

NORTHERN NEVADA NATURAL MINING, ET AL.

IBLA 2001-363

Decided May 19, 2004

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring certain unpatented placer mining claims and mill sites null and void ab initio in part. NMC 823620 - 823624.

Affirmed as modified.

1. Acquired Lands--Mining Claims: Lands Subject To--Public Lands: Generally

Lands patented without a mineral reservation which are subsequently acquired by the United States by deed which is accepted by the Secretary of Agriculture for inclusion in a national forest are not subject to the location of mining claims in the absence of a legislative provision authorizing mineral entry. A decision declaring mining claims located on such acquired lands null and void ab initio is properly affirmed.

APPEARANCES: Darrell L. Jones, President, for Northern Nevada Natural Mining, Rhema Rock Ranch, and Sierra Select Stoneworks; Leona E. Berger, MaryAnn Jones, Randall L. Jones, and Ila A. Jones, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Northern Nevada Natural Mining and other appellants, including Rhema Rock Ranch, Sierra Select Stoneworks, Darrell L. Jones, MaryAnn Jones, Randall L. Jones, Leona E. Berger, and Ila A. Jones, have appealed from a decision issued by the Deputy State Director for Mineral Resources, Nevada State Office, Bureau of Land Management (BLM), dated July 6, 2001, declaring two unpatented placer mining claims and three mill sites null and void ab initio, in part.

The BLM decision declared appellants' unpatented mill site and mining claims identified as Rhema Rock, Rhema Day, Rhema Way, Sons of Thunder Nos. 1 and 2 (NMC 823620 through 823624), located January 7, 2001, null and void ab initio.^{1/} In its decision, BLM stated that the lands embraced in the claims were acquired by the United States by deed dated October 9, 1984. Further, BLM held that such lands are not open to location of mining claims until such time as an opening order describing the lands has been issued.

In their statement of reasons (SOR) for appeal, appellants do not dispute that title to these lands was acquired by deed to the United States and that they have not been the subject of an opening order. They assert that in inquiring of the BLM public room contact representative no mention was made of the need for an opening order. Noting that these claims are relocations of claims which they located in 1996, appellants state they were not advised of the need for an opening order until the BLM decision was issued five years later. Claimants contend they are committed to the operation of these claims and have made substantial investments in equipment and materials.

Reference to the case file discloses that the lands at issue were patented in 1884 and 1895 pursuant to railroad grant patents. Title to the subject lands was subsequently acquired by the United States, acting through the Forest Service, United States Department of Agriculture, by deed dated October 9, 1984. Title to these lands was acquired pursuant to a provision in the Deficit Reduction Act of 1984, Pub. L. 98-369, § 1028, 98 Stat. 494, 1032-33. Under this provision, an estate tax credit was allowed to the grantee for conveyance of the lands at issue to the Secretary of Agriculture for addition to the Toiyabe National Forest.

[1] Provisions of the Mining Law of 1872 pursuant to which appellants' claims were located are broad in scope, providing that: "Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States * * * shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase * * *." 30 U.S.C. § 22 (2000). It has long been recognized, however, that the Mining Law of 1872 does not apply to all land belonging to the United States. Oklahoma v. Texas, 258 U.S. 574, 599-600 (1922), quoted in Junior L. Dennis, 61 IBLA 8, 14 (1981). Pursuant to section 1 of the Act of June 4, 1897, ch. 2, 30 Stat. 34 (codified at 16 U.S.C. §§ 475, 478 (2000)), public lands reserved for national forest purposes are open for prospecting and location of mining claims. Thompson v. United States, 308 F.2d 628, 631 (9th Cir. 1962). A distinction

^{1/} The decision actually declared the claims null and void ab initio "in part." It is clear, however, from the text of the decision that the identified claims were declared void in their entirety.

is properly recognized, however, between acquired lands in which title is acquired by the United States from private parties and public lands constituting part of the original public domain. *Id.*, citing Barash v. Seaton, 256 F.2d 714, 715 (D.C. Cir. 1958). In considering the question of whether acquired lands are open to location under the mining law, the Ninth Circuit Court of Appeals declared:

It may be stated as a universal proposition that patented lands reacquired by the United States are not by mere force of the reacquisition restored to the public domain. Absent legislation or authoritative directions to the contrary, they remain in the class of lands acquired for special uses, such as parks, national monuments, and the like--areas which it could not rationally be argued remain open to location and exploitation under the mineral laws.

Rawson v. United States, 225 F.2d 855, 858 (9th Cir. 1955), cert. denied, 350 U.S. 934 (1956); Ted Thompson, 98 IBLA 251, 252-53 (1987), citing inter alia, 43 CFR 3811.2-9.

In applying Rawson to lands acquired by deed to the United States through the Secretary of Agriculture, the Ninth Circuit has held that “it is only where the United States had indicated that the [acquired] lands are held for disposal under the general land laws that a mineral location might be filed.” Thompson v. United States, 308 F.2d at 632; Roberts and Koch, 95 IBLA 239, 242-43 (1987); Melvin Franzen, 92 IBLA 20, 21 (1986); Silver Buckle Mines, Inc., 84 IBLA 306, 309 (1985); ^{2/} Maurice Duval, 68 IBLA 1, 2 (1982). In Junior L. Dennis we found that the issue of whether lands which have been acquired become “public lands” is properly focused on the reasons for which the United States acquired title and the statutory authority under which title was obtained. 61 IBLA at 15. Noting that the land in that case was acquired under section 205(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1715(c) (2000), which explicitly provides that upon acceptance of title, lands acquired “become public lands and for administration of public land laws not repealed by this Act, shall remain public lands,” we found Congress had shown its intent that lands acquired under authority of that section are to be held for disposal and management under the public land laws. 61 IBLA at 15-16.

After reviewing the statutory provision under which the lands at issue in the present case were acquired for inclusion in the Toiyabe National Forest, we find no

^{2/} The Silver Buckle case, like Thompson, involved mining claims located on land acquired by deed by the Secretary of Agriculture for national forest purposes under section 7 of the Act of June 7, 1924, 16 U.S.C. § 569 (2000).

indication that Congress intended these acquired lands to be open to disposal under the Mining Law of 1872. Indeed, Congress has generally provided at 16 U.S.C. § 521a (2000) that lands which are acquired within national forests, explicitly excepting lands reserved from the public domain or acquired by exchange for lands reserved from the public domain, are subject to all laws and regulations regarding lands acquired under the Weeks Act of March 1, 1911, ch. 186, 36 Stat. 961-963, as amended, 16 U.S.C. §§ 480, 500, 513-519, 521, 552 and 563 (2000). Development of mineral resources on lands acquired under the Weeks Act is authorized only under such regulations as the Secretary may prescribe and upon such terms and for such periods as the Secretary may determine to be in the best interests of the United States. 16 U.S.C. § 520 (1982).^{3/} Thus, a mining claim located on such lands is properly declared null and void ab initio. Melvin Franzen, 92 IBLA at 21. Hence, the decision of BLM is properly affirmed on the basis that these acquired lands are not subject to the Mining Law of 1872.

We note that even if the acquired lands were subject to the Mining Law of 1872, it is well established that, absent contrary statutory intent, the lands would not become available for location and entry under the Mining Law until an opening order has been published by the Department. Junior L. Dennis, 61 IBLA at 17-18; see Tom Notestine, 73 IBLA 320, 321-22 (1983); Esdras K. Hartley, 58 IBLA 329, 330-31 (1981); Petro Leasco, Inc., 42 IBLA 345, 353-54 (1979). Appellants acknowledge this has not occurred. To the extent appellants contend that the BLM decision cannot stand because of delay in adjudicating their location of the subject mining claims and sites, we note it is expressly provided by statute and regulation that the recordation of an unpatented mining claim by itself “shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law.” 43 U.S.C. § 1744(d) (2000); 43 CFR 3833.5(a). Failure of the BLM to notify claimant upon the recording of a claim that such claim is located on lands not subject to location shall not prevent BLM from later declaring the claim void. 43 CFR 3833.5(f); Jesse R. Collins, 139 IBLA 392, 393-94 (1997) .

^{3/} Section 205(d) of FLPMA regarding acquisition of lands by the Secretary of Agriculture which become part of the national forest system provides that such lands shall be “subject to all the laws, rules, and regulations applicable thereto.” 43 U.S.C. § 1715(d) (2000). This is distinguished from the provisions of section 205(c) respecting lands acquired by the Secretary of the Interior which provides that the lands acquired shall become public lands subject to the public land laws. 43 U.S.C. § 1715(c) (2000). This latter provision was addressed in Junior L. Dennis, 61 IBLA at 16.

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.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge

