Chapter 10

Pursuing Segments of the Glass Snake; The Battle for the Big Jim

The Discovery

On Christmas Eve, 1915, for some reason not really known to history, three-quarters of a mile southeast of the Western Arizona gold-mining camp of Oatman, miners were hard at work 400 feet underground within a lode mining claim that had been named the "Big Jim" when it had been located seven years earlier. They had been driving a cross-cut through barren rock for approximately 150 feet. Perhaps they had a premonition, or perhaps teasing traces of "pay dirt" led them to work on what should have been a holiday. The fact was that these miners, that evening, discovered gold, and lots of it.

The geology that created this gold was not simple. During the mid-Tertiary period of the Cenozoic geologic era, between 23 to 18 million years ago, as a near-surface magma dome swelled beneath the Precambrian rocks of the River Range, the strain created a three-mile-long fissure, or fault, in the rocks trending ("striking") northwest and having a dip (downward direction) of between 70 to 75 degrees to the northeast. Then, as volcanic eruptions broke through the rocks, the fault acted as a zone of weakness into which a thick, sticky, molten rhyolite was intruded. This material, with its high silica content, acted as a structural host for mineralized hot waters trapped in the deeper reaches of the earth. As the crack was reopened by seismic activity or new volcanism, the host materials within the fissure were exposed to mineralizing events perhaps as many as five separate times, each time further enriching a vein of free gold in quartz and calcite.

Other faults in the area were similarly mineralized to a greater or lesser extent depending upon how many times a fissure had been exposed to the mineralizing waters; the result was the creation of a proliferation of low-grade "teasers" along with a few bonanza deposits. Later, after mineralization was complete, when new strains were applied to the rocks, there was a recurrence of faulting; this time, although the new faulting was for a distance precisely parallel to the older, now mineralized fault, its dip was in the opposite direction, from 60 to 70 degrees southwest. In addition to creating the fault, this same seismic activity moved the ground on the western side of the fault either downward or horizontally, separating the vein at its intersection with the new fault line. The resulting dislocation was sometimes only a few inches, but in other cases many hundreds of feet. The principal vein running through Oatman came to be known as the Tom Reed vein and the post-mineral fault was named for Ellis Mallery, the young geologist who first identified it. Finally, erosion and volcanic debris joined the conspiracy to hide the evidence of mineralization by erasing the surface evidence of the vein. The first prospectors found only a rugged chain of volcanic foothills along the western slope of the Black Mountains with several rather prominent features created by rhyolite plugs that came to be known as the "Elephant's Tooth" that overlooked Oatman from the northeast, and the "Boundary Cone," located at the southern-most end of the vein. There was little real indication of what lay underground.

The find was good news in Mohave County, but the discovery did not make banner headlines in the *Mohave County Miner*; the community was accustomed to announcements of new mineral discoveries in 1915. The first minerals in the area had been discovered in 1862 by soldiers from Gen. James H. Carleton's Fifth California Volunteers, many of whom were experienced miners from the California gold fields. In 1863, John Moss found a gold vein not too far from Carleton's Fort Mohave encampment on the Colorado River and eventually removed ores worth $240,000. While some promise was shown, the deposits quickly played out and the area waited for 30 years before shafts sunk in 1901 discovered gold in the hidden Tom Reed vein. "Civilization," such as it was, was a group of miner's shacks huddled on the Tip Top mining claim. In 1909, the "town" was named Oatman either after Olive Oatman, a little girl captured by the Apaches in 1851 along the Gila Trail and sold to the Mohave Indians, or John Oatman, a local miner who claimed to be her son.

The known wealth of the area had been centered on two parallel veins, the Tom Reed vein, and 1-1/2 miles to the northeast, the Gold Road vein. It was the Gold Road Mining Company that had sunk the first shaft on the Tom Reed vein in 1901 and had thereafter made its principal discovery in 1902 on the Gold Road vein.

While the Gold Road Company concentrated on its Gold Road vein, it was left to the Tom Reed Gold Mines Company to consolidate diverse holdings on the Tom Reed vein and finally begin operations in 1908 on the Ben Harrison and Tip Top ore bodies.

The Tom Reed vein remained the heart of the district but its secrets were not easily revealed. Some of the complexities of the area's geology were stripped away with a major find announced on March 20, 1915, on the Tom Reed Extension claim which skyrocketed the new United Eastern Mining Company into prominence and underscored the geological acumen of Frank Keith, Seeley Mudd and Philip Wiseman, who, on an investment of $5,000 each (the total capitalization was $50,000), within one year defined a gold deposit worth $6 million. During June and July the Tom Reed Company completed a survey as part of the process of obtaining title to its Grey Eagle claim but very little mineralization was shown in two shafts measuring eight and ten feet deep and a deeper 40-foot shaft. The company's attention was distracted when a new strike was made within their Black Eagle claim, 1,500 feet to the southeast, announced on August 14, 1915, and the possibilities under the Grey Eagle were ignored. After the discovery of these deposits, development in the district could only be termed as "feverish," and by September, the entire Oatman area was being heralded as "The New Cripple Creek." The stock of both the Tom Reed and United Eastern Companies soared on the Los Angeles and San Francisco stock exchanges; even Oatman boasted its own exchange. And no wonder, in addition to the potential for great wealth, an investment in the Tom Reed Company had paid dividends averaging 4-1/2 percent per month over a period of 54 months; any new investment opportunity meant possible riches. The romance of the new discoveries, as typified by the United Eastern deposit, was that there was almost no surface evidence of mineralization save a seam of non-mineralized clay or calcite and quartz. The accepted practice thus became to sink a shaft of 300-500 feet and then look for mineable ore by cross cutting. The risk was enormous, but it was an ideal environment for mining stock promoters and perhaps a hundred shafts were sunk in the district, each ballyhooed by a new stock promotion.

The *Mohave County Miner* was itself a participant in this drama and unabashedly promoted the stock of the Tom Reed Company frequently making up slow news days with either banner headlines heralding activities at the Tom Reed mine or advising readers that "[n]o matter what the stock may sell for in the Los Angeles market it is the chance of a lifetime for all shareholders to hang [on] to their stock like grim death..."

The Big Jim Mining Company had not been a big player. It owned the Big Jim claim and the adjoining Little Alice, Monarch Mine and Stem Winder claims and had plans to develop these holdings through funds raised by stock sales. On May 29, 1915, in a half-page advertisement in the *Mohave County Miner*, it announced the listing of its stock on the Los Angeles stock exchange for ten cents per share to develop its claim, boasting of its strategic position between the previously announced discoveries of the Tom Reed Company to the southwest and United Eastern to the northwest. The boast proved prophetic.

By the time the news of the Christmas Eve strike was reported in the *Mohave County Miner* in its January 1, 1916, edition, the miners at the Big Jim had cut through 43 feet of gold ore assaying between $18 to $112 per ton (based on gold prices of $20 per ounce). A. George Keating, the superintendent of the Big Jim Company who had only arrived in Oatman on August 1, 1915, was soon visited by his friend, Stephen S. Jones, the manager of the Tom Reed Company whose Grey Eagle claim lay immediately to the southwest. Jones wanted to inspect the workings underground. Jones's motives were undoubtedly mixed; he had to have been thrilled with the discovery, he had, after all, been one of the original locators of the Big Jim along with two other Tom Reed Company employees who, on a weekend lark, decided to take up some adjoining ground on sheer speculation, and later sold out to the Big Jim Company. The primary motive for the examination was probably that the Tom Reed Company's Aztec Center claim adjoined the Big Jim's southeastern endline and there was a chance that the mineralized geologic structure continued onto the Aztec Center. A darker motive had to have been lurking because the Big Jim vein did not come to the surface on ground owned by the Big Jim Mining Company; it was possible that the vein exposed on the surface of the Grey Eagle was the same physical structure that had been discovered underground. The importance of this fact was based on a legal right ascribed to lode mining claims, an "extralateral" right, that permitted the owner of the highest part, or "apex," of a vein to follow its downward course, or "dip," underground within planes defined underground by the claim's parallel endlines, and, if circumstances were right, even into adjoining ground claimed by others.

This concept of an extralateral right was a product of at least medieval antiquity. Probably no element of the mining law has been so thoroughly condemned by legal scholars and commentators while at the same time sanctified by miners as natural law of the highest stature.

In any case, Keating permitted the inspection, and the Tom Reed Company quickly thereafter began a frenzied development of a new shaft on the Grey Eagle claim angled toward the Big Jim apparently looking for an apex of the Big Jim vein within the boundaries of the Grey Eagle; which, under the law, would give them the rights to the Big Jim vein.

The Law

The extralateral right, a common attribute of the self-governing regulations or by-laws of the mining districts of the western mining camps, was first cloaked with legitimacy of law by Section 2 of the Lode Mining Act of 1866, which allowed a miner, as part of a right to purchase a mineral vein from the United States, the deceptively simple right:

> to follow such vein or lode with its dips, angles, and variations to any depth, although it may enter the land adjoining . . .

A problem with this grant, as perceived by the miners,

was that the right was limited (perhaps based on English and German concepts) to the single "discovery" vein and ownership of any additional veins that might be found within the boundaries of the mining claim was open to question. In fact, the federal mining law did not even contain a provision to define the width of the claim or impose any limitations on the amount of surface of the mining claim that could be used by the miner. These limitations were, according to General Land Office instructions, left to either the rules of the individual districts or the actual occupancy of the individual claimant.

It seems to have been the popular notion that it was William M. Stewart, United States Senator from Nevada, who redefined the concept of the extralateral right in the General Mining Law passed in 1872. Stewart, who had been a California gold rush '49er, was reputed to have been the author of some of the first lode district regulations and is generally credited as the architect of the passage of the 1866 Lode Mining Act. By the 1872 law, the maximum length of lode claims was fixed at 1,500 feet and the width limited to 300 feet on either side of the vein at the surface. By the changes in the law, the claimant was given clear title to all veins that apexed within these surface boundaries together with the rights of extralateral pursuit originally recognized under the 1866 law for all of such veins. The 1872 provision granted claimants:

> the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface location.

The 1872 law did impose some restrictions by prohibiting the miner from entering the surface of a claim owned or possessed by another in the exercise of extralateral rights.

During the early years of operation of the General Mining Law, the exercise of extralateral rights and the defense against such exercise was probably the greatest single source of employment for mining lawyers and professional witnesses. This circumstance was not unexpected as commentators of the day were apprehensive from the very beginning. Justice William H. Beatty, the Chief Justice of the Nevada Supreme Court, in comments submitted to the Public Lands Commission in 1879, predicted problems:

> As yet there has not been time for a great amount of litigation to arise out of attempts to follow lodes on their dip beyond the side lines of locations, or from attempts of claim holders to mine on lodes dipping into their surface lines from outside locations. These seeds of strife are, however, germinating.

Micajah T. Burgess, in testifying before the same Commission in Salt Lake City, on September 7, 1879, was more blunt:

> There are so many excuses for litigation, so many crooks in practical mining, that I doubt if it would be possible to do away with litigation, so long as you allow men to go beyond the plane of their side lines on the dip of the lode.

At the center of this controversy was Rossiter W. Raymond, probably the pre-eminent mining publicist of the day and the first president of the American Institute of Mining Engineers. In fact, the term "extra-lateral mining right" was probably coined by Raymond in his article, "The Law of the Apex" which was presented at the 1883 New York meeting of the American Institute of Mining Engineers. Raymond had at first supported the right in 1869, when, as Commissioner of Mineral Statistics for the Treasury Department, he advocated its retention in his report to the Congress, but in his own letter to the Public Lands Commission in 1879, he began to waffle. In this letter, although recognizing the potential for litigation, he argued that the extralateral right was the best incentive for deep mining, but at the same time conceded that "[t]he certainty of a location carrying absolute ownership of a tract and its contents would be in many cases far better for the miner than this combination of chance of getting a great deal with the risk of getting nothing." In the final analysis, Raymond's article expressed a plea for an authoritative construction of the law by the United States Supreme Court to bring about the results he felt had been contemplated by Congress; failing such action, Raymond wanted "its radical reconstruction at the hands of Congress." In Raymond's 1883 article, probably the most significant contribution to the body of comment on extralateral rights, he concluded that:

> The "common-law principle" does not . . . forbid the separation of the mineral right from the surface ownership. . . . The heart of the trouble [is that] the government, in exercising its undoubted right to separate the two properties, has violated, not common-law, but common-sense, by conveying a thing which is difficult to recognize, describe, and bound.

The extralateral right, despite all of these protestations to the contrary, is not "unnatural." In the final analysis, one must be influenced by the image of the miner excavating feverishly along the dip of a vein in the hope of great wealth deep underground as being comparable to a law officer in hot pursuit of a fleeing felon. A jurisdictional boundary line is both annoying and unfair. It is not surprising therefore, that when the pursuer has written the rules, the right of pursuit is not only inviolate, it's downright holy.

These rules were not so easily applied, and George Keating and Stephen Jones probably never foresaw that the vein they were looking at would eventually precipitate a classic battle of both legal principles and personalities.

The Dispute

> [I]t is usually just as easy to identify portions of a vein as belonging to one original and continuous vein, as it is to identify and place together the different pieces of the so-called "glass snake" after it has been disjointed.

With these words, Daniel Mareau Barringer and John Stokes Adams summed up the legal premise that would provide Arizona's most significant contribution to both the lore and legal precedent of the "law of the apex" that began on the Christmas Eve of 1915.

Although the Grey Eagle claim had been located on January 1, 1904, work had never been vigorously pursued. The Tom Reed Company was much more interested in the more promising deposits on their nearby Black Eagle claim. With the discovery next door, Jones set about

the sinking of the "Grey Eagle Shaft" on Tom Reed Company property, but angled in the direction of the Big Jim. The Big Jim Company's owners, not surprisingly, became nervous when a cross-cut was begun at the 200-foot level of the Grey Eagle shaft towards the Big Jim claim. Once the line between the two properties was reached underground, work was stopped. Whether the halt was the result of a gentlemen's agreement or fear of provoking the ire of the Big Jim Company, the situation did not last. At the annual meeting of the shareholders of the Tom Reed Company on April 28, 1916, Jones resigned and was replaced by Edward M. Rabb. Rabb, undoubtedly acting under management's new directives, ordered the extension of the cross-cut onto the Big Jim. Keating issued a strong protest and word was sent to Los Angeles, the headquarters of the Tom Reed Company, followed by a visit to Los Angeles from Keating. Keating received assurances that the Tom Reed Company's management "did not want to do anything antagonistic" but at the same time, the intrusion continued. The results for the Tom Reed Company turned out to be inconclusive because the cut was above the Big Jim vein.

Forced into a defensive action, Keating determined that the most effective method of stopping the incursion would be by connecting the workings between the two properties. In June, 1916, he began an upraise from the Big Jim's 400-foot level to connect the Grey Eagle's cross-cut and put in a door to prevent further work. By September, a bulkhead and door sealed off the Big Jim. Underground probing by the Tom Reed Company continued but the company was also beset by other problems as disputes erupted between shareholders and Rabb feuded with management over what he viewed as a desire to "gut" the mine without spending required funds for exploration. The result was that Rabb was himself replaced on August 1, 1917, by W. Bemis Phelps. In spite of the distraction faced by the Tom Reed Company, the stakes were too high for the Big Jim Company, and on December 10, 1917, it sold out to United Eastern for 187,000 shares of United Eastern stock, then valued at $800,000.

After United Eastern's acquisition of the Big Jim, mining within the Big Jim stopped as the dispute simmered and both sides attempted to define the legal ownership of the Big Jim's gold. The Tom Reed Company began an upraise along the Mallery Fault into Big Jim ground to a point called the "Litigation Winze," where the excavation turned and continued laterally into the Big Jim vein in what was called the "Trespass Crosscut." This effort, unlike the work on the 200-foot level, cut through the ore within the Big Jim vein. These actions were not entirely aggressive as attorneys for United Eastern had tacitly agreed not to prevent the "trespass" and the Tom Reed Company's miners would leave small pillars to demonstrate the existence of ore. This new spirit of cooperation was probably the result of the fact that the two companies had been talking about consolidation of their holdings for several years.

On March 1, 1919, the efforts at consolidation reached an impasse and the Tom Reed Company sued United Eastern to quiet title to what it called the Grey Eagle vein. United Eastern responded by a second suit of its own, asking for an injunction to prevent the Tom Reed Company's miners from entering the ground beneath the Big Jim claim. By this time, both sides had a reasonably clear picture of the facts. Physically, the mineralization within the two claims probably was, at some time in geologic history, connected as a single continuous fissure vein. It had, by the intervention of the Mallery fault and a secondary fault, the Big Jim fault, been fractured and dislocated in two places creating three segments. This faulting took place after the mineralizing event and thus no mineral values were found along the fault lines. The first segment, called the Grey Eagle vein by the Tom Reed Company, apexed at the surface of the Grey Eagle mining claim and dipped in a northeasterly direction at approximately a 75 degree angle to a depth of 600 feet where, by virtue of the dislocation caused by the Mallery fault, the likely continuation of the vein was moved upward along the fault in excess of 400 feet before continuing in a downward direction for varying distances along its length, but generally less than 100 feet. Looking down from the surface of the claims, the strike of the highest point of this second segment of the vein, called the "Sideline vein" by United Eastern, was along the common sideline of the Grey Eagle and Big Jim claims and portions of this strike straddled both claims. Then, following the dip of this second segment to its bottom, the Big Jim fault intersected the vein and again dislocated its continuation creating the third segment of the vein. The upward movement of this third segment ranged from only a slight dislocation to approximately 200 feet. The strike of the highest point of this third segment was wholly within the boundaries of the Big Jim claim and constituted what United Eastern called the Big Jim vein.

The Players

The application of the law to these facts was the challenge and both companies set about to hire the finest "guns" in the industry. With $2,000,000 at issue, cost was of little concern. The Tom Reed Company retained Judge Curtis H. Lindley of San Francisco, then 70 years old and the son of a mining lawyer. Judge Lindley was, without question, the dean of mineral lawyers and his treatise on mineral law, then in its third edition, was not only considered the preeminent exposition of existing judicial interpretations of the mining law, but was in many instances the very fabric of what was really a rather sparse piece of legislation because Lindley frequently expanded existing precedents with his own views; most of which were eventually accepted by the courts. The title of "judge" was obtained early in his career during a one-year stint as a trial court judge, fittingly in Amador County, California, the birthplace of organized hard-rock mining districts. Judge Lindley was, in addition, a long time adviser to Herbert Hoover and, despite his age, had served as legal advisor to the Food Administration during the recent great war. He was thus probably eager to return to the battlefields of extralateral rights litigation and likely ignored failing

health to take the case for the Tom Reed Company. With him, from his San Francisco office, was William E. Colby, then 45, who in years to come would establish himself as Lindley's scholastic successor. Lewis L. Wallace, a private practitioner in Oatman was United Eastern's local lawyer and his participation was required to satisfy the legal requirements for a local attorney to direct practice by out-of-state lawyers. The technical members of the Tom Reed Company's team included Oscar H. Hershey, Dr. Andrew C. Lawson, Walter H. Wiley, Albert Burch, and Bemis Phelps.

The lead counsel for United Eastern Mining Company was John P. Gray of Coeur d'Alene, Idaho, likewise an exceptionally qualified veteran of mining litigation. Gray, although he was thirty years Lindley's junior, had almost twenty years experience in trying this type of case. He received his legal education at George Washington University, having obtained his LL.B. at age 18, and began his practice in Wallace, Idaho, in 1901 with W. B. Heyburn, a former United States Senator, who was regarded as a great mining authority and was one of Lindley's principal adversaries. Heyburn schooled Gray in mineral rights and Gray built a reputation on this foundation. Gray was also counsel for U.S. Senator William A. Clark, famous for his own extralateral rights disputes in Butte, Montana, as well as his Arizona holdings at the United Verde at Jerome, and had represented Clark in *Clark-Montana Realty Co. vs. Butte & Superior Copper Company*. Clark later described Gray as "having the keenest legal mind with reference to mining law" of any one he had ever met.

The United Eastern legal team also included R.L. Alderman, originally from Hailey, Idaho, who was United Eastern's regular corporate attorney in Los Angeles, and Charles N. Herndon, a Kingman attorney who had been the Mohave County Attorney for some years and who was the company's local counsel. The technical team for United Eastern included Horace V. Winchell, Fred Searls, Jr., Perry G. Harrison, Dr. William H. Emmons, and John A. Burgess.

The individual technical experts on both sides included some of the true academic stars of the day. On Lindley's team, and probably the dean of the group, was Dr. Lawson, then 59, a professor of mineralogy and geology at the University of California at Berkeley, whose revolutionary studies of Precambrian rocks had made him famous. He had gained further prominence as the head of the commission appointed to investigate the causes of the San Francisco earthquake of 1906, and his report on the event marked a milestone of understanding earthquakes and initiated the terminology of elastic rebound of shock waves. Hershey was a mining geologist, also from Berkeley, who had 15 years professional experience in the Black Hills of South Dakota and in northwestern California. In 1907, he became an assistant to the editor of the *Mining and Scientific Press*, the most widely distributed trade publication of the day, and since 1910 had been a geological consultant. Both Wiley and Burch were mining engineering consultants who had extensive experience throughout the western United States, Canada and Central and South America; both also had experience in providing expert testimony in extralateral rights cases. On the other side, Horace Winchell had put together the exploration department for The Anaconda Company, considered a model of its day. He had also participated in ten years of the "underground warfare" of the epic extralateral rights fight between F. Augustus Heinze and Amalgamated Copper Company in Butte, Montana, that began in 1895. Winchell, 55 at the time of the trial, was the immediate past president of the American Institute of Mining Engineers, a post where he was succeeded by Judge Lindley's long-time friend Herbert Hoover. Dr. Emmons, a professor at the University of Minnesota was the author of the leading text book of the day on ore deposits and had worked at one time for Col. William Greene's Cananea Copper Company after graduation from college. The junior member of United Eastern's team, Fred Searls, who was 32 years old at the time of the trial, was already an experienced veteran of extralateral rights cases having first established his credentials as an expert eight years earlier in a case entitled *National Mines Company vs. Charleston Hill National Mining Syndicate* (in which case Burch and Lawson had also testified).

The Trial

The trial, before Mohave County Superior Court Judge E. Elmo Bollinger, sitting without a jury, had been eagerly awaited by the citizens of Kingman. As a mining community, the legalities of "apex rights" were understood by just about everyone in town and the comings and goings of the legal and technical talent during the two years of trial preparation was a frequent topic for coverage in the *Mohave County Miner*. On the eve of trial, the newspaper waxed poetic:

> The faults of mankind are no more numerous than the faults of nature and not more exasperating to the average human being. And while the jurist is working out the one the geologist is working out the other.

A festive air was lent to the proceedings because United Eastern, even without the Big Jim, had $6,000,000 in ore blocked out and the Tom Reed Company had never had access to the ore body. Therefore, the stockholders of the losing company would not suffer, but the winner would likely benefit greatly. The citizens of Kingman viewed the litigation as simply a prizefight between the two companies. Judge Bollinger also knew that he was in the spotlight. He had been on the bench for only two years, having unsuccessfully sought an appointment to the Mohave County bench from Gov. George W.P. Hunt. When John A. Ellis resigned in 1917, Hunt had appointed Paul C. Thorne. In the democratic primary the next year, Bollinger defeated Thorne by a 2-1 margin. Bollinger had spent considerable time preparing himself for trial, and when he was injured in a train accident, the trial was postponed by the litigants in lieu of accepting a substitute.

From the outset of the trial on Monday, November 8, 1920, it was clear that these "big fellows," as described by the *Mohave County Miner*, would be doing things differently: a daily transcript would be prepared, a

practice unheard of in the Mohave County Superior Court, each side had carefully orchestrated the presentation of its case, and normal rules of practice were being ignored by the lawyers. These "new rules" involved occasional interruptions of arguments with questions posed by the lawyers to each other, and witnesses would be questioned by any of two counsel on either side. The lawyers were cool although generally cordial towards each other; Lindley, slightly pompous and Gray, the smart young pretender to his preeminent position. The only objections from Gray usually came when Lindley argued with witnesses, a circumstance that occurred increasingly as the trial progressed. The Tom Reed Company's case took three days to present, and, at its close on Wednesday, both sides wanted to continue on Thursday, a legal holiday in honor of Armistice day. Judge Bollinger ruled, however, that the legal holiday prevented him from holding court and United Eastern began its defense on Friday. The trial continued through an all-day Saturday session, and concluded at 5:30 p.m. on Monday, November 15.

The first day's proceedings began with Judge Lindley presenting an opening statement during which he "unveiled" the plaintiff's rather intricate trial exhibits. Lindley's theory of the case was that if the party asserting the existence of the extralateral right could, by a preponderance of the evidence, prove original identity and traceable continuity of a vein, the extralateral right would exist. "From my point of view," Lindley told Judge Bollinger, "this case does not involve a question of priority. Our basic and fundamental contention is that this, under the authority of the law, is one vein, originally identical, with faulted parts being connected by indicia which, in our judgment, cannot be controverted."

Lindley's statement was unusual inasmuch as Gray, at the termination of Lindley's remarks, asked him directly, and not through the trial judge, as is the normal trial etiquette, to clarify his statement as to the delineation of the rights of the miner. "He has a right," Lindley responded, "to follow down the first segment, the second segment and the third segment. He has a right to go along the faulted plane or anywhere else to find it and follow [the vein]." The trial then proceeded to an examination by Colby of the original locators of the mining claims in dispute. Lindley resumed the questioning with the engineering witnesses and spent the bulk of the time during the first day in the examination of Oscar Hershey. At the end of the first day's testimony, after a request was made by Gray, Judge Bollinger gave permission to the United Eastern lawyers to be in the courtroom that night to make drawings of the exhibits used during the first day's testimony.

Gray's defense, as evident in cross-examination, was simple. The law, despite Lindley's assertion to the contrary, suggested that the extralateral right could only be pursued on a "downward course." Gray thus sought to ask each witness whether the facts related to the Tom Reed Company's "three segment" theory of the Tom Reed vein fit this criterion. His cross-examination of each witness included this ultimate question; to Hershey the question was:

> Gray: There is no way by which you can follow from what you call the apex of the Tom Reed vein downward within the plane of the vein and reach any part of the Big Jim vein, is there, Mr. Hershey?
>
> Hershey: There is not, without going on the Mallery fault or cross cutting through [a distance through country rock of approximately 420 feet].

To Walter Wiley:

> Gray: Mr. Wiley, you cannot start at this apex of the Tom Reed vein so-called, and follow it downward on a downward course within the plane of the vein and reach what I call the Big Jim ore-body?
>
> Wiley: Not by keeping continuously downward. You can go on a downward course, that is, considering the area as a whole course from the Tom Reed apex is downward from the highest point to the Big Jim.

Wiley did come up with an inventive way around the "continuously downward" limitation and explained that "the average of the amount of upraises would be downward."

To establish its case, the Tom Reed Company had to avoid the legal determination that the uppermost portion of each of the segments was a "blind apex" which would by law create a new right and instead sought to call the uppermost portion of each segment its "leading edge." Wiley, in his direct examination by Colby, had used this terminology. In cross-examination Gray seized upon the opportunity to both close the trap Wiley had set for himself based on previous testimony and also to use Lindley's published views to benefit United Eastern. Gray began by asking Wiley for a definition of an apex and directed his attention to the fact that when he was a witness in the case of *Jim Butler Tonapah Mining Company vs. West End Consolidated Mining Company*, he had testified, then under cross examination by Lindley, that in his view the uppermost part of any vein was its apex and that this definition was taken largely from Lindley's book. The quoted portion of the transcript also included Lindley's reaction to using his book against him:

> I knew I would get it before I got through with the case. Never tried a case in my life that I did not get it. The great trouble is that you people pick out such things and suit yourselves, and you do not always pick out things that suit me.

The purpose of Gray's examination was to get Wiley to admit that the upper portions of the segments were actually blind apices. Wiley, in redirect examination conducted by Colby, continued to assert that the provable displacement of the vein constituted a distinguishing characteristic and that the "leading edge" of the second and third segments, while it might satisfy a dictionary definition of an apex, was not the legal apex. His distinction was not particularly convincing.

Andrew Lawson, Lindley's star witness, was the last to testify for the Tom Reed Company. It was on Dr. Lawson that Lindley had placed the responsibility of convincing Judge Bollinger that the three segments were indeed the same mineral vein. Dr. Lawson presented his theories of the geology in a clear and methodical manner; but Gray's cross-examination was devastating. After first obtaining Dr. Lawson's opinion that under his theory the distance of the displacement was irrelevant and only the provability of the continuity was important, Gray posed as a hypothetical question whether his

testimony would change if the vein had been displaced upward and the surface eroded downward to such an extent that the second segment had been exposed at the surface. Lawson responded that he would still consider it one in the same vein. Gray must have sensed victory because if a court were to accept this rule, no lode claim's title could ever be safe. Lawson's testimony had thus been turned in favor of the United Eastern position.

The structure of the case was fixed, and the Tom Reed Company finished its case on what must have been a disappointing note late Wednesday afternoon. The *Mohave County Miner*, however, consistent with its historical support of the Tom Reed Company, provided a good review:

> The presentation of the Tom Reed viewpoint by Judge Lindley was one of the most entertaining exposition of a case ever heard in a court in the State of Arizona and the courtroom was crowded with interested spectators.

After the one-day recess for Armistice Day, United Eastern began its case on Friday morning. Gray opened United Eastern's case on an inflammatory note, suggesting in his opening argument that it was only the discovery of the Big Jim ore body that precipitated the work on the Grey Eagle claim at a place where work would never have been commenced without the knowledge of the Big Jim vein, and when the vein was not found, the Tom Reed Company stopped at the sideline boundary in accordance with custom. But, he added:

> . . . so then came the geologists and instead of taking the veins and ore-bodies as they now exist, they began to develop how they would exist in the beginning. This lawsuit is a result of that theory.

Gray's first witness was George Keating whose testimony was to provide background. Lindley, however, returned the growing animosity in cross examination suggesting that Keating "was working the stock market and not a mining camp." After an angry exchange between the lawyers as to who was a "master of bunk," Judge Bollinger interceded and suggested that the argument could be concluded after the trial. Lindley apologized, conceding that "a fellow gets worked up sometimes and slips over." In truth, if Keating had been working the stock market, he was good at it. The Big Jim Company's stock, from its beginning at ten cents per share reached $2.00 on April 22, 1916, before settling down at $1.25.

A contributing factor to Lindley's agitation may have been the weather. The cold of late autumn in Kingman was held off by a belching oil stove in the courtroom. Immediately prior to the noon recess Lindley suggested that the bailiff put out the fire as "the fumes . . . are worse then the cold." Gray seconded the motion.

United Eastern's first major salvo was fired by Fred Searls. Searls, a self-confident, rough-hewn individual, prided himself in his physical conditioning (he had been his battalion boxing champ during his army service in the Great War), and promoted an identification with the common miner. To the latter's end, he normally wore work clothes and miner's boots topped off with a trademark of red socks. Searls was not intimidated by the courtroom nor the legal talent of the case probably because both his father and grandfather had been lawyers in Nevada City, California, and his brother was even then carrying on the family tradition and had used his expert testimony in a prior case.

Searls had been Dr. Lawson's assistant for a time at Berkeley and was understandably tactful in disagreeing with his old mentor's views on the conclusiveness of the single vein theory. Searls testified that it had been his experience where a vein had been faulted, the faulted portions were always known by separate names regardless of the fact that they may have been at one time in the geologic past parts of the same vein. He had never heard any vein spoken of as "No. 1" or "No. 3" segments of the same vein. This contrasting terminology set the tone of the case, with the Tom Reed Company's witnesses insisting on referring to the deposit as three segments of the Grey Eagle vein, and the United Eastern witnesses calling only the first segment Grey Eagle vein, the remaining portions being the Sideline vein and the Big Jim vein.

Most of Searls's testimony during direct examination was through a *voir dire* examination by Lindley who was seeking to discredit the foundation of Searls's opinions. It must have seemed strange to complete direct testimony, mostly elicited by adverse counsel, only to be again turned over to another member of the same team, this time Colby, for cross-examination. Under cross-examination, Searls agreed with Lawson that at one time, a very long time ago, the Sideline vein was a piece of the Big Jim vein. He made it clear that there was no place where the Sideline vein joined the Big Jim vein although there was a place where the two were separated only by the non-mineral material within the fault. Colby attempted to cross-examine based on the faulting of a vein litigated in *Original Sixteen to One Mine, Inc. vs. Twenty-One Mining Company*, another case where Searls had testified (as a witness for Colby), and asked why in that case, had not the different portions of the vein been given separate names. Searls's response was that the distinction was that the displacement was quite small, probably not more than 45 feet, and displacement had been downward. He continued to assert that, in his view, in spite of the small displacement, the two pieces of the vein were distinct. Lindley apparently thought he could do better, and in a re-cross examination concerning practices in other mining camps, a further exchange ensued:

> Lindley: Now, Mr. Searls, with reference to what miners think in other districts as to whether they are separate veins or not, does the average miner know how veins are formed?
>
> Searls: No, sir; and usually does not care.
>
> Lindley: [S]o that in certain districts where there are geological conditions, the miner makes up his mind, as you say, that these veins are two and separate veins, that is, entirely regardless of the geological tendency of the veins?
>
> Searls: Usually does.
>
> Lindley: Now, there are miners in this district where the miner says there are no apices, are there not?
>
> Searls: I think that is the general consensus of opinion in Arizona.
>
> Lindley: Well, there has not been a litigated case in Arizona on the apex subject, has there?

