

Tonopah Mining
Litigation

11

11 TONOPAH MINING - LITIGATION

4840

60000318

APEX LITIGATION AT TONOPAH

The 1872 Mining Law provides that if a mining claimant has the "apex" of a vein within the boundaries of his claim, he may follow the vein in its downward course even though the vein extends outside of the vertical side lines of the claim, but his rights are limited to that portion of the vein lying between vertical planes drawn through the end lines of the claim. These rights are usually referred to as "extralateral rights", and the law granting extralateral rights is sometimes referred to as the "law of the apex". See Figure 1, attached. The "law of the apex" gave rise to a welter of "apex" litigation in the mining states. In a number of court cases lawyers, geologists, engineers, judges, and juries wrestled with definitions of terms such as "apex", "vein", "side line", "end line", and even "downward".

Tonopah's contribution to the "law of the apex" was the litigation between the Jim Butler Tonopah Mining Company and the West End Consolidated Mining Company. This litigation involved the Eureka and Curtis claims, owned by the Jim Butler Tonopah Mining Company and the West End claim, owned by the West End Consolidated Mining Company. Jim Butler alleged that West End had taken ore from beneath the surface of the Eureka and Curtis claims. West End defended on the ground that the apex of the vein in question was on the West End claim and that the ore, although under the surface of the Eureka and Curtis claims, actually belonged to West End by reason of extralateral rights. As was the usual practice in "apex" litigation, great effort was put into the preparation of models, maps, and cross-sections illustrating the contributions of the parties. The trial court held in favor of West End and this decision was upheld on appeal to the Nevada Supreme Court and the United States Supreme Court. The Nevada Supreme Court included in its opinion a cross-section of the ground in controversy, showing the apex of the claim lying in the West End claim and the vein extending in its downward course into the Jim Butler ground. See Figure 2, attached. One of the principles of law established by this litigation is that, in a case such as that illustrated in Figure 2, extralateral rights may extend in both directions.

Many of the maps and cross-sections used in the case, together with an elaborate model, are now located in the office of Houston International Minerals Corporation in Tonopah.

FIGURE 1

VEIN DEPARTING THROUGH VERTICAL SIDELINE (PERSPECTIVE VIEW)

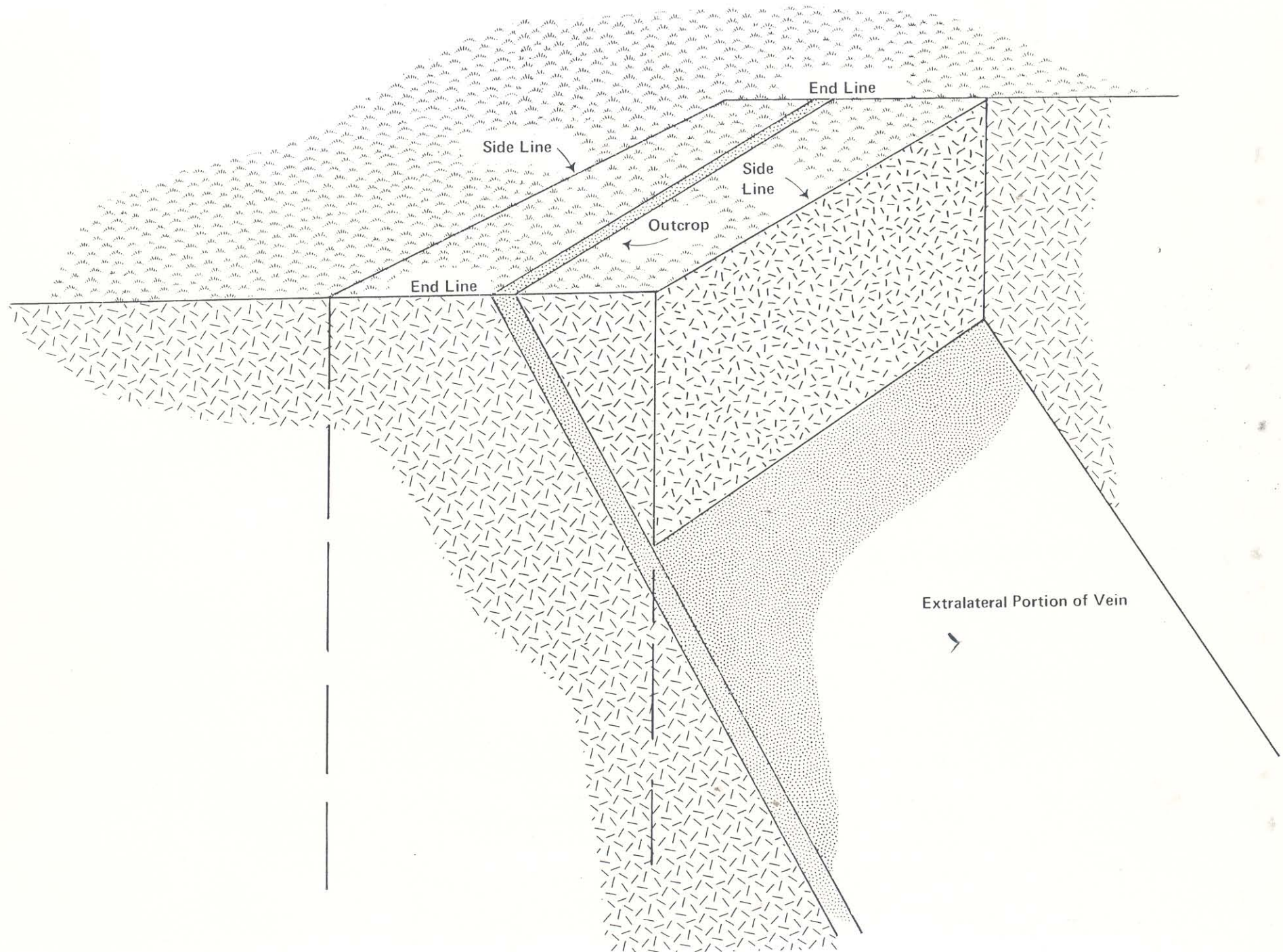
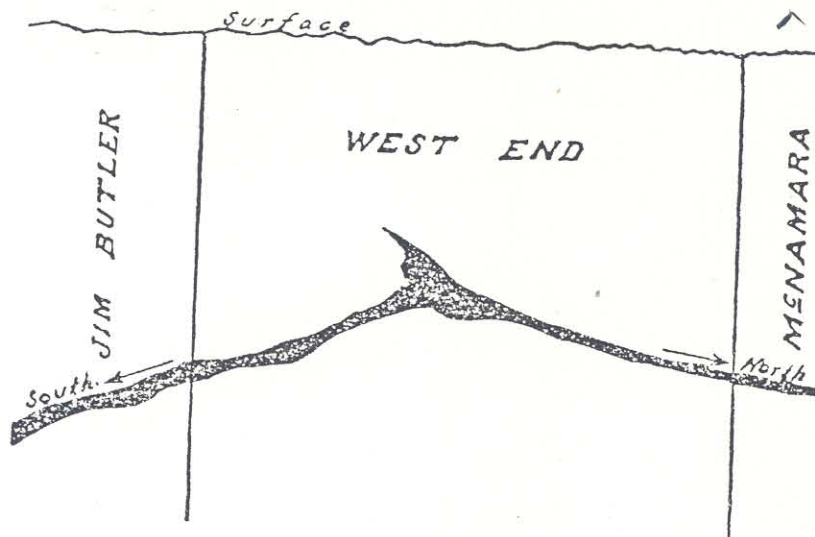


FIGURE 2



Mining Litigation

In a district such as Tonopah, in which a number of producing mines of relatively small surface extent adjoin each other, it is probably inevitable that disputes, particularly over extra-lateral rights, will arise. The following record of Tonopah litigation, perhaps not entirely complete, shows that all but a few cases were settled by compromise, one feature of which was the establishment of vertical side lines. Such compromises, however, were commonly not made until after the ^{first} ~~initial~~ stages of legal controversy had been passed and a considerable expenditure had been made on special development work and for expert geological advice. The conclusion is difficult to escape that an initial agreement among the operators to consider the vertical extensions of the surface boundaries as the limits of their mining activities underground would not only have prevented unnecessary expense and bad feeling but would have anticipated the eventual relations that developed between the companies.

Although the coincidence of labor troubles and litigation is probably fortuitous, it is perhaps possible that operators, freed from the uncertainty for the future that accompanies all apex litigation, might have considered their relations with the men with somewhat greater sympathy, and the labor extremists,

faced by a united and harmonious organization of operators, less likely to commit the acts of violence that tended to prevent a speedy solution of the disagreements by compromise.

