

INTERIOR BOARD OF LAND APPEALS

Matthew (Mattew) Helit

166 IBLA 69 (June 20, 2005)

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MATTHEW (MATTEW) HELIT

IBLA 2002-301

Decided June 20, 2005

Appeal from decision of the California State Office, Bureau of Land Management, declaring a placer mining claim null and void ab initio. CAMC 260417.

Affirmed.

1. Mining Claims: Location--Mining Claims: Placer Claims

Under 30 U.S.C. § 35 (2000), all placer mining claims located after the 10th day of May 1872 shall conform as near as practicable with the United States system of public land surveys, and the rectangular subdivisions of such surveys. Even where it is not practicable to strictly conform to the system of surveys, BLM will not approve claims that are long narrow strips or grossly irregular or fantastically shaped tracts.

APPEARANCES: Matthew (Mattew) Helit, Oceanside, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Matthew (Mattew) Helit has appealed from the April 3, 2002, decision of the California State Office, Bureau of Land Management (BLM), declaring the V-ABLE #1-2-3-4-5-6-7-8 placer mining claim (CAMC 260417) null and void ab initio. This case is another in a series of cases dealing with mining claims located along stretches of stream or river beds in California by Melvin Helit.

The claim was originally located on September 1, 1993, as evidenced by a notice signed (in what appears to be one person's handwriting) by Melvin Helit, Rufina Helit, Adrian Helit, Paul B. Helit, A-Able Plumbing, Inc. ("Pres. Melvin Helit"), Stephen P. Helit, Michael S. Helit, and Paula J. Helit. The location notice filed with BLM on October 13, 1993, states that the claim is situated in: "Sec. 5W1/2, Sec. 6E1/2, Sec. 8N1/2, E1/2, Sec. 9W1/2, S1/2, Sec. 10SE1/4, Sec. 11S1/2,

Sec. 12S1/2, Sec. 13N1/2, Sec. 14N1/2, Sec. 15ALL1/4 [sic], Sec. 16ALL1/4 [sic] T7N R20W SBM. Sec. 31S1/2 T8N R20W SBM.” The notice asserts that “[t]he acres claimed is 160 Acres” [sic] and offers the following description of the claim:

The Locators claim this Gulch Placer Claim * * * commencing at the beginning, thence 100 feet from the center of river, creek, etc. on the right side, and 100 feet from center river, creek, etc. to the l[e]ft side. The Placer Mining Claim follows the river, creek, etc. and is 200 feet wide, starting at patented land in Sec. 18NW1/4 T7N R19W SBM (Gold Hill) Thence going West to Sec. 13N1/2 T7N R20W SBM, thence NW to Sec 12S1/2, thence going West to Sec. 11S1/2 thence going SW to Sec. 10SE1/4 and Sec. 14NW1/4, thence West to Sec. 15NW1/4, NE1/4, SW1/4, thence West to Sec. 16 and Claim ends on Piru Creek where Sec. 16SW1/4, and Sec. 21NW1/4 meet. Returning to Sec. 16E1/2 at Lockwood Creek and going NW up to Sec. 9S1/2, W1/2, thence up Long Dave Canyon, thence returning to Lockwood Creek to Sec. 8E1/2, N1/2, thence NW to Sec. 5W1/2, thence NW to Sec. 6NE1/4, Thence NW to Sec. 31S1/2 where the claim ends at patented land in Sec. 31 T8N R20W SBM. SEE MAP FILED WITH BLM.

(1993 Notice of Location at paragraph 5 (emphasis added).) The referenced map depicts what appears to be a single thick line drawn with a marker along two converging stream courses and then heading off from the point at which the streams merge. On January 7, 1994, an amended location notice bearing the same signatures and dated December 31, 1993, was filed for the claim but the notice contained no new description.

Melvin Helit and others also located two additional mining claims along Piru Creek on September 1, 1993, and filed the location notices with BLM for recordation on October 1, 1993. (CAMC 260418 and CAMC 260419.) Maps submitted to BLM with the location notices show the claims following Piru Creek for some miles, and along nearby tributary creeks.

By decision dated February 21, 1995, BLM declared all three claims null and void ab initio. Among the grounds for this declaration, BLM determined that the locations violated the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287 (2000), because the claims included certain lands within a quarter mile of Piru Creek which had been designated as a potential addition to the Wild and Scenic River System. Melvin Helit submitted to BLM a notice of appeal and statement of reasons (SOR) challenging the decision only with respect to CAMC 260417.

On April 21, 1995, BLM received another amended location notice for CAMC 260417, dated February 24, 1995, claiming 160 acres and asserting: “This

claim is situated in: Sec. 4, 5, 6, 8, 9, 16, 17, T17N R20W SBM. and Sec. 31 T8N R20W SBM.” It was made “in conformity with the original location.” The purpose of the amendment was to eliminate lands which had been designated as a potential addition to the Wild and Scenic River System along Piru Creek.

