

INTERIOR BOARD OF LAND APPEALS

Devon Britton, et al.

158 IBLA 279 (February 24, 2003)

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DEVON BRITTON, ET AL.

IBLA 99-260

Decided February 24, 2003

Appeals from a decision of the California State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio (CAMC 271628-30), and from a notice to claimants, advising that no mineral or surface rights had been obtained for portions of lode mining claims (CAMC 271631-33) lying within a wilderness area.

Affirmed as modified.

1. Mining Claims: Lands Subject to--Mining Claims: Lode Claims--Mining Claims: Relocation--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Generally

Rights acquired under relocations of lode mining claims declared to be forfeited by operation of law for failure to timely file the claim maintenance fee do not relate back to the date of the locations of the original claims but only to the date of the relocations. When such claims are located totally on land withdrawn from entry under the mining laws, BLM properly declares those claims null and void ab initio. When only part of such claims lies on with- drawn land, BLM properly notifies the claimants that they have not acquired any surface rights to the portion of the claims overlapping the withdrawn land; that mining and mining-related activities on those lands would constitute a trespass; and that, depending on the circumstances, they may or may not have any mineral rights in the subsurface of such land.

APPEARANCES: James E. Good, Esq., San Bernardino, California, for appellants.

## OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Devon Britton, Layne Leslie Britton, and Leila Britton have appealed the December 4, 1998, decision of the California State Office, Bureau of Land Management (BLM), declaring the Beauty Vein #1, #2, and #3 lode mining claims (CAMC 271628-30) null and void ab initio because they were located on land within the Trilobite Wilderness Area which had been withdrawn from entry under the mining laws on October 31, 1994. The Brittons have also appealed a December 4, 1998, Notice to Claimants issued by BLM, notifying them that a portion of the Beauty Vein #4, #5, and #6 lode mining claims (CAMC 271631-33) lay on lands within the wilderness not open to mineral entry under the mining laws and advising them that they had “acquired no mineral or surface rights” to the portion of the claims overlapping the withdrawn land and that mining and mining-related activities on those lands would constitute a trespass.

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 that Act designated the Trilobite Wilderness as a component of the National Wilderness Preservation System. 108 Stat. 4477. Section 103(a) of the Act directed BLM to administer each designated wilderness area 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 wilderness areas from all forms of appropriation under the mining laws. All lands included within the Trilobite Wilderness Area were therefore closed to mineral entry as of October 31, 1994. See G. Robert Carlson, 152 IBLA 35, 37 (2000). The Beauty Vein #1, #2, #3, #4, #5, and #6 lode claims were located on May 1, 1997, after the creation of the Trilobite Wilderness Area. Those claims embrace lands within the SE1/4 sec. 22, T. 6 N., R. 14 E., San Bernardino Meridian, San Bernardino County, California.

In its December 4, 1998, decision, BLM found that the portion of the SE1/4 sec. 22, T. 6 N., R. 14 E., San Bernardino Meridian, encompassed by the Beauty Vein #1, #2, and #3 lode mining claims lay entirely within the Trilobite Wilderness Area and had been closed to entry and location under the mining laws effective October 31, 1994. Since those claims had been located on May 1, 1997, after the land had been withdrawn, BLM declared them null and void ab initio.

BLM's December 4, 1998, Notice to Claimants, similarly informed the Brittons that portions of the Beauty Vein #4, #5, and #6 lode mining claims embraced lands within the wilderness not open to entry under the mining laws and advised them that they had acquired no mineral or surface rights to the portion of the claims overlapping the withdrawn land and that mining and related activities on those lands would constitute a trespass.

Upon receipt of the appeal of the Notice to Claimants, BLM informed the Brittons by letter dated March 31, 1999, that the Notice was not an appealable decision because, under Board precedent, lode claims partially located on withdrawn land were nevertheless valid if there had been an actual discovery on the portion of the claim open to location. BLM further noted that if the Brittons could show that no part of the claims was situated within the wilderness, the Notice would be a nullity, but that if a portion of the claims was within the wilderness, then they risked a trespass action if they conducted mining or related operations on that land.

The Brittons responded by letter dated April 14, 1999, stipulating that portions of the Beauty Vein #4, #5, and #6 claims were located within the wilderness and explaining that they maintained that the locations of the claims, including the portions within the wilderness, were validly made and that, therefore, the Notice constituted an adverse decision that portions of the claims were not validly located under the mining laws.

