

INTERIOR BOARD OF LAND APPEALS

Kaiser Steel Resources, Inc., and Kaiser Eagle Mountain, Inc.

135 IBLA 340 (May 29, 1996)

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KAISER STEEL RESOURCES, INC.
KAISER EAGLE MOUNTAIN, INC.

IBLA 93-529

Decided May 29, 1996

Appeal from a decision of the California State Office, Bureau of Land Management, declaring lode mining claim and millsites null and void ab initio in their entirety. CAMC 43585, et al.

Reversed.

1. Millsites: Generally--Mining Claims: Lands Subject To--Mining Claims: Millsites--Patents of Public Lands: Effect

Where the evidence establishes that the lode mining claim and millsites are not located wholly on lands patented under the general mining laws without a reservation of minerals to the United States, the Board will reverse a BLM decision declaring them null and void ab initio to the extent the lands are not in fact patented.

APPEARANCES: Ernest E. Riffenburgh, Esq., San Bernardino, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Kaiser Steel Resources, Inc., and Kaiser Eagle Mountain, Inc. (Kaiser), 1/ have appealed from the June 7, 1993, decision of the California State Office, Bureau of Land Management (BLM), to the extent that it declared the North Fraction lode mining claim (CAMC 43585) and the Black Eagle Nos. 25, 45, 65, 86, and 93 millsites (CAMC 43634, CAMC 43654, CAMC 43674, CAMC 43695, and CAMC 43702) null and void ab initio in their entirety. 2/

1/ Kaiser Eagle Mountain, Inc., is a wholly-owned subsidiary of Kaiser Steel Resources, Inc., which is known as Kaiser Resources, Inc.

2/ BLM also declared, with respect to 13 other lode mining claims, that the claimant had acquired no mineral or surface rights to the portion of the claim located on land previously patented or withdrawn from mineral entry and declared 38 other placer mining claims and millsites null and void ab initio either in their entirety or in part, to the extent they were located wholly or partially on land previously patented or withdrawn from mineral entry. Kaiser does not challenge the decision with respect to these other claims and millsites.

The claim and millsites were located between June 18, 1963, and November 14, 1975, by the Kaiser Steel Corporation (Kaiser's predecessor- in-interest). ^{3/} Copies of their location notices were filed for recordation with BLM on October 12, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1994). The notice described the boundaries of the North Fraction mining claim by metes and bounds tied to United States "Location Monument No. 85." The millsites were described by metes and bounds tied to the corner common to secs. 30 and 31, T. 3 S., R. 14 E., and secs. 25 and 36, T. 3 S., R. 13 E., San Bernardino Meridian, Riverside County, California. Maps submitted with the notices placed the claim and millsites within particular aliquot parts of secs. 19, 20, and 29, T. 3 S., R. 14 E., and sec. 24, T. 3 S., R. 13 E., San Bernardino Meridian, Riverside County, in southeastern California. ^{4/} The claim and millsites are part of a large block of claims located generally north of a block of patented lode mining claims near the Joshua Tree National Monument. ^{5/}

In its June 1993 decision, BLM declared the claim and millsites null and void ab initio in their entirety based on its determination that they

^{3/} The claim and millsites were located on the following dates: North Fraction (June 18, 1963); Black Eagle Millsite No. 25 (Aug. 3, 1970); Black Eagle Millsite No. 45 (May 18, 1971); Black Eagle Millsite No. 65 (Aug. 18, 1973); and Black Eagle Millsite Nos. 86 and 93 (Nov. 14, 1975).