The record indicates that a mix-up ensued involving incorrect service of the BLM decision on Helit and the submission of the 1995 amended notice of location, which documents may have crossed in the mail. The case file contains the original of a transmittal memorandum from BLM to this Board, dated May 22, 1995, requesting that the Board remand the matter to BLM. The Board has no record that such an appeal was docketed.

On November 27, 1998, BLM received a copy from Melvin Helit of a Mineral Deed dated May 22, 1998. According to this document, A-Able Plumbing Inc., Melvin Helit, Rufina Helit, Adrian Helit, and Paula J. Helit, conveyed their interest in CAMC 260417 to AA-One Inc., Stephen P. Helit, Michael S. Helit, and Paul B. Helit. None of these persons to whom the claim was allegedly transferred signed the document. Melvin Helit requested that evidence of recordation be mailed to A-Able Mining at his address. The case record contains annual Maintenance Fee Payment Waiver Certifications filed in 1998, 1999, and 2000, for ten mining claims, including CAMC 260417. On each one, the owners are listed as AA-One Inc. (“Pres. Paul B. Helit”), Stephen P. Helit, Michael S. Helit, and Paul B. Helit. All signatures for each waiver certification appear in the handwriting of one person.^{1/} The record indicates that this person is Melvin Helit. The same handwriting appears on the various location notices for CAMC 260417, the 1998 Mineral Deed for CAMC 260417, and another “Mineral Deed” dated April 10, 2001, in which the same four entities purported to transfer their interest to “Mattew F. Helit.” Melvin Helit signed the names of each transferee on that document as “Agent for All Locators.” The transferee did not sign the Mineral Deed. Again, Melvin Helit requested that evidence of recordation be mailed to A-Able Mining at his address.

Although the location notices for CAMC 260417 state that the claim is situated in various sections or subdivisions, the boundaries of the claim are not described in terms of rectangular subdivisions. On the basis of the descriptions in the location notices and maps, BLM determined that the location notices described a claim that was 200 feet wide, 100 feet either side of the creek bed, 22,000 feet or 4.2 miles long following the course of a river or creek, and containing a total of 110 acres. Citing the Department’s decision in Snow Flake Fraction Placer, 37 L.D. 250 (1908), the decision stated: “[T]he government will not permit locations which cut the public domain into long narrow strips.” (Decision at 2.) BLM determined that the claim

^{1/} These certifications contain surface deficiencies. See Samual B. Fretwell, 154 IBLA 201, 205 (2001); see also 18 U.S.C. § 1001 (2000).

does not conform “as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys” as required by 30 U.S.C. § 35 (2000). *Id.* Further, BLM cited this Board’s decision in Melvin Helit, 146 IBLA 362, 369 (1998), which dealt with similar locations and concluded that they were “so contrary to the statutory mandate * * * that no opportunity need be provided to conform the location to survey.” (Decision at 2.)

Matthew Helit appealed. Notably, Matthew Helit reprinted and resubmitted Melvin Helit’s SOR submitted in 1995, changing only the appellant’s name and signature. Because of the intervening passage of 6-7 years, the 1995 SOR, offered as reasons for the 2002 appeal, raises a number of arguments that have no bearing on the decision challenged here. BLM calculated that the claim contained 110 acres, but Matthew Helit reasserts from Melvin Helit’s 1995 SOR appeal that the acreage claimed is 160 acres and that the claim did not exceed acceptable acreage, failing to recognize BLM’s clear concession that acreage is not an issue with this mining claim. (SOR at 2.) Matthew Helit repeats an argument from the 1995 SOR about the “inaccessibility” of the location which derived from comments in the 1995 decision which were not repeated in the 2002 decision.^{2/}

Moreover, after 1995, this Board decided several appeals involving other streambed claims located by Melvin Helit, who raised the same arguments in those appeals that he presented in the 1995 appeal and that Matthew Helit adopted in 2002. Failing to update the SOR to account for subsequent decisions issued by this Board in cases involving Melvin Helit and his pattern of locating long, meandering claims along river or creek beds, Matthew Helit’s adoption of the 1995 SOR fails to account for the fact that many of those arguments have been decided by this Board in decisions affirming BLM.

