



TAI KIM, *ET AL.*

180 IBLA 145

Decided November 17, 2010



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

TAI KIM, *ET AL.*

IBLA 2010-182

Decided November 17, 2010

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Black Krim placer mining claim null and void *ab initio* because its description on the location notice does not conform to regulatory requirements. CAMC 292073.

Set aside and remanded.

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

A claimant must locate and describe a placer mining claim as compact and regular in form as reasonably possible and the description should conform to the U.S. Public Land Survey System and its rectangular subdivisions as much as possible.

2. Administrative Review--Generally

BLM's decisions must be supported by a rational basis, and that basis must be stated in the written decision and demonstrated in the accompanying administrative record. A BLM decision that does not provide a rational basis may properly be set aside.

3. Mining Claims--Location: Mining Claims--Placer Claims: Patents of Public Lands--Generally

Patented lands without a reservation of minerals to the United States are not open to mineral location. Those portions of a placer mining claim that overlap patented lands without such mineral reservation are null and void.

#### 4. Mining Claims--Placer Claims

Lands within an association placer mining claim must be contiguous. If a placer mining claim includes noncontiguous tracts, a claimant must elect which tracts to preserve under the original claim.

APPEARANCES: Tai Kim, Happy Camp, California, Rachel L. Krasner, Happy Camp, California, Julia Schreiber, Happy Camp, California, Eli Sarnat, Happy Camp, California, Philip D. Leighton, Portola Valley, California, Joan K. Leighton, Portola Vally, California, David Kim, Carmel Valley, California, Jean Kim, Carmel Valley, California, *pro sese*.

#### OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Tai Kim, Rachel L. Krasner, Julia Schreiber, Eli Sarnat, Philip D. Leighton, Joan K. Leighton, David Kim, and Jean Kim (collectively, Claimants) have appealed from a June 4, 2010, decision of the California State Office, Bureau of Land Management (BLM), declaring the Black Krim association placer mining claim (CAMC 292073) null and void *ab initio* because the location notice for the claim failed to conform to regulatory requirements. For the reasons discussed below, we set aside BLM's decision.

#### *Background*

Claimants located the Black Krim mining claim on April 1, 2008, within secs. 24 and 25 of T. 16 N., R. 7 E., Humboldt Meridian, Siskiyou County, California, and filed a copy of the location notice for recordation with BLM on April 18, 2008, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (2006). The location notice included a description of the claim in specific aliquot parts according to the U.S. public land survey system, together with a copy of a portion of a topographical map depicting the claim's location.<sup>1</sup> See

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<sup>1</sup> BLM's Master Title Plat shows that T. 16 N., R. 7 E., is only partially surveyed, with secs. 24 and 25 lying in that part of the township delineated by protraction diagram.

43 C.F.R. § 3832.12(a). The legal description itself amounts to a total of 160 acres,<sup>2</sup> but there is a notation at the end of the description that states: “\*Excluding from this claim any Private Land infringed upon.” The location notice states that the claim contains a total of approximately 152 acres.

In its June 4, 2010, decision, BLM states that “[t]he practice of carving irregular swaths out of the public domain makes management of the remaining lands difficult for the federal agencies,” and “those filing a mining claim with the BLM are required to inform the BLM with such exactitude as to the location of their mining claim that the BLM can locate the claim on the ground . . . . The description of the land must be arranged in a reasonably compact and regular form as is possible.” The decision mentions that placer claimants must place their location monument in conformity with State law, and that “all Placer mining claims shall conform as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys.” BLM concluded:

The claim as describe[d] on the location notice and as shown on the map is contrary to the above listed statutory mandates. The description does not conform to the requirements listed in the regulations. Thus there are fatal flaws in the location notice. The location is so indefinite as to be in non-compliance with the regulations.

BLM then declared the claim null and void *ab initio*, citing *Melvin Helit*, 147 IBLA 45 (1998).

On appeal, Claimants argue that the claim’s description “has been arranged in a reasonably compact and regular form.” Statement of Reasons (SOR) at 1. They then indicate that BLM told them that “aliquot parts of ten (10) acres or less are contrary to the arrangement of a reasonably compact and regular form,” because BLM must be able to locate the claim on the ground. *Id.* In response, Claimants

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<sup>2</sup> The location notice describes the claim as 4 separate parcels in sec. 24 and 9 separate parcels in sec. 25. For convenience, we identify each of the parcels by section and then by consecutive numbers. The claim description is as follows: Sec. 24 (1) E<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> (20 acres), (2) NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> (2.5 acres), (3) W<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> (20 acres), (4) W<sup>1</sup>/<sub>2</sub>E<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> (10 acres); Sec. 25 (1) S<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> (5 acres), (2) NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> (10 acres), (3) S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> (5 acres), (4) E<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> (10 acres), (5) W<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> (5 acres), (6) N<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> (20 acres), (7) SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> (2.5 acres), (8) W<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub> (40 acres), (9) NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> (10 acres).

assert that “all aliquot parts of ten (10) acres or less are so specifically for the purpose of maintaining the boundaries of the claim as closely as possible to [the] path of the waterway, Elk Creek.” *Id.* Finally, Claimants state that a claim adjacent to theirs is described solely by aliquot parts of ten or fewer acres and yet BLM has not reviewed and invalidated that claim, suggesting “unjust and unfair treatment.” *Id.* at 2.

### *Discussion*

[1] To locate a placer mining claim, a claimant must stake and monument the corners of the claim consistent with state monumenting requirements and post a notice of location in a conspicuous place on the claim. The location notice must, among other things, include a description of the claim and be recorded in the local recording office and the BLM State Office with jurisdiction. 43 C.F.R. § 3832.11(c). “The claim must be described by state, meridian, township, range, section and by aliquot part to the quarter section,”<sup>3</sup> using an official survey plat or other U.S. Government map based on the surveyed or protracted U.S. Public Land Survey System. “In all cases, your description of the land must be as compact and regular in form as reasonably possible and should conform to the U.S. Public Land Survey System and its rectangular subdivisions as much as possible . . . .” 43 C.F.R. § 3832.12(a). An individual placer claim may not encompass more than 20 acres, but up to eight associated co-locators may each locate up to 20 acres to jointly locate an association placer claim, not to exceed a total of 160 acres. 43 C.F.R. § 3832.22(b).

Here, Claimants located the Black Krim claim and described it as encompassing a total of 160 acres, but excluding private lands on which it infringed. Although the township within which the claim was located is only partially surveyed, and the specific area of the claim is unsurveyed, there is a protracted survey of record. Placer claims located on unsurveyed public lands where there is a protracted survey of record must be described by protracted survey. Claimants in this case described the claim by protracted survey.

[2] BLM’s decision provides no rational basis for declaring the Black Krim claim null and void *ab initio*. It merely recites the basic statutory and regulatory

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<sup>3</sup> Aliquot part is defined as “a legal subdivision of a section of a township and range . . . by division into halves or quarters.” 43 C.F.R. § 3830.5.

requirements<sup>4</sup> for claim descriptions, but does not specify how the claim violates any specific requirement. The sole inference in the decision, that the claim is so inexactly described that it cannot be located on the ground, has been effectively rebutted by Claimants' statement in their SOR and by the claim's description in the location notice and the associated claim map. The decision fails to even acknowledge that the claim is described by aliquot part according to the public land survey system in contiguous parcels ranging in size from 2.5 acres to 10 acres. Although Claimants suggest that BLM made its decision based on the "conviction" that claims cannot be described by aliquot parts of less than 10 acres because that is "contrary to the arrangement of a reasonably compact and regular form," SOR at 1, no such rationale appears in the decision itself. Even if that rationale were evident in BLM's decision, it could be subject to dispute.<sup>5</sup>

Finally, although the decision refers to our *Melvin Helit* case as justification for not providing Claimants an opportunity to conform their location to the public land survey system, BLM misreads that decision. In *Melvin Helit*, BLM declared those portions of the claims which overlapped existing rights-of-way null and void, noted that because of the rights-of-way the claim was divided into noncontiguous parcels, and provided the claimants 30 days to file an amended location notice. 147 IBLA 45, 47 (1998). Upon the claimants' submission of an amended location notice, which did not correct the claim location, BLM rejected the recordation of the claim and held the claim was abandoned by operation of law. *Id.* The Board set aside the BLM decision with respect to its rejection of the claim for recordation, but affirmed BLM's declaration that the claim was void, modifying BLM's decision to show that the claim was void because the claim improperly contained noncontiguous parcels (after claimants' failure to correct the claim location) and because the claim was 100 feet wide and more than 12 miles in length, violating the requirement that the claim

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<sup>4</sup> BLM's decision states the claim violates "the above listed statutory mandates," see page 4 *supra*, but the decision lists no statutory mandates other than a reference to sec. 314 of the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (2006). All other references are to BLM's regulations.

<sup>5</sup> The Department has, under certain circumstances, found that a placer mining claim consisting of contiguous tracts of land each smaller than 10 acres conforms to the public land survey system. See, e.g., *Charles H. Henrikson and Oliver M. Henrikson*, 70 I.D. 212, 220 (1963); see also 30 U.S.C. § 36 (2006) ("Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof . . .") (emphasis added).

conform to the public land survey system. *Id.* at 48-49. In the instant case, the Black Krim claim, which extends just over 1 mile in length and generally is approximately 660 feet wide, does not resemble the claim at issue in *Melvin Helit*.

We have long held that BLM's decisions must be "supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the administrative record accompanying the decision." *Larry Brown & Associates*, 133 IBLA 202, 205 (1995). In this case, BLM provides no such rational basis in its decision, and none is demonstrated in the administrative record. Therefore, the decision must be set aside and the matter remanded to BLM.

[3] The record presents another issue BLM may wish to consider on remand. The description of the Black Krim claim states that it excludes from the claim "any Private Land infringed upon." Our review of the Master Title Plat for the involved township reveals that some of the parcels of the claim within section 25 overlie a homestead entry patented in 1928, patent no. 1020391, that encompasses almost 27 acres. Patented lands without a reservation of minerals to the United States are not open to mineral location. In this case, the homestead entry was patented without a reservation of minerals, and those portions of the Black Krim claim that overlap the patented lands are null and void *ab initio*. *Yellow Aster Mining and Milling Co.*, 130 IBLA 234, 235 (1994).

[4] In addition, it appears that the overlap of the section 25 claim parcels 3, 4, 5, 6, and 7 with the patented land breaks the claim's contiguous parcels into noncontiguous parcels. Lands within an association placer claim must be contiguous. 30 U.S.C. § 36 (2006) ("associations of persons, having contiguous claims of any size . . . may make joint entry . . ."); *Melvin Helit*, 147 IBLA at 48; *Robert J. Collins*, 129 IBLA 341, 344 (1994). "Separate tracts which are not contiguous are not subject to a single location and, hence, appellants must elect which tracts they wish to preserve under their original claim." *Robert J. Collins*, 129 IBLA at 344.

*Conclusion*

BLM fails to provide a rational basis for its decision in this matter. 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 set aside and remanded to BLM for action consistent with this decision.

\_\_\_\_\_/s/\_\_\_\_\_  
H. Barry Holt  
Chief Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
Bruce R. Harris  
Deputy Chief Administrative Judge