^{4/} As depicted on the maps, the claim and millsites were located as follows, all with reference to the San Bernardino Meridian:

<u>Claim</u>	<u>Location</u>
North Fraction	NW ¹ / ₄ SW ¹ / ₄ , NE ¹ / ₄ SW ¹ / ₄ , sec. 19 T. 3 S., R. 14 E.
B.E. Millsite No. 25	NW ¹ / ₄ SW ¹ / ₄ , sec. 19 T. 3 S., R. 14 E. NE ¹ / ₄ SE ¹ / ₄ , sec. 24 T. 3 S., R. 13 E.
B.E. Millsite No. 45	NW ¹ / ₄ SE ¹ / ₄ , NE ¹ / ₄ SE ¹ / ₄ , sec. 19 T. 3 S., R. 14 E.
B.E. Millsite No. 65	SW ¹ / ₄ SW ¹ / ₄ , sec. 20 T. 3 S., R. 14 E.
B.E. Millsite No. 86	NE ¹ / ₄ NW ¹ / ₄ , sec. 29 T. 3 S., R. 14 E.
B.E. Millsite No. 93	NE ¹ / ₄ NW ¹ / ₄ , NW ¹ / ₄ NE ¹ / ₄ , sec. 29 T. 3 S., R. 14 E.

^{5/} The Monument was designated a National Park on Oct. 31, 1994, pursuant to the California Desert Protection Act, P.L. 103-433, 108 Stat. 4471. It is not immediately clear if the claim and millsites were included within the expanded boundaries of the Park.

were located wholly on land previously patented under the general mining laws without a reservation of minerals to the United States. ^{6/} Kaiser (appellants) timely appealed from BLM's June 1993 decision.

Appellants contend that the mining claim and millsites are not located entirely, but only partially, on land previously patented. Thus, they contend that they are only null and void ab initio to the extent of the overlap. BLM has submitted no response.

[1] It is not disputed that appellants' lode mining claim and millsites were located after the dates of the two mineral entry patents, and that the patents divested the United States of both the surface and mineral estates in the absence of any reservation of minerals. Santa Fe Mining, Inc., 79 IBLA 48, 50-51 (1984); Zula C. Brinkerhoff, 75 IBLA 179, 180 (1983). Thus, if each claim or millsite was located entirely on land that had already been so patented, BLM would properly declare them null and void ab initio in their entirety. Stacy B. Good, 133 IBLA 119, 120 (1995); Zula C. Brinkerhoff, 75 IBLA at 181; Fletcher De Fisher, 93 IBLA 68, 72 (1986), aff'd sub nom., Northwest Silver Corp. v. Hodel, No. 88-1301 (D. Idaho Sept. 26, 1989); Robert C. LeFaivre, 13 IBLA 289, 291 (1973). However, it is improper for BLM to declare a lode mining or millsite claim null and void ab initio in its entirety where it is located only partially on land already so patented. Butte Lode Mining Co., 131 IBLA 284, 288-89 (1994); Santa Fe Mining, Inc., 79 IBLA at 51, 52.

The record contains copies of the two pertinent patents. However, with one exception, ^{7/} BLM's record does not contain copies of the field notes or plats for the two mineral surveys. Nor is there any description

^{6/} BLM concluded that the claim and millsites were located on land that had been patented pursuant to Mineral Entry (ME) Patent Nos. 460785 and 04-68-0175 on, respectively, Mar. 3, 1915, and Dec. 7, 1967:

<u>Claim</u>	<u>Patent No.</u>
North Fraction	460785
	04-68-0175
B.E. Millsite No. 25	460785
B.E. Millsite No. 45	04-68-0175
B.E. Millsite No. 65	04-68-0175
B.E. Millsite No. 86	04-68-0175
B.E. Millsite No. 93	04-68-0175

^{7/} The only exception is a copy of one of the plats ("Sheet No. 2 of 2") prepared in connection with MS No. 6702, California. It relates only to a portion of the land patented under ME Patent No. 04-68-0175 in the area of appellants' North Fraction lode mining claim, and the Black Eagle Nos. 45 and 65 millsites. We subsequently obtained the other plat ("Sheet No. 1 of 2") for MS No. 6702, California, which relates to the patented land in the area of appellants' Black Eagle Nos. 86 and 93 millsites, as well as two relevant plats ("Sheet No. 2" and "Sheet No. 7") prepared in connection with MS No. 4892 A, California, which relate to a portion of the land patented under ME Patent No. 460785 in the area of appellants' Black Eagle Millsite No. 25 millsite claim.

tying the surveyed boundaries of the two tracts of patented land to the boundaries of the United States rectangular surveying system. The record does contain copies of the master title plats (MTP's) for T. 3 S., R. 13 and 14 E., San Bernardino Meridian, Riverside County, California, which depict the location of the boundaries of the two patented tracts in relation to the rectangular survey system boundaries. ^{8/} The record also contains copies of the location notices describing the land encompassed by appellants' mining claim and millsites by metes and bounds tied to two fixed points, as well as by maps that locate them in relation to the boundaries of the aliquot parts of the rectangular survey system.

