

BRACE C. CURTISS

IBLA 72-439

Decided May 22, 1973

Separate appeals from two decisions of the Nevada State Office, the first decision declaring the Twin Metals Vein No. 2 lode mining claim null and void ab initio, the second rejecting application, Nev-065769, to purchase a part of that mining claim under the Mining Claims Occupancy Act.

The first decision is reversed, the second is affirmed.

Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land --  
and Reservations: Effect of

Withdrawals

A mining claim, located at a time when the land is withdrawn from mineral entry, is null and void ab initio and may be so declared without a hearing.

Mining Claims: Hearings -- Mining Claims: Lands Subject to -- Mining  
Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

Where a mineral claimant asserts that his claim was not located on land withdrawn from entry under the mining laws, and the record indicates that part of the claim was not located on withdrawn land, the entire claim cannot be declared null and void ab initio without contest proceedings.

Mining Occupancy Act: Generally -- Words and Phrases

The term "improvements" includes any structures of a permanent nature placed upon land which tend to increase the value of land but excludes a house trailer or other mobile property which is not permanently affixed to the land.

Mining Occupancy Act: Qualified Applicant

A qualified applicant for conveyance of land under the Act of October 23, 1962, must have been, on that date, a residential occupant-owner of valuable improvements in an unpatented mining claim which constituted for him a principal place of residence, and where there were not, on that date, permanent improvements

on the land suitable for residence, an applicant is not qualified under the Act, and his application is properly rejected.

APPEARANCES: Ellis R. Ferguson, Esq., Reno, Nevada, for appellant.

#### OPINION BY MR. FISHMAN

Brace C. Curtiss has filed separate appeals from two decisions of the Nevada State Office, Bureau of Land Management, both dated April 24, 1972.

One decision declared his Twin Metals Vein No. 2 lode mining claim to have been void ab initio, for the reason that it was located on land withdrawn from mineral entry at the time of location.

The other decision rejected his application Nev-065769, filed under the Mining Claims Occupancy Act of October 23, 1962, as amended, 30 U.S.C. §§ 701-709 (1970), to purchase a part of that mining claim. The rejection was based upon a finding that the house trailer he moved onto the land applied for did not constitute a qualifying "improvement" within the ambit of 30 U.S.C. § 702 (1970).

On April 12, 1965, appellant filed a petition, in accordance with 43 CFR 2551.1, with the Nevada State Office requesting that it issue him a statement of belief as to the validity of his mining claim. He also filed on that date his application to purchase part of the mining claim under the provisions of the Mining Claims Occupancy Act.

Appellant's application describes the mining claim as being situated in the W 1/2 SE 1/4 NE 1/4 SW 1/4 sec. 28, T. 20 N., R. 20 E., M.D.M., Washoe County, Nevada. This would be an area of, at most, five acres. On April 25, 1972, the State Director for the Bureau of Land Management issued a statement of belief that the mining claim is invalid.

On June 13, 1967, the claim was examined by H. W. Mallery, district geologist, Bureau of Land Management, Carson City, Nevada. Mallery's report, dated April 4, 1968, based on this examination, states, in part, as follows:

The Twin Metals No. 2 lode is situated in T. 20 N., R. 20 E., [M.D.M., Washoe County, Nevada] and as far as could be determined, using the SE and the S 1/4 corner

of section 28 for control, lies in the SE 1/4 SW 1/4, NE 1/4 SW 1/4 and SE 1/4 NW 1/4 of section 28 \* \* \*

It should be made clear at this point that no contest proceedings were instituted against the mining claim in question and no hearing was held on the question of the validity of the claim prior to the rendering of the decision below which declared appellant's mining claim null and void. In this regard that decision stated as follows:

When all the factors pertaining to the legality of a mining claim are shown by the records of the Bureau of Land Management, the case may be decided by administrative decision without a formal contest proceeding.

