

MATTHEW HELIT
MELVIN HELIT

IBLA 2002-283 and 2002-284

Decided July 29, 2003

Consolidated appeals from two decisions by the California State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. CAMC 278137 and CAMC 278138.

Affirmed.

1. Mining Claims: Location--Mining Claims: Placer Claims

Association placer mining claims are properly declared null and void ab initio where topographic maps accompanying the notices of location for the claims depict them as covering vastly more than 20 acres per person and where the gross oversizing of the claims is confirmed by post-location efforts to sell portions of one of the claims in excess of the maximum acreage.

2. Mining Claims: Location--Mining Claims: Placer Claims

The boundary of a placer mining claim may be retracted prior to patenting only where excess land has been inadvertently or unintentionally included and where proportionately small amounts of excess land are involved. The opportunity to retract is not available where the record shows that claimants intentionally located claims vastly larger than authorized by law for purposes unrelated to mining.

APPEARANCES: Matthew (Mattew) Helit and Melvin Helit, Oceanside, California, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Matthew (Mattew) Helit and Melvin Helit (appellants) have separately appealed two decisions of the California State Office, Bureau of Land Management (BLM), dated March 15, 2002, declaring the K-ABLE Nos. 8 through 15 (CAMC 278137) and the K-ABLE Nos. 5 through 12 (CAMC 278138) association placer mining claims null and void ab initio for failure to “meet the statutory or regulatory mandates of locating a mining claim.” ^{1/} (Decisions at 3).

Because the cases involve similar facts and appellants raise the same arguments in their statements of reasons (SORs), the appeals are consolidated. Also, BLM’s request for expedited consideration of the matter is granted.

The relevant facts are not in dispute. On November 8, 2000, a location notice for each claim was filed with BLM. Each location notice stated that the claim was located on September 1, 2000; that the size of the claim is 160 acres; and that the locators were A-Able Plumbing, Inc., and Melvin, Rufina, Adrian, Paul B., Stephen P., Michael S., and Paula J. Helit. ^{2/}

The location notice for association placer claim CAMC 278137 states that it “is 1,320 feet wide” and that it is situated in “Sec.5N ½, Sec.6 all ¼, Sec. 7W ½, T. 28S R. 31E Mer. MDM[;] Sec. 26W ½, Sec.32S ½, Sec.33 all ¼, Sec.34all ¼, Sec.35W ½, T. 27S R. 31E Mer. MDM.” The copy of the topographical map submitted with the location notice for claim CAMC 278137 depicts it as winding from above mile 52 to below mile 58 along both sides of the Kern River, to the north of Highway 178, through portions of eight sections in T. 27 S. and T. 28 S., R. 31 E., M.D.M. The claim is shown as beginning from a single point, expanding to the sides, meandering with the river for many miles, and ending at a single point without end lines. It is depicted as having two roughly parallel sinuous boundaries that follow the path of

^{1/} There are only two association placer claims at issue here, despite the fact that each claim has eight named and numbered components. For simplicity, we shall refer to each claim by its BLM serial number.

^{2/} Appellants’ SORs begin by stating: “After about two years of the IBLA 97-238 decision, the claimant located two mining (contested) claim(s) on the contested land (one mining claim was on the same ground in the past), in line with the IBLA 97-238 decision.” The statement refers to our decision in Melvin Helit, 147 IBLA 45 (1998), which appeal was docketed as IBLA 97-238.

BLM’s casefile in that matter was returned to BLM and is not before us in the present appeal. However, based upon the descriptions in the location notices, it appears that the two claims at issue in the present appeal extend along generally the same portion of the Kern River as the mining claim at issue in the earlier appeal. See Melvin Helit, 147 IBLA at 46-47; see also Decisions at 2 n.1.

the Kern River. Three small areas are shown within the boundaries of the claims; two of these are marked “none mineral” (sic). Numerous lines have been drawn across the width of the claim and typed notes stating “1,320 feet” have been added to the map in two places across the claim. The width of the claim as depicted on the map varies slightly and is both narrower and wider than 1,320 feet (as shown on the map) at various points along its length. Nevertheless, the claim may be described as averaging approximately 1,320 feet in width over the many miles of its length.

