

INTERIOR BOARD OF LAND APPEALS

R. J. Collins

140 IBLA 394 (October 15, 1997)

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R.J. COLLINS

IBLA 97-153

Decided October 15, 1997

Appeal from a Decision of the California State Office, Bureau of Land Management, declaring mining claims null and void ab initio. CAMC 264507 and CAMC 264508.

Affirmed.

1. Mining Claims: Lands Subject to—Mining Claims: Placer Claims

Placer mining claims located on land closed to mineral entry are properly declared null and void ab initio.

2. Mining Claims: Placer Claims

An association placer mining claim location made pursuant to 30 U.S.C. § 36 (1994), may not contain noncontiguous tracts of land within a single location. When an association placer mining claim is severed by a highway right-of-way, the locators may elect which tracts they wish to preserve through an amended location. Tracts not preserved may be located only as new locations.

APPEARANCES: R.J. Collins, pro se; Ed Hastey, California State Director, Bureau of Land Management, U.S. Department of the Interior.

OPINION BY ADMINISTRATIVE JUDGE TERRY

R.J. Collins has appealed from a Decision of the California State Office, Bureau of Land Management (BLM), dated December 23, 1996, declaring the Pink Lady A and Pink Lady #4A association placer mining claims (CAMC 264507 and CAMC 264508) null and void ab initio because the claims were located on land segregated from appropriation under the general mining laws.

The Pink Lady A and Pink Lady #4A mining claims were located on August 31, and November 3, 1994, respectively, west of Interstate 15 (I-15) in sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian, in San Bernardino

County, California. <sup>1/</sup> The location notices for the two claims were recorded with BLM on November 7, 1994, excluded road rights-of-way, and stated that they were "filed to meet contiguity requirements."

On June 4, 1993, BLM had published notice that lands including all of sec. 4 of T. 8 N., R. 2 W., San Bernardino Meridian, were determined to be suitable for disposal by land exchange, pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1994). This Notice of Realty Action segregated the listed lands and withdrew them from mineral entry for 2 years from the date of publication in the Federal Register, i.e., from June 4, 1993, to June 4, 1995. 58 Fed. Reg. 31748-50 (June 4, 1993).

Appellant brought this appeal and requested a stay of the BLM Decision pending adjudication of this appeal. By Order dated March 24, 1997, this Board granted Appellant's request for a stay.

In his Statement of Reasons for appeal, Appellant asserts that the disputed claims are amendments of earlier association placer mining claims which predate the withdrawal: "the Pink Lady 83-166621 recorded July 25, 1983, and the Pink Lady #4 89-230182 recorded June 26, 1989." (Notice of Appeal at 1.)

On April 22, 1997, the California State Director, BLM, requested that this case be expedited in order to facilitate a proposed land exchange with P & V Enterprises, Inc. The Board grants the request to expedite adjudication of this appeal in order to resolve this mining claim ownership dispute in the potential land exchange area.

[1] A mining claim located on land closed to entry under the mining laws confers no rights to the locator and is properly declared null and void ab initio. See, e.g., Lucian B. Vandegriff, 137 IBLA 308 (1997); Merrill G. Memmott, 100 IBLA 44 (1987). The record shows that the land in these two disputed mining claims was not open to mineral entry on the date of location of the claims. By the Federal Register Notice of Realty Action, BLM closed all of sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian to new mining claim locations. The land was closed to mineral location from June 4, 1993, to June 4, 1995, which precluded valid location, in

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<sup>1/</sup> Appellant located the Pink Lady A together with R.J. Collins. The Pink Lady A included 20 acres of the SW<sup>1/4</sup> of sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian. Appellant located the Pink Lady #4A together with R.J. Collins, Mildred E. Collins, and Linda J. Sheresh (later Linda J. Callahan). The Pink Lady #4A included 15 acres in the E<sup>1/2</sup>NW<sup>1/4</sup> of sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian. It is unclear from the documents filed on appeal whether Appellant seeks to represent the interests of all locators.

1994, of the Pink Lady A and Pink Lady #4A claims. 58 Fed. Reg. 31748-50 (June 4, 1993). Therefore, BLM correctly declared these two claims null and void ab initio.

[2] Appellant contends that these claims were not new locations in 1994, but amended locations which relate back to the dates of location of larger, earlier claims. Appellant attached copies of original and amended location notices for these claims: the Pink Lady claim, located July 1, 1983, and the Pink Lady #4, located May 21, 1989. (Ex. B.) The Pink Lady included 160 acres, comprising the SW $\frac{1}{4}$ , sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian. The Pink Lady #4 included the E $\frac{1}{2}$ NW $\frac{1}{4}$  of sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian. On August 31, 1994, Appellant filed another location notice for the "Pink Lady" claim (CAMC 130467), specifically designated "amended," for 130 acres on the east side of I-15 in the SW $\frac{1}{4}$ , sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian. The August 31, 1994, location notice for the 20-acre Pink Lady A claim west of I-15 is not labeled "amended." Similarly, Appellant's November 3, 1994, "amended" location notice for the Pink Lady #4 claim included 60 acres east of I-15 in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian. Appellant's location notice for the Pink Lady #4A claim for 15 acres on the west side of I-15 in the E $\frac{1}{2}$ NW $\frac{1}{4}$  of sec. 4, T. 8 N., R. 2 W., San Bernardino Meridian is not labeled "amended." Appellant's earlier locations, the Pink Lady and Pink Lady #4, predated the Notice of Realty Action by which BLM segregated the land from further mineral entry. The locations disputed here, the Pink Lady A and Pink Lady #4A claims, did not predate segregation of the land.

On April 26, 1991, BLM declared the Pink Lady claim and another claim in the Pink Lady claim group, the Pink Lady #1, null and void ab initio as to the land included in Federal Aid Highway rights-of-way which predated the original locations. The rights-of-way separated the Pink Lady claim into noncontiguous portions which could not be combined into a single association placer claim. 30 U.S.C. § 36 (1994); Robert J. Collins, 129 IBLA 341 (1994). The BLM advised the locators that they could amend their notices of location to exclude noncontiguous portions and then file new location notices for the excluded portions, subject to discovery requirements. Id.

As we have held, a single association placer mining claim location, made pursuant to 30 U.S.C. § 36 (1994), cannot apply to noncontiguous parcels of land. Robert J. Collins, *supra*, at 344; Jesse R. Collins, 127 IBLA 122, 124 (1993). See also 43 C.F.R. § 3842.1-3; William Peterson, 113 IBLA 19, 20 (1990). Thus, when amending the Pink Lady locations to exclude the highway rights-of-way and noncontiguous parcels, Appellant and his co-locators made a choice to include the larger of the separated portions in the amended locations and exclude the smaller noncontiguous parts. Appellant chose to relate the larger portions back to the original locations. See R. Gail Tibbetts, 43 IBLA 210 (1979). The locations for the

Pink Lady A and Pink Lady #4A claims are not amended locations. The BLM correctly treated these Pink Lady A and Pink Lady #4A claims as new claim locations with later location dates located independently of the others.

Accordingly, pursuant to the authority delegated to the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision of the California State Office declaring that the Pink Lady A and Pink Lady #4A mining claims are null and void ab initio is affirmed.

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James P. Terry  
Administrative Judge

I concur.

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Bruce R. Harris  
Deputy Chief Administrative Judge