

NOTE: This disposition is nonprecedential.

United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
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January 28, 2016

IBLA 2015-95	)	CMC 286813
	)	
STEVE WINE	)	Mining Claim Null & Void <i>Ab Initio</i>
	)	
	)	Decision Affirmed in Part and Set
	)	Aside and Remanded in Part;
	)	Request for Stay Denied as Moot

ORDER

Steve Wine (Appellant) appeals from and petitions for a stay of the effect of a December 16, 2014, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring the All American unpatented lode mining claim (CMC 286813) null and void *ab initio* because it was located on lands not open to mineral entry at the time of location. For the reasons stated below, we affirm in part and set aside and remand in part BLM's decision. We also deny Appellant's petition for stay as moot.

*BACKGROUND*

Appellant filed a Certificate of Location (COL) and map for the All American claim with BLM on September 18, 2014, as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (2012). The COL and attached map placed the claim in the E½ sec. 35, T. 6 S., R. 77 W., Sixth Principal Meridian, Summit County, Colorado.

In its December 2014 decision, BLM declared the claim null and void *ab initio* because it was located on lands not available for mineral entry. According to BLM, the location notice and map included lands that are not owned by the United States because they were patented prior to Appellant's attempted location, as well as lands owned by the United States but not open to location by virtue of their "Weeks Act status." Decision at 1-2. Appellant appealed BLM's decision and petitioned for a stay of the effect of the decision during the pendency of his appeal.

## DISCUSSION

The determinative issue in this case is whether the lands in question were open to entry when the All American claim was located. It is well settled that the portions of mining claims located on lands closed to mineral entry are null and void *ab initio*. See, e.g., *Dan Adelman*, 169 IBLA 13, 17 (2006); *Mineral Hill Venture*, 155 IBLA 323, 329 (2001). However, it may be improper for BLM to declare a lode mining claim null and void *ab initio* in its entirety where it is located only partially on land unavailable for location. *Fred E. Harding*, 140 IBLA 398 (1997); *Kaiser Steel Resources, Inc.*, 135 IBLA 340, 342 (1996); *Butte Lode Mining Co.*, 131 IBLA 284, 288-89 (1994); *Raymundo J. Chico*, 115 IBLA 4, 5 (1990); *Santa Fe Mining, Inc.*, 79 IBLA 48, 51-52 (1984). Where a lode mining claim is located partially on land unavailable for location, the locator must have located the claim on land that is available for mineral entry for any part of the claim to be considered properly located. *Santa Fe Mining, Inc.*, 79 IBLA at 50. A claim location on patented land or on land withdrawn from location under the mining law is properly held to be void *ab initio* because such land is not open to the operation of the mining laws. *Id.*

### A. Portions of the Claim on Patented Lands Null and Void “Ab Initio”

BLM declared the All American claim null and void *ab initio* on the basis that the subject lands were not open to entry. BLM stated that the All American claim “crosses over land that has been transferred out of Federal ownership within the following patents: #2772 issued 3/16/1878, #17308 issued 3/4/1891, #26712 issued 4/6/1896, and #27448 issued 10/6/1896.” Decision at 1.

The record includes a copy of the Master Title Plat (MTP) for T. 6 S., R. 77 W., Sixth Principal Meridian, Summit County, Colorado, which depicts numerous portions of sec. 35 as being transferred out of United States ownership via multiple mineral patents. The record also contains two maps on which BLM has overlain Appellant’s location information on a portion of the MTP. On one map (Map 1), which depicts the location as described in the COL, portions of the lands sought to be located overlap Patent Nos. 27273,<sup>1</sup> 27448, 26712, and 17308. On the other map (Map 2), which depicts the location as illustrated on the map attached to the COL, portions of the lands sought to be located overlap Patent Nos. 27273 and 27448. It is clear from these materials that BLM properly determined that Appellant sought to locate portions of the All American claim on lands that were transferred out of United

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<sup>1</sup> In its Decision, BLM does not state that Appellant’s claim overlaps in part Patent No. 27273, but both of BLM’s Maps show this to be the case. The record does not include General Land Office Mineral Certificates for Patent No. 27273, as it does for Patent Nos. 17308, 26712, and 27448.

States ownership and thus were unavailable for mineral entry. We therefore affirm BLM's decision declaring those portions of the All American claim null and void *ab initio*.

*B. Portions of the Claim on Lands with "Weeks Act Status"*

The record, however, does not contain sufficient evidence to support BLM's statement that other lands Appellant sought to include in his claim are owned by the United States but are not open to location by virtue of their "Weeks Act status." BLM states only that "the land and minerals within patent # 2772 were acquired back to the United States," and that such "reacquired lands and minerals have Weeks Act status which forecloses the land to the location of mining claims under the United States general mining laws." Decision at 2.

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, 522, and 563 (2012), are not subject to location under the mining laws, except upon such terms and for such periods as the Secretary of the Interior<sup>2</sup> may determine to be in the best interests of the United States. 16 U.S.C. § 520 (2012). Such acquired lands "shall be permanently reserved, held, and administered as national forest lands." 16 U.S.C. § 521 (2012); *see Mark Miller*, 174 IBLA at 402-404. In the absence of the Secretary's approval, such lands cannot be mined. Thus, a mining claim located on such lands is properly declared null and void *ab initio*. *Melvin Franzen*, 92 IBLA 20, 21 (1986).

The MTP shows that the majority of lands where Appellant sought to locate his claim were conveyed out of United States ownership in 1878 by mineral Patent No. 2772, but were reconveyed to the United States in 2000. This is indicated by the following notation on the Supplemental MTP: "COC 62547 QCD to US All Min NOM Recon to US." The record includes a copy of a Warranty Deed reconveying the surface estate of these lands and a Quitclaim Deed reconveying the mineral rights underlying them to the United States on May 30, 2000. Both deeds contain citations to the General Exchange Act of March 20, 1922, 16 U.S.C. §§ 485 and 486 (2012), *amended by* Act of Feb. 28, 1925, 43 Stat. 1090, and Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1715, 1716 (2012). Decision at 1. These documents confirm BLM's finding that both the surface and subsurface estates

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<sup>2</sup> In 1946, under section 402 of Reorganization Plan No. 3, 60 Stat. 1099, Congress transferred the functions of the Secretary of Agriculture with respect to uses of mineral deposits under the Act of March 4, 1917, 16 U.S.C. § 520 (2012), to the Secretary of the Interior. *See Mark D. Miller*, 174 IBLA 398, 402 n.3 (2008).

described in Patent No. 2772 were reconveyed to the United States as part of a land exchange.

However, the record provides no documentation to support BLM's statement that the "reacquired lands and minerals have Weeks Act status." *Id.* at 2. There is only the notation on the MTP that the lands subject to Patent No. 2772 were reconveyed to the United States. In the absence of such evidence, the Board will set aside and remanded a BLM decision declaring mining claims void *ab initio*. *Mark D. Miller*, 174 IBLA at 398. In an earlier order in that case we set aside and remanded BLM's decision because "the case file failed to show that title to the subject lands had been accepted by the Secretary of Agriculture, and BLM had not submitted the documentation the U.S. Forest Service (FS) relied upon or evidence of acceptance of title that triggers the applicability of the Weeks Act." *Id.* at 400. The same is true here. Because the record contains insufficient evidence to support BLM's conclusion that some lands Appellant sought to locate are not available for location by virtue of their being subject to the Weeks Act, we will set aside and remand BLM's decision with respect to those lands.

### *C. Portions of the Claim on Lands Open to Mineral Entry*

In addition, BLM has highlighted, as open to location, small areas of land within the boundaries of the All American claim as shown on the maps created—Map 1 depicting the location as described in the COL and Map 2 depicting the location as illustrated on the map attached to the COL. BLM thereby indicates that at least one portion of the land Appellant sought to locate is open to location. We have held on numerous occasions that it is improper for BLM to declare a lode mining claim null and void *ab initio* in its entirety where it is located only partially on land unavailable for location. In *Santa Fe Mining, Inc.*, we stated, with regard to "partial location of lode claims on patented or withdrawn land," that "such claims are *not* null and void *ab initio* to the extent of their inclusion of such lands." 79 IBLA at 51. We explained: "While those claims may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of claim of that kind might, in the proper circumstances, invest the claimant with extralateral rights in *other* land beyond or adjacent to that land which is closed to mineral entry." *Id.* (emphasis in original); *see also, e.g., Fred E. Harding*, 140 IBLA 398 (1997). Therefore, we will set aside and remand BLM's decision with respect to the lands it has indicated are open and available for location.

Appellant has offered no argument or evidence showing error in BLM's determination that the All American claim is located in part on lands patented out of United States ownership. Nor does he provide any evidence to undermine BLM's statement that the reconveyed lands owned by the United States are not available for

location because they were subject to the Weeks Act. Rather, Appellant argues that he “noticed that there is enough uncertainty from the Colorado office as to the true location of the claim to warrant further investigation.” Statement of Reasons at unpaginated 1. He states that he is unable to verify the location of the claim because it is at a high elevation under several feet of snow. *Id.* He also notes that he has refiled the claim several times in past years without the location being questioned by BLM. *Id.* He “propose[s] that a delay in the decision be set until [he is] able to provide proof of our location that will assist the BLM in determining the true location” of the claim. *Id.*

As discussed above, the record shows that at the time of location some of the lands Appellant sought to locate were not available for location by virtue of their being patented and therefore not owned by the United States. Appellant has provided no evidence to the contrary. We therefore conclude that BLM was correct in declaring those portions of the All American null and void *ab initio* and affirm its decision with respect to those patented lands.

However, we conclude that the record contains insufficient evidence to support BLM’s conclusion that certain other lands Appellant sought to locate are not available for location by virtue of their being subject to the Weeks Act. As in *Mark D. Miller*, we find that “the record [is] insufficient to decide the matter.” 174 IBLA at 399. We therefore set aside BLM’s decision and remand the case to BLM for further review and action regarding the reacquired lands subject to Patent No. 2772.

Last, the record demonstrates that both the COL and attached map depict small areas of land that, according to BLM, are open to location. The record does not provide information as to whether Appellant bases his location based on a discovery on land open to mineral entry. BLM must make such a determination before declaring the mining claim null and void *ab initio* in its entirety. See *Santa Fe Mining, Inc.*, 79 IBLA at 50. Therefore, we set aside BLM’s decision and remand this question for further review and action consistent herewith.

Accordingly, 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 affirmed in part and set aside and remanded in part for further action consistent with this decision, and the request for a stay is denied as moot.

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/s/  
James F. Roberts  
Deputy Chief Administrative Judge

I concur:

\_\_\_\_\_/s/  
Eileen G. Jones  
Chief Administrative Judge