It is not clear how BLM determined that the claim and millsites entirely included patented land. It appears that BLM compared their location, as shown on appellants' maps, with the depiction of the location of the two tracts of patented land, as shown on its MTP's. Both the maps and the MTP's denote the boundaries of the aliquot parts of the United States rectangular surveying system, and thus may be correlated. ^{9/} The problem with this method is that appellants' maps depict square sections with exterior boundaries all 80 chains (or 5,280 feet) long. The same sections, as shown on the MTP's, however, are irregularly shaped, with unequal exterior boundaries. As a result, it would have been imprecise to superimpose the patented tract boundaries, taken from the MTP's, onto appellants' location maps. Although this method of determining whether a mining or millsite claim is included within a tract of patented land would generally suffice where the claim is clearly well within such a tract, it does not here, where the claim and millsites at issue are very near the patented tract boundaries.

Moreover, it seems clear that BLM itself determined that all of the millsites at issue here encompassed some land falling outside the patented tracts. Despite BLM's conclusion in its June 1993 decision that millsites were situated in their entirety on patented land (Decision, Attachments "A" and "B," at 1), the location maps on which BLM superimposed the patented

^{8/} Attached hereto as "Appendix A" is a copy of the pertinent part of the 1992 MTP for T. 3 S., R. 14 E., San Bernardino Meridian, Riverside County, California.

The MTP's, which appear to have been dated in 1992, state that the two townships had only been partially surveyed. However, it is apparent that most of the public lands in the immediate vicinity of the two tracts of land patented under ME Patent Nos. 460785 and 04-68-0175 and the claim and millsites at issue here had been surveyed at the time of the MTP's. ^{9/} BLM states in its June 1993 decision, at page 4, that enclosed with the decision "are portions of the Master Title Plats show[ing] * * * the patented mining claims [and] * * * sketches of the patented lands drawn on the maps submitted when the claims were filed in th[e BLM] office." In addition, the record contains copies of appellants' maps on which BLM superimposed (by means of lines and/or shading) the nearby boundaries of the patented tracts.

tract boundaries plainly depict small portions of the millsites falling outside those boundaries on unpatented public land. 10/

Appellants have provided a map, prepared by "in-house engineers for the former Kaiser Steel Corporation," depicting the location of their unpatented and patented mining claims and millsites in the area in question (Supplemental SOR at 2). This map clearly places a portion of each of the millsites at issue outside the boundaries of the patented mining claims. BLM has offered no response to appellants' submission.

To the extent that the millsites were located on unpatented public land, they are not null and void ab initio. See Yellow Aster Mining & Milling Co., 130 IBLA 234, 235 (1994) (placer mining claims). To the extent BLM, in its June 1993 decision, declared the millsites null and void ab initio in their entirety, it is reversed. See Raymundo J. Chico, 115 IBLA 4, 5 (1990); Savage Construction Co., Inc., 79 IBLA 389, 390 (1984).

The North Fraction lode mining claim presents a slightly different situation. BLM concluded that it was located entirely on land (in the N $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 19, T. 3 S., R. 14 E.) that was patented as a part of ME Patent Nos. 460785 and 04-68-0175. BLM apparently based that determination on the fact that the 1992 MTP for the township shows the two tracts joined along a common boundary in the N $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 19. However, there is other evidence in BLM's record showing that there is a gap between the two tracts at that point, which hiatus area has apparently never been patented. 11/ It appears further that the North Fraction claim

10/ The Black Eagle Nos. 25 and 45 millsites are clearly shown falling partly outside the patented land. The Black Eagle No. 65 millsite appears to have a portion outside the patented land. The maps for the Black Eagle Nos. 86 and 93 millsites bear a red line that depicts an alternate boundary for the patented land cutting across them. The boundary more closely conforms to that depicted on the MTP.

