

WAYNE J. BREWER

IBLA 91-401

Decided April 11, 1995

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring portions of two placer mining claims null and void ab initio. CMC 197089, CMC 226492.

Affirmed as modified.

1. Mining Claims: Withdrawn Land--Mining Claims: Lands Subject to--Mining Claims: Placer Claims

A placer mining claim which, at the time of location, partially included land not open to mineral entry, is properly declared null and void ab initio as to such land.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Relocation

Rights acquired under a relocation of a mining claim determined to be abandoned and void pursuant to 43 U.S.C. § 1744 (1988) do not relate back to the date of the location of the original claim but only to the date of relocation.

APPEARANCES: Wayne J. Brewer, Olanthe, Colorado, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Wayne J. Brewer has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated July 12, 1991, declaring portions of two placer mining claims, the Gold Dust (CMC 197089) and the Shad No. 1 (CMC 226492), null and void ab initio because part of the land on which the claims were located was withdrawn from entry under the mining laws by Public Land Order No. (PLO) 5261, 37 FR 20030 (Sept. 23, 1972). We affirm.

The Gold Dust placer claim was originally located on December 10, 1982, by Larry L. and John D. Van Den Berg, d.b.a. Bonanza Mining and Milling, and was duly recorded with BLM on March 7, 1983. According to the location notice, the claim was situated in sec. 6, T. 15 S., R. 93 W.,

sixth principal meridian, approximately one-half mile south of the confluence of the North Fork of the Gunnison River and the main Gunnison River. As shown on both the location notice and the separate map submitted for recordation purposes, the claim, which had dimensions of 800 by 400 feet, straddled the Gunnison River, with the vast majority of the claim lying east of the river within lot 9 in the SW¹/₄ SW¹/₄ sec. 6. ^{1/} This claim was subsequently transferred to Tom Ennis who, in turn, conveyed the claim on July 25, 1989, to appellant, Isabelle Hecker, and H.H. Huff Inc.

The Shad No. 1 claim was originally located on November 6, 1987, by Tom Ennis. According to the location notice, the N.E. corner of this claim was located South 54°48' West a distance of 4,938 feet from the common section corner for secs. 5 and 6, T. 15 S., R. 93 W., and secs. 31 and 32, T. 14 S., R. 93 W., sixth principal meridian. As recited in the location notice, the dimensions of this claim were 1,500 by 600 feet. The map which accompanied the location notice indicated that the claim was generally situated in the NW¹/₄ SW¹/₄ sec. 6. This claim was conveyed to appellant and Hecker by quitclaim deed dated July 25, 1989.

By letter dated January 11, 1991, BLM informed appellant and Hecker that it appeared from the location documents submitted that a majority of the Gold Dust claim was located within the SW¹/₄ SW¹/₄ sec. 6, T. 15 S., R. 93 W., and that this land had been withdrawn from location and entry under the mining laws on September 11, 1972, for the Gunnison Gorge Recreation Lands and, again on September 15, 1972, by PLO 5261 for the protection of scenic and geological features. ^{2/} This letter advised appellant and Hecker that, since it further appeared that only a small portion of the claim was located on land open to mineral entry in the NW¹/₄ SW¹/₄ sec. 6, they should be aware that, unless their point of discovery was located on land open to entry, the claim would be invalid.

Thereafter, alerted to this problem, the staff of the Uncompaghre Basin Resource Area Office, BLM, conducted a field examination for the purpose of more precisely locating the Gold Dust and Shad No. 1 claims.

^{1/} Because the various subdivisions in the SW¹/₄ of sec. 6 did not contain the normal acreage expected, owing primarily to the meandering of the Gunnison River, it was necessary to lot out the various subdivisions. Thus, lot 8 was that part of the SW¹/₄ SW¹/₄ west of the Gunnison and lot 9 was that part of the SW¹/₄ SW¹/₄ east of the Gunnison River. Lot 6, consisting of 38.25 acres, lay immediately to the north of lots 8 and 9 in the NW¹/₄ SW¹/₄ sec. 6, while lot 10, consisting of 40.82 acres located in the SE¹/₄ SW¹/₄ sec. 6, was immediately to the east of lot 9.

^{2/} We must point out that while, as we explain below, BLM was correct in its assertion that PLO 5261 withdrew the lands in lots 8 and 9, sec. 6 from mineral entry, nothing in the order including these parcels in the Gunnison Gorge Recreation Lands as unique natural areas purported to withdraw the lands from mineral entry. See 37 FR 18939 (Sept. 16, 1972).

In a report dated June 28, 1991, the Area Geologist advised the Area Manager that, while they had been able to locate the two claims on the ground, the dimensions of the Shad No. 1 were 850 by 400 feet rather than the 1,500 by 600 feet recorded in the notice of location. Furthermore, while the map submitted with the location notice had indicated that the Shad No. 1 was located to the north of the Gold Dust claim, the corners as located on the ground showed that these two claims generally overlapped each other. As located on the ground, approximately the southern 350 feet of both claims were located south of the south 1/16th line of sec. 6, i.e., lot 9. The report concluded that, to the extent the claims embraced this acreage, they were null and void ab initio. By decision dated July 12, 1991, the State Office held that so much of the Gold Dust and Shad No. 1 placer mining claims as was located in lot 9 of sec. 6 was null and void ab initio.

In his statement of reasons for appeal, appellant asserts that the subject claims are located on private lands owned by William H. McCluskey and that he and Hecker own the mineral rights thereto. Appellant also alleges that these claims have been in existence since 1938, being duly recorded and worked at that time. He generally assails BLM's actions as beyond any lawful authority and contrary to the Constitution.

Insofar as appellant's specific allegations are concerned, we note that he fails to differentiate between those parts of his claims which are located within lots 8 and 9, in the SW¹/₄ SW¹/₄ sec. 6, and those parts of his claims which are located north of lots 8 and 9, in the NW¹/₄ SW¹/₄ sec. 6. While the NW¹/₄ SW¹/₄ sec. 6 has, indeed, been patented subject to a mineral reservation to the United States, lots 8 and 9, sec. 6 are not and have never been in private ownership. Moreover, as BLM correctly advised appellant, the land in lot 9 was expressly withdrawn from mineral entry and location by PLO 5261. And, we would point out, so was the land in lot 8. ^{3/} See PLO 5261 at 1.A., 37 FR 20030 (Sept. 23, 1972).

[1] The law is perfectly clear that mining claims located on Federal lands that are withdrawn from mineral entry as of the date of location are null and void ab initio. See Kathryn J. Story, 104 IBLA 313 (1988); Jack Stanley, 103 IBLA 392 (1988). Where placer locations embrace lands partially within and partially outside of a withdrawal, the locations are properly declared null and void ab initio as to those portions on land not open to mineral entry as of the time of the locations. See John Wright, 112 IBLA 233 (1990).

[2] Appellant's assertion that the land in lots 8 and 9 were subject to other mining claims as long ago as 1938 is a legal irrelevancy, even if

^{3/} While admittedly only a small sliver of the Gold Dust claim is located across the Gunnison River in lot 8, this portion is also null and void ab initio since it, too, embraces land not open to entry at the time that the claim was located.

true. First of all, assuming such claims once existed, appellant has simply failed to show any privity of interest between those claims and his present interest in the Gold Dust and Shad No. 1 locations. See United States v. Webb, 132 IBLA 152 (1995); Hugh B. Fate, 86 IBLA 215 (1985).

Second, there is no indication that such earlier claims were properly recorded or that the annual filings were maintained as required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988). Failure to comply with either the recordation or annual filing requirements of that Act gives rise to a conclusive presumption that the claims were abandoned. See United States v. Locke, 471 U.S. 84 (1985). Such abandoned and void claims could afford appellant no additional rights and the relocation of former abandoned claims does not relate back to the date of the location of the original claims. See, e.g., Ernest Smart, 131 IBLA 44, 46 (1994); Florian L. Glineski, 87 IBLA 266, 268-69 (1985).

It is clear from the foregoing that the BLM decision was fully in accord with both the evidence of record and well-established principles of mineral adjudication and must be sustained. We modify it merely to note that, to the extent that the Gold Dust claim embraces land within lot 8 of sec. 6, it, too, is null and void ab initio.

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 as modified.

James L. Burski
Administrative Judge

I concur.

John H. Kelly
Administrative Judge

