

BRISTLECONE MINING CO.

IBLA 93-47 Decided February 8, 1996

Appeal from a decision of the California State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio in their entirety. CAMC-255379 and CAMC-255380.

Affirmed.

1. Mining Claims: Lands Subject To—Mining Claims: Lode Claims—Mining Claims:
Patent

BLM properly declares a lode mining claim null and void ab initio in its entirety where, at the time of location, the land had already been patented, with no reservation of minerals to the United States, pursuant to a placer mineral entry; and where veins or lodes bearing valuable mineral deposits had not been excepted under the terms of the patent, since they were not known to exist on the date application for placer patent was made.

APPEARANCES: Dennis S. LaPrairie, Bristlecone Mining Company, Reno, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

The Bristlecone Mining Company (BMC) has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated September 29, 1992, declaring the Rachael Elizabeth and Sarah Alicia lode mining claims (CAMC-255379 and CAMC-255380) null and void ab initio in their entirety.

BMC's mining claims were located May 12, 1992, and copies of the location notices were filed for recordation with BLM on July 30, 1992, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1988). Based on the description of the claims in these notices and attached maps, BLM placed the two adjacent claims, each 1,500 feet long and 600 feet wide, in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ (Rachael Elizabeth) and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ (Sarah Alicia) of sec. 34, T. 17 N., R. 11 E., Mount Diablo Meridian, Nevada County, California.

According to BLM's Master Title Plat and Historical Index for the subject township, the land encompassed by BMC's claims had been patented,

without any reservation of minerals to the United States, on April 12, 1878, under Mineral Entry (ME) Patent No. 2816. BLM concluded that the land was not open to mineral entry on May 12, 1992, and accordingly declared the claims null and void ab initio in their entirety. BMC appealed.

The record contains a copy of ME Patent No. 2816, which confirms that the N¹/₂, SW¹/₄, N¹/₂ SE¹/₄, and SW¹/₄ SE¹/₄, sec. 34, T. 17 N., R. 11 E., Mount Diablo Meridian, Nevada, and Placer County, California, were patented to James L. Gould on April 12, 1878, pursuant to Chapter 6, Title 32, of the Revised Statutes (1878). ^{1/} There is no reservation of minerals to the United States. However, the patent contains a provision excepting particular veins or lodes: "[S]hould any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits, be claimed or known to exist within the above-described premises at the date hereof, the same is expressly excepted and excluded from these presents" (ME Patent No. 2816 at 4 (emphasis supplied)). That language is based on section 2333 of the Revised Statutes (1878), which authorized a person to apply for and acquire, as part of the patent of a placer mining claim, any vein or lode "included within [its] boundaries," but stated:

[W]here a vein or lode * * * is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim. [Emphasis supplied.]

30 U.S.C. § 37 (1988). It is significant that the statute does not refer to veins or lodes "claimed * * * to exist at the date" of the patent. (Emphasis supplied.)

Appellant does not challenge BLM's placement of its two lode mining claims or its conclusion that the land encompassed by the claims was entirely subject to ME Patent No. 2816. It contends that the "Zeibright Lode" in sec. 34 was "known to exist, claimed and in production not only prior to but also during and after the Patent Application period which ended with the issue of [ME Patent No. 2816], dated April 12, 1878" (SOR at 2 (emphasis supplied)). ^{2/} As the Zeibright Lode apparently extends

^{1/} The patent encompassed a placer mining claim known as the Sacramento Consolidated Blue Gravel Hydraulic Placer Mine.

^{2/} Appellant also refers to the third stipulation in the patent (SOR at 2), which provides:

"[T]he premises hereby conveyed may be entered by the proprietor of any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits, for the purpose of extracting and removing the ore from such vein, lode or deposit, should the

into the patented land now sought by appellant, it argues that the lode was excepted from the patent.

[1] We are unpersuaded by appellant's arguments that it may properly locate these claims. ^{3/} A vein or lode containing valuable mineral deposits "known to exist" as of the date of the filing of the application for the April 1878 ME patent would be deemed "excepted and excluded" from the patent, and thus now available for location pursuant to a proper lode mining claim. See Iron Silver Mining Co. v. Mike & Starr Gold & Silver Mining Co., 143 U.S. 394, 402 (1892); Clark Montana Realty Co. v. Ferguson, 218 F. 959, 963 (D. Mont. 1914); Republic Oil & Mining Co., 46 IBLA 120, 121 (1980); 2 Am. L. of Mining § 54.03 (2d ed. 1984), at 54-6. By contrast, those veins or lodes "which may hereafter be discovered within [the exterior] limits [of the patented land], and which are not * * * known to exist at the date hereof" were expressly included in the patent (ME Patent No. 2816 at 4) and are not now available for location. (Emphasis supplied.) ^{4/}

The patent appears also to exclude veins or lodes that were "claimed * * * to exist at the date" of the patent. As noted above, the statutory language does not refer to veins or lodes that were "claimed to exist,"

fn. 2 (continued)

same or any part thereof be found to penetrate, intersect, pass through or dip into the mining ground or premises hereby granted."