11/ The record contains a copy of one of the plats for MS No. 6702, California ("Sheet No. 2 of 2"). Attached hereto as "Appendix B" is a copy of the pertinent part of the plat for MS No. 6702, California. It confirms that there is a small parcel of land between the northwestern boundary of the patented North No. 45 claim (MS No. 6702, California; ME Patent No. 460785) and the southeastern boundary of the patented Black Diamond No. 4 claim (MS No. 4892 A, California; ME Patent No. 04-68-0175). That BLM was aware of that gap is demonstrated by its having been highlighted in yellow. The presence of the gap is confirmed by a copy of the plat ("Sheet 2 of 4 Sheets"), which we have obtained from BLM.

The exact dimensions of the unpatented lands are not completely clear from the record. Appellants have provided us with a copy of what appears to be a portion of one of the plats for MS No. 4892 A, California, with their SOR. This is confirmed by a copy of the plat ("Sheet No. 2"), which we have obtained from BLM. Thereon, the southeastern boundary of the Black Diamond No. 4 claim is shown to be 726.16 (rather than 712.4) feet long

encompasses that area. 12/

To the extent that the North Fraction lode mining claim was located on land that had not already been patented under the general mining laws without a reservation of minerals to the United States, it may be valid. 13/ Where a valid lode mining claim partially covers land which is not open to entry under the general mining laws, either because the United States does not own the land or for another reason, it is improper for BLM to declare the claim null and void ab initio, either in whole or in part. 14/

fn. 11 (continued)

on a bearing of N. 43° 37' (rather than 42° 30') E. The dimensions of the parcel of land between the North No. 45 and Black Diamond No. 4 claims are confirmed by a copy of the relevant portion of the field notes for MS No. 6702, California, also provided by appellants with their SOR.

12/ The location of that parcel appears to coincide generally with the land located in the North Fraction claim. The NW corner of the claim

is said to coincide with the NE corner of the Black Diamond No. 4 claim (MS No. 4892 A, California). Thus, it appears that the North Fraction claim was intended to encompass that small parcel between the two patented claims.

We note that the North Fraction claim actually appears to encompass slightly more land than this parcel. The northeastern boundary of the parcel between the North No. 45 and Black Diamond No. 4 claims and the northeastern boundary of the North Fraction claim are identical. Also, the southeastern boundary of the North Fraction claim exactly corresponds to the southwestern boundary of the North No. 45 claim, i.e., 724.2 feet on a bearing of N. 43° 55' E. However, the southwestern boundary of the parcel is 40.5 feet on a bearing of S. 82° 11' E., while the corresponding boundary of the North Fraction claim is 60.5 feet on the same bearing. The result is that a small triangular portion of the North Fraction claim extends across the patented Black Diamond No. 4 claim.

13/ Validity would depend on whether its discovery point is located on unpatented land. Butte Lode Mining Co., 131 IBLA at 288; David A. Smith, 128 IBLA 249, 250 (1994); Moise & Leon Berger, 82 IBLA 253, 255 (1984). That fact should only be determined through contest proceedings. Moise & Leon Berger, 82 IBLA at 255.

14/ However, it is well established that a lode mining claim partially located on land in which the United States does not own the mineral estate affords the claimant no surface or mineral rights under the general mining laws to the extent that it encompasses such land. David A. Smith, 128 IBLA at 250-51; Santa Fe Mining, Inc., 79 IBLA at 50-51. Nonetheless, if valid, such a claim will afford the claimant extralateral rights beyond that land to veins or lodes that apex within the claim. David A. Smith, 128 IBLA at 250; Santa Fe Mining, Inc., 79 IBLA at 50, 51.

Butte Lode Mining Co., 131 IBLA at 288-89; Santa Fe Mining, Inc., 79 IBLA at 51. Therefore, we reverse BLM's June 1993 decision to the extent it declared the North Fraction claim null and void ab initio in its entirety. See Raymundo J. Chico, 115 IBLA at 5.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

David L. Hughes
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge