

JERRY D. GROVER D.B.A. KINGSTON RUST DEVELOPMENT
(GROVER VII)

IBLA 99-13

Decided November 2, 2004

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring unpatented oil shale mining claims null and void *ab initio*. UMC 115512 to 115742.

De novo review authority exercised, decision affirmed as modified.

1. Administrative Authority: Generally--Administrative Procedure: Generally--Administrative Procedure: Administrative Review--Administrative Procedure: Administrative Record

Where BLM offers an alternative rationale in addition to that stated in the decision appealed and requests the Board to exercise its *de novo* review authority to affirm the result of BLM's decision on the alternative basis, the Board typically will reverse or vacate the decision and remand the case so that a new decision can be issued by BLM. No remand is necessary where the appellant did not object to BLM's request, filed a reply and two surreplies responding to BLM's alternative rationale, and has fully briefed the merits of such alternative rationale in other appeals. Appellant is not prejudiced by granting BLM's request for *de novo* review, and no purpose would be served by remanding the cases. In such circumstances, the Board properly invokes its *de novo* review authority.

2. Administrative Authority: Generally--Mining Claims: Generally--Mining Claims: Lands Subject to--Mining Claims: Location

The authority to adjudicate the status of mining claims arises from the authority Congress vested in the Secretary of the Interior or such officer as he or she may designate

to “perform all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of Government.” 43 U.S.C. § 2 (2000). That authority extends to Indian Reservation lands as well.

3. Administrative Authority: Generally--Mining Claims:
Generally--Mining Claims: Lands Subject to--Mining
Claims: Location

Lands set aside for an Indian Reservation cease to be part of the public domain, and a mining claim located on Indian lands that are not open to mineral entry is null and void *ab initio*.

4. Administrative Authority: Generally--Mining Claims:
Generally--Mining Claims: Lands Subject to--Mining
Claims: Location

Only the United States, acting through the Secretary of the Interior, has the authority to determine administratively what lands constitute public lands. That duty and authority necessarily includes the power to determine administratively that a mining claim is located on land not owned by the United States. The question of whether the United States has title is justiciable before the Department, and when the Department determines that the United States has no title in lands, it may properly declare mining claims located on such lands null and void *ab initio* as a matter of Federal law.

5. Administrative Authority: Generally--Mining Claims:
Generally--Mining Claims: Lands Subject to--Mining
Claims: Location

Where appellant’s oil shale “mining claims” were located on lands that were patented to third parties without a mineral reservation to the United States, no interest appellant may have with respect thereto can be raised or pursued as a mining claim initiated and maintained under Federal mining law. Those interests in the patented

portions of the claims, whatever they may be, are properly declared null and void *ab initio*, since no Federal mining claim can arise on private or State lands.

6. Energy Policy Act of 1992: Generally--Energy Policy Act of 1992: Oil Shale: Mining Claims: Rental or Claim Maintenance Fees--Oil Shale: Mining Claims

In Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (2003), this Board clearly described what was necessary to comply with the Energy Policy Act of 1992 (EPA), 30 U.S.C. § 242 (2000). All holders of oil shale claims, except those who had filed patent applications and received first half final certificates as of the date the EPA was enacted, are required to pay a \$550 fee per claim per year to maintain possession as against the United States until such time as patent may issue or the claim is otherwise invalidated. When it is undisputed that appellant failed to pay the fees mandated by the EPA after written notice and an opportunity to do so, exercising its *de novo* review authority, the Board properly affirms a BLM decision declaring oil shale mining claims null and void on the basis of that failure to comply with the EPA.

