet, Subsection 12(5) of the Regs. may shed some light on the question:

12. (5) A second witness post may bear the same inscription as is required for a corner post at a true corner under subsections 15 (1) and (3). O. Reg. 7/96, s. 12 (5).

If the second witness post “...may bear the same inscription as is required for a corner post at a true location...” , it would appear that the completion time can be inscribed on the second witness post. I cannot find anything in the Regs. that forces the staker to return to the first witness post. In this particular case the situation is that the true corner is replaced by two legitimate witness posts and, in a sense, the result is that there are two posts representing the #one corner. I find, therefore that Mr. Reed was finished his

staking at the second witness post and he was not required to return to the first in order to complete the staking. While I would agree that there should be some fashion of strict compliance with the special rules for the first twenty-four hours I cannot expect compliance with rules that are not expressed in the Staking Regs. Claim SSM 3018248 is not defective simply because Mr. Reed failed to return to the first witness post for the #one corner.

Also, Exhibit #3 was entered in evidence by Mr. Rupert. The exhibit is a summary of Mr. Vallillee's field notes, sketch and GPS coordinates for claim posts found. By plotting Mr. Vallillee's coordinates on a claim map, claim SSM 3018248 is found to be a trapezoid containing approximately 15.12 hectares. Mr. Rupert is correct that the claim is less than 16 hectares. I find, however, that there is substantial compliance with regard to the area of the claim.

The staking of claim SSM 3018348 substantially complies with the Staking Regs. The Disputant has failed to prove otherwise. The claim should stand and then competing filed only claims that overlap it should be considered.

2) SSM 3018249

The claim is indicated on Jacques Robert's application to record to be completed at 9:18 a.m. The recorded holders are the Randall Salo group.

The Disputant, Mr. Rupert, points to irregularities in the Robert staking with regard to area and dimensions. Mr. Rupert also questioned the use of an ATV between the #one and #two corners suggesting the east boundary was not a straight line but rather an ATV trail. According to Mr. Rupert, the strategy employed for the Robert claim required the east boundary to be close to the ATV trail in order to gain an unfair advantage in the competition. In planning this particular part of their scheme The Randall Salo group should have placed the east limit of SSM 3018249 further east in order to capture an area closer to the 16 hectare minimum. The allegation is that they chose not to stake 16 hectares simply because of the location of the ATV trail and its obvious advantage for Mr. Robert to race on the ATV from corner one to corner two.

I do not agree with Mr. Rupert regarding use of the ATV and the east boundary is probably a reasonable line. Looking at the north west prtion of SSM 3018249 it appears to me that Mr. Robert's jog in the boundary was a convenience to avoid a seriously steep hill. On the other hand, the jog seems to follow the limits of a pre-existing claim of record to the north (SSM 4219728). Mr. Robert is then allowed to create the jog by Section 3 of the Regs.

With the use of Mr. Vallillee's coordinates (Exhibit #three) I find that claim SSM 3018249 contains approximately 13.16 hectares.

Mr. Robert was called as a witness at the hearing. He was asked why the claim was not staked to contain the required 16 hectares. His answer was that he was not required to stake 16 hectares as he was restricted by surrounding claims of record. Mr. Robert seemed to regard a 400 meter boundary line to be of ultimate significance and the sixteen hectare area as a secondary consideration.

On the contrary, the Regs. only infer a 400 meter boundary in the rule spelled out by Subsection 2(1)a.

2. (1) Subject to subsections (2) and (3), a mining claim in unsurveyed territory must be staked so that it,

(a) consists of one or more square 16 hectare units;

The most significant consideration is the creation of a square or a rectangle containing 16 hectares. The 400 meter square is a logical conclusion, ideal in theory and intent, but dimensions will often vary with practical staking in the bush. The 400 meter dimension becomes a secondary issue especially when staking irregular areas.

