

INTERIOR BOARD OF LAND APPEALS

G. Robert Carlson

152 IBLA 35 (March 1, 2000)

Title page added by:  
[ibiadecisions.com](http://ibiadecisions.com)

G. ROBERT CARLSON

IBLA 98-387

Decided March 1, 2000

Appeal from a decision of the California State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. CAMC 269364-69.

Affirmed in part; set aside and remanded in part.

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 Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Lode Claims--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Generally

Public lands designated by Congress as a wilderness area in 1994 are withdrawn from mineral entry and mining claims located on the land in 1996 are properly declared null and void ab initio.

2. Mining Claims: Lands Subject to--Mining Claims: Location

When the exact situs of the claim on the ground is unclear from the record and the claim may actually embrace land open to mineral entry, a decision finding the claim null and void ab initio will be set aside and the case remanded to BLM pending a determination of the actual position of the claim on the ground.

APPEARANCES: G. Robert Carlson, Apple Valley, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

G. Robert Carlson has appealed the May 22, 1998, decision of the California State Office, Bureau of Land Management (BLM), declaring six lode mining claims (CAMC 269364-69) null and void ab initio because they were located on land withdrawn from mineral entry at the time of location.

Carlson located the six claims on April 13, 1996. The location notices place the Excelsior Nos. 6 and 7 lode mining claims (CAMC 269364-65) in the W $\frac{1}{2}$  sec. 30, T. 20 N., R. 11 E., and the NE $\frac{1}{4}$  sec. 25, T. 20 N., R. 10 E., San Bernardino Meridian (SBM), San Bernardino and Inyo Counties, California. Similarly, the location notices describe the Acme Nos. 1-4 lode mining claims (CAMC 269366-69) as situated within the SW $\frac{1}{4}$  sec. 4 and

the NW<sup>1</sup>/<sub>4</sub> sec. 9, T. 19 N., R. 8 E., SBM, San Bernardino County, California. Carlson filed the location notices for recording with BLM on July 15, 1996, in accordance with the mining claim recordation requirements. 43 U.S.C. § 1744 (1994); 43 C.F.R. § 3833.1-2. In his letter transmitting the location notices for recordation, Carlson noted that, based on the current maps, it "is not possible to tell if the attached six (6) claims are locatable because of the Desert Protection Act." <sup>1</sup>/ Carlson also asked BLM to send him the official Congressional maps of the Kingston Range Wilderness, map 46, and the Pahrump Valley Wilderness, map 59.

In its May 22, 1998, decision, BLM found that, according to its records, the part of sec. 30, T. 20 N., R. 11 E., included in the Excelsior claims appeared to be within the boundaries of the Pahrump Valley Wilderness <sup>2</sup>/ and the parts of secs. 4 and 9, T. 19 N., R. 8 E., embraced by the Acme claims seemed to be within the boundaries of the Kingston Range Wilderness. These areas were designated in the California Desert Protection Act of 1994 as BLM-administered wilderness areas, effective October 31, 1994. 108 Stat. 4476, 4478, 4481. Further, BLM explained that, under section 4 (d)(3) of the Wilderness Act, 16 U.S.C. § 1133(d)(3) (1994), lands in wilderness areas were withdrawn from all forms of appropriation under the mining laws. Since Carlson had located his claims after the October 31, 1994, effective date of the applicable wilderness designations, BLM declared the Excelsior Nos. 6 and 7 lode mining claims lying within the Pahrump Valley Wilderness and the Acme Nos. 1-4, lode mining claims within the Kingston Range Wilderness null and void ab initio.

On appeal, Carlson asserts that the most recent topographic map of the area had the effect of shifting sec. 4, T. 19 N., R. 8 E., SBM, approximately 1/2 mile west and 1/2 mile south of its previously projected position. Hence, it appears that the legal descriptions of the Acme claims found in the recorded location notices do not accurately portray the true sites of those claims. Appellant submits, therefore, that the legal description of the claims should be amended to reflect their actual positions in the E<sup>1</sup>/<sub>2</sub> sec. 4, instead of the SW<sup>1</sup>/<sub>4</sub> sec. 4 and the NW<sup>1</sup>/<sub>4</sub> sec. 9, and indicates his intention to amend the claim location notices as necessary to correct the legal description of the sites of the claims. Appellant challenges BLM's invalidation of the Acme claims on the ground that the revised description of those claims places them outside the Kingston Range Wilderness Area. In support of his contention, appellant has submitted a revised map upon which are projected the Acme claims and the wilderness boundary as set forth in Map 46 relied upon by BLM. This revised map shows the claims to be located outside the Kingston Range Wilderness Area.

<sup>1</sup>/ California Desert Protection Act of 1994, Pub. L. No. 103-433, 108 Stat. 4471 (Oct. 31, 1994).

<sup>2</sup>/ Although BLM did not explicitly state that the part of the NE<sup>1</sup>/<sub>4</sub> sec. 25, T. 20 N., R. 10 E., SBM, included within the Excelsior claims fell within the Pahrump Valley Wilderness, its records clearly place those lands within the wilderness area. See Map 59, Pahrump Valley Wilderness Area, October 1994.

Carlson characterizes the Excelsior claims as important sources of high quality talc situated in a well-known mining area unsuitable for wilderness designation. He points out that, in a 1991 record of decision, BLM had determined that the Pahrump Valley WSA should be excluded from further wilderness consideration because it lacked wilderness characteristics and contrasts that BLM analysis with the assessment provided to Congress during its consideration of the California Desert Protection Act which, Carlson submits, exaggerated the wilderness value of the Pahrump Valley. Carlson complains that, although the lands embraced by the Excelsior claims were specifically omitted from Pahrump Valley WSA in 1980, the WSA boundaries were later improperly expanded to include the claims without following the amendment procedures mandated in BLM's 1980 California Desert Protection Plan. He further maintains that, since Congress' intent was to exclude active mines and known or potential mineral conflicts from the designated wilderness areas, inclusion of the Excelsior claims within the Pahrump Valley Wilderness must have been an error which should be corrected by modifying the area's southern boundary to eliminate the lands encompassed by the claims.

[1] On October 31, 1994, Congress enacted the California Desert Protection Act of 1994, Pub. L. No. 103-433, 108 Stat. 4471 (1994). Section 102 of the Act designated the Kingston Range Wilderness and the Pahrump Valley Wilderness as components of the National Wilderness Preservation System. 108 Stat. 4476, 4478. Section 103(a) of the Act directed BLM to manage the wilderness areas in accordance with the provisions of the Wilderness Act, 16 U.S.C. §§ 1131-1136 (1994), effective October 31, 1994. 108 Stat. 4481. Section 4(d)(3) of the Wilderness Act, 16 U.S.C. § 1133(d)(3) (1994), withdrew the minerals in designated wilderness areas from all forms of appropriation under the mining laws. Therefore, as of October 31, 1994, the lands included within the Kingston Range Wilderness and the Pahrump Valley Wilderness were no longer open to mineral entry.

Mining claims located on lands closed to entry under the mining laws confer no rights on the locator and are properly declared null and void ab initio. See, e.g., Ronald A. Pene, 147 IBLA 153, 157 (1999); Richard K. Hatch, 145 IBLA 264, 266 (1998). Carlson located the Acme Nos. 1-4 and the Excelsior Nos. 6 and 7 lode mining claims on April 13, 1996, after the lands within the Kingston Range and Pahrump Valley Wildernesses had been withdrawn from mineral entry. Thus, if the claims fall within the boundaries of those wilderness areas, BLM properly declared them null and void ab initio.

Section 103(b) of the California Desert Protection Act of 1994 instructed BLM to file maps and legal descriptions for the designated wilderness areas and provided that those maps and descriptions would have the same force and effect as if included in the Act. 108 Stat. 4481. Map 59, dated October 1994, a copy of which is included in the case file, depicts the Pahrump Valley Wilderness Area, and Map 46, dated June 1995, also contained in the case file, delineates the Kingston Range Wilderness Area. These maps place the claims as described in the recorded location notices within the boundaries of the designated wilderness areas.

Carlson concedes that the Excelsior Nos. 6 and 7 lode mining claims lie within the boundaries of the Pahrump Valley Wilderness Area as shown on Map 59. He argues, however, that the lands embraced by the claims should not have been incorporated into the wilderness area. His contentions in this regard notwithstanding, the fact remains that Congress included those lands within the Pahrump Valley Wilderness. The United States Constitution grants to Congress the full authority to enact legislation regarding the administration or disposition of the public lands of the United States and the executive agencies of the Federal Government are bound to follow strictly the mandates of statutes enacted by Congress. Chevron U.S.A., Inc., 108 IBLA 96, 99 (1989), quoting Kidd v. U.S. Department of the Interior, 756 F.2d 1410, 1411-12 (9th Cir. 1985). Since the Excelsior Nos. 6 and 7 claims clearly fall within the Pahrump Valley Wilderness designated by Congress, BLM properly declared those claims null and void ab initio.

[2] Appellant, however, has submitted on appeal a map of the location of the Acme claims indicating that the descriptions of the Acme claims on the location notices are slightly inaccurate and that the Acme claims are, in fact, located outside the Kingston Range Wilderness Area. <sup>3/</sup> In determining the location of a mining claim, its situs on the ground as disclosed by its monuments controls over a conflicting description in the location notice or placement on a map. Wallace E. Mieras, 151 IBLA 274, 276 (1999); see Outline Oil Corp., 95 IBLA 255, 259-60 (1987); Leslie Corriea, 93 IBLA 346, 349 n.3 (1986); Arley Taylor, 90 IBLA 313, 317-18 (1986). Accordingly, the finding that the Acme claims are null and void ab initio is properly set aside and the case remanded to verify the situs of the claims on the ground and whether they are indeed outside the wilderness. Once the situs of the claims has been determined, BLM may adjudicate the claim accordingly. Wallace E. Mieras, *supra*; see Leslie Corriea, 93 IBLA at 350.

Therefore, 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 in part and set aside and remanded in part.

---

C. Randall Grant, Jr.  
Administrative Judge

I concur:

---

Will A. Irwin  
Administrative Judge

---

<sup>3/</sup> Appellant may wish to follow up on his announced intention to file amended notices of location reflecting the proper location of the Acme claims on the ground in relation to the public land surveys.