> Searls: Never heard of any structural rights being adjudicated. . . . I think it is the common law in the state that it shall not arise.

Searls was wrong in his impression that extralateral rights had not been adjudicated in the Arizona courts, as both Bisbee and Tombstone had been rife with such litigation during the early 1880s. He was correct, however, in his view of the accepted practice of the Arizona miners; by the time of the battle over the Big Jim vein, extralateral rights disputes had been avoided by common consent of the miners for almost 35 years because of efforts begun by James ("Rawhide Jimmy") Douglas in Bisbee in 1881. Through Douglas' efforts, the "sideline" agreement, by which adjoining owners established vertical boundary lines by contract had become the accepted resolution of the extralateral rights problem.

Gray's final witness was Horace Winchell. Winchell, who considered himself an authority on both mining law and engineering, was prepared to make a speech. Based on what he had heard from Winchell in prior cases, Lindley knew that another "dig" was coming. As Winchell began his testimony, Lindley objected asserting that the testimony was "mixing law and geology," and further that the witness was using notes. Judge Bollinger, indicating the great flexibility he was permitting, allowed the testimony. Winchell, then continuing, rather ponderously expounded that the legal concept of the facts could differ substantially from accepted geological definitions. He explained:

> [I]t seems to me that we received a very plain tip in the language of Justice Field in the Eureka case when he said, 'These acts,' referring to the mining acts, 'were not drawn by geologists or for geologists. They were not framed in the interest of science and, consequently, are not scientifically accurate in the use of terms. They were framed for the protection of miners in the claims which they had located and developed and should receive such a construction as will carry out this purpose.' Now, we have a warning given to the geologists, and our experience has shown that our preconceived notions in many cases and definitions which we had relied upon during our school days and learned from the textbooks in many instances are not applicable to the law of mines which we are required to keep in mind in reaching our own conclusions upon certain of these questions. It is true that the geologist has been complimented by the very ablest and most eminent authority upon that question in connection with just such matters, and I am very pleased to refer to a quotation from Judge Lindley who says, in his celebrated treatise on the law of mines, 'The mining engineer expert, with a broad experience, not only in the field of mining operations but in mining litigation, occupies a unique position not only to the miner but in giving aid to the court in the ascertaining of the facts to which the law is to be applied.' Now, I propose to discuss these facts in the light of all the information I have and to show you in what way I reach a conclusion.

Winchell continued with his prepared testimony including a quotation from *Bunker Hill & Sullivan Mining & Concentrating Co. vs. Empire State-Idaho Mining & Developing Co.*, in which he also provided the judge the legal citation, another slight jab since Lindley had represented the losing side, and went on to express his opinion as to separation of the vein:

> I think the rule of reasonable distance applies to a matter like that. I do not think ten feet would sever it or thirty feet or anything within a reasonable amount, and as long as you can follow downward, substantially downward and without great interruption and find your vein and identify it, I think it is yours, but where there is such a throw as this is, which throws it clear out of the ground and makes it necessary to construct upraises that no miner would think of doing, I think you have lost your vein.

With that, the United Eastern rested. The Tom Reed Company's rebuttal evidence took less than thirty minutes.

The exhibits used in the case merit a special note. The jewels of the Tom Reed Company's case were models of the ore deposit prepared by Arthur B. Crosley illustrating the conflict in three dimensions. One model that engendered particular interest was Plaintiff's Exhibit 66, a wooden representation of the Tom Reed Company's supposition of the original configuration of the vein that could be manipulated to separate the vein into the three segments that represented the facts as they existed at the time of trial. After the trial, a book of photographs of the exhibits was prepared for Judge Bollinger, prompting another gushing review from the *Mohave County Miner*:

> This volume is a work of art and is worth viewing, and we feel sure will be highly prized by the judge. . . . The photographs are the work of F. H. McClure, of Kingman, who has left a record in this volume that will endure for many years after the actors in this mining drama have gone the way of all flesh.

The newspaper was correct, as the models were displayed in the lobby of the Engineering and Geology Building at the University of Arizona until 1960.

After the conclusion of the trial, Judge Bollinger, on December 1 and 2, visited the mine and viewed the actual workings accompanied by Phelps for the Tom Reed Company and Winchell for United Eastern.

The Decision and the Appeal

The result of the trial was a victory for the United Eastern Mining Company. On March 28, 1921, before a packed courtroom, Judge Bollinger read his entire decision, comprising 35 printed pages of the final record. An abstract of the decision was also printed in the May 14, 1921, edition of the *Mining and Scientific Press*. The decision concluded that the three segments of the vein beneath the adjoining claims were permanently separated and had been so separated for many centuries so that each of them possessed an individuality of its own. Judge Bollinger's conclusion was that the Tom Reed Company had not established any extralateral right because it could not start on the apex of the Grey Eagle vein and proceed on a course downward on its dip within its same plane and reach the ore body found within either the Sideline deposit, the second segment, or the Big Jim vein, the third segment. Secondly, neither the identity nor the practical continuity of the deposits as one vein had been proved. Finally, there was no "continuity of right" that would permit the separated deposits to be reached by working through the subsurface of the Big Jim claim; which right the Tom Reed Company did not have under established law.

The Tom Reed Company appealed Judge Bollinger's decision to the Arizona Supreme Court. The substance of the Tom Reed Company's argument on appeal was that the federal law granted the right to follow a vein "extralaterally," even though the vein was faulted, so long as the various vein segments could be identified as parts of the same vein. The argument contended that the horizontal movement along the fault did not destroy the extralateral right and that this right should receive

a liberal interpretation based on miner's customs; the Big Jim vein was merely a "secondary vein" to the Grey Eagle's vein. The argument characterized the separate portions of the vein as "outside parts" and argued that the owner of the upper or outcropping portion has a right to follow the other broken off portions. The argument recognized the substance of Gray's cross examination of Professor Lawson and admitted that if the faulting should result in two outcrops, it would be unreasonable to give the owner of the highest outcrop the right to follow that portion of the vein that outcropped on the claim of his neighbor. The answering argument of United Eastern continued to question the motives of the Tom Reed Company and stressed the language of the statute requiring a *downward* pursuit. The reference to the miner's custom was negated by United Eastern's argument, quoting Fred Searls, that, from the miners' standpoint, "[t]hey are today separate and distinct veins . . . the substance of it is that no miner would consider these veins as the same vein, but would regard them as separate and distinct veins."

Ironically, Judge Lindley, in the view of the Arizona Supreme Court, probably lost the case in his opening statement. There, this "learned and distinguished jurist," (the words of the Arizona Supreme Court) made the following statement of his case that was repeated in the Supreme Court's written decision:

> Our basic and fundamental contention is that this [the separated deposits], under the authority of the law, is one vein, originally identical, the faulted parts being connected by *indicia* which, in our judgment, cannot be controverted... I shall hope and expect throughout the medium of this case to establish a rule for the guidance of the mining world in the future, and that rule is this: That whenever a vein is faulted and the faulted segments can be identified and traced by absolute physical facts, and the faulted fragments are found within the end-line planes of the ground holding the apex, that in the authority of the law the miner is just as much entitled to go and take those segments which, through no fault of his, but through the acts and processes of nature have been separated in parts, and mine them and extract them, notwithstanding the fact that they are under his neighbors surface...

This position was too much for the Arizona Supreme Court to swallow. The Arizona appellate courts had been remarkably free from extralateral rights cases, the last case having reached the court 37 years prior to the trial. In the earlier case, *The Tombstone Mill and Mining Company vs. The Way Up Mining Company*, the court had denied the existence of any extralateral rights by reading the statute very strictly. The court must have seen that their previous narrow view of this right had discouraged litigation and acceptance of Judge Lindley's proposed rule of law would likely upset this peace. On this point, Justice Edward J. Flanigan, writing the opinion of the court, commented:

> [T]he rule contended for is unconscionable, and fraught with great possibilities of injustice and deprivation of the right of the discoverer of mineral upon the public domain to that which he discovers, may easily be demonstrated, and the subject is inviting. . . . Examples drawn from the inconvenience and unreason of the rule avouched strengthened the argument by broadening the basis of induction to the wisdom of the law: But the argument from authority is sufficient, and in this case conclusive against appellant's contention.

Justice Flanigan thereafter agreed with Judge Bollinger's written decision at trial and seized upon the language that the miner was permitted to pursue his vein along a "downward" course. Since the second and third segments, to the extent that the upper portions of these segments were not beneath the surface of the Grey Eagle claim, could not be reached along the dip of the original vein extended downward, these segments were "in fact distinct, separate, and different veins." On the second point, regarding the "continuous" nature of the vein on its downward extension, the Supreme Court recognized that the deposit was most likely in geologic times past part of the same vein structure, and that for legal purposes slight interruptions in the mineral bearing rock, short partial closures of the fissure or even a total interruption of the vein would not be sufficient to destroy its identity so long as mineral was found within a short distance in pursuing the same contact. However, where displacement had occurred, and the displacement in question was considered as substantial by the court, any attempt to follow the extension through a non-mineralized fault in the hope of finding an extension of the vein would be exploratory work beneath the surface of another's ground and a trespass on the neighbor's rights not sanctioned under the mineral law. On this point, the court noted that the extralateral right did not invest the pursuers of the extralateral extension of mineralization "with any right of general exploration under the subsurface of [United Eastern's] claim." The grant of the patent to a mining claim conveyed the subsurface as well as the surface and the only right to invade these boundaries was in pursuit of the vein "which on its dip enters the subsurface."

Justice Flanigan concluded that:

> The findings of the [trial] court were amply warranted by the facts in evidence and that [the Tom Reed Company] has shown no right within the separated veins, first, because they cannot be reached in pursuit of the Grey Eagle vein on its course and the approximate plane of that vein extended downward; second, because the deposits are in fact distinct, separate, and different veins; third, as in any event the right claimed may be enjoyed only by an invasion of [United Eastern Mining Company's] subsurface, the right itself cannot, under such facts, exist.

