

JACK T. KELLY

IBLA 87-771

Decided March 12, 1990

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio in part. M MC 108915 through M MC 108917.

Affirmed.

1. Mining Claims: Lands Subject To--Navigable Waters--State Lands

Title to the bed of navigable rivers is held in trust for future states and passes to them upon admission to the Union. A placer mining claim is properly declared null and void to the extent that it includes the bed of a navigable river.

2. Mining Claims: Lands Subject To

A placer mining claim is properly declared null and void to the extent that it includes land patented without a reservation of minerals to the United States.

3. Mining Claims: Lands Subject To--Mining Claims: Relocation--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Generally

To establish that a location of a mining claim made after withdrawal is actually an amendment of a prior location made before the withdrawal, a claimant must show the earlier location included the portion of this claim subject to the withdrawal, that the person making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

4. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location--Mining Claims: Recordation of Certificate or Notice of Location

Under 43 U.S.C. § 1744 (1982), the owner of an unpatented mining claim located on or before Oct. 21, 1976,

was required to file with the proper office of BLM a copy of the official record of the notice or certificate of location and a copy of the evidence of assessment work on or before Oct. 22, 1979. Failure to make the required filings constitutes an abandonment of the claim by the owner.

5. Federal Land Policy and Management Act of 1976: Assessment Work--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold

Under 43 U.S.C. § 1744 (1982), an owner of an unpa-tented mining claim is required to file evidence of annual assessment work or a notice of intention to hold the claim with the proper BLM office before Dec. 31 of each year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the claim.

6. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location--Mining Claims: Recordation of Certificate or Notice of Location--Mining Claims: Relocation

Rights acquired under a relocation of a mining claim abandoned pursuant to 43 U.S.C. § 1744 (1982) will not relate back to the date of location of the original claim but only to the date of the relocation.

7. Mining Claims: Lands Subject to--Mining Claims: Powersite Lands--Mining Claims: Withdrawn Land--Powersite Lands--Withdrawals and Reservations: Powersites

The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1982), opened certain powersites to entry under the mining laws. Mining claims located after the enactment of that legislation are properly made subject to its restrictions.

APPEARANCES: Jack T. Kelly, pro se.

OPINION BY ADMINISTRATIVE JUDGE BYRNES

Jack T. Kelly has appealed from the July 24, 1987, decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Gold Bar Amended Mining Claim (M MC 108915), the Gold Standard No. 1 Amended Mining Claim (M MC 108916), and the Nugget Bar Amended Mining Claim (M MC 108917) null and void ab initio in part because the

claims are located partially on lands not open to mineral entry. These claims were located on February 10, 1984, and recorded with BLM on February 23, 1984. BLM determined that the three claims lie partially on the streambed of the Missouri River which is navigable and that title to the streambed vested in the State of Montana upon its admission to the Union. BLM also determined that the Nugget Bar Amended claim lies in part on land patented without a reservation of minerals to the United States. The decision also found that the remaining portion of each claim was located under the Mining Claims Rights Restoration Act of 1955 (MCRRA), 30 U.S.C. § 621 (1982), and is subject to certain limitations under that statute because the remaining portions of all three claims lie within land withdrawn for power purposes by Powersite Reserve No. 9, issued effective July 2, 1910.

Although appellant appeals the decision to "void the mining claims," BLM declared the claims void only to the extent that they described patented land or land in the bed of the Missouri River. BLM did not declare those portions of the claims invalid which remain within the powersite withdrawal. Nevertheless, appellant states the subject claims were first located in the early 1900's, prior to the 1910 powersite withdrawal. We construe this contention as directed against that portion of BLM's decision which held appellant's claims to be subject to the MCRRA.

[1] BLM properly held that appellant's claims are null and void to the extent they describe land in the streambed of the Missouri River. Appellant does not contest BLM's assertion that the portion of the river in question is navigable, and it is well established that title to the bed of navigable rivers is held in trust for future states and passes to them upon admission to the Union. Utah Division of State Lands v. United States, 482 U.S. 193 (1987); Montana v. United States, 450 U.S. 544 (1981); Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845); Leonard R. McSweyn, 28 IBLA 100, 83 I.D. 556 (1976). It necessarily follows that a placer mining claim is properly declared to be null and void to the extent that it embraces land underlying the navigable waters of a state.