APPEARANCES: Jerry D. Grover, Jr., Provo, Utah, pro se; John W. Steiger, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

This is the latest in a series of cases involving oil shale claims held by Jerry D. Grover, d.b.a. Kingston Rust Development, or his predecessor, Production Industries Corporation (PIC).^{1/} In a decision dated August 28, 1998, the Utah State Office, Bureau of Land Management (BLM), declared 92 oil shale claims null and void

^{1/} See Jerry D. Grover d.b.a. Kingston Rust Development (Grover VI), 161 IBLA 26 (2004); Jerry D. Grover d.b.a. Kingston Rust Development (Grover V), 160 IBLA 318 (2004); Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261 (2003); Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234 (2003), Jerry D. Grover d.b.a. Kingston Rust Development (Grover II), 141 IBLA 323 (1997); Jerry D. Grover d.b.a. Kingston Rust Development (Grover I), 139 IBLA 178 (1997); and Production Industries Corp., 138 IBLA 183 (1997).

ab initio on the ground that the claims had been located on lands withdrawn for the Uintah Indian Reservation by Executive Order (E.O.) dated October 3, 1861.^{2/} The claims were located in 1918, 1919, and 1920. The decision was issued to PIC, but Grover appealed, asserting record title to the claims, as evidenced by a warranty deed dated August 3, 1992, from PIC to Grover which he provided to this Board.

The Parties' Arguments

On appeal, Grover objects to BLM's decision, contending that Congress restored unallotted lands of the Uintah Valley Reservation^{3/} to the public domain by the Act of May 27, 1902, Ch. 888, 32 Stat. 263, as amended, which was made effective by the Act of March 3, 1905, Ch. 1479, 33 Stat. 1069. Acknowledging that for the first 5 years after March 3, 1905, entry onto Reservation lands was limited to homestead and townsite entries, Grover cites Hagen v. Utah, 510 U.S. 399 (1994), for the assertion that "[t]he restoration of the reservation by these acts to the public domain was upheld." (SOR at 1.) As a result, oil shale was a locatable mineral from 1910 to 1920, when the Mineral Leasing Act (MLA), 30 U.S.C. § 181 (2000), was enacted. He notes that the Secretarial order restoring lands to tribal ownership on August 25, 1945, contained references to the Act of May 27, 1902. He concludes that his claims were located at a time when unallotted lands contained in the Uintah Valley Reservation were open to mineral entry, and that his claims constituted valid existing rights when the land was restored to the Ute Indians in the Uintah Valley. (SOR at 2.)

Based on these events, Grover advances three specific lines of argument. He first contends that BLM lacked jurisdiction to take any action with respect to the oil shale claims:

^{2/} The claims were identified by serial number, claim name, and location date in Exhibit A to BLM's decision. Exhibit A has been reproduced and appended to this opinion with the IBLA docket number noted on it. According to Grover, all the claims are located in T. 5 S., R. 8 and 9 W. and T. 6 S., R. 8, 9 W., Uintah Special Meridian. (Statement of Reasons (SOR) at 1.)

^{3/} By E.O. No. 38-1 dated Oct. 3, 1861, President Lincoln adopted in its entirety Secretary Smith's recommendation that the Uintah Valley "be set apart and reserved for the use and occupancy of Indian tribes." Specifically, the Secretary had recommended that the President "order the entire valley of the Uintah River within Utah Territory, extending on both sides of said river to the crest of the first range of contiguous mountains on each side, to be reserved to the United States and set apart as an Indian reservation." The name of the Reservation apparently was changed to the Uintah and Ouray Reservation in 1956. Ute Indian Tribe I, 521 F. Supp. 1072 (D. Utah 1991).

Although the United States still maintains the role of trustee, the Bureau of Land Management does not retain authority, and is not authorized, to make any decisions involving lands in tribal ownership. * * * It is not certain, lacking any clear controversy between the tribe and Appellant, whether the U.S. in its trust relationship would have cause to raise issues relevant to Appellant's title. In any event[,] the BLM decision at issue is improper because BLM has never been so authorized.

(SOR at 2.) As additional support for the assertion that the United States lacks jurisdiction over the claims, Grover next argues that the claims are not subject to the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-1784 (2000), and that the notices of location tendered by PIC should have been rejected on that basis. Grover maintains, moreover, that “[e]ven if one were to believe that the United States would qualify as an ‘owner’ because of the remaining trust relationship, these lands were not ‘subject to location under the General Mining Law of 1872’ in 1976 when FLPMA was promulgated.” (SOR at 3.) Grover’s final argument is that even assuming that BLM has jurisdiction and that the claims are subject to FLPMA, the land was open to location when the claims were located. (SOR at 3.)

Relying on the Supreme Court’s recitation of historical events in Hagan v. Utah, 510 U.S. at 402-408, BLM initially responded that “none of the lands subject to Appellant’s claims were allotted, entered under the homestead or townsite laws, or disposed by sale.” (Answer at 5.) More specifically, BLM urges that “Congress has charged the Secretary with broad responsibility for the welfare of Indian tribes, and it must be assumed that in doing so, Congress has given the Secretary reasonable power to discharge the responsibility effectively. This includes inherent power not specified by statute or regulation.” (Answer at 7; citations omitted.) BLM thus reasons that “[t]he Secretary’s general authority to protect tribal lands and interests by determining the validity of mining claims is analogous to his authority to determine the validity of mining claims on public lands, which is also not explicitly provided by statute or regulation.” (Answer at 7.) Based on its analysis of the statutes, presidential proclamations, and General Land Office instructions, BLM denies that the land was open to mineral entry when the claims were located. (Answer at 10-16.)

Grover filed a Reply in which he challenged BLM’s assertion of general authority over Indian interests (Reply at 1-2) and proffered excerpts of Congressional debate as evidence of legislative intent that unallotted Reservation lands were to be open to mineral entry (Reply at 2-4). Grover further argued that the intervening 1910 withdrawal did not apply to mineral lands, and therefore did not apply to the claims, which were “clearly both observed and observable mineral lands prior to 1910.” (Reply at 5.)

On January 7 1999, BLM moved for leave to respond to Grover's Reply, filing its response with the motion, and this in turn prompted Grover to seek on January 19, 1999, leave to file a pleading responding to BLM's January 7 response, which he styled an "Answer." In this second round of briefing, the parties adhered to their respective views of the dispute, and raised and argued the impact of Reorganization Plan No. 3 of 1950, 64 Stat. 1262, as amended, Pub. L. No. 92-22, § 3, 85 Stat. 76, and Solicitor's Opinion, M-34836, 59 I.D. 393 (January 27, 1947). In 2003 and 2004, the Board decided nine other appeals filed by Grover.^{4/} In its order of December 23, 2003, the Board requested the parties to apprise it of the status of the claims in IBLA 99-13 under the analysis and reasoning of Grover III and Grover IV before it proceeded to the merits of BLM's decision rationale.

On February 9, 2004, BLM filed its Response to the Board's December 23, 2003, Order and Supplemental Answer (Supp. Answer). BLM stated that neither PIC nor Grover had ever paid the oil shale claim maintenance fee of \$550 per claim per year established by the Energy Policy Act of 1992 (EPA), 30 U.S.C. § 242 (2000), after written notice from BLM and an opportunity to pay the fee. (Supp. Answer at 2-4.) On that basis, BLM argues that the claims must be deemed forfeited. (Supp. Answer at 7.) Although it stands by its decision and the rationale therefor, BLM invokes the Board's *de novo* review authority to modify the decision here appealed and declare the claims forfeited for failure to pay the \$550 fee (Supp. Answer at 5), in which case the Board need not reach the question of whether the subject lands were open to mineral entry at the time the claims were located (Supp. Answer at 7). If the Board disagreed, however, BLM urged notice to the Ute Tribe before proceeding to the merits of the stated decision rationale.

Grover filed his Reply to BLM's Supp. Answer on February 23, 2004 (Supp. Reply). He maintains the position expressed in his earlier pleadings, arguing that if any dispute exists, it is between him and the Ute Indians. In addition, however, Grover argues that the "EPA applies to existing mining claims within the public domain, not valid existing rights underlying lands in Indian ownership." (Supp. Reply at 2.) He reasons that the "rights held at the time of transfer of ownership are essentially frozen in time and at that point became valid existing rights." (Supp. Reply at 2.) Grover further argues that his valid existing rights are "incapable of proceeding to patent as a mining claim would," citing Solicitor's Opinion M-36994 (May 22, 1998). (Supp. Reply at 2-3.) Consequently, because the EPA presupposes that a claim must be capable of proceeding to full or limited patent and that it "must be capable of making concurrent EPA and FLPMA filings, and

^{4/} In the course of deciding those appeals, the Board inadvertently dismissed as moot the instant appeal by order dated Dec. 22, 2003. On Dec. 23, 2003, we withdrew that dispositive order in its entirety, reinstated the appeal, and requested further briefing.

therefore must be part of the public lands,” the EPA is inapplicable. (Supp. Reply at 3.) Lastly, Grover contends that the concept of a limited patent, in which title to the mineral estate remains in the United States, is not consistent with tribal ownership. (Supp. Reply at 3.)

BLM moved for and was granted leave to file a surreply on March 24, 2004. The Board’s order also granted Grover the right to file a surrebuttal. The Board received BLM’s Surreply on April 9, 2004. In that pleading, BLM noted that it had erred in stating in its Answer that none of Grover’s claims had been disposed of by sale. Instead, BLM stated that “[p]arts or all of a number of claims at issue are to lands that have been patented. All patents were issued between 1916 and 1922 after the subject lands were sold pursuant to the Act of April 24, 1820 (as then amended), which generally authorized the sale of public lands. [Footnote omitted.]” (Surreply at 1-2.) BLM submitted a Table prepared by the Utah State Office detailing those patents, based on data maintained as part of BLM’s Historical Index and Master Title Plat and patents it has on file. That Table describes three classes of oil shale claims: (1) those that were patented either before or after the claim was located, with a mineral reservation to the United States; (2) those for which no patent was issued for the claim or any part of the claim; and (3) those for which patent was issued to a third party before the location date for all or a part of the claim, with no mineral reservation. (Surreply at 2-3.) Most of the claims are in the first two categories, but parts of four claims fall into the third.^{5/} (Surreply at 3.)

For claims in the first two categories, BLM maintains the Board should exercise its *de novo* review authority and modify the decision to hold the claims forfeited for failure to pay the EPA’s claim maintenance fee. As to the third category, BLM “acknowledges that the Department lacks jurisdiction to adjudicate the nature and extent of the rights of the mining claimant as to those parts of the parcels.” (Surreply at 3.) BLM therefore withdrew its contentions as to the parts of the four claims in category three. To the extent that all or parts of the claims had been patented to third parties without a mineral reservation before the claims were located, however, BLM urged the Board to modify the decision appealed and find them null and void *ab initio*, because such lands are no longer part of the public lands and thus were not subject to mineral entry. (Surreply at 4.) Noting that Grover had in previous pleadings conceded the issue, BLM disputed the contention, first raised in Grover’s Supp. Reply, that the lands were restored to the Ute Indians in fee, rather than in trust. (Surreply at 5-7.) As to Grover’s argument that the EPA does not apply to his claims, BLM states that the Act by its terms applies to any unpatented oil shale mining claim, and notes that Grover’s assertion that his claims are incapable of

^{5/} These are the Hazel, and the Greene Placer Nos. 9, 11, and 12 (UMC Nos. 115538, 115579, 115581, and 115582).

proceeding to patent and that they are not subject to FLPMA are unsupported. (Surrebuttal at 7-8.)

In his Surrebuttal, Grover responds that he has “all rights to all minerals” to be found within the boundaries of the claim under the mining laws, “not only those mineral(s) for which discovery is made, which include rights enumerated in 30 USC § 35 and 37.” (Surrebuttal at 1-2.) He argues that the Surface Resources Act of July 23, 1955, 30 U.S.C. §§ 601-615 (2000), limits surface rights for mining claims located after that Act was enacted, but “clearly did not apply to pre-existing mining claims.” (Surrebuttal at 1-2.) Thus, he asserts an exclusive right to the possession and enjoyment of all surface resources within the boundaries of a mining claim. (Surrebuttal at 2.) Grover concedes that “portions of claim[s] that, on the date of location, were located on lands already patented without reservation, are null and void.” (Surrebuttal at 2.) As to the rest of his claims, however, although he articulates the categories a little differently, he appears to generally agree with BLM’s classification: “A) Claims, or portions of claims, located prior to issuance of a third party patent.” * * * B) Claims, or portions of claims, located after a third party patent with reservations issued. * * * C) Claims located where no patent had or has issued.” (Surrebuttal at 2-3.) According to Grover, claims in category (A) included the right to all minerals and “all surface rights” before patent issued. Patent was issued subject to valid existing rights, and when patent issued, any right not reserved to the United States thereupon became a valid existing right outside the United States’ jurisdiction. (Surrebuttal at 2.) With respect to category (B), claims located after patent was issued to a third party, subject to a reservation to the United States, Grover concedes that the locator acquired only those rights reserved to the United States. (Surrebuttal at 3.) Finally, he argues that category (C) claims “retain the full rights of all Pre-Leasing Act claims.” (Surrebuttal at 3.) He concludes that

All of the subject valid existing rights, whether based upon post-location third party patent language or the 1945 transfer of title to the Indian tribe, can only include those rights present at those points in time. Since proceedings [sic] toward patent had not occurred on any of the claims at the time[,] they became valid existing rights frozen in time, the right and ability to patent was not an existing part of the bundle of rights contained and included in these valid existing rights.

(Surrebuttal at 3-4.)

Analysis

[1] We begin with BLM’s request that the Board exercise its *de novo* review authority to affirm the result of BLM’s decision, but on a different basis than that

stated in the decision. We considered a similar request in Grover III, and find it appropriate to repeat the conclusions reached there:

When a timely appeal subjects a BLM decision to this Board's jurisdiction, our review authority is *de novo* in scope because it is our delegated responsibility to decide for the Department, "as fully and finally as might the Secretary," appeals regarding use and disposition of the public lands and their resources. 43 CFR 4.1; Richard Bargaen, 117 IBLA 239, 245 n.3 (1991); United States Fish & Wildlife Service, 72 IBLA 218, 220 (1983). The Board's authority to correct or reverse an erroneous decision by the Secretary's subordinates or predecessors in interest and to decide cases on the basis of issues other than those advanced by parties has been judicially recognized. Ideal Basic Industries, Inc. v. Morton, 542 F.2d 1364, 1367-68 (9th Cir. 1976); see also Schade v. Andrus, 638 F.2d 122, 124-25 (9th Cir. 1981); Ben Cohen (On Judicial Remand), 103 IBLA 316, 328-29, aff'd sub nom., Sahni v. Watt, Civ. No. S-83-96-HDM (D. Nev. Jan. 17, 1990), aff'd (Jan. 14, 1991), aff'd, No. 91-15398 (9th Cir. Apr. 27, 1992) (disposition of a land selection application on a basis other than that for which the case was remanded); Kelly E. Hughes, 135 IBLA 130, 136 (1996); Exxon Company, U.S.A., 15 IBLA 345, 353 (1974). Moreover, the Board's authority has been deemed sufficiently broad so as to allow it to take notice of official records of the Department on appeal which were not noted by an Administrative Law Judge in the initial consideration of the case, Briggs v. BLM, 99 IBLA 137, 142 (1987), as well as to take cognizance of evidence submitted for the first time on appeal. W&T Offshore, Inc., 148 IBLA 323, 359 (1999).

The Board nonetheless strives not to replace BLM as the initial decision maker, and where BLM admits that the stated rationale of the decision appealed is incorrect, the more typical result would be to reverse the decision or vacate and remand the case so that BLM could issue a new decision that would be appealable to this Board. This is because the recipient of a decision is entitled to a reasoned and factual explanation of the rationale for the decision, and must be provided an adequate basis for understanding and accepting it or disputing and appealing it. Further, the basis for that decision must be stated in the written decision and demonstrated by the administrative record. Nevada Division of Wildlife v. BLM, 145 IBLA 237, 247 (1998); Kanawha & Hocking Coal & Coke Co., 112 IBLA 365, 368 (1990); Exxon Co., U.S.A., 113 IBLA 199, 205 (1990); Eddleman Community Property Trust, 106 IBLA 376, 377 (1989); Roger K. Ogden, 77 IBLA 4, 7, 90 I.D. 481, 483 (1983).

However, we have held that, where the appellant is able to surmount any difficulty initially encountered after BLM fails to present an adequate explanation of the basis for its decision, presents an informed and organized appeal, and is not unduly prejudiced by BLM's initial omission, no remand is necessary. Nevada Division of Wildlife v. BLM, 145 IBLA at 237.

Grover III, 160 IBLA at 240-41.

The situation here is virtually the same. The parties were put on notice that the status of the oil shale claims in light of the Board's analysis and reasoning in Grover III and Grover IV could be dispositive when the Board issued its December 23, 2003, order requesting further briefing. In the two further rounds of briefing that followed, Grover did not object to BLM's request, nor did he dispute the assertion that claim maintenance fees had not been paid. Instead, he disputed or argued the applicability of the EPA and FLPMA, and, as the above excerpt observes, this is but the latest of a number of opportunities to offer argument regarding the scope and applicability of the EPA. Grover clearly is neither surprised nor prejudiced by our granting BLM's unopposed request. Thus, there is no point in remanding these cases, and instead we invoke our *de novo* review authority to determine whether the record supports the result of BLM's decision, i.e., that the claims are void. See Grover III, 160 IBLA 241-42; Nevada Division of Wildlife v. BLM, 145 IBLA at 237; Ronald A. Pene, 147 IBLA 153, 159 n.7 (1999).

[2] Grover has offered a number of arguments designed to show that these oil shale mining claims were properly located pursuant to the Federal mining laws, and that those claims have lawfully persisted to the present. Thus, he argues various theories to show that Uintah Valley Reservation lands restored to the public domain were thereby opened to entry under the mining laws, and that the United States and the Secretary lack jurisdiction to determine the status of those claims. It is beyond question, however, that Congress has the supreme power to dispose of and regulate property belonging to the United States.^{6/} It has provided for the manner of mineral entry on the public lands in the mining laws, 30 U.S.C. §§ 21-54 (2000). Whether a mining claim has been located and maintained as required by the Federal mining laws under which it was initiated is a matter of Federal law. 2 American Law of Mining (2d ed.) § 33.01. The authority to adjudicate the status of mining claims arises from the authority Congress vested in the Secretary of the Interior or such officer as he or she may designate to "perform all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing

^{6/} See the Property Clause of the U.S. Constitution, Art. IV, § 3, cl. 2.

of patents for all grants of land under the authority of Government.” 43 U.S.C. § 2 (2000) (emphasis added).^{7/}

[3] That authority extends to Indian Reservation lands as well. The United States retains its legal title to lands set aside from the public domain for the exclusive use and benefit of Native Americans, in trust for those for whom the land has been reserved, whereas the Indians hold beneficial or equitable title to the land.^{8/} In that regard, it is well settled that lands set aside for an Indian Reservation cease to be part of the public domain, and BLM properly declares a mining claim located on Indian lands that are not open to mineral entry null and void *ab initio*. Haldon Mining, 94 IBLA 93, 96 (1986); Dora Trudell, 83 IBLA 196, 196-97 (1984); Montana Copper King Mining Co., 20 IBLA 30, 36 (1975) and cases cited.

[4] Grover is correct that the Department has no jurisdiction over mining claims located on land patented without a reservation of minerals to the United States. Harry J. Pike, 67 IBLA 100 (1982), and cases cited therein. However, only the United States, acting through the Secretary of the Interior, has the authority to determine administratively what lands constitute public lands belonging to the United States. See 43 U.S.C. § 2 (2000); Kirwin v. Murphy, 189 U.S. 35, 54, 56 (1903); Brown v. Hitchcock, 173 U.S. 473, 476, 479 (1899); Mark Einsele, 147 IBLA 1, 12 (1998); William D. Brown, 137 IBLA 27 (1996); State of Montana, 11 IBLA 3, 13, 80 I.D. 312, 316 (1973); Burt Wackerli, 73 I.D. 280, 286 (1966) and cases cited. That duty and authority necessarily includes the power to determine administratively that a mining claim is located on land not owned by the United States. Stated differently, the rule is as follows:

^{7/} This authority formerly was codified as Revised Statutes § 453, derived from the Acts of Apr. 25, 1812, ch. 68, § 1, 2 Stat. 716; July 4, 1836, ch. 352, § 1, 5 Stat. 107; June 6, 1874, ch. 223, 18 Stat. 62; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 317.

To the extent Grover challenges whether the Secretary ever formally delegated authority to adjudicate the validity of mining claims to GLO or BLM, we decline to undertake the research and effort to ascertain the merits of the question when the proponent of the argument has not done so. We otherwise perceive no reason to inquire into or disturb the long line of apparent authority and practice pursuant to which GLO and BLM historically have acted.

^{8/} Though the Ute Indians hold equitable title to the lands thus set aside for them, that fact neither defeats nor negates the authority of the United States to adjudicate the status of mining claims, or its trust obligation to ensure that Reservation lands are not encumbered by putative mining claims.

The jurisdiction of the Department (and thus of this Board) to adjudicate the nature and extent of the rights of mining and other claimants to the land extends only to lands to which the United States has title. Charles E. Crafts, 135 IBLA 211, 213 (1996); Rosander Mining Co., 84 IBLA 60, 62-63 (1984); George Antunovich, 76 IBLA 301, 308, 90 I.D. 464, 468 (1983). Where the United States has no title, the Department clearly has no jurisdiction. However, the question of whether the United States has title is justiciable before the Department. See, e.g., State of California, 121 IBLA 73, 98 I.D. 321 (1991). Furthermore, * * * when the Department determines that the United States has no title in lands, it may properly declare mining claims located on such lands null and void ab initio as a matter of Federal law. See, e.g., David A. Smith, 128 IBLA 249 (1994); see also United States v. Boucher, 147 IBLA 236, 240 (1999). Such decision by BLM is appealable by right to this Board. 43 CFR 4.1(c).

Aberdeen Idaho Mining Co., 155 IBLA 358, 360 (2001); see also Silver Spot Metals, Inc., 51 IBLA 212, 214 (1980). The Department therefore properly adjudicated the status of all the claims in this appeal.^{2/}

[5] As stated, three categories of lands are at issue: (1) claims on lands that were patented either before or after the claim was located, with a mineral reservation to the United States; (2) claims on lands for which no patent was issued for the claim or any part of the claim; and (3) claims on lands for which patent was issued to a third party before the location date for all or a part of the claim, with no mineral reservation. Despite the complexities of the arguments advanced on appeal, resolution of this case ultimately comes down to this: Either Grover's claims are null and void *ab initio* because they were located on lands in which the mineral estate was held by the United States in trust for the Ute Indians (because the lands had never been patented and remained part of the Uintah Valley Reservation or because they were patented with an express reservation of the mineral estate -- that is, the claims in categories 1 and 2), or they are null and void because, having persisted to 1992, neither Grover nor his predecessor ever complied with the EPA. Regarding the parts of four claims that were patented to third parties without a mineral reservation to the

^{2/} Citing the decision in Aberdeen Idaho Mining Co., BLM acknowledged that "the Department lacks jurisdiction to adjudicate the nature and extent of the rights of the mining claimant as to those parts of the parcels." (Surreply at 4.) Accordingly, to that extent, BLM withdrew its request for *de novo* review. As set forth above, Aberdeen Idaho Mining Co. in no way constrains the Department's authority to determine whether land embraced in a mining claim is Federally owned, and when it is not, to declare putative mining claims null and void. We therefore have reinstated BLM's request *sua sponte*.

United States, no interest Grover has therein can be raised or pursued as a mining claim initiated and maintained under Federal mining law. To the extent Grover's interests in the patented portions of the claims, whatever they may be, are characterized as mining claims, they are properly declared null and void *ab initio*, since no Federal mining claim can arise on private or State lands. Aberdeen Idaho Mining Co., 155 IBLA at 360 and cases cited; MM Holdings, Inc., 121 IBLA 26, 29-30 (1991) and cases cited therein.

[6] We find it unnecessary to delve into and decide all the issues of fact and argument raised by Grover to demonstrate that his claims were validly located on lands open to mineral entry, because doing so would not alter the fact that in 1992 Congress changed the manner in which oil shale claims are to be maintained. Thus, we assume *arguendo*, expressly without determining such matters, that Grover's claims were validly located on lands open to mineral entry^{10/} and proceed to consider their status after the enactment of the EPA in 1992. The decision in Grover III clearly described what was necessary to comply with the EPA: We held that all holders of oil shale claims, except those who had filed a patent and received first half final certificates as of the date the EPA was enacted, are required to a pay \$550 fee per claim per year to maintain possession as against the United States until such time as patent may issue or the claim is otherwise invalidated. 30 U.S.C. § 242(b) (2000); Grover III, 160 IBLA at 254-55. Here, it is undisputed that Grover failed to pay the fees imposed by the EPA after written notice and an opportunity to do so. Moreover, with the issuance of our order on December 23, 2003, inquiring into the status of these claims under the analysis and reasoning in Grover III, he was on notice that the EPA could become an issue in this case, by reason of which he gained a further opportunity to pay the fees. Rather than tender those fees, he chose to argue that the EPA is inapplicable to his claims for various reasons. Notwithstanding those arguments to the contrary, we reiterate our conclusion that "[n]othing in th[e] plain language of the EPA provides a legitimate basis for concluding that Congress intended to relieve a claim holder of the fee requirement

^{10/} We even assume, without deciding the question, that Grover can prove an unbroken chain of title to these claims from the dates they were located to the dates they were acquired by Grover or his predecessor to conclude that he is the party who now owns them. See, e.g., Silverado Nevada, Inc., 152 IBLA 313, 324 n.14 (2000); John C. Heter, 143 IBLA 123, 125 (1998); J & J Building Supply, 145 IBLA 196, 197 (1998), and cases cited therein; Richard L. Goergen, 144 IBLA 293, 297 (1998), and cases cited therein; Helmut Rohrl, 132 IBLA 279, 282 n. 4 (1995); U.S. v. Hiram B. Webb, 132 IBLA 152, 176 (1995); Add-Ventures, Ltd., 95 IBLA 44, 47-48 (1986), vacated and remanded, Civ. No. A87-075 (D. Alaska Feb. 24, 1990); Dist. Ct. reversed, No. 90-35573 (9th Cir. May 15, 1991); 933 F.2d 1013 (unpublished); cert. denied, No. 91-277 (Nov. 12, 1991), 502 U.S. 957; Hugh B. Fate, Jr., 86 IBLA 215, 216-17 (1985).

for a reason not enumerated in the Act itself.” Grover III, 160 IBLA at 256. Accordingly, exercising our *de novo* authority, the decision is affirmed as modified herein.

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.

T. Britt Price
Administrative Judge

I concur:

James F. Roberts
Administrative Judge