The division of the Sideline vein presented a more difficult conceptual problem. Justice Flanigan's decision pointed out that it was settled law where two or more adjacent mining claims longitudinally bisect the apex of a vein, the "senior" claim had the right to the entire width of the vein on its dip so long as the other prerequisites of an extralateral right existed. Thus, the issue arose as to which claim was senior in the context of the Sideline vein. Here, the Supreme Court ruled that for these purposes it was the priority of the actual discovery of the buried existence of these veins that would control and not the priority of staking or issuance of a patent. Thus, since it was the Christmas Eve, 1915, discovery of the Big Jim vein and the work thereafter done by the Big Jim Company that identified the actual structure, the Sideline vein, to the extent that it was not solely within the boundaries of the Grey Eagle claim, belonged to United Eastern.

The final irony was that Judge Lindley's treatise on mining law, referred to by Judge Bollinger in his decision as "without doubt the greatest work in the English language upon that subject," proved to be the ultimate source for the authority for many of the positions finally

adopted by the Arizona Supreme Court.

Lindley, probably mercifully, did not live to see this ultimate decision in the case. On Monday evening, after the final day of testimony, his recurrent problem with gastric ulcers flared up, and he collapsed in the lobby of the Beale Hotel. Some difficulty was experienced in getting Lindley back to his home as rail service had not yet been completely reinstated after the war. A Pullman car was finally obtained on Wednesday, and after being taken home on a stretcher, he died on Saturday, November 20, 1920. As Judge Lindley's death had occurred prior to final argument, Judge Bollinger appointed Gray, Alderman and Herndon, the entire opposing legal team, as a committee to draft a memorial resolution to be presented immediately prior to final argument of the case on February 21, 1921. Judge Bollinger's decision also eulogized Lindley's passing with the following statement:

> ...[Judge Lindley] after a long and noble career, was cut down by the Grim Reaper while still in harness after passing the mileposts which marks the allotted 'three score years and ten,' the last active days of his life having been spent in ably and vigorously presenting the cause of Plaintiff's company during this trial. In the mining law, his chosen branch of the legal profession, which he honored so many years, he had few equals and no superiors.

All of this was probably small consolation to the Tom Reed Company.

The Final Resolution and a Postscript

The early 1920s continued to produce new discoveries along the Tom Reed vein as the Telluride, United American, United Western and Pioneer deposits were announced, but the boom was over. The population of the Oatman area, which during the frantic days of 1915-18 had swelled to near 10,000, dwindled to only a few hundred by 1925. Even the construction of U.S. Highway 66 through Oatman created little more than a curiosity.

As for the players, Fred Searls turned out to be one of the truly eminent geologists and mine evaluators of his generation, and joined Newmont Mining Corporation in 1925. He eventually served as its president from 1947 to 1953, and chairman from 1953 until his retirement in 1966. William Colby must have learned something from Lindley's effort to shape the law; he would never lose another extralateral rights case. He also established prominence as the first secretary of the Sierra Club and remained on its board of directors for 49 years; he died in 1964. John Gray continued to influence the shape of Arizona law and in 1925 represented the Iron Cap Copper Company in the last of Arizona's extralateral rights cases, successfully defeating the assertion of such rights by the Arizona Commercial Mining Company in the porphyry copper deposits of the Globe Mining District. When he died in 1939, Fred Searls was one of his honorary pallbearers.

As for the Big Jim claim, even with the final decision of the Arizona Supreme Court (the Tom Reed Company had tried to appeal to the United States Supreme Court, but the court refused to review the case), the battle did not end, at least as it related to the Sideline vein. Ironically, the Sideline vein had been referred to during the trial as the "litigation vein" by Phelps because the Tom Reed Company had taken enough ore out of the vein to pay for the entire litigation, or at least he hoped so, not knowing at the time "how much you fellows (referring to both sets of lawyers) are going to soak us." Not surprisingly, the determination of where (and if) the boundary between the Grey Eagle and the Big Jim bisected the Sideline vein was not readily ascertainable. Disputes thus lingered and ten years after the Arizona Supreme Court's decision, a jury ordered the Tom Reed Company to pay United Eastern $20,000 for ore taken from the Big Jim claim by underground trespass. This time the matter was handled by Alderman as the regular counsel for United Eastern, and Judge Bollinger, now in private practice, as local counsel for United Eastern.

The battle was finally laid to rest in 1938, when the Tom Reed Company, United Eastern and the Big Jim Company (now reorganized as a lessee from United Eastern) entered into an agreement by which the Tom Reed Company was permitted to mine the remainder of the Sideline vein and process it through its mill. At the time the agreement was announced, the remaining ore reserves were estimated to be sufficient to keep the Tom Reed Company's mill running for two years based on a mining rate of from 50 to 100 tons per day. Work continued until all gold mines were shut down by Presidential order during the early days of World War II, and, although additional exploration has been undertaken, the mines have never reopened but the Big Jim claim continues to be owned by the heirs of Seeley Mudd and Philip Wiseman.

The "litigation vein" fittingly provided the final segment of the glass snake to be mined. Even with victory in court, the final resolution awaited agreement between the parties. The Arizona "common law" had been confirmed.

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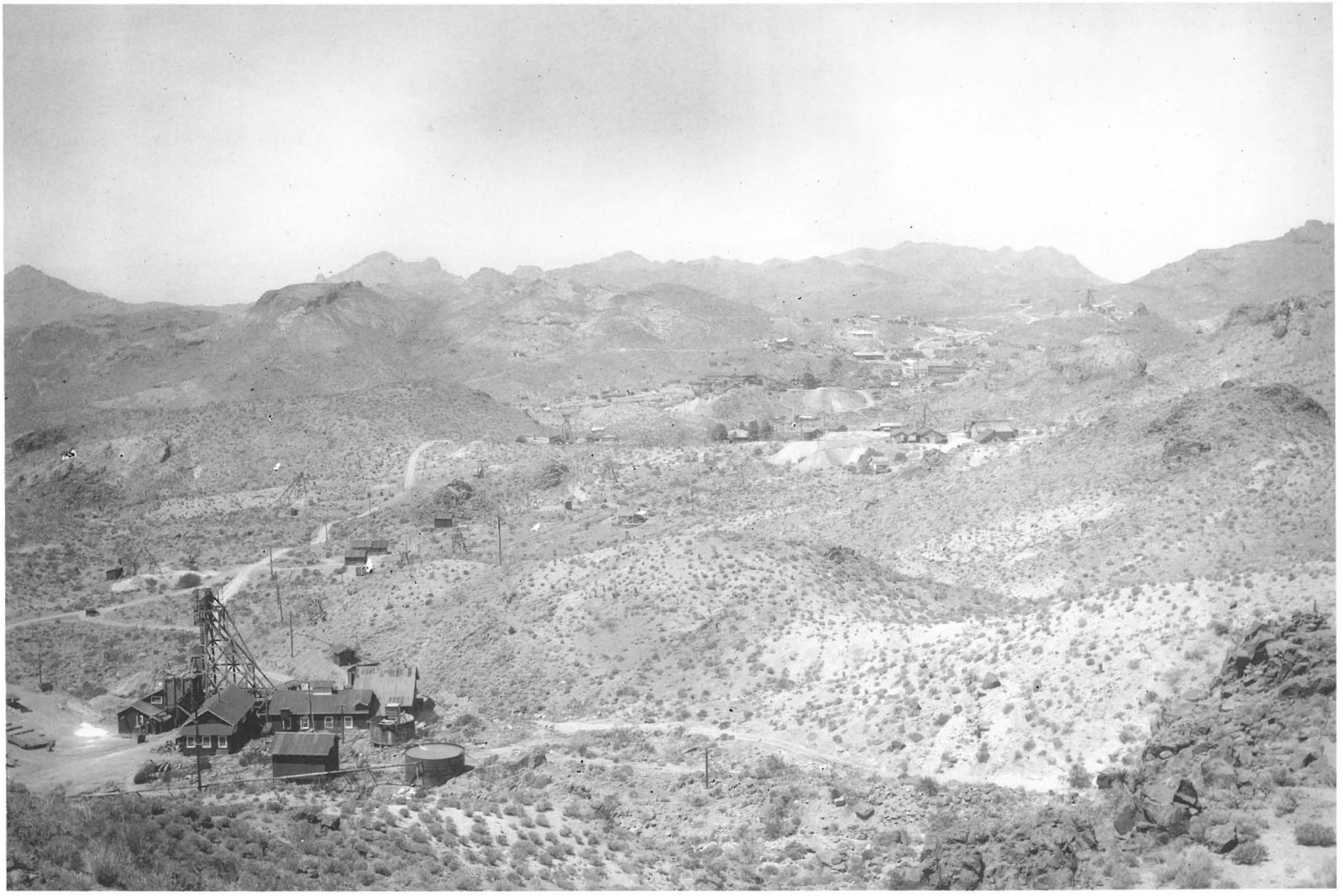
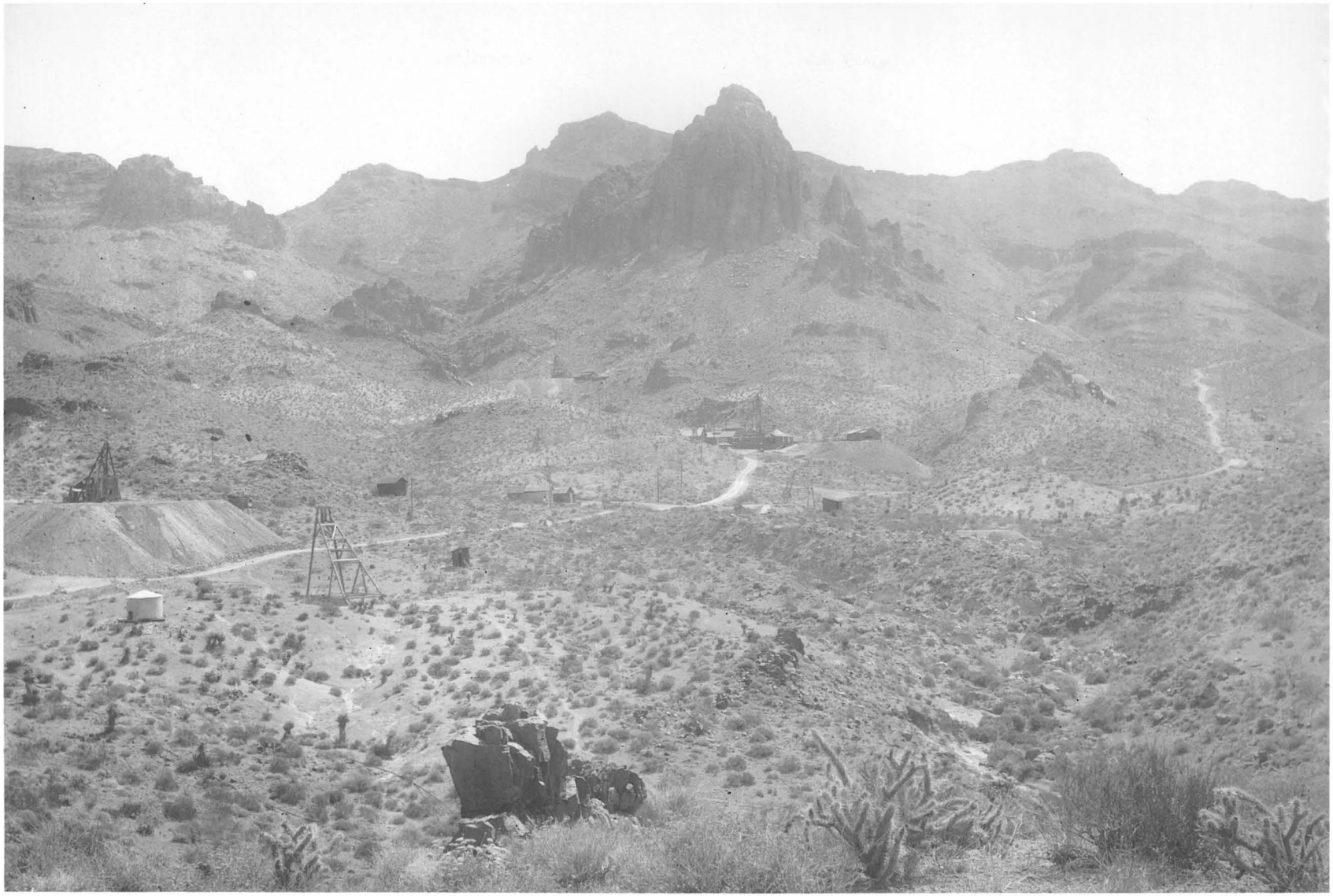
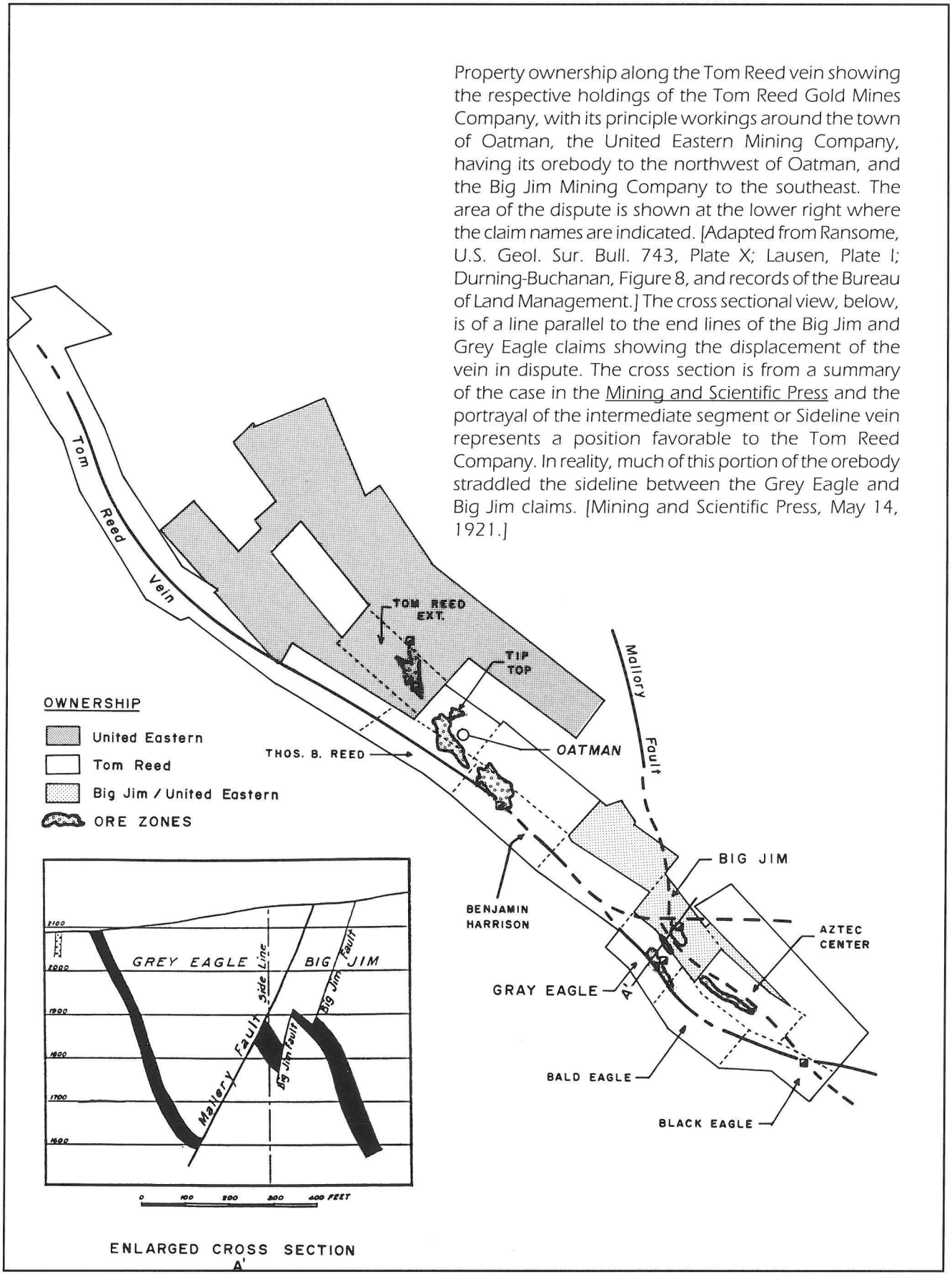


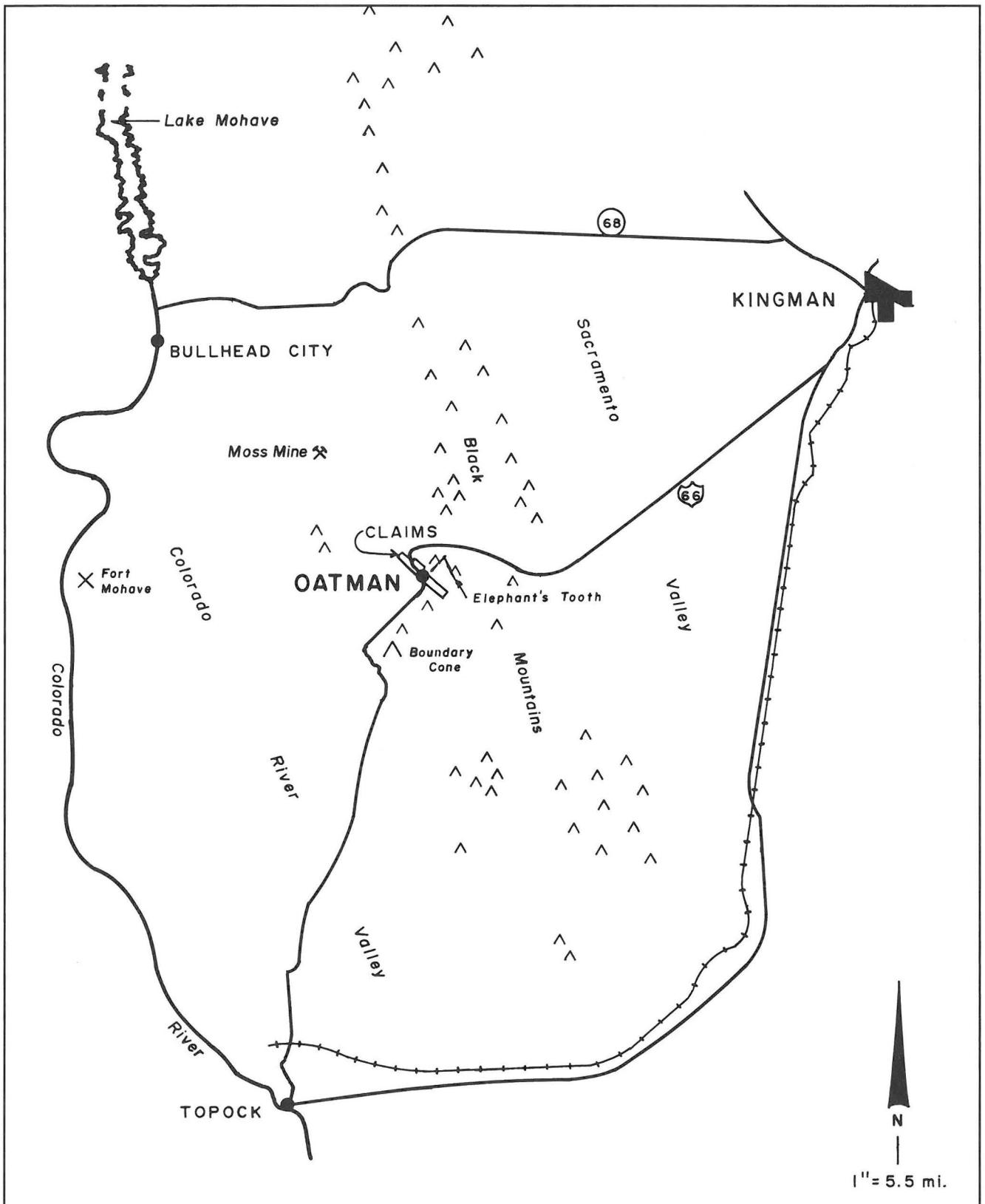
Looking northwest, toward Oatman, along the Tom Reed vein from south of the Big Jim claim. The town of Oatman is shown between the hills on the right side of the photograph, the spoil pile immediately below the town is the Benjamin Harrison shaft and the Big Jim shaft is slightly below and to the right. The Grey Eagle shaft is shown left of the Big Jim shaft near the road and the headframe and hoist in the left foreground is the Aztec shaft. [F.N. Ransome, "Geology of the Oatman District," Photo No. 1251, U.S.G.S. Photographic Library.]



Looking southeast from Oatman. The spoil pile at the left of the photograph is the Grey Eagle shaft and the headframe immediately to its right is the Hooper shaft. The Aztec shaft is situated within the buildings shown in the middle of the photograph. [F.N. Ransome, "Geology of the Oatman District," Photo No. 1252, U.S.G.S. Photographic Library.]

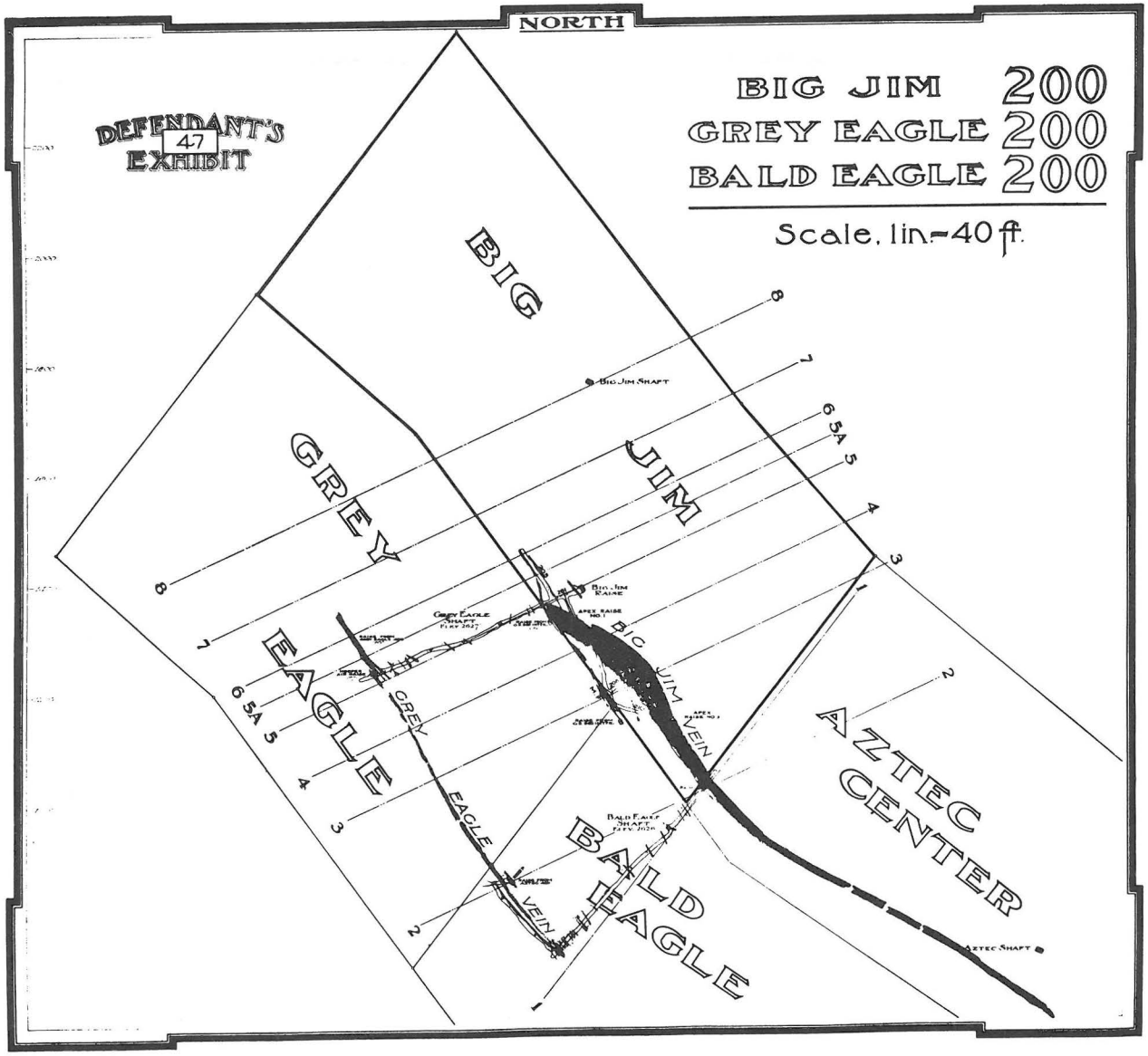


Property ownership along the Tom Reed vein showing the respective holdings of the Tom Reed Gold Mines Company, with its principle workings around the town of Oatman, the United Eastern Mining Company, having its orebody to the northwest of Oatman, and the Big Jim Mining Company to the southeast. The area of the dispute is shown at the lower right where the claim names are indicated. [Adapted from Ransome, U.S. Geol. Sur. Bull. 743, Plate X; Lausen, Plate I; Durning-Buchanan, Figure 8, and records of the Bureau of Land Management.] The cross sectional view, below, is of a line parallel to the end lines of the Big Jim and Grey Eagle claims showing the displacement of the vein in dispute. The cross section is from a summary of the case in the Mining and Scientific Press and the portrayal of the intermediate segment or Sideline vein represents a position favorable to the Tom Reed Company. In reality, much of this portion of the orebody straddled the sideline between the Grey Eagle and Big Jim claims. [Mining and Scientific Press, May 14, 1921.]

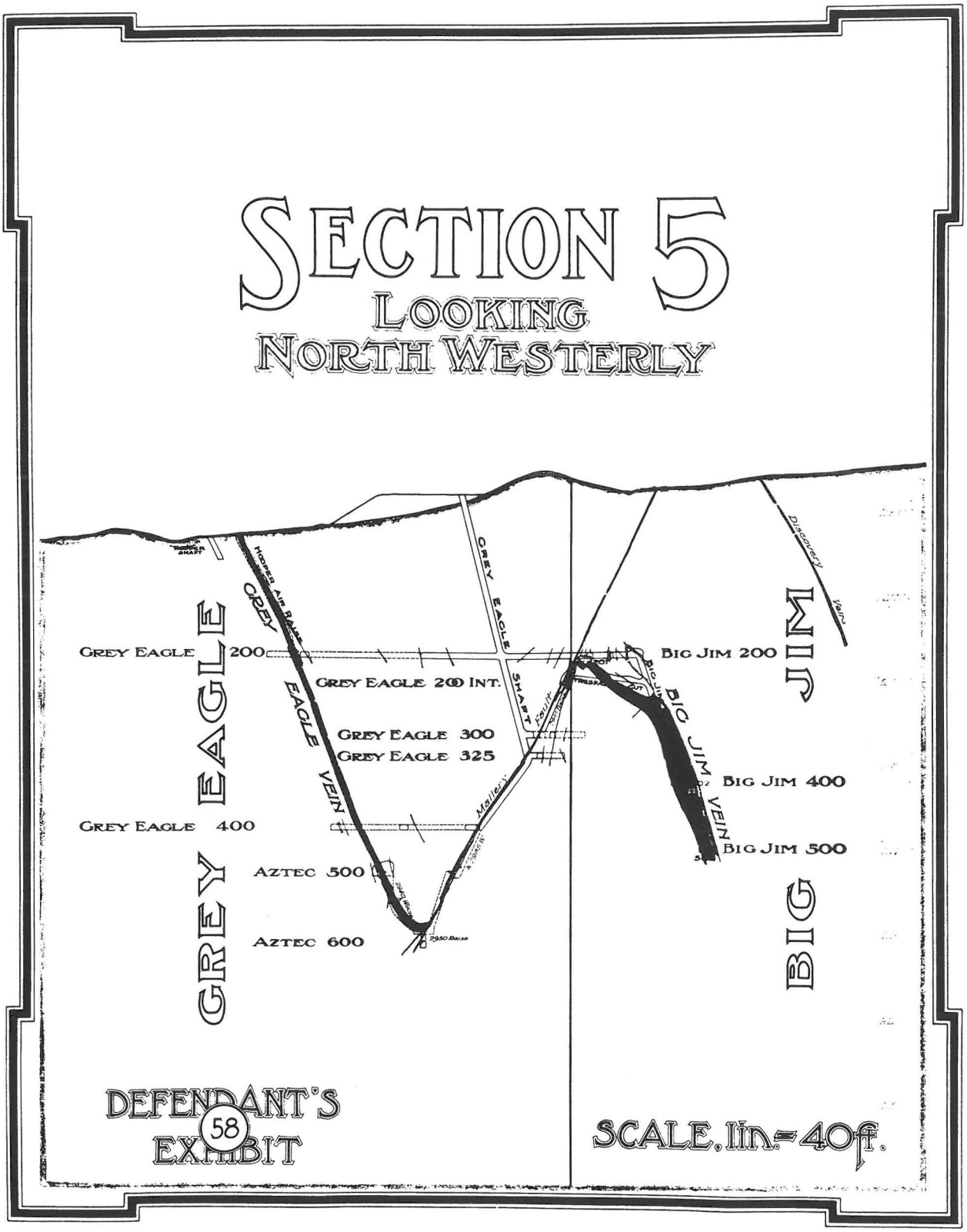


The Oatman area in 1930. Although it was not on the main rail line across the United States, when U.S. Route 66 was built, the highway went through the middle of town.

Rossiter W. Raymond, a founder and the first president of AIME, a mining publicist and commentator on the "Law of the Apex," coined the term "extra-lateral" mining right.

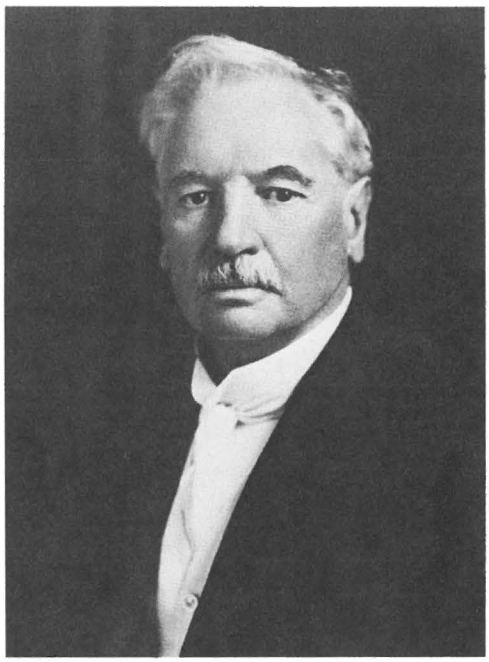


United Eastern Mining Company Exhibit 47, an overhead representation of the Big Jim and Grey Eagle claims, the strike of the Grey Eagle, Sideline and Big Jim veins, and underground workings.



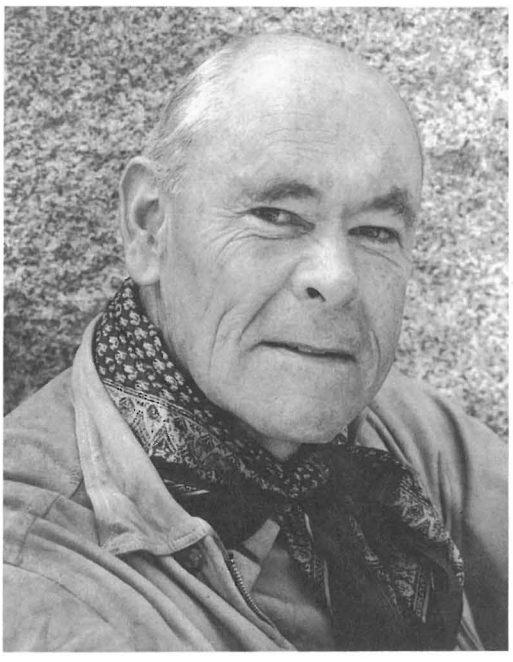
United Eastern Mining Company Exhibit 58, a cross section of Exhibit 47 along axis 5 showing the dip of the Grey Eagle, Sideline and Big Jim veins, the Hooper shaft, the Grey Eagle shaft, the cross-cut at the 200 level, the litigation winze and the trespass cross-cut.

John P. Gray, United Eastern Mining Company's lawyer, took the position that the language of the extralateral rights law should be interpreted literally, and that the "downward" meant exactly that. [Cheney Cowles Museum, Eastern Washington State Historical Society.]



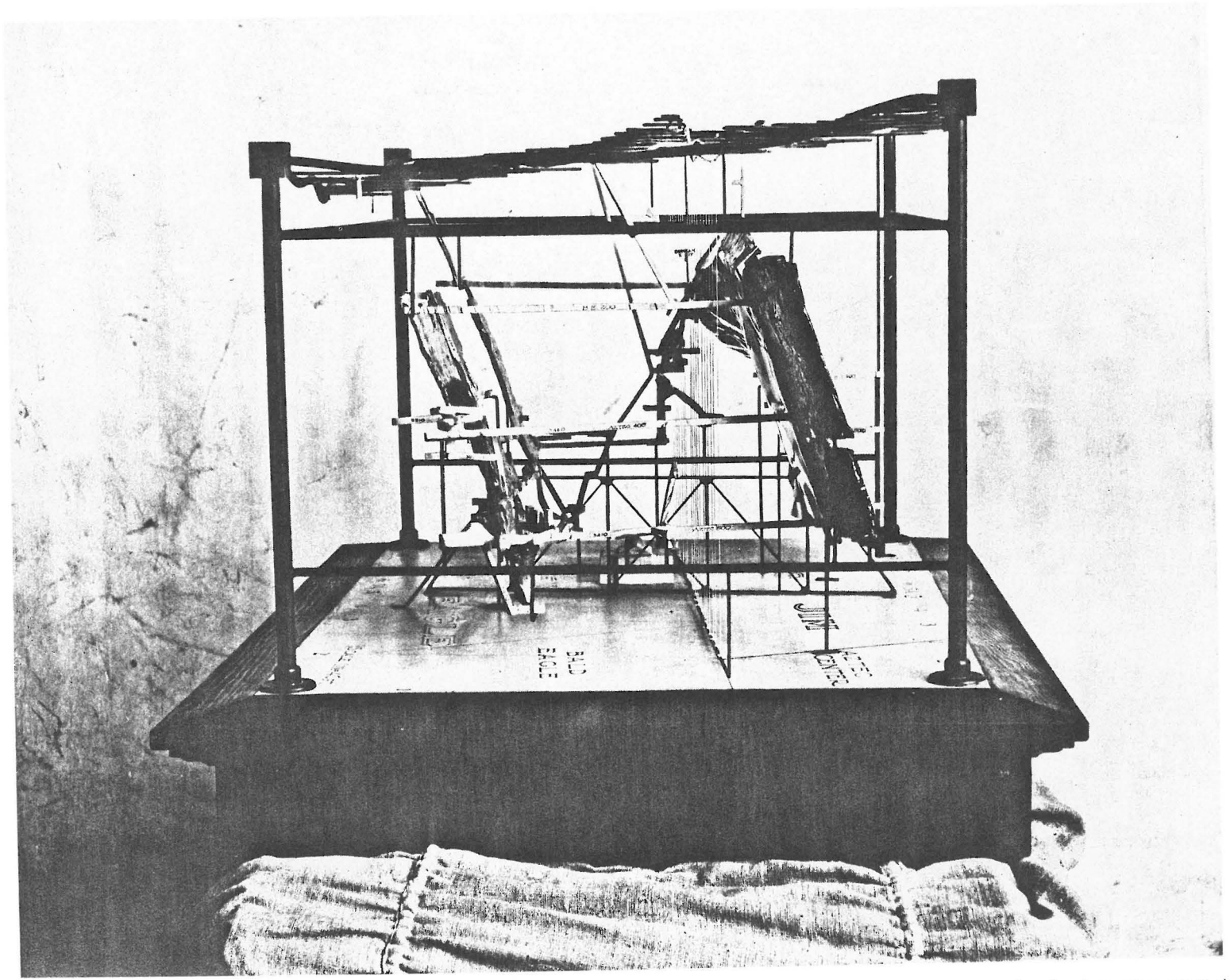
Curtis H. Lindley, lead counsel for the Tom Reed Gold Mines Company, argued that provable continuity of a vein would give his client ownership of the Big Jim ore body. [Mrs. Curtis H. Lindley, Jr.]

Lewis L. Wallace, a resident of Oatman during the time of the trial, was local counsel for Tom Reed Gold Mines Company. [Mohave County Historical Society.]

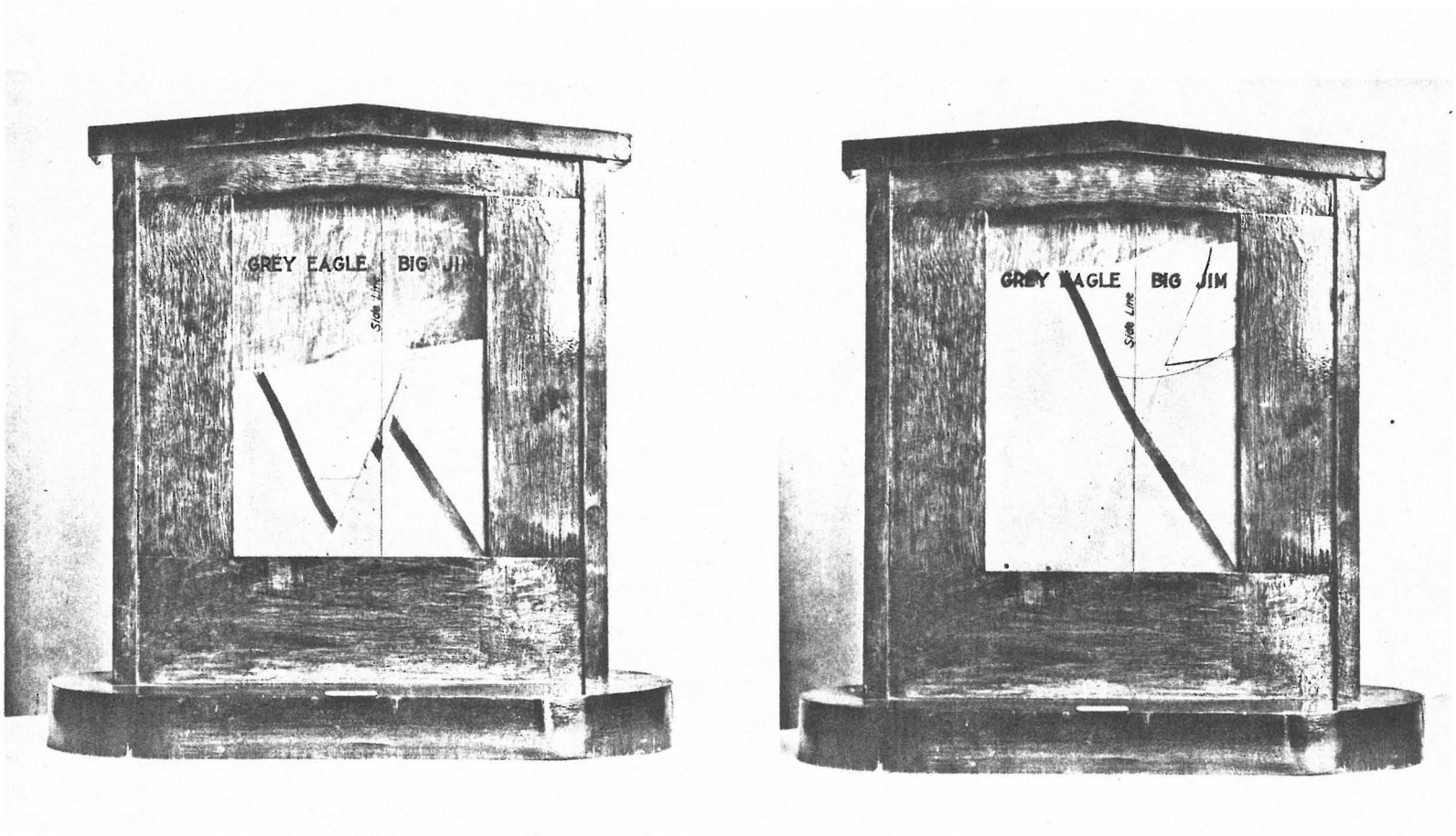


William E. Colby, the "second chair" for the Tom Reed Company, handled the case on appeal. [Colby Memorial Library, Sierra Club.]

Charles N. Herndon, standing fourth from right, with a group of Mohave County Officials in 1910. A Kingman attorney and former Mohave County attorney, he was local counsel for United Eastern Mining Company. [Mohave County Historical Society.]

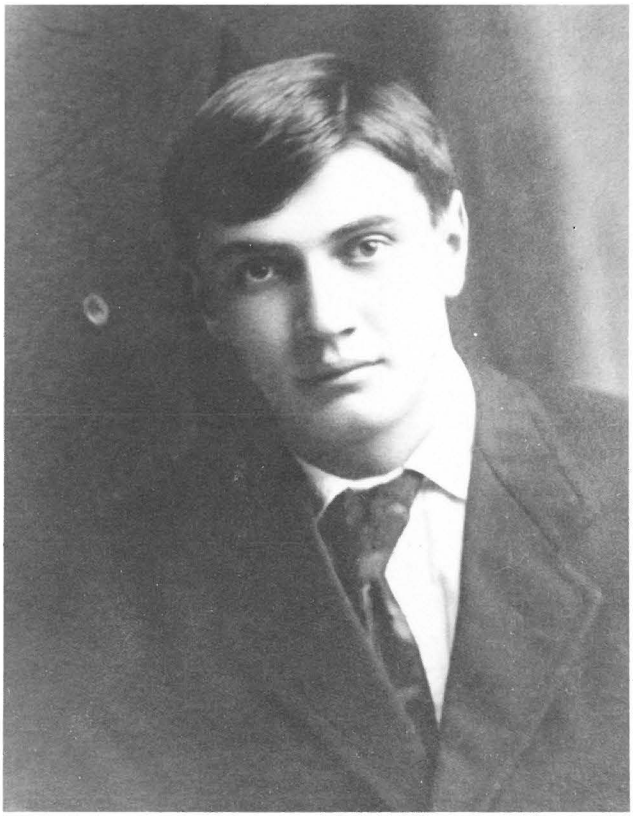


United Eastern Company Exhibit 33, a three-dimensional "skeleton model" of the claims in dispute representing both underground and surface workings of the various ore bodies.



Tom Reed Company Exhibit 6, a working model of the vein, showing its original configuration prior to faulting (right view), and in its final configuration after faulting. Note that the Sideline vein appears to be wholly on the side of the Grey Eagle mining claim; a fact proved otherwise during the trial.

E. Elmo Bollinger, Judge of the Superior Court, Mohave County, 1918-1927, the trial judge for the case of Tom Reed Gold Mines Company vs. United Eastern Mining Company. [Mohave County Historical Society.]



Fred Searls, Jr., the star witness for United Eastern Mining Company, argued that the rules of the miner were the basis of the mining law and not technical geological definitions. [Searls Historical Library, Nevada City, California.]

A news item . . .

☛ Large Skeleton Found in Rich Ore.

July 25, 1909

Buried deep in the ground, with a quantity of very high grade gold ore surrounding it, the skeleton of a man of large stature was unearthed in the Tonto district a few days ago by S. A. Fagles, who reported his strange find in Globe.

The ore is very rich and has the appearance of having been mined, prior to the time it was deposited around the body, whose bones were unearthed. How the body happened to be buried in the rich mineral rock is a mystery which cannot be explained.

If the bones could tell of the strange fate of the man, long since buried, it is probable that the mysterious disappearance of one of many prospectors who have started forth in search of nature's treasure, never to be heard of again, would be cleared up.

With nothing to show who the dead man had been, much less to explain the manner of his death and strange burial, the mystery in the present case will probably never be cleared up.

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