The notice for association placer claim CAMC 278138 states that it “goes 1,320 Feet North of the Highway 178, and at all times covers the Kern River” and that it is situated in “Sec.12SE¼, Sec.13all¼, Sec.14SE¼, Sec. 21E½, Sec.22all¼, Sec.23all¼, Sec.24W½, Sec.28all¼, Sec. 29S½, T. 28S R, 30E Mer. MDM.” The copy of the topographical map accompanying the location notice for claim CAMC 278138 depicts four roughly parallel sinuous lines that curve along the path of the Kern River, north of Highway 178, from below mile 43 to above mile 52 through a number of sections within T. 28 S., R. 30 E., M.D.M. The lines, along with the end lines of the claim, enclose three long narrow areas, two of which are marked as being “none mineral” (sic). Numerous lines have been drawn across the claim and notations of “1,320 feet” have been added across the enclosed areas in eight places. The claim may also be described as averaging approximately 1,320 feet in width over the many miles of its length.

The record indicates that claims CAMC 278137 and CAMC 278138 were both transferred by mineral deed from A-Able Plumbing, Inc., and Michael S., Paul B., Stephen P., Michael S., Rufina, Adrian, Paula J., and Melvin Helit to Matthew F. Helit on April 10, 2001. On September 10, 2001, claim CAMC 278138 was transferred by mineral deed from Matthew F. Helit to Melvin Helit.^{3/}

BLM’s decisions state that the maps that accompanied the location notices show “a long narrow placer claim with an average width of 1,320 feet that covers eight sections within two townships” (in the case of the association placer claim CAMC 278137) and nine sections of land within one township (in the case of association placer claim CAMC 278138). (Decisions at 2.) The decisions, which are substantially identical, explain that, to clarify the approximate length and acreage of the claims, a BLM senior technical mineral specialist plotted them on United States Geological Survey topographic maps, thereby estimating that (excluding the non-mineral lands indicated on the location notice and accompanying map) claim

^{3/} In view of our holding that the claims were null and void ab initio as originally located, we do not reach the question whether this transfer was void as a sham or device entered into whereby one individual is to acquire by location an amount or portion of a placer mining claim of more than 20 acres. See American Colloid Co., 154 IBLA 7, 12 (2000), and cases cited.

CAMC 278137 is 34,000 feet (6.4 miles) long and encompasses 1,000 acres, and that claim CAMC 278138 is 40,000 feet (7.5 miles) long and encompasses 500 acres. Id.

Relying on 30 U.S.C. § 35 (2000), 43 CFR 3842.1-5, and our decision in Melvin Helit, 146 IBLA 362, 369 (1998), BLM concluded that the claims did not conform to the legal subdivisions of the system of public lands surveys; that an opportunity to conform the claims to the public land survey is not necessary “when it is clear that the inclusion of the excess acreage is intentional”; and that mining claims may be declared null and void as a matter of law when they are so contrary to the statutory mandate that claims conform as near as practicable with the United States system of public-land surveys. Id. Accordingly, BLM declared both claims null and void ab initio. (Decisions at 3.)

[1, 2] On appeal, appellants argue they should be allowed to amend their claims to show that the valuable mineral deposits they claim are only on the Kern River, not above the river floor. These deposits at most average 150 feet wide, appellants state, so that association placer claim CAMC 278137 is about 130 acres and CAMC 278138 is about 140 acres, not 1,000 acres and 500 acres as estimated by BLM. Excluding previously-located claims, their claims are much less than 130 and 140 acres, appellants state.

We reject appellants’ arguments out of hand. A claimant may only amend a claim that contains excess acreage when the excess was included inadvertently. Melvin Helit, 157 IBLA 111, 117-118 (2002); Melvin Helit, 146 IBLA 362, 368 (1998); Melvin Helit, 144 IBLA 230, 233 (1998). In this case, as in the previous cases, the Helits clearly intended to claim acreage in excess of the 20 acres per person (here, 160 acres) allowed under 30 U.S.C. §§ 35-36 (2000) and 43 CFR 3842.1-2. This intent is revealed, first and foremost, by the text of their notices of location and by the accompanying maps. It is confirmed by the fact that in November 2001, two months after Matthew Helit conveyed CAMC 278138 to Melvin Helit, the following item (#1661765192) was posted on the internet auction site “eBay,” a copy of which is contained in the record:

DO YOU HAVE A PLACE TO GO IN GOOD TIMES AND BAD TIMES,
Kern River -- Bakersfield-- Lake Isabella, California 20 Acres. About
130 miles north of Los Angeles, and fifteen miles east on State
Highway 178 (paved) from Bakersfield. You are purchasing 20 acres of
mineral deed property (unpatented) in T28S R30E Sec22 W1/2 MDM
* * * about 1/4 mile west of Live Oak Picnic Area on State
Highway 178, next to the one that sold in the Section on Ebay on the
Kern River. The mineral deed mining claim property (MCP) is 660 feet
or more on the Kern River and 660 feet or more on State Highway 178,
and starts at the State Highway 178, and goes 1,320 feet in the

direction, across the Kern River, it includes both banks or sides of the Kern River. [Emphasis supplied.]

The land described in this item is the same as described in the notice of location for association placer claim CAMC 278138. The item states that further information is available from “A-Able, Inc., P.O. Box 1146, Oceanside, CA,” which is Melvin Helit’s address. From this it is clear that whoever was marketing interests in association placer claim CAMC 278138 (evidently Melvin Helit) believed that the claim, as located, was 1,320 feet wide, not 150 feet wide as maintained on appeal.^{4/} That is consistent with the topographic map provided with the notice of location. Since the claim was several miles long, the locators plainly intended to locate an area vastly in excess of the 20 acres per claimant (here, 160-acre) maximum.

Further, BLM’s decision relating to this claim states that although the location notice claimed only 160 acres, Helit “severed and sold the association placer into ten individual 20 acre claims and one 40 acre claim for a total of 240 acres.” The record supports this statement with copies of mineral deeds from Helit to several parties referred to above. BLM concludes: “Mr. Helit intentionally exceeds the 160 acres claimed on the original location notice.” We agree.^{5/}

In circumstances such as these, where the acreage limitation is grossly exceeded and a claimant’s behavior indicates he has not located the claims in good faith for mining purposes, BLM need not resort to analyzing whether the claims conform to the public land surveys as it did in this case. Rather, it may declare the claims null and void ab initio because the acreage limitations are intentionally exceeded. See United States v. Zimmers, 81 IBLA 41, 42-44 (1984); United States v. Zweifel, 11 IBLA 53, aff’d, Roberts v. Morton, 549 F.2d 158 (10th Cir. 1977). See

^{4/} Parcels of 20 or 40 acres were deeded on Nov. 28, 2001, from Melvin Helit to Geoffrey and Ruby Ryan; on Dec. 17, 2001, from Melvin Helit to Carol A. Hunter and Daniel T. Zvelic; on Jan 16, 2002, from Melvin Helit to Warren D. Stone; on Jan. 16, 2002, from Melvin Helit to Warren Douglas Stone; and on Nov. 27, 2001, from Melvin Helit to William Olsen, Jr., and Jack H. Allen.

The configuration of all five of those parcels, as depicted in attachments to the mineral deeds, is consistent with the map that accompanied the notice of location of that claim. The attachments all show parcels with boundaries extending 1,320 feet perpendicular to the banks of the Kern River, not parcels that cover only 150 feet of the streambed, as appellants assert on appeal.

^{5/} Although the evidence referred to above relates only to claim CAMC 0278138, we find, based on the copy of the topographic map submitted with claim CAMC 278137, that the latter claim was also intentionally located for an area greatly in excess of the 20-acres per claimant (here, 160-acre) maximum allowed for that claim.

also United States v. Zweifel, 508 F.2d 1150 (10th Cir. 1975). We affirm BLM's March 15, 2002, decisions on that basis.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 15, 2002, decisions appealed from are affirmed.

David L. Hughes
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge