

MELVIN HELIT

IBLA 97-238

Decided December 16, 1998

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting recordation of a placer mining claim and declaring the claim abandoned and void. CAMC 260445.

Vacated in part; affirmed as modified in part.

1. Mining Claims: Location–Mining Claims: Placer Claims–Rules of Practice:  
Appeals: Generally

Where a mining claimant fails to appeal a decision holding a mining claim null and void to the extent that it embraced lands within specified rights-of-way, the claimant will not be heard to challenge this determination in the context of a subsequent appeal from a decision holding that the remaining parts of the claim are null and void.

2. Mining Claims: Placer Claims

Lands within a placer mining claim, whether an individual claim or an association claim, must be contiguous.

3. Administrative Procedure: Adjudication–Mining Claims: Determination of Validity–Mining Claims: Recordation of Certificate or Notice of Location–Rules of Practice: Generally

The fact that the description of a placer mining claim, recorded with BLM pursuant to the provisions of 43 U.S.C. § 1744(b) (1994), indicates that the claim contains noncontiguous parcels of lands in violation of 30 U.S.C. § 36 (1994) does not establish a proper basis for rejecting recordation of the claim. It may, however, provide an independent basis for a determination that the claim is null and void.

## 4. Mining Claims: Location–Mining Claims: Placer Claims

The location of an association placer mining claim which is 100 feet wide and over 12 miles long is a per se violation of the requirement of 43 U.S.C. § 35 (1994), that placer claims be located in conformity with the rectangular system of public land surveys and such a claim is properly declared null and void.

APPEARANCES: Melvin Helit, Oceanside, California, *pro se*.

## OPINION BY ADMINISTRATIVE JUDGE BURSKI

Melvin Helit has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 22, 1997, rejecting recordation of the K-ABLE #5-6-7-8-9-10-11-12 placer mining claim and holding the claim null and void because it was abandoned by operation of law. For the reasons provided below, we vacate the rejection of recordation but affirm the finding that the claim is null and void.

The K-ABLE #5-6-7-8-9-10-11-12 claim, purportedly embracing 160 acres, was located by A-ABLE Plumbing, Inc. (Melvin Helit, President), Melvin Helit, Rufina Helit, Adrian Helit, Paul B. Helit, Stephen P. Helit, Michael S. Helit, and Paula J. Helit on September 1, 1993, and a notice of location was filed with BLM on October 14, 1993. The location notice described the claim as 100 feet wide, extending 50 feet both right and left of the center of the Kern river:

starting at patented land at Delonegha Hot Springs in Sec. 26N $\frac{1}{2}$  T27S R31 E MDM, thence following the Kern River South to Sec. 35NW $\frac{1}{4}$ , thence going Sw to Sec. 34, thence going SW to Sec. 33, thence going West to Sec. 32S $\frac{1}{2}$ , thence going SW to Sec. 5NW $\frac{1}{4}$  T28S R31E MDM, thence going SW to Sec. 6, thence going South to Sec. 7, thence going SW to Sec. 12 SE $\frac{1}{4}$  T28S R30E MDM, thence going South to Sec. 13, thence going SW to Sec. 14SE $\frac{1}{4}$ , thence going South to Sec. 23, 24, 25, thence going West to Sec. 22, thence going SW to Sec. 21, thence going SW to Sec. 28, thence going SW to Sec. 29, thence going SW to Sec. 30, 32, where the claim ends at the National Forest Boundary line.

The location notice also averred that "[t]he Locators do not claim interest in proven, valid Mining Claim that was prior."

An "amended" location notice was filed on January 7, 1994, ostensibly for the purpose of "more definitely describing the situation and boundaries of said placer." This notice averred that the K-ABLE #5-6-7-8-9-10-11-12 was situated in:

Sec. 26W $\frac{1}{2}$ , Sec. 32S $\frac{1}{2}$ , Sec. 33All $\frac{1}{4}$ , Sec. 34N $\frac{1}{2}$ W $\frac{1}{2}$ , Sec. 35NW $\frac{1}{4}$  T27S R31E MDM Sec. 5NW $\frac{1}{4}$ , Sec. 6E $\frac{1}{2}$ , S $\frac{1}{2}$ , sec. 7W $\frac{1}{2}$  T28S R31E MDM,

Sec. 12SE<sup>1</sup>/<sub>4</sub>, Sec. 13N<sup>1</sup>/<sub>2</sub>, W<sup>1</sup>/<sub>2</sub>, Sec. 14SE<sup>1</sup>/<sub>4</sub>, Sec. 21E<sup>1</sup>/<sub>2</sub>, Sec. 22N<sup>1</sup>/<sub>2</sub>, E<sup>1</sup>/<sub>2</sub>, Sec. 23S<sup>1</sup>/<sub>2</sub>, E<sup>1</sup>/<sub>2</sub>, Sec. 24W<sup>1</sup>/<sub>2</sub>, Sec. 28N<sup>1</sup>/<sub>2</sub>, W<sup>1</sup>/<sub>2</sub>, Sec. 29S<sup>1</sup>/<sub>2</sub>, Sec. 30SE<sup>1</sup>/<sub>4</sub>, Sec. 32NW<sup>1</sup>/<sub>4</sub> T28S R30E MDM.

The amended notice also stated that "at all times claim goes around any Patented Land," though it failed to explain how this was accomplished.

By decision dated May 20, 1996, BLM noted that three separate rights-of-way traversed the lands described in the location notice and declared that the claim was null and void with respect to those lands within the right-of-way grants. BLM further explained that, since the three rights-of-way divided the claim into noncontiguous parcels, it would be necessary to file an amended mining location which excluded noncontiguous parcels. BLM allowed the claimants 30 days in which to file such an amendment. BLM also advised the claimants that, subject to any intervening rights of third parties or the United States, those noncontiguous parcels which were excluded from the amended location might be relocated as separate claims and recorded as such, after payment of the required fees.

On June 19, 1996, Melvin Helit filed a response with BLM stating: "Your BLM decision to Declare Null and Void in Part of Mining Claim K-ABLE #5-6-7-8-9-10-11-12 (CAMC 260445) is wrong according to the Mining Laws." Helit then proceeded to provide why, in his view, the decision was in error. However, he closed this communication by noting that: "In conclusion, please find the Amended Location Notice." Notwithstanding the submission of a new amended notice, BLM understandably treated the document as a notice of appeal and forwarded the case file to the Board.

Before the Board, Helit expressly disavowed any intention to appeal the May 20 decision, arguing that his amended location had been submitted in compliance with that decision. Accordingly, the Board, by Order dated December 18, 1996, dismissed the appeal and remanded the case to BLM for consideration of the new amended notice of location. The Board noted, however, that, by foregoing an appeal, Helit had waived any right to challenge BLM's determination that, to the extent that his claim included land within the identified rights-of-way, the location was null and void. See Order of December 18, 1996, at 2.

Thereafter, on January 22, 1997, BLM issued its decision rejecting recordation of the claim. BLM noted that, inasmuch as Helit had not appealed its May 20, 1996, decision, Helit was forestalled from asserting that those parts of the claim covered by the three rights-of-way were invalid. Thus, the claim contained noncontiguous parcels, contrary to the requirements of 30 U.S.C. § 36 (1994). Insofar as Helit's new amended location was concerned, BLM noted that it was merely a verbatim replication of the original location notice and did nothing to correct the fact that the claim contained noncontiguous parcels. Based on the foregoing, BLM rejected the recordation of the claim and held the claim abandoned by operation of law. Helit thereupon filed an appeal to this Board.

In his statement of reasons in support of his appeal, Helit challenges BLM's decision on the grounds that (1) BLM was wrong in its determination that the claim contained noncontiguous parcels because, in fact, Helit claims rights in the rights-of-way involved, and (2) there is no requirement that the claims be contiguous. For the reasons provided below, we find that appellant is foreclosed from asserting any rights in the lands covered by the subject rights-of-way and clearly wrong in his contention that a placer location may contain noncontiguous parcels.

[1] Insofar as Helit's assertion that he is claiming rights within the traversing rights-of-way is concerned, we note that BLM's decision of May 20, 1996, expressly held the claim null and void with respect to the lands within the rights-of-way. If Helit wished to contest this determination, he was required to appeal it to this Board. Not only did Helit not appeal, but when BLM treated his June 19, 1996, submission as an appeal Helit expressly disclaimed any intention of challenging the BLM determination. <sup>1/</sup> As this Board advised him in its Order of December 18, 1996, he had "waived all right to challenge the determination of the State Office that, to the extent that claimants sought to include land embraced within the above-referenced rights-of-way in their location, the location was null and void." In view of the foregoing, we will not permit Helit to raise in this appeal any argument that those portions of the claim were not invalid and his attempt to relitigate herein matters which should have been appealed earlier is emphatically rejected.

[2] Second, appellant's assertion that there is no requirement that association placer claims embrace only contiguous lands is simply wrong. The statute, 30 U.S.C. § 36 (1994), provides in relevant part that "[t]wo or more persons, or associations of persons, having contiguous claims of any size \* \* \* may make joint entry thereof." (Emphasis supplied.) Both the Federal courts and the Department have long held that, pursuant to this provision, a single placer location may not embrace noncontiguous parcels, and any placer location embracing noncontiguous parcels is a nullity with respect to the noncontiguous lands. See, e.g., Stenfjeld v. Espe, 171 F. 825 (9th Cir. 1909); Raymond A. Naylor, 136 IBLA 153 (1996); James Aubert, 130 IBLA 50 (1994); Tomera Placer Claim, 33 L.D. 560 (1905).

[3] Notwithstanding the foregoing, however, we must set aside so much of the BLM decision as rejected the claim for recordation. The purpose of the recordation statute, 43 U.S.C. § 1744(b) (1994), was to apprise the Department of the existence of mining claims on Federal land since, prior to the adoption of this provision of the Federal Land Policy and Management Act of 1976, there was no general requirement that a claimant even notify the Department of the existence of a claim. The thrust of the recordation statute was informational; it was not intended to serve as a

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<sup>1/</sup> Thus, Helit averred before the Board: "AT NO TIME DID I SAY OR INTEND TO SAY THAT I WAS GOING TO APPEAL THE BLM DECISION!" (Letter dated Aug. 19, 1996, at 1.)

mechanism for enforcing substantive provisions of the mining laws. See, e.g., Oregon Portland Cement Co., 66 IBLA 204, 207-210 (1982). 2/

This, of course, does not mean that BLM cannot use information acquired through the recordation process as a predicate for its management actions and decisions. It simply means that substantive problems relating to those locations which have been properly recorded with BLM do not bring compliance with the recordation provisions into play. See Melvin Helit, 146 IBLA 362, 367 n.6 (1998). To relate this to the present appeal, it seems clear to us that the K-ABLE #5-6-7-8-9-10-11-12 was properly recorded with BLM pursuant to the statute and regulations relating to recordation. The fact that, as indicated below, the claim possesses fatal flaws should not be metamorphosed into a finding that the claim was not properly recorded. Accordingly, we set aside the rejection of the claim's recordation.

However, it is also clear that this claim is properly declared null and void in its entirety, for two separate reasons. First of all, as we held above, the claim improperly contains noncontiguous parcels. As a general matter, when BLM is apprised of such a situation, the correct procedure is to notify the claimant of the problem and offer the claimant the opportunity to correctly identify that part of the claim which contains the discovery point and, should the claimant so desire and the land remain open to location, to relocate, as separate claims, the remaining noncontiguous parcels. See, e.g., R.J. Collins, 140 IBLA 394 (1997); Raymond Naylor, supra; Jesse R. Collins, 127 IBLA 122 (1993). In fact, BLM did precisely this in its May 20, 1996, decision. Helit chose neither to appeal that determination nor to redescribe the claim in conformity with the provisions of 30 U.S.C. § 36 (1994). In such circumstances, we hold that it is proper to declare the claim null and void in its entirety.

[4] Moreover, we hold that the claim is invalid as a matter of law for a different reason as well. The relevant statute, 30 U.S.C. § 35 (1994), expressly requires that placer claims "shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys." As described in the location notice, this claim has a width of 100 feet and extends more than 12 miles in length. The description of the instant claim, on its face, establishes a per se violation of the statutory requirement.

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2/ This is implicitly recognized in the Department's regulations which provide that the "[f]ailure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law." 43 C.F.R. § 3833.5(f).

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

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is vacated as to its determination that the claim was not properly recorded and affirmed, as modified, to the extent that it concluded that the K-ABLE #5-6-7-8-9-10-11-12 placer mining claim is null and void.

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James L. Burski  
Administrative Judge

I concur.

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Will A. Irwin  
Administrative Judge