This provision is designed to protect the extralateral rights of valid lode claims located off the premises of the patented lands. Appellant's claims are located entirely within those premises, so there is no question of its having extralateral rights in the patented lands.

^{3/} This case also presents the question whether BLM may properly interpret granting language in a patent, or whether that must be done in court. In Germania Iron Co. v. United States, 165 U.S. 379, 383 (1987), the Supreme Court noted that the effect of the issuance of a patent "is to transfer legal title, and remove from the jurisdiction of the land department the inquiry into and consideration of such disputed questions of fact." The Board has consistently held that BLM lacks authority to resolve competing land claims between private parties, unless an application for patent is pending. However, those cases differ from the present case in that appellant posits that the United States never lost title to the lands in question. BLM was obliged to determine its own title to the lands.

It would also appear that, as a matter of due process, BLM could not in any event interpret the language to the detriment of the patent holder without involving it in its decisionmaking process. Our affirmance of its decision renders it unnecessary to do that.

^{4/} This language is taken from section 2333 of the Revised Statutes (1878): "[W]here the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof." 30 U.S.C. § 37 (1988).

and it has been decided that, in issuing that patent, the United States exceeded its authority in excluding veins or lodes containing valuable mineral deposits merely "claimed * * * to exist at the date" of the patent, and that all such language is properly treated as a nullity. See Burke v. Southern Pacific Railroad Co., 234 U.S. 669, 704-05 (1914); United States v. Iron Silver Mining Co., 128 U.S. 673, 680 (1888); Iron Silver Mining Co. v. Reynolds, 124 U.S. 374, 382 (1888).

Thus, the central question here is whether, as of the date the application for the subject patent was filed, a vein or lode containing valuable mineral deposits was "known to exist" on the land sought by appellant. The burden of proof is upon appellant. Cripple Creek Gold Mining Co. v. Mt. Rosa Mining, Milling & Land Co., 26 L.D. 622, 628 (1898).

Appellant points generally to numerous mining claims located after January 1859 in the vicinity of the lands it now claims, as well as prospecting activity in that area (SOR at 2-9). Appellant is unaware that it has been decided that a vein or lode was not "known to exist" within the meaning of the controlling statute at a particular time simply because the vein or lode was "appropriated by location" at that time. Iron Silver Mining Co. v. Mike & Starr Gold & Silver Mining Co., 143 U.S. at 400. Rather, the vein or lode must have been "known to the applicant for the placer patent or known to the community generally, or else disclosed by workings and obvious to any one making a reasonable and fair inspection of the premises for the purpose of obtaining title from the government." Id. at 402-03; see also 2 Am. L. of Mining § 54.03 (2d ed. 1984) at 54-8. The vein or lode must be known to exist within the boundaries of the placer tract. See Iron Silver Mining Co. v. Mike & Starr Gold & Silver Mining Co., 143 U.S. at 401. 5/ We have carefully reviewed the evidence submitted by appellant and conclude that it has failed to establish such by a preponderance of the evidence.

Although appellant shows that the area containing the Zeibright Lode was apparently actively mined, its own evidence indicates that this did not

5/ In any event, we have carefully reviewed the evidence submitted by appellant and conclude that it has failed to establish by a preponderance of the evidence that the lands covered by its locations were covered by mining claims prior either to the date of patent or the application for patent. Appellant shows that J. H. Chamberlain and others located 25 lode mining claims on Apr. 17, 1858, and asserts that those claims encompassed the land it now seeks, that valuable ore was produced from those claims from the Zeibright Lode, and that they remained outstanding until after the April 1878 ME patent (SOR at 2, 9, 12).

The description of the Chamberlain claims is not specific enough to place those mining claims on the lands appellant now claims. The claims were described as being "on [a] ledge situate on the North side of Bear River, between (about halfway) Bear Valley and the Lower Tunnel of the

occur until the 20th century, when the Zeibright mine was developed. Even the name of the Zeibright mine and lode appears to have long postdated the patenting of the lands now sought. ^{6/} Evidence of discovery and development after the date of application for placer patent may not be considered. United States v. Iron Silver Mining Co., 128 U.S. at 683; Cripple Creek Gold Mining Co. v. Mt. Rosa Mining, Milling & Land Co., 26 L.D. at 624.

While there is evidence that some vein outcroppings along the strike of the "Zeibright Lode" in sec. 34 might have been visible prior to April 1878, there is no evidence that any prospecting efforts prior to the 1858 location or any subsequent work on the Chamberlain claims had disclosed the existence of the lode before that date, let alone demonstrated that it was valuable. This is required for the lode to be considered "known." Aurora Lode v. Bulger Hill & Nugget Gulch Placer, 23 L.D. 95, 96-97, 105 (1896). As the Supreme Court has held,

[i]t is not enough that there may have been some indications by outcroppings on the surface, of the existence of lodes or veins of rock in place bearing gold or silver or other metal, to justify their designation as "known" veins or lodes. To meet that designation the lodes or veins must be clearly ascertained, and be of such extent as to render the land more valuable on that account, and justify their exploitation.

fn. 5 (continued)

South Yuba Canal running into or through the divide between Bear River and the South Fork of Steep Hollow in Nevada County" (SOR Exh. 1). That description is not adequately specific to support the conclusion the appellant would have us draw. The description contains two major ambiguities: the location of Bear Valley and the use of the term "about halfway." Owing to those ambiguities, the Chamberlain claims could have been located any- where along the north side of Bear River.

The location of the Lower Tunnel of the South Yuba Canal is also far from clear. South Yuba Canal and Bear River run generally parallel from northeast to southwest through the southeastern portion of the township (secs. 25, 26, and 34 through 36), with South Yuba Canal to the north of Bear River. Bear River exits the township at the southern boundary of sec. 34 and continues southwesterly across the northwestern portion of T. 16 N. South Yuba Canal leaves the township and continues southwesterly in sec. 4 of T. 16 N., R. 11 E., but then turns north back into sec. 33 of T. 17 N., diverging from Bear River. The only mention of a "Tunnel" on the 1867 plats is on the east-west line between secs. 30 and 31 in T. 17 N. Appellant places the tunnel in the NW¹/₄ sec. 4, T. 16 N., far to the southeast (SOR Map 3). There is in fact a tunnel at that location marked on Map 3, but it is not clear when that tunnel was constructed.

^{6/} On Jan. 12, 1900, Fred Zeitler located "A Quartz Mine" (Exh. 31). The first three letters of the lode are evidently taken from Zeitler's name and the last six letters are from the name of W. F. Englebright (who witnessed the posting of the notice).

United States v. Iron Silver Mining Co., 128 U.S. at 683; accord Iron Silver Mining Co. v. Mike & Starr Gold & Silver Mining Co., 143 U.S. at 404; see also Mason v. Washington-Butte Mining Co., 214 F. 32, 37 (9th Cir. 1914); Clark Montana Realty Co. v. Ferguson, 218 F. at 963-64; 2 Am. L. of Mining § 54.03 (2d ed. 1984) at 54-8 to 54-9. The evidence shows that the lode was exposed in the vicinity of the claimed lands well after the date patent was applied for or granted.

Evidence of other historical mining activity in the area is inadequate to show that the lode was known to exist on the lands now claimed. Appellant quotes from various written reports that never specifically refer to that land, so far as can reasonably be determined. Although its efforts to identify the sites of 19th-century mining and ore processing activity are very interesting, they fall short of establishing either that there was lode mining activity on the lands now claimed or that it was such as to put the placer claimant on notice of the existence of the lodes later exploited in the vicinity. As the Supreme Court held,

[a] placer patent conveys to the patentee full title to all lodes or veins within the territorial limits, not then known to exist; and mere speculation and belief, based, not on any discoveries in the placer tract, or any tracings of a vein or lode adjacent thereto, but on the fact that quite a number of shafts, sunk elsewhere in the district, had disclosed horizontal deposits of a particular kind of ore, which, it was argued, might be merely parts of a single vein of continuous extension through all that territory, is not the knowledge required by law.

Sullivan v. Iron Silver Mining Co., 143 U.S. 431 (1892) (syllabus).

In sum, we are not persuaded that, on or before April 12, 1878, the land included in ME Patent No. 2816 and now sought by appellant was known to encompass a vein or lode containing gold or other valuable mineral deposits.

Accordingly, 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.

David L. Hughes
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

