

#63

2/15/67

Memorandum 67-22

Subject: Senate Bill No. 247 (General Evidence Code Recommendation)

At the last meeting, the Commission reviewed the correspondence received concerning Evidence Code Section 1602 and determined to repeal this section and to add Section 2325 to the Public Resources Code as contained in the Commission's recommendation on this subject.

We have since received a letter from the California office of the Bureau of Land Management. That office advises us that "No patents have been found which recite the date of location. To our knowledge it has never been the practice to refer to the location date in the patent." The letter is set out as Exhibit I (pink). This confirms the information we previously received from the Bureau of Land Management in Washington, D. C. (copy of letter previously considered is attached as Exhibit II).

Since we are advised that patents do not contain the date of location, we can only assume that the predecessor of Evidence Code Section 1602 was based on a lack of information concerning the contents of patents. It seems clear that the section contributes nothing but confusion to the California law. Hence, the staff recommends that Evidence Code Section 1602 be repealed (as proposed in our recommendation) and that proposed Public Resources Code Section 2325 be deleted from Senate Bill No. 247 by amendment.

We further suggest that the Comment to the repeal of Evidence Code Section 1602 be revised (by Report of the Senate Committee on Judiciary) to read:

Comment. Section 1602 of the Evidence Code is repealed because a patent for mineral lands does not contain a statement of the date of the location of the claim or claims upon which the granting or issuance of the patent is based. See Bureau of Land Management Form 4-1081 (September 1963) and Form 4-1082 (January 1963). As to patents issued before 1963, the California office of the Bureau of Land Management of the United States Department of Interior reports: "No patents have been found which recite the date of location. To our knowledge, it has never been the practice to refer to the location date in the patent." Letter, California Office of Bureau of Land Management, January 25, 1967, on file in office of California Law Revision Commission.

We have no other changes to suggest in Senate Bill No. 247.

Incidentally, Justice Kaus reports that he has examined this recommendation and believes that it is a very good one.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

STATE OFFICE

4017 U. S. Courthouse and Federal Building
650 Capitol Mall
Sacramento, California 95814

IN REPLY REFER TO:

3400

(0492-C.04b-1)

JAN 25 1967

Mr. Joseph B. Harvey
Assistant Executive Secretary
California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Dear Mr. Harvey:

This is in further reference to your letter of November 15, 1966 to Director Rasmussen, Bureau of Land Management, and your recent letter to me dated January 4, 1967, concerning Evidence Code Section 1602.

I have attached copies of three very old patents and a blank form presently used for patent. You will note that none refer to the date of location nor do they provide for a reference to such date. The earlier patents refer to a date of entry; however, later patent forms omit the reference to the date of entry and simply refer to the fact that the patentee "entered and paid for" the claim. To our knowledge this reference to date never had reference to the date of location of the claim, but rather it had reference to the date of payment and entry in the book of entries in the land office.

As an example, the record shows as to the John Dack patent (enclosed) that the application was made and entered in the patent application book August 22, 1872, and payment was made and entered on the entry book November 19, 1872, and patent issued July 15, 1874. Only the latter two dates appeared in the patent. The location date must have preceded the date of application as is the case today.

No patents have been found which recite the date of location. To our knowledge it has never been the practice to refer to the location date in the patent.

Sincerely yours,

R. E. McCallum
Acting State Director

Enclosures

Patents (3)

Patent Form 4-1081



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

NOV 30 1966

Mr. Joseph B. Harvey
Assistant Executive Secretary
California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Dear Mr. Harvey:

This responds to your inquiry of November 6 with reference to your review of California Evidence Code Section 1602.

Insofar as we can determine in this office, it has not been our practice to enter the date (s) of location on mineral patents. However, since we are unable to verify this from the records at hand, we are referring this question to our State Director in California with a request that he review specimens of past patent certificates and advise you regarding his findings.

Assuming that some patents may recite the date of location, it would probably be based upon the applicant's submission of his evidence of title. The present requirement is described in detail in Title 43, Code of Federal Regulations, Subpart 3550.3(see enclosed Circular 2149), which provides for the submission of a copy of the original location notice, or secondary evidence in lieu thereof as provided in Section 3450.4 of the regulations.

In proceedings for the issuance of a patent, any adverse claimant may intervene as provided by 30 U.S.C. § 30, at seq. However, the only effect that this would have on the administrative process would be to stay the patent proceedings until the controversy shall have been settled or decided by a court of competent jurisdiction. The United States would not attempt to establish the truth of the allegations of either party.


Usually, the showings of proof submitted by the mineral patent applicant are of such quality that there is no necessity for the United States to undertake a separate investigation to determine the date of location. Mineral patent investigations are more commonly directed to confirming the alleged discovery, verifying that the requisite improvements have been made, and other statutory and regulatory requirements are met. There is, ordinarily, no requirement that the claim must have

been located within a given period of time. However, there are circumstances which do require that a claim must have been located prior to a cut-off date, as in the case of lands or minerals which have been removed from the purview of the general mining laws. In such cases, the date of location becomes critical and we do endeavor to verify it in all cases where doubt exists.

It occurs to us that the significance of the statute may be related to the determination of the claimant's liability for the payment of taxes, although this is merely speculation.

We trust that this information will be of benefit. You may anticipate a response from our State Director in the near future.

Sincerely yours,



Assistant Director, Lands and Mineral

1 Enclosure
Encl. 1 - Circular 2149