INTERIOR BOARD OF LAND APPEALS

Ronald W. Froelich, et al.

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RONALD W. FROELICH ET AL.

IBLA 94-632 Decided April 24, 1997

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a placer mining claim null and void ab initio. CAMC 261578.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Generally

A placer mining claim is properly declared null and void ab initio when the record discloses it was located on land withdrawn from mineral entry on the date of location. A subsequent cancellation of the withdrawal did not retroactively validate a location made while the lands were withdrawn from mineral entry.

2. Estoppel--Mining Claims: Location

The acceptance of a mining claim filing for recordation does not preclude BLM from subsequently declaring the claim to be null and void ab initio upon a finding that the land on which the claim was located was withdrawn from the location of mining claims at the time the claim was located.

APPEARANCES: Robert A. Sanregret, Esq., Tustin, California, for Appellants; Gary D. Hembd, Sr., Redlands, California.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ronald W. Froelich and others 1/ have appealed from a May 26, 1994, Decision of the California State Office, Bureau of Land Management (BLM), declaring unpatented placer mining claim Cool Gardie #1 2/, CAMC 261578,

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1/ The notice of appeal was on behalf of mining claim owners Ronald W. Froelich et al. The other mining claimants are Dorothy Froelich, Tony Meyer, Marcia L. Meyer, Gary D. Blood, and Jeffery S. Littleton. In this decision, they will be referred to collectively as Froelich.

2/ The locators in their notice of location hand printed the name of the mining claim (CAMC 261578) as Coolgardie #1, but the BLM Decision referred to it as Cool Gardie #1 (two words). Regardless of any inconsistency in the spelling, the identity of the claim under appeal is not at issue.

null and void ab initio. The Decision explained that the land on which the claim was located was withdrawn from location or surface entry at the time the claim was located.

The notice of location for CAMC 261578 was filed for recording with BLM on December 1, 1993. The notice states that the claim, situated in the SW¼ SW¼ of sec. 33 and S½ SE¼ of sec. 32, T. 32 S., R. 46 E., Mount Diablo Meridian (M.D.M.), San Bernardino County, California, was located on September 18, 1993. The BLM found the location was null and void because it was made on land withdrawn from surface entry and mining for a period of 2 years beginning October 1, 1991, and thus was withdrawn on the date of location.

The land was withdrawn from surface entry and mining in response to an application filed by the Department of the Army to withdraw the public land to expand the Army's National Training Center at Fort Irwin. The notice announcing the withdrawal stated the lands would be segregated for 2 years, unless the application was denied or canceled or the withdrawal was approved prior to that date. 56 Fed. Reg. 49792 (Oct. 1, 1991). 3/ The withdrawn lands included all of secs. 32 and 33 in T. 32 S., R. 46 E., M.D.M., thus encompassing all of the lands identified in the location notice of CAMC 261578. On October 28, 1993, BLM published another notice in the Federal Register announcing that the Army had canceled its application in its entirety and that the lands described in the notice, including all of secs. 32 and 33, T. 32 S., R. 46 E., M.D.M., were open to surface entry and mining as of 10 a.m. on October 1, 1993. 58 Fed. Reg. 58015 (Oct. 28, 1993).

[1] The law is well established that mining claims located on Federal lands withdrawn from mineral entry on the date of location are null and void ab initio. Cotter Corp., 127 IBLA 18, 19 (1993); David R. Clark, 119 IBLA 367, 368 (1991); Kathryn J. Story, 104 IBLA 313, 315 (1988). It is also clear that the "date of location" of a mining claim is "the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated." 43 C.F.R. § 3833.0-5(h); John and Maureen Watson, 113 IBLA 235 (1990); Dutch Creek Mining Co., 98 IBLA 241, 247 (1987). Under California law, the date of posting a location notice on a permanent monument situated on the claim is the date of location. Cal. Pub. Res. Code §§ 3900(d), 3902 (West 1984, Supp. 1996); John and Maureen Watson, supra; C.B. Shannon, 55 IBLA 312 (1981). This Board has recognized that the date of location is the date of posting stated in a recorded location certificate. Dutch Creek Mining Co., supra, at 248 n.6; C.B. Shannon, supra. Froelich's notice of location recorded with the county recorder's office gives the date of location as September 18, 1993. On that date, the land was still withdrawn from entry under the mining laws.

3/ Over the next 6 months, lands were added and removed from the original withdrawal, but none of those amendments affected the land involved in this mining claim.

On appeal, Froelich concedes that the claim was located on September 18, 1993. However, he argues that the October 28, 1993, notice in the Federal Register announcing the cancellation of the proposed withdrawal and reopening the land to mineral entry established a "queuing-up" procedure to establish priority of claim. He points to language in the notice stating that all filings received prior to 10 a.m. on October 1, 1993, would be considered as simultaneously filed at 10 a.m. on October 1, 1993, with filings received after that considered in the order of filing. He contends that there were no other location notices filed at that time which conflicted with CAMC 261578, and therefore, it should be considered effective as of October 1, 1993. Froelich also argues that BLM is estopped from denying or invalidating his mining claim because of the language of the notice.

The language cited by Froelich in the October 28, 1993, notice deals with applications, not mining claims, and has no bearing on the issue of the validity of mining claims. The notice does state that valid applications received at or prior to 10 a.m. on October 1, 1993, would be considered as simultaneously filed at that time, but this clearly relates to applications for public lands as opposed to locations of claims. This meaning is confirmed when the statement is placed in the context of the previous sentence of the paragraph which states that the lands were opened to "the operation of the public land laws generally." 58 Fed. Reg. 58016 (Oct. 28, 1993). The next paragraph of the notice states that at 10 a.m. on October 1, 1993, the lands were opened to location and entry under the United States mining laws. It then goes on to say that "[a]ppropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation * * * shall vest no rights against the United States." The notice recognizes that there is a distinction between ordinary applications to enter land under the various public land laws and the location of a mining claim. 4/ The notice is

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4/ The distinction between applications for the public lands and location of mining claims was discussed in Lynn H. Grooms, 99 IBLA 237, 238-39 n.1 (1987):

"The ordinary application to enter land under the various public land laws, or to lease land under the mineral leasing laws of the United States, imposes upon this Department the responsibility for determining whether the land can or should be disposed of pursuant to the particular law under which [the] application is filed, whether the applicant is qualified under that law to have his application approved, and, if the land is suitable and the applicant is qualified, whether one applicant is to be preferred over another equally qualified applicant in the event of competing applications. It is only after the Department has made these determinations that any rights in the land vest in an applicant. This is not true of the location of a mining claim. The locator of a mining claim does not file an application to locate a claim, and the acts required for the location of a claim do not include even notice to this Department. The location of a valid mining claim is, in effect, a grant from the United States, and, by

clear that the land was not open to location under the mining laws until 10 a.m. on October 1, 1993, and any location prior to then would be null and void.

Even if the notice had not stated that appropriation under the mining laws prior to restoration was unauthorized, Froelich still could not have acquired rights under the mining laws prior to 10 a.m. on October 1, 1993, because the land was not open to entry until that time. The language cited is simply a reiteration of the controlling legal principles, i.e., until the land is open to location and entry under the mining laws no rights may be acquired. Revocation or cancellation of a withdrawal order will not validate a mining claim located on land withdrawn from operation of the mining laws. William H. and Claudene Nordeen, 129 IBLA 369, 371 (1994); Kelly R. Healy, 60 IBLA 115, 116 (1981).

Froelich also argues that BLM is estopped from denying or invalidating his mining claim because BLM accepted and recorded the claim. He asserts that because BLM received the location notice on December 1, 1993, after the lands were reopened, it had a full opportunity to review it before it recorded the claim on December 13, 1993. Froelich has also submitted a copy of a May 9, 1994, letter from BLM stating that the official land status records did not show that any of the lands had been closed by any type of formal withdrawal in 1993 or 1994 and argues that this supports his argument for estoppel.

[2] The acceptance of a mining claim filing for recordation does not preclude BLM from subsequently declaring the claim to be null and void ab initio upon a finding that the land on which the claim was located was withdrawn from the location of mining claims at the time the claim was located. Robert L. Payne, 107 IBLA 71 (1989); 43 C.F.R § 3833.5(f). It is expressly provided by regulation that the recordation of an unpatented mining claim by itself "shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law." 43 C.F.R. § 3833.5(a). Moreover, as was pointed out in Paul Vaillant, 90 IBLA 249, 251 (1986), "BLM does not have a duty to immediately determine the legal status of every claim filed with the agency and to notify claimants of its conclusions."

The record does not support a claim of estoppel because the fact that the lands in question were not available for mineral entry at the time they were located was a matter of public record, having been published in the Federal Register. Froelich must be presumed to have had knowledge of that fact. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947); Mac A. Stevens, 84 IBLA 124, 126 (1984). Moreover, he has failed

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fn. 4 (continued)
the location of a valid claim, the locator is vested with a present right of possession without action on the part of this Department. * * * Thus, appellants' attempt to find an analogy in the premature location of a mining claim and the premature filing of an application to enter, or to obtain an interest in, land is without merit."

to show any reliance on statements made by BLM, nor has he alleged that any official of the Government actively deceived him in any way. The May 9, 1994, letter is after the date of location and could have had no effect on Froelich's knowledge of whether or not the land was open to mineral location at the time the claim was located in September 1993. Therefore, there could have been no reliance.

The record shows, and Froelich admits, that mining claim CAMC 261578 was located on September 18, 1993. However, the land was not opened to location and entry under the mining laws until 10 a.m. on October 1, 1993. Therefore, the BLM Decision declaring the claim null and void ab initio must be affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge