

INTERIOR BOARD OF LAND APPEALS

Joseph Fell McDonald

146 IBLA 27 (September 29, 1998)

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JOSEPH FELL McDONALD

IBLA 96-523

Decided September 29, 1998

Appeal from a decision of the California State Office, Bureau of Land Management, declaring two placer mining claims null and void ab initio. CAMC 261483; CAMC 261484.

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 Mining Claims: Lands Subject to—Mining Claims: Withdrawn Land—Withdrawals and Reservations: Generally

A placer mining claim is properly declared null and void ab initio when the record discloses it was located on land withdrawn from mineral entry on the date of location.

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declaring the claim to be null and void ab initio upon a finding that the land on which the claim was located was withdrawn from the location of mining claims at the time the claim was located.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: Joseph Fell McDonald, Cardiff, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Joseph Fell McDonald (Appellant) has appealed from a July 29, 1996, Decision of the California State Office, Bureau of Land Management (BLM), declaring unpatented placer mining claims Royal Throne #1 and #2 (CAMC 261483 and CAMC 261484) null and void ab initio. The Decision explained that the land on which the claims were located was withdrawn from location or surface entry at the time the claims were located.

The notices of location for CAMC 261483 and CAMC 261484 were filed for recording with BLM on December 3, 1993. The notices state that the claims, situated in the SW¹/₄SW¹/₄ of sec. 14 and in the NW¹/₄SE¹/₄ of sec. 15, T. 9 S., R. 2 W., San Bernadino Meridian (SBM), were located on September 6, 1993. BLM found the location of the two claims was null and void because it was

made on land withdrawn from location and entry of mining claims. The lands had been previously transferred to the Pala Band of Mission Indians on November 1, 1988, and remained closed on the date of attempted location.

The July 29, 1996, BLM Decision (Decision) appealed from explained that the land encompassing the two unpatented placer mining claims was withdrawn from location of mining claims as a result of passage of the Southern California Indian Land Transfer Act of 1988 (Act), which is Title VII to the Act of November 1, 1988, 102 Stat. 2946. The Act provides that all of the rights, title, and interest of the United States to the W¹/₂W¹/₂ of sec. 14 (excepting certain patented areas) and to the SE¹/₄ of sec. 15 (except certain patented areas), and including other lands, were transferred to the Pala Band of the Mission Indians by the Act. (Decision at 1.) The Decision further states:

The lands transferred to the Pala Band of Mission Indians includes all of the land embraced by the Royal Throne #1 and the Royal Throne #2 placer mining claims. Therefore, the lands were not open to the location and entry of mining claims on the date the lands were transferred to the Pala Band of Mission Indian, Nov 1, 1988, and remained closed on September 6, 1993, the date of attempted location.

Accordingly, the Royal Throne # 1 and the Royal Throne # 2 placer mining claims (CAMC 26183-484) are hereby declared null and void ab initio—without legal effect from the beginning.

(Decision at 1.)

In the appeal filed with the Board, Appellant states, in pertinent part:

At the time when I researched and filed both BLM[] and County offices had the property in question open to mineral entry. The offices that I contacted were the Riverside BLM and San Diego County Recorder [a]nd Assessor[.]. All other maps and resources confirmed this as well. Therefore it was known to me that this was claimable land. The [C]ounty of San Diego still says the land in question is public domain. United States Congress passed [P]ublic [L]aw 100-581-Nov. 1, 1988 transferring land to the Pala Indian Reservation at the time. This was not known to me nor was told to me as I filed the claims in both the Department of the Interior BLM office, or the County of San Diego. With this in mind and fees paid to both, I continued to work these claims as supplemental income. Now more than before, this has become a more primary source of my income. My papers, claim notices, assessment work [are] all up to date. Current fees and exemptions are filed both in county and federal offices. [M]y reasons for appeal are valid. Does not some one individual or agency have to tell you before you file or start a mining venture that this is not legal or not open to mineral

entry? No such persons did in fact[.] [S]uch persons kept mailing me paperwork and said fees are as follows[.] [M]ail checks payable to * * *. When land is transferred, is there not a title or deed and does it not have to be filed in the county of w[h]ere it resides[.] [N]o such documents exist. I have had all kinds of crazy problems trying to get access to this property. In my journeys to my claims over the last several years I have encountered many individuals (including other miners, BIA, Sheriffs, rangers, etc.). When they saw my papers were in order I was allowed to proceed. There has been plenty of opportunity for anyone including the BLM to stop me. If you do not agree with me I believe I am due refunds of all such fees[.] [t]hat I was required to pay.

(Statement of Reasons at 1.)

[1] The withdrawn lands included the lands within the location notices of CAMC 261483 and CAMC 261484. 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*. Appellant's notice of location recorded with the county recorder's office gives the date of location as September 6, 1993. On that date, the land was withdrawn from entry under the mining laws.

On appeal, Appellant contends that the claims were located properly and that the transfer of the land to the Pala Indians "was not known to me nor was [I] told * * * as I filed the claims in both the Department of the interior BLM office, or the County of San Diego." (Decision at 1.)

The case file contains a copy of the Master Plat for T. 9 S., R. 2 W., SBM, dated October 7, 1992, which shows that the W¹/₂ of sec. 14 and the E¹/₂ and the E¹/₂W¹/₂ of sec. 15 were withdrawn by Act of Congress on November 1, 1988, for the Mission Indian Reservation. The Master Plat is a public document available at the BLM office to inform the public concerning the status of the public lands. Apparently, Appellant did not review the Master Plat to determine whether the land he sought was open to location. Otherwise, he would have learned that the lands had been withdrawn.

BLM has the responsibility to maintain the land records and to keep them current in order that the public has notice of the status of the

public lands. It was Appellant's responsibility to research the land records to determine the true status of the land he sought to enter. When Appellant located his claims, the public lands records reflected that the lands he sought to enter were withdrawn.

[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 fact is, the lands in question were not available for mineral entry at the time the claims were located and this was a matter of public record, as noted in the public lands records. Appellant is presumed to have knowledge of that notation. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947); Mac A. Stevens, 84 IBLA 124, 126 (1984).

The record shows, and Appellant admits, that mining claims CAMC 261483 and CAMC 261484 were located on September 6, 1993. However, the land was not opened to location and entry under the mining laws after November 1, 1988, except for some excepted patented claims. Therefore, the BLM Decision declaring the claim null and void ab initio must be affirmed.

As a related matter, we note that BLM has indicated in the Decision under appeal that Appellant will be entitled to a refund for the maintenance and location fees paid, since, as of the date the fees were submitted, the claims were null and void in their entirety. (Decision at 2.)

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.

James P. Terry
Administrative Judge

I concur.

Gail M. Frazier
Administrative Judge