The area available for Mr. Robert to stake is somewhat irregular due to pre-existing claims of record. It would appear his role in the team effort was to win the south west corner of the area opened on June 1. He had to fit his claim within the restrictions established by the pre-existing mining . An irregular area is significant in that there are special rules provided in Subsections 2(2), (3), and (5), Section 3, Subsection 13(2) and Section 20 of the Regs.

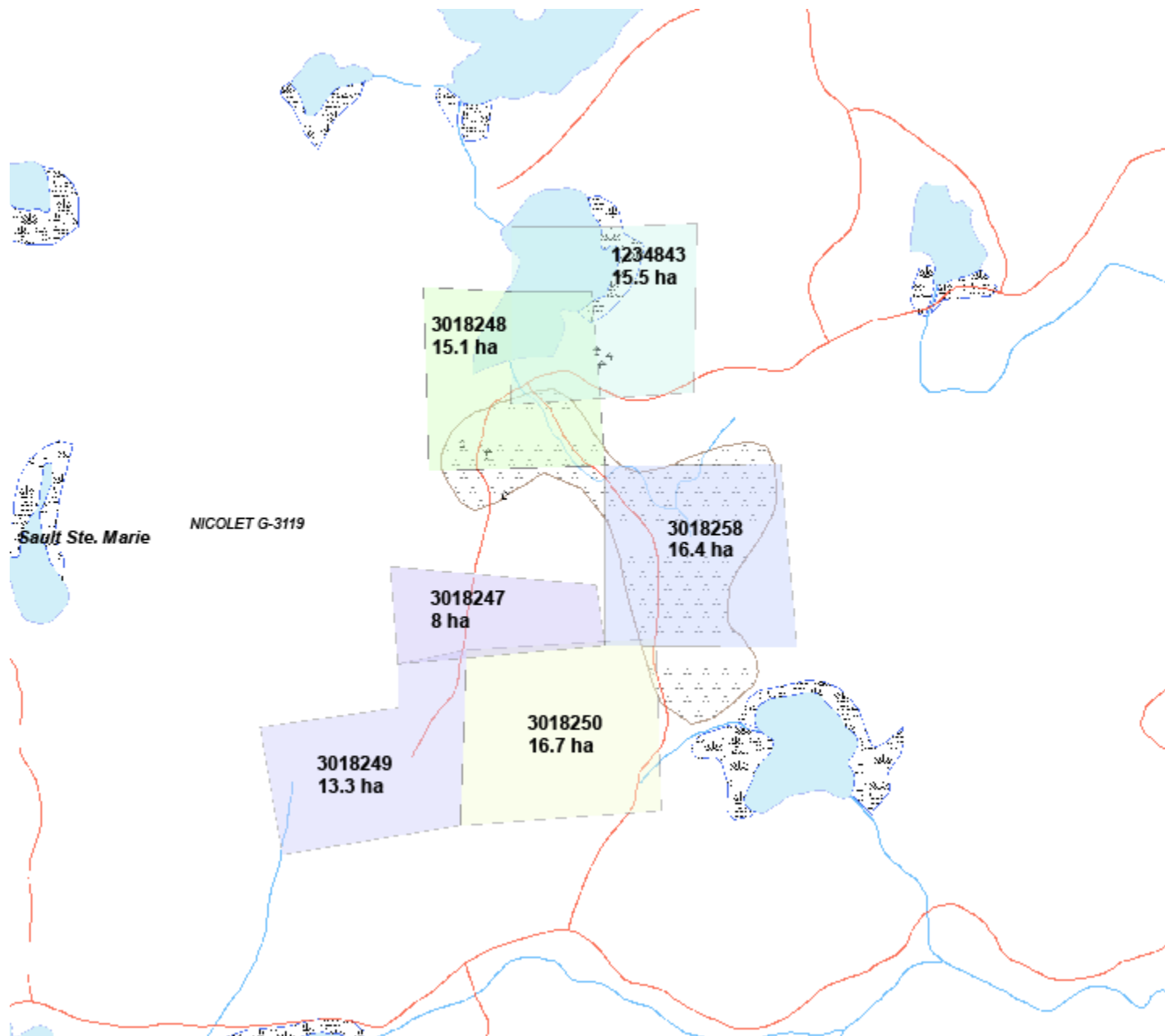
In the Moneta case Commissioner Kamerman said:

“Clearly, irregularly shaped lands do not lend themselves to being divided up into 16 hectares and the manner in which this may be accomplished would vary both with the size of the available land and its configuration, However, where the entire portion of land is less than 16 hectares, that should be the end of the matter, as it should all be staked as one unit...”

76 hectares could be divided into four 16 hectare units, with 12 hectares remaining. 12 hectares could be regarded as sufficiently close to 16 hectares as circumstances permit to allow it be staked as the fifth unit. Alternatively, the 76 hectares could be staked into approximately equal units of 19 hectares. Both would be acceptable, it would appear, from the requirements of the regulation...

The staking by Mr. Jacques Robert of Mining Claim L-1227765, having an area of 14 hectares, thus complying with the requirements of the regulation, and having a completion time of 9:13 a.m., thus being the first staking of a size within the allowable limits, should properly be accepted for recording. The Tremblay staking of Mining Claim L-1227766, having an area of 14 hectares, similarly in compliance with the size requirements of the regulation and having not only the second completion time, but not overlapping the Robert staking, should properly be accepted for recording...”

In order to apply the Commissioner’s interpretation one must plot the Randall Salo group claims to understand how the strategy unfolds with regard to the area in each claim and to determine if the Jacques Robert staking of SSM 3018249 was reasonably placed to “fit”. By the Commissioner’s interpretation, a 12 hectare claim would be acceptable depending on the circumstances. These circumstances may be that the overall area that came open for staking on that June 1 morning was irregular but, on the other hand, should Mr. Robert and Mr. Tremblay (staked claim 3018250 adjacent to Robert on the east side) have been expected to create 16 hectare claims with the area available to them? The following image illustrates the Randall Salo staking pattern:



The governing factor, as illustrated above, is whether or not the Randall Salo group could have placed claim 3018250 (Tremblay) further east thus providing more area in the Robert claim. On June 1, 2008 Steve Patrick O'Leary staked claim 1243981. The claim was accepted for recording in the name of Roy Rupert. The O'Leary claim is generally just east of Robert and Tremblay. David Vallillee's coordinates for the O'Leary claim, verifies that there was open ground east of Tremblay therefore 3018249 and 3018250 were not "forced" by restrictions to be laid out where they were.

I note that the claim corners and dimensions as illustrated on applications to record for the Randall Salo staking team align very closely to where David Vallillee found everything on the ground. In order for the Randall Salo team to be so precise in their applications to record they must have done an excellent job of planning and laying out their claim boundaries prior to the actual staking. The point is that they had to know the dimensions and area of the Robert staking prior to June 1. They planned and executed

a claim 13.3 hectares in area when they could have “stretched” Temblay and Robert farther east.

Also, the Randall Salo team strategy clearly demonstrates an advanced understanding of the principles established in the Moneta and Racicot cases decided by the Mining and Lands Commissioner. Obviously when Mr. Peever overlaps his own team member, Mr. Reed, the team properly abide by the Commissioner’s direction in laying out and staking close to 16 hectares (15.1 and 15.5 hectares). That level of compliance could have been executed by members of the same team in the staking strategy for Mr. Robert and Mr. Tremblay.

The restrictions to the north and west do not prevent Mr. Robert from capturing 16 hectares more or less. His #one and #two corners could have been laid out farther east (and likewise Mr. Tremblay) thereby creating two 16 hectare claims more or less. Mr. Robert was faced with some irregularities but 16 hectares were available to him. In these particular circumstances I do not find that the Robert claim SSM 3018249 demonstrates a bona fide attempt to comply and also under the circumstances I do not find the area of the claim to substantially comply with the area requirements. Therefore, SSM 3018249 is cancelled.

Jacques Robert was competing with Stanley Trudeau for more or less the same area of land. Mr. Trudeau staked filed only claim 4243485 on behalf of the Roy Rupert group. Trudeau was called as a witness for the Disputant. I note that oral evidence from Mr. Trudeau revealed a stump post had been established prior to opening time. Also, Mr. Trudeau indicated he had inscribed at least one line post tag prior opening time.

So, Roy Rupert’s objective in this corner of the property, is to challenge and defeat the Robert staking hoping to have Mr. Trudeau’s claim 4243485 recorded. A disputant should expect that their staking will also be analyzed for compliance. In *Whiting vs. Mather* 2 M.C.C. 318, October 1916, (Whiting) the then Mining Commissioner Thomas E. Godson said:

“ I feel forced to judge the Whiting staking strictly. He was not the first discoverer, as far as the year 1915 is concerned, at which time the land was in the Crown, and it is only by a successful attack upon Maher’s staking that he would have succeeded upon going upon record for the same land, provided his application and staking were regular. If I condone Whiting’s many imperfections of staking and applied the saving clauses of the Act, I feel I would be doing Mather an injustice.

What Whiting did must be judged by the same standard that he expects me to apply to the Mather staking: ‘He who seeks equity must do equity’ “.

I will not accept the Trudeau staking of claim 4243485 since part of the staking was done prior to opening time and the “equity” principle long established by the Whiting case expects a disputant’s claim to demonstrate the same level of fair play as the Disputant demands of the mining claim of record.

3) 1234843 (filed only)

The claim was completed by Darrell Peever at 9:12 a.m. for the Randall Salo group. Contrary to the Disputant’s arguments, the Commissioner has directed competitors to cross boundary lines for adjacent staking in order to capture the necessary 16 hectares more or less (in the Moneta and Racicot cases). According to the Commissioner, the

general idea is that all the land in a competition is to be considered open for staking until there are boundaries established by **recorded** claims. Therefore I cannot find the Peever overlap with his team member Reed to be in contravention of the Mining Act.

Again, Mr Vallillee's evidence provided in Exhibit #three provides us with GPS co-ordinates making it possible to plot the corner locations. Mr. Peever's claim plots out to contain an area of approximately 15.554 hectares. I find the area of the staking adequately satisfies the substantial compliance standard.

A more troubling defect in the staking involves one of Mr. Peever's witness posts for the #four corner. There were two witness posts erected in order to "call" the direction and distance to the true corner in Mine Lake. I find no issue with the second witness post erected (from the east shore). There is a problem with the first witness post apparently placed on the "dam" on the south shore of Mine Lake witnessing 320 meters due north. The true corner falls somewhere in Mine Lake. Based on Mr. Vallillee's coordinates the first witness post location is definitely south of a point of land protruding into Mine Lake along the west shore. In other words, the line of site due north from the witness post (the direction for the call distance) is broken by land. Subsection 12(2) of the Regs. requires a witness post to be placed on the claim boundary as close to the true corner as is practicable. Mr. Peever did not place his first witness post at the right location therefore it represents a defect in the staking. Also Mr. Peever failed to blaze boundary line and clear brush where the line crosses the point of land. Where the blazing and brushing was not done there is approximately 73 meters of defective/missing boundary representing approximately 18.3% of only one boundary line between corner #3 and corner#4.

The Regs. attempt to encourage fair rules for competitive staking through the three special staking requirements applicable where the land is open for less than twenty-four hours. Subsection 10(2) of the Regs.:

10. (2) The following rules apply to the staking of a mining claim in areas that have been open for staking for less than 24 hours:

1. The staking must start at the northeast corner of the mining claim and proceed in a clockwise direction.
2. Only the recording licensee may erect, inscribe or affix a tag to a corner post, line post or witness post.
3. The date and time of both the start and completion of the staking must be inscribed on the No. 1 corner post by the recording licensee. O. Reg. 7/96, s. 10 (2).

It would appear Mr. Peever satisfied 10(2) of the Regs. however there were other defects in the staking being the wrong witness post location and 73 meters of missing boundary line. I find it relevant that one of the two witness posts is defective but not both of them. While I find the defects troubling with regard to a fair and level playing field, the defects are cured by the substantial compliance standard and therefore the claim should stand and remains in the "queue" for recording. Where these filed only applications to record are found to comply, they line up for consideration chronologically by completion time. Section 46 of the MA requires the Recorder to decide what claims are acceptable for recording.

Another issue raised by Rupert concerned the available area illustrated on the claim map. Mr. Rupert alleges that the Randall Salo group produced misleading applications

to record as the east west measurement on the claim map does not provide sufficient space for the Reed and Peever staking. Mr. Salo succinctly responded that the matter is dependent on the real ground location of the staked claims to the east. I agree with Mr. Salo and the area of Mr. Peever's staking as plotted from Mr. Vallillee's coordinates demonstrates reasonably placed corners and boundaries. I find that Mr. Peever has made an attempt, in good faith, to comply with the MA and Regs. therefore Section 20 of the Regs. assists to validate filed only claim 1234843.

4) 3018257 (filed only)

Roy Rupert withdrew his dispute against this claim (at the hearing) and both parties agreed to allow the Provincial Recorder to make decisions without argument. There remains a need to make a decision required of the Recorder by Section 46 MA. The application to record for filed only claim 3018257 (staked by Tremblay for the Randall Salo group) illustrates boundaries containing only 8 hectares (200 meters X 400 meters). According to the Mining and Lands Commissioner, only recorded claims limit the staker's ability to comply with the size requirements. In the Racicot case:

*"...In the Tribunal's opinion, there must be something already in existence which restrict the staker's ability to comply with the size requirements. Under the **Mining Act.**, the only relevant example for Mr. Racicot's purposes of something "already in existence", would be a recorded claim. "*

When Mr. Tremblay staked claim 3018257 he was not restricted by a recorded claim to the north. He was obliged to stake a sixteen hectare claim. That obligation is regardless of overlap with the filed only claim to the north. Claim 3018257 does not comply as it is substantially less than 16 hectares therefore it is refused.

Mr Rupert's personal staking of filed only claim 4243488 overlaps Tremblay's 3018257. The overlap is irrelevant because Mr. Tremblay is refused and also because Mr. Rupert enjoys a clear priority as he finished his staking well before Mr. Tremblay. Mr. Rupert's 4243488 overlaps 3018257 only partially. The Rupert claim is approximately 11.7 hectares in area as plotted from Mr. Vallillee's coordinates. It would appear from his application to record that Mr. Rupert limited his east-west dimensions (300 meters between corners four and one; 225 meters between corners two and three) since there appeared to be staking to his east. A recorded claim did not restrict Mr. Rupert's east boundary. Once again, only a recorded claim provides a restriction therefore Mr. Rupert should have staked sixteen hectares.

The Disputant, Mr. Rupert, challenged the staking of Jacques Robert (SSM 3018249) citing an unfair strategy of staking less area. The area Mr. Rupert staked within his claim 4243488 is similar to that of Jacques Robert. As a result of the evidence considered, Jacques Robert's claim is cancelled. Based on the principles in the Whiting case I find that the staking of filed only claim 4243488 does not substantially comply as the area within the claim is not large enough. Under the circumstances I must refuse to record filed only claim 4243488.

5) 4243148 (filed only)

The claim was completed at 9:13 a.m. by Adam Jorstad for Larry Salo. The facts, as agreed by Larry Salo, were that Adam Jorstad raced around the claim on an ATV and that helpers completed the straight boundary lines. The Disputant argues the boundaries were insufficient, wandering and "askew". Adam Jorstad did not appear as a

witness. The witness for the Disputant, David Vallillee, found the boundaries to be difficult to follow where he could find them at all.

In his limited evidence the Respondent, Larry Salo, asserts there was a reasonable level of compliance that is acceptable in a “staking rush”.

I find that it is probable there was blazing done on the boundaries where trees existed but most of the boundary was through open areas where no trees were available to blaze. I did not hear much evidence that would assure me that a sufficient number of pickets were erected on the boundary where standing trees were absent. This may be why Mr. Vallillee had difficulty finding the boundary lines. Subsection 8(6) of the Regs. requires pickets or earth mounds to mark the boundary where standing trees are absent. If flagging tape was used on these boundaries the competitors should understand that the flagging tape does not satisfy the requirements, on this particular land, for marking boundary.

I find on the balance of probabilities that the boundaries were insufficiently marked during the staking of 4343148 and therefore the claim should not be accepted for recording.

SUMMARY

According to the Mining and Lands Commissioner in an unreported case MCC Files MA 024-96, 029-96, 032-96 and 006-97 Oct., 1997 Interlocutory Order:

“ 9. If the situation should result, based upon the application of the foregoing criteria, that a nonoverlapping portion of a mining claim which is less than one unit is completely surrounded by lands which are not open for staking, the resulting mining claim will be allowed and a direction to the mining recorder to order the moving of posts and boundaries will be issued. This will apply to cases involving rectangles, parallelograms, rhombuses and "C" and "L" configurations. “

The following summarizes the various aspects of this decision:

- 1) SSM 3018248 by Reed is found to stand the test of substantial compliance, the dispute is dismissed and the mining claim is to remain on record.
- 2) SSM 3018249 by Robert is to be cancelled as insufficient area was staked when the proper area was available. The dispute is allowed however overlapping/competing claim 4243485 by Trudeau is refused since part of that staking was done prior to the legal opening time.
- 3) Filed only 1234843 by Peever is conditionally accepted for recording. If the dispute filed against this unrecorded claim is legally valid, the dispute is dismissed. Should it be later found that a dispute cannot be legally filed against an unrecorded filed only claim, this decision is made, as I am required, by Section 46 of the MA. The claim will be recorded on the condition that a separate order to move boundaries off the Reed claim (SSM 3018248) is complied with. The filed only application to record is continued until written confirmation of compliance with the separate order moving boundaries is filed in PRO. Failure to comply with the Recorder's order may result in cancellation and refusal of the

filed only claim. Also, the application to record is to be amended after boundaries are adjusted.

- 4) Filed only 4243148 by Jorstad is refused for insufficient boundary marking. The dispute is allowed if it is relevant. Similar to 3) above, this decision is made according to Section 110 of the MA or alternatively Section 46 MA.
- 5) Filed only claims 4243484 by Eden, 4243482 by Caron, and 4243483 by Pigeon are conditionally accepted for recording. Separate orders to move boundaries are to issue. The orders will direct elimination of overlaps and the residual portions of non-overlapping staking may be recorded according to Subsection 45(4) MA. The filed only applications to record are continued pending boundary adjustments. The claims may be recorded on PRO's receipt of written confirmation regarding compliance with boundary adjustments plus amended applications to record.
- 6) Filed only 4243488 by Rupert is refused for failure to stake the required area.
- 7) Filed only 3018257 by Tremblay is refused for failure to stake the required area. The dispute against this claim was verbally withdrawn by Roy Rupert. This decision is made by authority in Section 46 of the MA.
- 8) Any other filed only applications to record that may exist in this matter but are missing from this decision are continued for 30 days beyond the date of this order. The parties are directed to identify any other filed only applications to record that have not been dealt with herein within the 30 days. Additional decisions may then be made as provided in Section 45 and/or Section 46 of the MA.
- 9) The total area involved in this matter is withdrawn from further staking during the period allowed for appeal or until there is a final decision made by the Mining and Lands Commissioner as a result of an appeal. The withdrawal is also a separate order. A reopening of the lands is not automatic and will require yet another order specifying the date that further staking may occur.

Roy Spooner

Provincial Mining Recorder

The image on page 25 is a portion of the Nicolette Township claim map after amendments as a result of this Order.