The earliest litigation in the camp was naturally over titles to the land. The ~~T~~onopah Mining Company was involved in two of these suits early in 1902, one with the Tonopah Consolidated Mining Company (later the MacNamara Company) over a part of the Buckboard claim and one with the Tonopah and Salt Lake Mining Company (now included in the Jim Butler Company) over the Valley View ~~Vein~~ claim. These suits apparently were based on the assertions of the complaining companies that Jim Butler's original locations could not be found and that the amended locations made by the Tonopah Mining Company differed from them and conflicted with the locations of the plaintiffs. A contemporary account notes that "a number of attorneys are on the ground gathering evidence and having surveys made."^{1/} Both suits were eventually decided in favor of the Tonopah Min-

^{1/} Eng. & Min. Jour., vol. 73, p. 810, 1902.

ing Company.

Title to the North Star mine was involved in a suit settled in the District Court at Carson City in 1904 and during 1907-1908 there was litigation

over titles to the claims in the western part of the camp, the Red Rock Extension, McKane, and Monarch Pittsburg properties apparently being the ones concerned. A correspondent of the Engineering and Mining Journal wrote that "some of the more favorably situated claims owned by the Red Rock and McKane companies are tied up by litigation and held by revolvers for one set of litigants."^{2/}

^{2/}Eng. & Min. Jour., vol. 86, p. 871, 1908.

The first of the many apex suits was started in 1906 when the Tonopah Extension Company secured an injunction restraining the MacNamara Company from following the MacNamara vein into Extension ground. A short time later the West End Company filed a similar suit against the MacNamara. After considerable expenditures on development work, the suit with the West End was settled in 1908 and the one with the Tonopah Extension in 1909. The settlement in both suits resulted in the establishment of vertical side lines.

An example, which unfortunately was not followed in later years, was set in 1911 by the Tonopah Mining and Jim Butler companies when they made a friendly settlement out of court over a dispute as to apex rights on the Fraction Mine. The fact that the managements of the two companies were closely related probably aided in the settlement, which appears to have resulted in the acceptance

by both companies of vertical side lines along their common boundary.

Similar agreements were probably negotiated shortly after this by the Tonopah Mining Company with the Midway and Montana companies.

The year 1914 marked the beginning of a series of long and costly apex suits. The first of the series, between the Jim Butler Tonopah and the West End companies, was one of the most bitterly contested and was eventually carried to the Supreme Court of the United States. The litigation was initiated by the Jim Butler company on the grounds that the West End company was extracting ore from a vein on the Jim Butler property. The West End claimed the apex of the vein, however, and argued that they therefore possessed extra-lateral rights. After several unsuccessful attempts at compromise, in the course of which the West End company offered to pay the Jim Butler \$150,000 in cash plus a half interest in the ore in dispute, the case was brought to court and argued by a formidable array of attorneys and geologists representing the two sides. Over 1100 pages of testimony was taken, and a considerable amount of special development work was done by the litigants in the attempt to prove their opposing contentions.^{1/} The decision of the District court at Tonopah, rendered in April,

^{1/}A clear presentation of the two arguments is given in "Apex litigation at Tonopah: Special Correspondence": Eng. and Min. Jour., vol. 99, pp. 660-661, 1915.

was curious in that it accepted the greater part of the geologic contentions of Jim Butler Company and used them as a basis for a decision in favor of the West End Company.^{1/} This decision was affirmed successively by the

^{1/} Apex Litigation at Tonopah: Eng. & Min. Jour., vol. 99, pp. 897-898, 1915.

Nevada Supreme Court in 1916 and the United States Supreme Court in 1918.^{2/}

^{2/} The text of the U. S. Supreme Court decision is given in "Jim Butler Tonopah Loses Appeal": Eng. & Min. Jour., vol. 106, pp. 64-65, 1918.

The Tonopah Mining Company also started its litigation with the Tonopah Extension Company in 1914, claiming that the latter company was extracting ore from Tonopah Mining Company property. The Extension claimed apex rights on the disputed ore but after more or less preparation for court action the suit was settled out of court by a small cash settlement plus some transfer of property and the subsequent establishment of vertical side lines.

A long period of litigation between the Tonopah Extension and Cash Boy companies was started in 1915 when a suit was filed in the Federal Court at Carson City in which the court was asked to determine the end lines and to quiet title to the claim containing the vein being worked by the Tonopah Extension, and to define the apex rights of the two companies. The conflict was apparently dormant for several years but early in 1921 the Cash Boy Company sued to prevent

further mining by the Tonopah Extension within their ground, and the Extension countered with a suit for \$15,000 in damages resulting from trespass by the Cash Boy. The litigation was finally settled in December, 1921, by the purchase of the Cash Boy for 100,000 shares of Extension stock.