The arguments in the SOR that actually pertain to the 2002 decision can be identified as follows: The SOR contends that BLM erred in declaring the mining claim to be null and void on grounds that it is a “shoestring” placer claim. The SOR asserts that a claim may be valid even though it is in a long narrow strip or shoestring shape, if the mineral deposit is confined in the bed or banks of a stream and the surrounding land contains no mineral value, because a locator is not required to include nonmineral land within the boundaries of his claim. (SOR at 3-4.) The SOR contends that failure to comply with the requirement of conforming a claim to the public land survey does not invalidate the claim but normally results in requiring a claimant to amend the claim. (SOR at 4.) Finally, the SOR argues that whether or not a claim conforms to the public land survey is an issue that BLM can determine at

^{2/} Matthew Helit copies from the 1995 appeal an argument concerning the Wild and Scenic Rivers Act. The claim was amended in 1995 to exclude land subject to that Act. That statute did not form a basis for the decision under appeal.

such time as the claimant applies for a patent. Since Melvin Helit did not apply for a patent, and Matthew Helit does not intend to do so, the SOR reasons that the claimant is free to maintain a mining claim that does not so conform without any opportunity on BLM's part to address it. (SOR at 4.) As shown below, the Board has resolved these issues since submission of the SOR in 1995.

[1] BLM's decision in this appeal directs our attention to the particular requirement of the general mining laws that "all placer-mining claims located after the 10th day of May 1872, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys." 30 U.S.C. § 35 (2000) (emphasis added).^{3/} In United States v. Haskins, 59 IBLA 1, 95, 88 I.D. 925, 972 (1981), aff'd, No. 82-2112 (C.D. Cal. 1984), we observed: "The critical phrase, of course, is the qualifying 'as near as practicable'." Even where it is not practicable to strictly conform to the system of surveys, BLM will not approve locations that are "long narrow strips" or "grossly irregular or fantastically shaped tracts." 30 CFR 3842.1-5(d) (2003); see Melvin Helit, 157 IBLA 111, 119-23 (2002) (Hemmer, A.J., concurring specially).

In other cases involving locations made by Melvin Helit, this Board has definitively concluded that long, meandering claims spanning streambeds do not meet the requirements of the statute, and that locating a claim in such manner is, standing alone, reason to declare the claims null and void. In Melvin Helit, 147 IBLA 45, 48-49 (1998), the Board held:

Helit's attempt to justify the location as some sort of "gulch" placer may be summarily rejected. While the Department has, on occasion, allowed some variation from complete conformity with the rectangular system of surveys where the claim has been located in narrow and confining "gulches," it has never, at least not since the decision of the Department in Miller Placer Claim, 30 L.D. 225 (1900), countenanced location of claims in the form exemplified by the location of the K-ABLE # 5-6-7-8-9-10-11-12. Indeed, in Snow Flake Fraction Placer, 37 L.D. 250 (1908), the Department went so far as to expressly repudiate a previous decision which had allowed the location of a single placer claim extending 12,000 feet in length. Id. at 258. Given the fact that the instant location is more than 67,000 feet long, the location is

^{3/} That section further provides: "[N]o such location shall include more than twenty acres for each individual claimant; but where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead purposes."

properly nullified on this basis alone, and we so hold that it is null and void on this basis as well. See Melvin Helit, [146 IBLA] at 368-69.

The Board held in that case, the cited Helit case, and other Melvin Helit cases, that BLM may properly declare a mining claim null and void without examining the issue of discovery.

In Melvin Helit, 157 IBLA 111, the concurring opinion rejected Helit's argument there that there was no rule in place prohibiting meandering claims along streambeds, addressing a mining claim alleged by Helit to be 10,000 feet long and 600 feet wide, stating:

The Department adopted Snow Flake into regulation. On April 11, 1922, the Department issued Circular 430, 49 L.D. 62. Paragraph 30 specified:

Claimants should bear in mind that it is the policy of the Government to have all entries * * * as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L.D. 250.)

This regulation remains unchanged today, except as recodified and corrected for punctuation. 43 CFR 3842.1-5(d).

157 IBLA at 120.

From 1922 until November 23, 2003, the description of placer mining claims was governed by language drawn from the syllabus of the Snow Flake decision. Paragraph 30 of Circular 430 was codified as 43 CFR 185.29 (1938) and recodified as 43 CFR 3416.5 (1965) and 43 CFR 3842.1-5 (1971-2003). In a rulemaking dated October 24, 2003, BLM removed Subpart 3842 and redrafted and recodified the rules. 68 FR 61046, 61048 (Oct. 24, 2003). Requirements for describing placer claims, including the rule's continued incorporation of the Snow Flake decision, now appear at 43 CFR 3832.12(c)(3) (2004).

In addition, 43 CFR 3842.1-5(c) (2003) retained another requirement found in paragraph 30 of Circular 430. That rule provided that association placer locations made by one or two persons within a square 40-acre tract, by three or four persons within two square 40-acre tracts, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts "will be

regarded as within the requirements where strict conformity is impracticable.” That rule did not require that locations slightly exceeding the square 40-acre rule be rejected. Thus, the decision in William F. Carr, 53 I.D. 431 (1931), reversed the application of the square 40-acre rule to an 80.695-acre association placer mining claim located in a creek canyon by five persons, which was a little over a mile in length and only slightly exceeded the rule. The claim in this case, at a length of 4.2 miles, so far exceeds the square 40-acre rule of 43 CFR 3842.1-5(c) (2003) that it must be considered to be not “within the requirements where strict conformity is impracticable.”^{4/}

Moreover, in the precedent intervening between Melvin Helit’s SOR and Matthew’s adoption of it, the Board expressly held that the nature of the string locations following steam beds such as CAMC 260417 are “so contrary” to statute that they may be declared null and void without providing the claimant an opportunity to conform the locations to survey. 146 IBLA at 369.

Moreover, in both Wood Placer Mining Co., 32 L.D. 198 (1903), and Miller Placer Claim, 30 L.D. 225 (1900), the Department cancelled mineral entries because of a failure to conform to the system of public land surveys without affording the claimants an opportunity to amend their claims because the very extent of their nonconformity made it effectively impossible to fairly conform the claim. In Wood Placer Mining Co., *supra*, the Acting Secretary rejected two claims which were each 9,000 feet in length and approximately 500 feet in width, generally tracking the bed of Hughes creek, noting that “[t]he locations here in question (comprising a long and narrow strip, throughout its length following and embracing Hughes creek, in the manner shown on the official plat) do not even approach conformity with the system of public-land surveys.” *Id.* at 200. * * *

We hold that the nature of the locations in the instant case are so contrary to the statutory mandate of 30 U.S.C. § 35 (1994) that no opportunity need be provided to conform the locations to survey. They are properly declared null and void as a matter of law.

146 IBLA at 369. In Melvin Helit, 157 IBLA at 118, we concluded that the failure to conform to the system of public land measurements could be found to be intentional when Helit insisted that his “depiction of the claim was a correct representation of [his] intent.” Here, Matthew and Melvin Helit contend in the SOR that claims like

^{4/} Notably, the new regulation expressly mandates that a placer mining claim located by eight persons “must fit within the exterior boundaries of 4 square contiguous 40-acre parcels.” 43 CFR 3832.12(c)(3) (2004).

CACA 260417 “can be located in long narrow strips of land or shoestring.” (SOR at 4.) This contention belies any assertion that the location’s failure to conform to the requirements of 43 CFR 3842.1-5 was inadvertent. In such a circumstance, no opportunity need be provided to conform the location to survey and the claim is properly declared null and void as a matter of law.

The Board has rejected claims of the nature located here – a 4.2-mile long strip which fluctuates with changes in a streambed – for an additional reason as well. In Melvin Helit, 146 IBLA at 369-70, the Board stated:

Furthermore, since each location is described as 100 feet on each side from “center of river, creek, etc.,” if the river altered its bed, the claim would presumably move with it.

In reality, Helit and his co-locators have attempted to locate a “floating claim,” one which can vary, at any time, by * * * the vagaries of nature. Assuming the claims were ever marked on the ground, the floating of claims after their boundaries have been fixed on the ground has long been held violative of the entire system of mineral location and entry and such indefinite claims are properly declared a nullity.

(footnotes omitted). This is exactly the method Melvin Helit adopted in locating CACA 260417.

We address Helit’s contention that the issue of conformity to the public land survey is a question to be decided only when a claimant applies for a patent, which he does not intend to do. (SOR at 2.) The impairment that a claim poses to management of the public lands, however, does not arise only when a patent application is filed. Thus, the issue of a placer claim’s conformity to the requirements of 43 CFR 3842.1-5 may be raised at any time. See, e.g., Melvin Helit, 157 IBLA at 117; Matthew Helit, Melvin Helit, 160 IBLA 15, 19 (2003).

All of this precedent is sufficient to dispose of this appeal. The arguments in this SOR have been addressed in the various cases cited above. Matthew Helit’s adoption of the same arguments, without accounting for intervening Board precedent which rejected those arguments, compels us to reiterate our prior precedent without further examination.

Finally, we have serious questions whether some documents submitted into this record by Melvin Helit would be in compliance with requirements of the Mining Law of 1872, and whether Melvin Helit is in fact the only person involved with the various transactions regarding the mining claim. In Matthew Helit, Melvin Helit, 160 IBLA at 17 and n.3, we questioned whether a Mineral Deed, also dated April 10,

2001, and also conveying mining claims to Matthew Helit by the same co-locators found in this record was “a sham or device entered into whereby one individual is to acquire by location an amount or portion of a placer mining claim of more than 20 acres.” Our disposition makes it unnecessary to exercise our de novo review authority to resolve such issues. Nevertheless, BLM may consider whether further investigation by appropriate authorities is warranted. See Lee S. Bielski, 39 IBLA 211, 228, 86 I.D. 80, 89 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Lisa Hemmer
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge