

ROCK SOLID INC. AND MINING

IBLA 2004-321

Decided November 9, 2006

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring mining claims and millsites to exceed maximum allowable acreage. NMC 839446 et al.

Affirmed as modified.

1. Mining Claims: Lands Subject to--Mining Claims: Placer Claims

No placer location shall include more than 20 acres for each individual claimant.

2. Mining Claims: Placer Claims

Where evidence of record is conclusive in showing that the mining claimant is a corporation, the submission of a document with eight signatures of individuals as purported members of the claimant group association listing their addresses as the corporate address will be seen as an attempt to substitute the names as "dummy locators" which will cause the claims to be void.

3. Mining Claims: Generally--Mining Claims: Recordation of Certificate or Notice of Location

Where a claimant asserts that a filing with BLM was meant to constitute an amended notice of location, or several of them, such an intent will be discounted where the filing does not conform to state and Federal requirements for an amended location.

APPEARANCES: David A. Hornbeck, Esq., Reno, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Rock Solid Inc. and Mining (Rock Solid) appeals from a July 19, 2004, decision of the Nevada State Office, Bureau of Land Management (BLM), concluding that Rock Solid's "Mining Claims/Sites Exceed Maximum Allowable Acreage." The decision concluded, based on 43 CFR 3842.1-2(b) (2003), that 16 notices (certificates) of location submitted by Rock Solid improperly located 160-acre placer mining claims on behalf of Rock Solid, despite BLM regulations applicable at the time of location which prohibit a claim containing "more than 20 acres for each individual claimant." In addition, the decision concluded that two 40-acre millsite claims exceeded the maximum five-acre size per millsite allowed by 43 CFR 3844.0-3(b) (2003). The decision ordered Rock Solid to amend the claim notices to include only 20 acres per mining claim and five acres per millsite.

The record reveals that on December 30, 2002, Rock Solid submitted to the Nevada State Office of BLM notices of location for 26 mining claims and two millsites along with required service charges and fees. The notices indicated that each claim or millsite was located in October or December 2002. Each notice listed a single locator identified as "Rock Solid Inc. and Mining (RSI Group)."

By decision dated March 25, 2003, BLM declared ten of the mining claims null and void *ab initio* on grounds that they were located on lands that had been transferred out of Federal ownership. Rock Solid did not appeal that decision which is final for the Department.

BLM issued a separate decision dated March 25, 2003, with respect to the 16 remaining placer mining claims. This decision was entitled "Mining Claims with Excessive Acreage." The decision asserted that the following mining claims, each one 160 acres in size, contained excessive acreage under the Mining Law, 30 U.S.C. § 35 (2000), and implementing regulation, 43 CFR 3842.1-2 (2003): Rap 1, Rap 2, Rap 3, Rap 3A, Rap 5, Rap 5A, Rap 5B, Rap 8, Rap 8A, Rap 8B, Rap 8C, Rap 10, Rap 12, Rap 12A, Rap 13, Rap 13A (NMC 839448 - 839454, NMC 839459 - 839462, NMC 839467, NMC 839470 - 839473). BLM explained that the law and regulation provide that mining claims "shall not include more than 20 acres for each claimant." BLM advised Rock Solid to submit an amended certificate of location, along with a \$5 service charge, for each mining claim to reduce the acreage per claim to 20 acres within 30 days of receipt of the decision or face the consequence that the mining claim notices would be rejected. BLM also advised Rock Solid of errors in the Notices of Location for the Rap 3 and Rap 13 mining claims.

By letter submitted to BLM on April 24, 2003, Rock Solid presented a "copy of the group or association qualified individuals, which lists eight of the members." Attached to the letter is a document entitled "Association Placer Claim Group." The

document has signatures representing eight names. The document is not a legal declaration or affidavit, and it is not possible for us to determine that the signatures were penned by eight different individuals. The document is undated, and states that the Agreement was “formed on or before October 1, 2002.” The eight individuals are listed as members of an “Associated Group [which] is formed to explore the world for precious valuable minerals.” The document states that “[a]ll parties to this agreement will have a full legal interest.”

On April 25, 2003, Rock Solid submitted a second letter to BLM stating:

At the request of the group they would like their names and addresses kept confidential. The RSI Group address will be [the same address in Sheridan, Wyoming, as the address for Rock Solid]

Dale Schuelke	Chad Westbrook
Rick Scheulke [sic]	Tim Westbrook
Karen Wyant	Tami Otis
Ron Wyant	Chad Bravek

On July 19, 2004, the Acting Supervisor, Branch of Minerals Adjudication, issued the decision that is the subject of the appeal. For the 16 mining claims identified in the March 25, 2003, decision, BLM referred to its earlier order and stated:

In our decision we asked [] you to submit amended information within 30 days of your receipt. To date we have not received the requested amended certificates [of] location or \$5.00 service charge per claim. However, on April 28, 2003, our office did receive a letter and associate placer claim group form which lists the signature of eight locators indicating they have full legal interest in Rock Solid Inc. and Mining, and/or RSI Group.

(Decision at 1.) The decision proceeded to explain limitations on claim size:

Regulations at 43 CFR 3842.1-2(b) [(2003)] state in part that . . . “all placer-mining claims . . . shall not include more than 20 acres for each individual claimant”. Accordingly, one locator may not exceed 20 acres per placer mining claim. Furthermore, in accordance with 43 CFR 3833.0-5(p), an amended certificate of location may not be used to add additional locators or transfer interest in a mining claim.

Additionally, the RM 1 & 2 millsites (NMC 839446 and NMC 839447) also exceed the maximum allowable acreage. Regulations at 43 CFR

3844.0-3(b) state in part that “Where nonmineral land is needed by the proprietor of a placer claim for mining, milling . . . no location shall exceed five acres.”

BLM concluded that Rock Solid must submit amended location certificates and the required \$5 service charge per claim; the amended certificates must exclude the 140 acres excessive of the 20 acres permitted by law for Rock Solid as a single locator. It ordered Rock Solid to submit amended certificates of location and the required \$5 service charge for each one of the two millsites, reducing each 40-acre millsite to five acres. It also concluded that its “decision of March 25, 2003, is hereby vacated because we erred in requesting amended locator information.”^{1/}

Rock Solid submitted a timely notice of appeal and a subsequent Statement of Reasons (SOR). As a legal matter, Rock Solid argues that its “clear intent” was “to locate valid association placer mining claims by a legitimate association of eight (8) individuals” and that “the omission [of the names] was cured” by the submission of their names and an address for them in April 2003. (SOR at 4.) Rock Solid argues that the April 2003 submission “was effectively an amendment of all the certificates of location,” that such an amendment is allowed by 43 CFR 3833.0-5(p)^{2/} and Nevada mining law, and that the April 2003 letters should be deemed to have cured any defect in the original certificates of location in a way that relates back to the date of the original notice of location.

In addition, Rock Solid points to a letter in the record submitted by a person named Marlon H. Thompson. Rock Solid avers that Thompson was attempting to undermine Rock Solid’s mining claims as evidenced by litigation between Thompson and Rock Solid. See SOR Exhibit A (unsigned order submitted by Rock Solid’s counsel in *Masters, et al. v. Thompson, et al.*, No. CV 03-9418). BLM has filed with this Board a number of submissions made to BLM by Thompson’s representatives and Rock Solid during the pendency of the appeal; they reflect an ongoing dispute between Thompson and Rock Solid.

Nothing in the July 19, 2004, decision issued by BLM on appeal to us refers to, relates to, derives from, or depends on any private dispute between Thompson and

^{1/} We do not find in the Mar. 25, 2003, decision that BLM requested “amended locator information”; accordingly, this portion of the decision is a nullity.

^{2/} The regulations applicable to the notices of location filed with BLM in 2002, and to amended mining claim notices in April 2003, were repromulgated in question and answer format in October of 2003. 68 FR 61071 (Oct. 24, 2003). The rules cited by the parties are correct but do not exist in the current Code of Federal Regulations. Differences in the rules are addressed in the analysis portion of this decision.

Rock Solid. Nor are we called upon to address any matter raised between rival claimants in reviewing the decision. Thus, we consider this information no further.

[1] Turning to the legal issues, it is well-settled that the mining laws limit the acreage which may be located in a single placer claim to 20 acres per individual claimant up to 160 acres for an association of eight individual claimants. See 30 U.S.C. § 36 (2000); 43 CFR 3842.1-2 (2003); James F. Burke, 148 IBLA 95 (1999); Melvin Helit, 144 IBLA 230 (1998). The applicable rule provides that “placer locations shall not include more than 20 acres for each individual claimant.” 43 CFR 3842.1-2 (2003).^{3/} The point of the mining law is that one locator can only locate 20 acres in a placer claim. To locate a single 160-acre claim requires eight locators or claimants. In Owyhee Calcium Products, Inc., 72 IBLA 235, 239 (1983), aff’d, Civ.No. 83-1245 (D. Idaho Sept. 5, 1984), we explained: “Eight associated persons, each qualified to make location, however, are absolutely essential to the initiation and completion of a location for 160 acres.” Clearly, eight or even more claimants may form an association of claimants to locate up to 160 acres. This means a 160-acre placer claim may be located by an association of no less than eight mining claimants, not that it may be located by a single association itself owned or populated by eight individuals.

Referring to its intent to locate “association placer mining claims by a legitimate association of eight (8) individuals,” Rock Solid confuses a legitimate association placer claim, which is one located by an association of claimants, with location of a placer claim by a legitimate association. The latter is allowed, but whatever the legal nature of the claimant, there must be eight of them (individuals or entities) to locate 160 acres. Setting aside the business nature of “Rock Solid Inc. and Mining,” the fact that eight persons have signed a document indicating that they have formed an “associated group” and established an “agreement [in which all] will have a full legal interest” only confirms Rock Solid’s mistaken belief that a single business entity can locate more than 20 acres. Rock Solid’s April 2003 submission of an agreement of eight people to form a group which located the claims confirms that a single entity located them, and each claim must therefore be limited to 20 acres.

[2] Moreover, even if we were to consider whether the eight persons listed as having an equal interest in Rock Solid in its April 2003 letters to BLM might in another case have been permitted to amend the certificates of location to include all of their signatures, the facts here would prohibit that outcome because they indicate that the names were used as “dummy locators” to locate oversized mining claims for a single corporate entity. Such action has been prohibited for years in Board

^{3/} The current rule is found at 43 CFR 3832.22(b)(2). It states that “within an association, each person or business entity may locate up to 20 acres.” See 43 CFR 3832.12(c)(3) (association placer claims are locations by two or more “persons”).

precedent. E.g., Owyhee Calcium Products, Inc., 72 IBLA at 239 (“a valid association location cannot be made by the use of ‘dummy locators’ acting on behalf of others”). Further, it is well-settled that a corporation is a single entity for purposes of locating a placer claim and can locate no more than 20 acres. 1 American Law of Mining § 32.04[1][b] (2d ed. 2006), at 32-34 and n.17 (citations). In Big Horn Limestone Co., 46 IBLA 98, 99 (1980), we held:

BLM has found a crucial deficiency in appellant’s application determining that the eight original locators were “dummy locators” acting on behalf of the corporation. The law clearly provides that no placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2. Within the meaning of 30 U.S.C. § 35 it has been determined that a corporation is an “individual claimant,” and therefore may not locate placer claims of more than 20 acres each. United States v. Toole, 224 F. Supp. 440 (D. Mont. 1963); United States v. Schneider Minerals, Inc., 36 IBLA 194 (1978).

While Rock Solid claims in the April 2003 documents submitted to BLM and in its SOR to be an “association” or “group,” in fact, this assertion is contradicted by its placing the term “Inc.” in its name, and also by the draft order submitted on behalf of Rock Solid as an attachment to the SOR in this appeal and to a Nevada state court judge, at that judge’s apparent request. (SOR, Exhibit A, Sept. 24, 2004, cover letter from David A. Hornbeck, to Judge Iroz.) The draft order contains the heading: “Rock Solid Inc. and Mining, a Wyoming corporation duly registered to do business in Nevada.” (SOR Exhibit A Attachment 1 at 1 (emphasis added).) As a corporation, Rock Solid was limited to locations of 20 acres per claim.

The use of dummy locators in an attempt to appropriate more than 20 acres per bona fide individual claimant “is a fraud upon the United States” which can cause the entire claim to be void. 1 American Law of Mining § 32.04[3][b] (2d ed. 2006), at 32-42 to 32-42.1 and n.86 (citations). This is the rule in this forum:

If a locator has knowledge of a concealed interest and is a party to the use of dummy locators, the location is deemed fraudulent and is invalid in its entirety. Cook v. Klonos, 164 F. 529 C.C.A. 402 (1908), modified on other grounds, 168 F. 700, 94 C.C.A. 144 (1909); Alumina Development Corp., 77 IBLA 366 (1983).