By letter dated April 21, 1999, BLM noted that, based on Board precedent, it could not issue a decision declaring a portion of a lode claim located on closed land null and void ab initio for that reason alone, but that it could only notify the claimants of the potential for trespass. Nevertheless, BLM stated that it had forwarded to the Board the appeal and related case files. 1/

On appeal, the Brittons explain that the Beauty Vein #1 through #6 lode mining claims were originally located by Devon Britton and her father Layne Britton on December 6, 1990, and recorded with BLM as CAMC 240732-37; that, because of an oversight, they did not timely pay the \$100 per claim maintenance fee due under 30 U.S.C. § 28f(a) (1994); that BLM declared the claims forfeited by operation of law for failure to timely pay the maintenance fee in a decision dated April 16, 1997; and that, as a result of BLM's decision, they relocated the Beauty Vein #1 through #6 lode claims (CAMC 271628-33) on May 1, 1997.

The Brittons contend that, but for the October 31, 1994, creation of the Trilobite Wilderness Area, the relocation of the Beauty Vein #1 through #6 claims would have revalidated their property rights. Given these circumstances, they maintain that the Board should "decide that this right to revalidate CAMC Nos. 240732-37 by relocation constituted an inchoate right of Appellants within the newly created Trilobite Wilderness Area, and that such right was duly exercised by the relocations in 1997 as CAMC Nos. 271628-33." (Statement of Reasons at 3.)

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1/ Because the rationale of our decision addressing the validity of the relocations of the Beauty Vein #1, #2, and #3 lode claims relates to the portions of the Beauty Vein #4, #5, and #6 claims lying within the wilderness, we will assume for the purpose of this decision that the Brittons' appeal of the Notice is properly before us.

Recognition of this inchoate right would be equitable, the Brittons submit, because they and their predecessors have conducted a valuable mining operation on the claims since the 1950's and have developed a successful business based on products utilizing the montmorillonite clay mined from the claims.

[1] Mining claims located entirely on lands withdrawn from entry under the mining laws on the date of location confer no rights on the locator and are properly declared null and void ab initio. See, e.g., G. Robert Carlson, 152 IBLA at 37; Stephen A. Beld, 136 IBLA 142, 144 (1996), and cases cited. The lands included within the Beauty Vein #1, #2, and #3 lode mining claims were withdrawn from mineral entry on October 31, 1994, by the creation of the Trilobite Wilderness Area, and BLM properly declared those claims, which were located on May 1, 1997, null and void ab initio.

The Brittons' contention that their earlier claims entitle them to relocate those claims despite the wilderness designation fails because whatever rights they had under the original claims were lost when those claims were declared forfeited. See National Cement Company of California, 156 IBLA 131, 135 (2001). Because forfeited claims do not grant a claimant any additional rights, relocations of such claims do not relate back to the date of the original locations. See Kenneth Lexa, 138 IBLA 224, 231 (1997); Steven A. Beld, 136 IBLA at 145-46, and cases cited. The Brittons' May 1, 1997, relocations of the Beauty Vein #1, #2, and #3 lode mining claims were made after the withdrawal of the lands and were therefore prohibited. See Steven A. Beld, 136 IBLA at 146. Accordingly, we affirm BLM's December 4, 1998, decision declaring the Beauty Vein #1, #2, and #3 lode mining claims null and void ab initio.

The earlier forfeited claims similarly do not afford the Brittons any additional rights to the portions of the Beauty Vein #4, #5, and #6 lode claims located within the Trilobite Wilderness Area. However, we believe BLM's statement regarding the Brittons' rights, if any, to minerals on lands within the wilderness area must be modified in accordance with Ed Nazelrod, 151 IBLA 374, 378 (2000), in which we stated:

However, BLM may not declare a lode mining claim null and void ab initio merely because it is located partially on land unavailable for mineral location. If Nazelrod's claims only partially include land which is closed to mineral entry their validity would depend on whether they are supported by a discovery on land which is open to mineral entry. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across patented or withdrawn land to define the extralateral rights to lodes or veins which apex within the claim, although he will not have any rights to

the surface of these lands, and, depending on the circumstances, may or may not have any mineral rights in the subsurface of such land. Butte Lode Mining Co., 131 IBLA 284, 289 (1994); 3/ Amelia Marglin Whitson, 101 IBLA 1, 4 (1988); Leslie Corriea, [93 IBLA 346 (1986)] at 350.

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3/ Vacated in part, on other grounds, 131 IBLA 292A (1995).

Thus, BLM properly notified the Brittons that a portion of the Beauty Vein #4, #5, and #6 lode mining claims lay on lands within the wilderness not open to mineral entry under the mining laws and that they had not acquired any surface rights to the portion of the claims overlapping the withdrawn land and that mining and mining-related activities on those lands would constitute a trespass. BLM should have stated, however, depending on the circumstances, the Brittons may or may not have any mineral rights in the subsurface of such land. The notice is modified accordingly.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision and notice appealed from are affirmed as modified herein.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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Lisa Hemmer  
Administrative Judge