Another protracted litigation started in 1915 between the Tonopah Extension and the West End companies. The initial step was taken when the West End company was enjoined from entering Extension ground along the vein. Later the West End Company was granted permission to inspect the disputed territory and in 1924 filed a complaint that the Tonopah Extension Company had extracted ore valued at \$1,000,000 from veins apexing on their property. The suit was finally settled later in 1924 by the payment of \$55,000 in cash to the West End Company together with the right to mine in the disputed territory for five years, after which vertical side lines were to be established.

The last of the important apex litigations was commenced in 1924 when the Tonopah Extension Company sought to prevent, by court action, the West End or affiliated companies from working in Tonopah Extension property along the continuation of the "76" vein. This case was finally settled out of court in 1926, when vertical side lines were agreed upon, with the added provision that

the West End Company was to have the right to mine all ore in the "76" vein upwards from a point 20 feet above the 1200 level in the Extension Mine.

In addition to the title and apex suits, there have been a number of other legal disputes that were of more than local interest. One of the earliest of these was in 1909 when an attempt was made to hold the directors of the Tonopah Belmont Company criminally liable for an issue of new stock. The discovery of the Belmont vein shortly thereafter and the resulting prosperity of the company seems to have prevented a settlement of the suit in court.

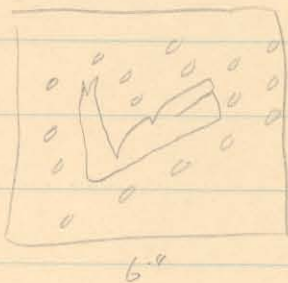
About 1912 final disposition was made of a suit brought against the Belmont Company on the grounds that the filters used in their mill infringed on certain patents held by the plaintiffs. This suit, which appears to have attracted considerable interest was first decided in favor of the Belmont Company but the decision was reversed on appeal.

Another legal action which was of importance throughout the State was started in 1919 by the Tonopah Extension Company backed by the Nevada Mine Operators Association. This was a friendly suit against the State over the Bullion Tax and was finally decided in favor of the State in 1926.

The controlling interest in the West End Company was brought into court by the minority stockholders in 1925 on the grounds of mismanagement. Although the majority interests won the case, they later turned control of the Tonopah properties over to the minority group as a compromise agreement. The last important suit involving the Tonopah mines was settled in 1930 when the old stockholders in the Tonopah Extension mine failed in an attempt to have a receivers' sale of the property declared invalid.

CA →

fine grained green banded K intrudes amygdaloidal K (rzt). It probably represents the still unconsolidated part of the flow that froze later than the intruded portion, since the contact is extremely irregular in detail & in one place the amygd K includes an area of the fine gr stuff but is embayed irregularly by it.



On 600 TE #1 CA has reverse facies & coarse flow breccia.

Contact with VA in 1880 limit at 1300 E + 8660 N. Pass from
normal WE to a breccia in which the matrix resembles WE but is darker -
breccia matrix gross coarse, more dark green + has a rather waxy contact with
pepper + salt variety of VA. Then into another fr with matrix like VA in places
+ in others like EB. Then porphyritic variety of VA. Suggested that WE
contact followed older one bet VA + EB.

WE has well of GT (1880)

Geological formation.

banding in GT is rather variable & local discordances may be noted.

Interbedded with massive buff.

• SXC along 1160-1180 E could on 1880' level - It has on face a greenish glauy matrix & to north a gray glauy matrix. In the breccia, which is normally rather fine, are blocks of GT more than 10' long & one of equal size of massive buff.

~~Contact of WE~~

1540 Pump station at Drellare shaft - contact bet TF & SA appears to be conformable. CA is notably finer gr at contact.

Contact with MT on 1100 level in XC to Buckeye.

MT above, - then 20' of coarse br - 6' MT - then 1' of breccia, then 15" well banded fine gr hard buff?, followed by a coarsened thickness of dark hypocrinous K with sparse inclusions -

Contact bet TF & WE on 1100 level appeared to determine as ~~map~~ the TF breccias locally closely resemble coarse phase of WE. There are probably tongues of WE in the areas mapped as TF, since T380 appears to be WE but much of the material must be TF since the well bedded Ks locally show x bedding.

Contact with CA 600 TF #1

Matrix greenish toward contact & br contacts much CA. Contact rather irregular.

Name

Distribution

Stratologic position

Microscopic features

Relations to other formations.

Thickness

Age.