Donald D. Hall (On Reconsideration), 95 IBLA 36A (1987). Notably, the Department promulgated this precedent as a rule in 2003. “You may not use the names of other persons as dummy locators (fictitious locators) to locate an association placer claim

for your own benefit.” 43 CFR 3832.22(b)(2). We find that Rock Solid has submitted the eight names as “dummy locators” and, for these reasons, hold that the mining claims located by Rock Solid are void and invalid and the decision is modified accordingly.^{4/}

[3] We also find no amendments of the certificates of location in this record. BLM regulations applicable at the time specified that an “amended location” “means a location that is in furtherance of an earlier location” to clarify defects in an earlier location. It may not transfer the mining claim or “add owners.” 43 CFR 3833.0-5(p) (2003). There is nothing in the record constituting an amended location notice or certificate for any one of the mining claims. Though Rock Solid alleges that its submission of its April 2003 letters “was effectively an amendment of all of the certificates,” we find no rule or precedent suggesting that a letter to BLM with an attached list of group members can constitute a single certificate of location, let alone 18 of them, or a single or multiple amended location notice(s). This is especially true given the failure of Rock Solid to identify any certificate of location it was seeking to amend. Amendment of a notice of location cannot be accomplished by inference; a notice of location can only be amended by an amended notice. Moreover, to the extent the original location notices identified the corporate entity as a locator, any attempt to substitute eight individuals as the locators would either constitute a transfer of the claims to them or “add owners” to the notices. Both actions are prohibited by the rule defining “amended location.” 43 CFR 3833.0-5(p) (2003); see also 43 CFR 3833.21(b) (amended location cannot transfer interest or add owner).

Another Departmental rule, 43 CFR 3833.1-4(d), requires that “[a]mendments to a previously recorded notice of location shall be accompanied by a nonrefundable service charge of \$5.00 for each mining claim [or] mill site.” Failure to submit the service charge required for “amended locations filed under 3833.1” will cause the amendment to be rejected and returned to the owner. 43 CFR 3833.1-3(c)(1) (2003); see 43 CFR 3833.22 (amended location notice must be recorded with BLM within 90 days of recordation with State, service charges required). Had Rock Solid intended to amend its notices of location, presumably it would have submitted the \$90 (\$5 x 18) necessary to do so. It did not. In Daddy Del’s, Inc., 151 IBLA 229, 234 (1999), we found that the failure of the mining claimant to conform to the fee requirements attendant on submission of relocation notices confirmed that relocation

^{4/} The fact that the eight signatures on the “group” document submitted in April 2003 are dummy locators is further supported by the fact that none of them is listed as having an individual address, but rather each lists his or her address as the address of the corporation. The applicable rule, 43 CFR 3833.1-2(b) (2003), required that each notice of location include names and addresses of the locators. See also 43 CFR 3832.11(c)(3)(i) (to locate a claim requires posting name and “addresses of the locators”).

was not the intent of the claimant. See Melvin Helit, A-Able Plumbing, Inc., 110 IBLA 144, 151 (1989) (claimant's "fail[ure] to record each claim with BLM as an original location including payment of the proper filing fee" amounts to abandonment of the claim). Similarly, here, Rock Solid's failure to follow the requirements attendant on submitting amended location notices, including payment of fees required to do so, confirms that Rock Solid had no intention of amending any mining claim (or millsite) notice. Thus, we reject Rock Solid's assertion that it submitted an amended location certificate for any mining claim or millsite.

Finally, we address the millsites (NMC 839446 and 839447). BLM is correct that 43 CFR 3844.0-3(b) (2003) limits millsites to five acres in size. This rule now appears at 43 CFR 3832.32 ("maximum size of an individual mill site is 5 acres"). The limitation on acreage is statutory. 30 U.S.C. § 42(b) (2000). The July 19, 2004, decision correctly directed Rock Solid to amend its location notices to limit the millsites to five acres each. But this result no longer pertains. Unless it is established as an independent millsite for a "quartz mill or reduction works," a millsite may only be located in association with a valuable mineral deposit. 30 U.S.C. § 42 (2000). The certificates of the location for the RM 1 and RM 2 millsites make clear that they are dependent millsites located in support of the "Rap claims." See 43 CFR 3832.31(a) (dependent millsites). Under 30 U.S.C. § 42(b) (2000), a millsite of nonmineral land is one "needed by the proprietor of a placer claim" for milling. Because we have declared void the "Rap" placer claims upon which the RM 1 and RM 2 millsites are expressly dependent, the millsites cannot be found to be needed by Rock Solid as the proprietor of those placer claims. Accordingly, the millsites are void and the decision is modified accordingly.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as modified to declare the millsites and mining claims located by Rock Solid Inc. and Mining void as a matter of law.

Lisa Hemmer
Administrative Judge

I concur:

James Jackson
Administrative Judge