[2] BLM also determined that the Nugget Bar Amended claim lies in part on land embraced by patent No. 358631 which issued on October 7, 1913, without a reservation of minerals to the United States. ^{1/} Placer mining claims partially located on lands patented without a reservation of minerals to the United States are properly declared null and void to the extent they include such lands. Seth M. Reilly, 112 IBLA 273, 275-76 (1990); Kenneth Russell, 109 IBLA 180, 183 (1989); Santa Fe Resources, 106 IBLA 374 (1989); Donald E. Stewart, 104 IBLA 48, 49 (1988); Merrill G. Memmott, 100 IBLA 44, 46 (1987); Leslie Corriea, 93 IBLA 346, 349 (1986); Lynn M. Sheppard, 90 IBLA 23, 25, 92 I.D. 612, 614 (1985). Thus, that portion of the Nugget Bar Amended claim situated in sec. 7, T. 4 N., R. 3 E., Principal Meridian, Montana, is properly declared null and void.

^{1/} The patent in this case was a railroad grant patent which excluded "all lands mineral in character." It has been held, however, that such a patent constitutes a conclusive determination of the nonmineral character of the land. Diane B. Katz 48 IBLA 118 (1980).

The remaining portions of all three claims lie within the parts of sec. 6 of that township which were withdrawn for power purposes by Power-site Reserve No. 9, issued effective July 2, 1910. BLM's decision stated that each of appellant's claims was located under the MCRRA, 30 U.S.C. § 621 (1982), and indicated the effect of this statute upon the claims:

We want you to be aware, however, that the location of these mining claims does not give the owner the right to preclude development of hydropower or the right to sue for any damages to his mining claims beyond acts of negligence by the United States or its licensees. Power development rights take precedent over mineral rights on federal lands withdrawn for power purposes, and a mining claimant is not entitled to damages resulting from the development of hydropower. See the regulations at 43 CFR 3730 (copy enclosed).

Appellant states the subject claims were first located in the early 1900's, prior to the 1910 powersite withdrawal. Appellant states that the claims were recorded to comply with the MCRRA, that assessment work has been done each year and the notices recorded, that he has received a small miner's permit for these claims continuously since 1975, and that he has filed the required documents with BLM since 1976.

[3] In Russell Hoffman (On Reconsideration), 87 IBLA 146 (1985), we held that to establish that a location of a mining claim made after a withdrawal is actually an amendment of a prior location made before the withdrawal, a claimant must show the earlier location included the portion of the claim subject to the withdrawal, that the person making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made. Appellant has provided no evidence that there were any claims covering the ground prior to the powersite withdrawal. Furthermore, for the reasons stated below, we find that the claims located by appellant in 1984 which are the subject of this appeal cannot be considered as relating back to any prior claims.

[4] The case record contains no indication that any claims for the lands in question, located prior to the powersite withdrawal were ever recorded with BLM as required by 43 U.S.C. § 1744 (1982). Under that provision, the owner of an unpatented mining claim located on or before October 21, 1976, was required to file a copy of the official record of the notice of location of the claim and a copy of the evidence of annual assessment work with the proper BLM notice on or before October 22, 1979. Failure to make these filings in a timely manner constitutes a conclusive presumption of abandonment of the claim by the owner. United States v. Locke, 471 U.S. 84 (1985).

The history of compliance with BLM's recordation requirements is set forth in BLM's records. On September 4, 1979, four claims describing land in secs. 6 and 7 were recorded with BLM:

<u>Serial No.</u>	<u>Name of Claim</u>	<u>Date of Location</u>
M MC 033068	Gold Bar Placer Claim	June 15, 1955 [2/]
M MC 033069	Gold Standard	July 1, 1958
M MC 033070	Gold Standard No. 2	April 7, 1961
M MC 033071	Nugget Bar	March 8, 1957

Although appellant asserts that he was in the possession of the claims at that time, they were recorded by Frances Perkins Coley who initially filed affidavits of assessment work. The four claims were located by or on behalf of F. B. Perkins.

[5] By decision dated May 28, 1982, the Gold Bar, the Gold Standard, and the Gold Standard No. 2 claims, M MC 033068 through M MC 033070, were declared abandoned and void for failure to file evidence of annual assessment work on or before December 30, 1981. The Nugget Bar claim was declared abandoned and void for failure to file the 1981 assessment work by decision dated June 9, 1983. ^{3/} Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), requires the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office before December 31 of each year. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the claim, regardless of the claimant's intent to hold the claim. 43 U.S.C. § 1744(c) (1982); United States v. Locke, *supra*.

On April 17, 1982, appellant located the Gold Bar, the Gold Standard No. 1, the Gold Standard No. 2, and the Nugget Bar mining claims in secs. 6 and 7. These claims were recorded with BLM on June 14, 1982, and assigned serial numbers M MC 88158 through M MC 88161. BLM notified appellant of a recording deficiency, and requested that appellant sketch the claims on a copy of a master title plat. No affidavit of assessment work or notice of intention to hold these claims was filed with BLM as required by 43 U.S.C. § 1744 (1982), so these claims were abandoned and void. United States v. Locke, *supra*. Appellant filed a relinquishment of these claims dated March 1, 1984.

On October 7, 1983, appellant located four claims with the same names and recorded them with BLM on December 16, 1983. ^{4/} These claims were

^{2/} We note that a mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the MCRRA of Aug. 11, 1955, did not give life to void claims which had been located on withdrawn lands prior to the date of the act. Mackay Bar Corp., 69 IBLA 148 (1982); George L. Hawkins, 66 IBLA 390 (1982).

^{3/} The copy of the 1982 decision sent to Mrs. Coley was returned as undeliverable. The 1983 decision was returned with the envelope marked "unclaimed" and "deceased." It is not clear that these decisions were addressed to Coley's last address of record. Although her initial filings gave her zip code as 59101, her later filings provided 59103. The address given in the decisions as well as on the envelopes was 59101 or 59102.

^{4/} To the extent that the claims describe land within a powersite withdrawal, it does not appear that they were recorded within the 60-day period prescribed by 30 U.S.C. § 623 (1982).

assigned serial numbers M MC 107630 through M MC 107633. No affidavits of assessment work were subsequently filed, and appellant relinquished these claims with the same March 1, 1984, notice in which he relinquished mining claims M MC 88158 through M MC 88161.

As we stated before, the three claims involved in the instant appeal were located by appellant on February 10, 1984. Although appellant maintains they represent a consolidation of the four prior claims, we conclude that BLM properly treated these filings as new claims and not in further-ance of the prior locations. ^{5/} The case records for the various prior claims covering this ground showed no filing of evidence of annual assessment work or a notice of intention to hold these claims for 1981, 1982, or 1983. Administrative officials are presumed to have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. Fern L. Evans, 88 IBLA 45 (1985); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). Appellant's uncorroborated statement that he made all necessary filings is insufficient to overcome this presumption of regularity. See Wilson v. Hodel, 758 F.2d 1369, 1374 (10th Cir. 1985); H. S. Rademacher, *supra*.

[6] Thus, all prior locations are properly deemed to be abandoned and void pursuant to 43 U.S.C. § 1744(c) (1982). United States v. Locke, *supra*. The voiding of those claims for failure to make the filings required by 43 U.S.C. § 1744 (1982) had the following effect:

Upon the abandonment of a mining claim, the right of possession of the claimant is absolutely lost, and the claim is to him as though he had never owned or occupied it. The former claimant cannot reclaim the ground or reacquire any interest in the claim by resumption of work or by any act short of making a new location. Rights acquired under a relocation of an abandoned claim, whether by a former claimant or another, will not relate back to the date of location of the original claim, but only to the date of the relocation. [Footnotes omitted.]

U. A. Small, 108 IBLA 102, 107 (1989); Florian L. Glineski, 87 IBLA 266, 268-69 (1985) (quoting from 2 Rocky Mtn. Min. L. Inst., Am. L. of Mining, § 8.6 (1983)).

[7] Because appellant's newly located claims were within a power-site withdrawal opened to entry by the MCRRA, 30 U.S.C. § 621 (1982), BLM properly notified appellant that his claims were subject to the restrictions imposed by that statute. Under 30 U.S.C. § 623 (1982), a locator of an unpatented mining claim situated on land opened to mineral entry under 30 U.S.C. § 621 (1982) is required to file a notice of location within 60 days of location. Under 30 U.S.C. § 621(b) (1982), the locator is required to refrain from conducting mining operations for a period of 60 days during which the Secretary may notify the locator of his intention to hold a public hearing to determine whether placer mining operations

^{5/} We note that when the acreage for the new claims is totaled, it appears that the claims take in additional ground.

would substantially interfere with other uses of the land included within the placer claim. See generally United States Forest Service v. Milender, 104 IBLA 207, 95 I.D. 155 (1988). It appears that no such hearing was ordered in this case. The language we previously quoted from BLM's decision stating the limitation on the liability of the United States is based on a provision required to be inserted in every patent issued for a mining claim located on land opened by the MCRRA. See 43 CFR 3731.1.

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.

James L. Byrnes
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge