

STEVEN A. BELD  
LEO BELD

IBLA 96! 312

Decided July 17, 1996

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring a lode mining claim null and void ab initio in its entirety because the lands included in the claim were not subject to location.

Decision affirmed; request for stay denied as moot.

1. Mining Claims: Lands Subject to

Sec. 2(b)(1) of the Washington State Wilderness Act of 1984 designated certain National Forest System lands in the State of Washington as components of the National Wilderness Preservation System. Sec. 4(d)(3) of the Wilderness Act of 1964 provides that, effective Jan. 1, 1984, the minerals in lands designated as wilderness areas are withdrawn from all forms of appropriation under the mining laws. A mining claim that was located on lands so designated and withdrawn from mineral entry on the date of location is null and void ab initio.

2. Mining Claims: Lands Subject to

An amended mining claim location is a location made in furtherance of an earlier valid location and relates back to the date of the original location as long as no adverse rights have intervened. The burden is on the claimant to establish that a mining claim location on land withdrawn from mineral entry, made after the withdrawal, is actually an amendment of a prior location made while the land was open to mineral location. To satisfy the burden, the claimant must show that the original location was properly made, that the amended location embraces lands included in the original location, that the original claim had not been invalidated, and that the claimant has an unbroken chain of title from the original location. Where appellants admit that an earlier claim was invalidated because proper FLPMA filings were not made, appellants cannot prevail, as such an abandoned and void claim could afford appellants no additional rights, and the relocation of a former abandoned claim does not relate back to the date of the location of the original claim.

## 3. Estoppel—Mining Claims: Lands Subject to

BLM is not estopped from declaring a mining claim null and void ab initio on account of its failure to notify the claimant that a claim has been located on lands that are not open to entry. BLM is under no affirmative duty to promptly check the legal status of every claim filed and apprise the owner of a mining claim of its conclusions; the authority of the United States to enforce the law is not vitiated or lost by acquiescence of its officers, or by failure to act or delays in the performance of their duties; and estoppel does not lie here because the locator of the claims and appellants had constructive knowledge of the legislation that withdrew the lands from entry under the mining laws.

## OPINION BY ADMINISTRATIVE JUDGE HUGHES

Steven A. Beld and Leo Beld have appealed from the March 22, 1996, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Sheridan lode mining claim (ORMC 124677) null and void ab initio in its entirety because the lands included in the claim were not subject to location under the General Mining Law of 1872, as amended, 30 U.S.C. §§ 21-54 (1994) and 43 CFR 3833.0-5(f). Appellants also requested a stay of the effect of this decision pending appeal. 1/

A notice of location in the case file shows that the Sheridan mining claim was located on August 12, 1989, by Katherine W. Larson and is situated in the NW<sup>1</sup>/<sub>4</sub> sec. 27 and the NE<sup>1</sup>/<sub>4</sub> sec. 28, T. 29 N., R. 11 E., Willamette Meridian, Snohomish County, Washington. A copy of the location notice was filed with BLM on October 16, 1989. Larson conveyed the claim to Steven A. Beld and his uncle, Leo Beld, by quitclaim deed dated November 25, 1994. 2/ In declaring the claim null and void ab initio, BLM stated that its records show that the lands embraced by the claim were included in an area that was withdrawn from all forms of appropriation under the mining laws by the Washington State Wilderness Act of 1984, P.L. 98-339, 98 Stat. 299 (1984), effective July 3, 1984, for the purpose of establishing the Henry M. Jackson Wilderness.

[1] Section 2(b)(1) of the Washington State Wilderness Act of 1984 "designate[d] certain National Forest System lands in the State of Washington as components of the National Wilderness Preservation System [NWPS], in order to promote, perpetuate, and preserve the wilderness

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1/ Although the documents filed on appeal are signed by only Steven Beld, he uses "we" in presenting his arguments. Apparently he is appealing also on behalf of his uncle Leo Beld. See 43 CFR 1.3(b)(3)(i).

2/ Charles S. Larson (deceased), husband of Katherine Larson, is also listed as a grantor on the deed.

character of the lands \* \* \*." 98 Stat. 299. An area designated by Congress as wilderness becomes a component of the NWPS and, as such, is managed in accordance with the provisions of the Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136 (1994). Section 4(d)(3) of the Wilderness Act of 1964 provides, in pertinent part: "Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto." 16 U.S.C. § 1133(d)(3) (1994). Thus, when the lands at issue were placed in the Henry M. Jackson Wilderness, they were no longer subject to location under the mining laws.

It is well established that mining claims that are located on Federal lands that are withdrawn from mineral entry on the date of location are null and void ab initio. Jack Stanley, 103 IBLA 392 (1988), aff'd sub nom. Ptarmigan Co. v. Dept. of the Interior, No. 90-35369 (9th Cir. May 15, 1991); Coeur Explorations, Inc., 100 IBLA 293 (1987); John C. Neill, 80 IBLA 39 (1984); Philip A. Cramer, 74 IBLA 1 (1983); Grace P. Crocker, 73 IBLA 78 (1983); Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970). The lands covered by the Sheridan mining claim were withdrawn from mineral entry by an act of Congress prior to the date of its location. Accordingly, BLM properly declared the claim null and void.

[2] In their statement of reasons, appellants contend that the location of the mining claim predates the withdrawal, and they have submitted additional information which they allege supports this contention. The information includes a quitclaim deed dated August 22, 1966, conveying the Sheridan mining claim from Arthur L. and Dorothy Collins to Charles S. and Katherine W. Larson. Appellants also enclosed "all receipts that [Katherine Larson] kept, showing payment of the required fees paid each year." <sup>3/</sup> However, appellants acknowledge that Larson was delinquent with her fees in 1988, stating that this omission was due to her husband's death that year. Appellants state that when Larson became aware of the delinquency, she promptly contacted BLM "to right this delinquency" and was assured by BLM that "she had taken the right steps and everything would be taken care of." Appellants contend that Katherine Larson owned the claim for almost 30 years and believe that failure to pay the fees in 1988 should not cause her to lose the right to convey her claim. Appellants believe that the claim should be "grandfather clausid in spite of the Henry M. Jackson Wilderness Area Law."

According to appellants, they were informed by a BLM employee that the claim was flagged for investigation when the ownership changed, and

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<sup>3/</sup> It appears that appellant is referring to the \$5 service charge required by 43 CFR 3833.1-4(c) which must accompany annual filings of evidence of assessment work submitted pursuant to 43 CFR 3833.2-1(d).

that the paperwork on mining claims is 20 years behind in some cases. Appellants assert that this works a hardship on Larson, who has paid her fees and made the required improvements. Appellants also assert that the only reason the claim is not "grandfather cloused" is the fact that Larson was delinquent in 1988. Appellants note that the withdrawal was made 5 years before the delinquency occurred and objects to the fact that BLM did not notify Larson about its intentions when she made the payment she had missed. Appellants question why BLM continued to collect her fees and require her to make yearly improvements. Appellants state that they do not intend to install a big mining operation or to destroy the area, but only want "to own a bit of Monte Cristo History."

Because the lands have been withdrawn, appellants must demonstrate that Katherine Larson's 1989 location is an amended location of a valid claim located prior to the withdrawal. See William H. & Claudene Nordeen, 129 IBLA 369 (1994). An amended mining claim location is a location made in furtherance of an earlier valid location and relates back to the date of the original location as long as no adverse rights have intervened. The burden is on the claimant to establish that a mining claim location on land withdrawn from mineral entry, made after the withdrawal, is actually an amendment of a prior location made while the land was open to mineral location. To satisfy the burden, the claimant must show that the original location was properly made, that the amended location embraces lands included in the original location, that the original claim had not been invalidated, and that the claimant has an unbroken chain of title from the original location. William H. & Claudene Nordeen, 129 IBLA at 371; Gary Hoefler, 127 IBLA 211, 215 (1993); Patsy A. Brings, 119 IBLA 319, 325 (1991); Jack T. Kelly, 113 IBLA 280, 283 (1990); Russell Hoffman (On Reconsideration), 87 IBLA 146, 148 (1985); Grace P. Crocker, 73 IBLA at 80, and cases cited therein. Appellants have failed to meet that burden here.

Appellants admit that proper filings were not made in 1988, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1994), and the implementing regulation, 43 CFR 3833.2-1. <sup>4/</sup> These provisions require that evidence of assessment work for each assessment year be filed in the proper office of BLM on or before December 30 of each calendar year. Failure to comply with either the recordation or annual filing requirements of that Act gives rise to a conclusive presumption that the claim was abandoned. See United States v. Locke, 471 U.S. 84 (1985). Such an abandoned and void claim could afford appellants no additional rights, and the relocation of a former abandoned claim does not relate back to the date of the location of the original

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<sup>4/</sup> They indicated that the "previous owner may have gone delinquent with her fees in 1988" (Statement of Reasons at 1). Proof of filing for calendar year 1988 is missing from the documents presented by appellants. That would explain why the claim was relocated in 1989.

claim. Wayne J. Brewer, 132 IBLA 220, 223 (1995); See also Ernest Smart, 131 IBLA 44, 46 (1994); Jack Stanley, 103 IBLA at 394-95; Florian L. Glineski, 87 IBLA 266, 268-69 (1985).

In Jack Stanley, 103 IBLA at 394-95, a case similar to the instant appeal, the Board referred to the Supreme Court's decision in United States v. Locke, 471 U.S. at 90:

Justice Marshall, in affirming the constitutionality of the recordation requirements of FLPMA in United States v. Locke, 471 U.S. 84 (1985), acknowledged that there could be disparity in consequences of the failure to comply with these requirements, but nonetheless expressly recognized that voided claims could not be revived when the lands on which they are situated were prospectively closed to mineral entry, even though the closure occurred while the claims were valid:

[Claimants] received a letter from the BLM Nevada State Office informing them that their claims had been declared abandoned and void due to their tardy filing. In many cases, loss of a claim in this way would have minimal practical effect; the claimant could simply locate the same claim again and then rerecord it with BLM. In this case, however, relocation of appellees' claims, which were initially located by appellees' predecessors in 1952 and 1954, was prohibited by the Common Varieties Act of 1955, 30 U.S.C. § 611; that Act prospectively barred location of the sort of minerals yielded by appellees' claims. Appellees' mineral deposits thus escheated to the Government. [Emphasis added.]

This rationale is applicable to the present case. The claim which appellants allege was in existence prior to the withdrawal in 1984 became abandoned and void when Larson failed to meet the filing requirements of FLPMA in 1988. Relocation in 1989 of a new claim on lands withdrawn for the Henry M. Jackson Wilderness in 1984 was prohibited.

[3] It appears that appellants are raising an estoppel defense to BLM's decision to declare the claim null and void, i.e., that they have relied to their detriment on BLM's failure to take prompt action to declare the claim invalid. Appellants point to the fact that BLM delayed in notifying Larson that the lands had been withdrawn. However, appellants have presented no factual or legal arguments which can be considered a basis for an estoppel defense. First, BLM is under no affirmative duty to promptly check the legal status of every claim filed and apprise the owner of a mining claim of its conclusions. 43 CFR 3833.5(f); Paul Vaillant, 90 IBLA 249, 251 (1986), appeal dismissed without prejudice, Civ. No. R-86-202-ECR (D. Nev. Sept. 22, 1987); Bill & Judy Bass, 84 IBLA 233 (1984). Second, the authority of the United States to enforce the law is not vitiated or lost by acquiescence of its officers, or by failure to act or delays in

the performance of their duties. See 43 CFR 1810.3(a). Moreover, estoppel does not lie here because the locator of the claims and appellants had constructive knowledge of the Washington State Wilderness Act of 1984, which withdrew the lands from entry under the mining laws. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947); John Plutt, Jr., 53 IBLA 313, 319 (1981). As a general rule, the Government holds the public lands in trust for all people, and is not to be deprived of this property by such defenses as laches and estoppel. Hallenbeck v. Kleppe, 590 F.2d 852, 855 (10th Cir. 1979), citing United States v. California, 332 U.S. 19, 40 (1947). The record indicates that appellants are to receive a refund for various moneys paid on the claim in 1994 and 1995, thus mitigating their damages.

The argument that appellants are sensitive to the wilderness characteristics of the lands and would protect them is to no avail. Appellants' entry onto the public lands is by virtue of the location of a mining claim, whose purpose is the exploration for and purchase of a valuable mineral deposit. 30 U.S.C. § 22 (1994); Evan Hansen, 83 IBLA 260, 263 (1984); United States v. Zimmers, 81 IBLA 41 (1984). The lands have been closed to such entry because Congress determined that mining and possible appropriation of the lands under the mining laws was inconsistent with the public values inherent in the wilderness area. See Evan Hansen, 83 IBLA at 263 (1984). Therefore, we conclude that BLM properly declared appellants' mining claim null and void ab initio.

In view of our ruling disposing of the appeal on its merits, appellants' request for stay is properly denied as moot. In re Bryant Eagle Timber Sale, 133 IBLA 25, 29 (1995).

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David L. Hughes  
Administrative Judge

I concur.

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James L. Burski  
Administrative Judge