After mistakenly indicating that the claim in question was located only within the NE 1/4 SW 1/4 sec. 28, T. 20 N., R. 20 E., M.D.M., Washoe County, Nevada, that decision, in pertinent part, states as follows:

Examination by our field representative revealed that the Twin Metals Vein No. 2 (aka Twin Metals; Wedekind Vein No. 2; Twin Metals No. 2; Wedekind Vein; Wedekind Vein No. 2) were [sic] located February 17, 1940 and recorded February 20, 1940 in Volume U page 265 of Washoe County records. The records also shows the following relocations:

<u>Date</u>	<u>Volume</u>	<u>Page</u>
February 19, 1942	U	582
May 12, 1947	W	72
February 4, 1948	W	207
November 19, 1954	I	481
April 14, 1958	21	182

The records of the Nevada State Office show that on the date of location and dates of relocation of the above-cited mining claim, the lands described above were unavailable for mineral entry by reason of a withdrawal from public entry, under the first form of withdrawal, as provided in Section 3, Act of June 17, 1902 (30 Stat. 388). The withdrawal order was signed by the Secretary of the Interior on December 10, 1920 and remained in effect when the above claims were located and recorded. Therefore, Twin Metals Vein No. 2 is hereby declared to

be null and void ab initio as the location thereof conferred no rights upon the claimants, since the claims were located subsequent to the aforesaid Secretarial Order of December 12, [1920] when the land was not open to mineral entry.

In his appeal from that decision, appellant presents arguments and evidence to establish that the records of the Nevada State Office do not show that the land covered by the claim was unavailable for mineral entry on the dates of location, relocation, or amended location of the claim, but in fact show that the land was either in whole or in part open to entry. Therefore, appellant argues that it was error for the State Office to declare the claim invalid without contest proceedings. Accordingly, he asks that the decision be reversed.

We agree with appellant. It is clear from the record that the claim was apparently located and relocated sometime during the period 1940-1958, and that during that entire period a portion of the lands covered by the claim was open to mineral location, e.g., lot 6, sec. 28, T. 20 N., R. 20 E., M.D.M., Nevada.

It is well established that a mining claim located on land withdrawn from mineral entry is null and void ab initio, and is properly declared so without a hearing where the records of the Department show that at the time of location the land was not open to mineral entry. Norman A. Whittaker, 8 IBLA 17 (1972); see Ralph Page, 2 IBLA 262, 78 I.D. 167 (1971).

However, it is equally well established that a mining claim can be declared null and void without a hearing only if there is no dispute as to the record facts underlying the determination of invalidity. W.J.M. Mining and Development Company, 10 IBLA 1 (1973); see Mr. and Mrs. Ted R. Wagner, 69 I.D. 185 (1962); John D. Archer, Stephen P. Smoot, 67 I.D. 181 (1960).

Accordingly, it was error to declare the Twin Metals Vein No. 2 claim invalid in toto without a hearing as to the portion of the claim which the record indicates was open to mineral entry at the time of location. Wesley Laubscher, 4 IBLA 246 (1972).

We note that the "discovery point" and almost all of the workings were located on land that was closed to mineral entry. Such a showing does not make the entire claim void ab initio. See Grassy Gulch Placer Claim, 30 L.D. 191 (1900).

We turn now to a consideration of the State Office decision rejecting Curtiss' application to purchase a part of the mining claim pursuant to the provisions of the Mining Claims Occupancy Act.

30 U.S.C. § 702 (1970) provides as follows:

For the purposes of this chapter a qualified applicant is a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962.

The record shows that Curtiss moved onto the claim in a trailer in 1947, and that at present he still has only a trailer on the claim. The trailer is an old 8 x 30 foot, 2-axle small house trailer setting on its wheels. The only other structure is an outhouse. The outhouse was also placed on the claim in 1947.

The State Office decision recited:

On April 12, 1965 you filed a Mining Claim Occupancy Act application identified as Nev. 065769. This application is hereby denied for failure to construct valuable improvements on the unpatented mining claim. The term "improvements" [in 30 U.S.C. § 702 (1970)] includes any structure of permanent nature placed upon land which tend to increase the value of land but excludes a house trailer or other mobile property which is not permanently affixed to the land. (See Stanley C. Haynes, 73 I.D. 373 (December 2, 1966)) [Emphasis in the original.]

The last sentence of the quoted portion of the decision is, as a statement of law, correct. Implicit in the quoted portion of the decision was a finding that Curtiss' house trailer was not permanently affixed to the land.

Appellant in his appeal from that decision asserts that the principles and criteria set forth in Haynes, supra, should be used to determine whether or not Curtiss' house trailer was or was not permanently affixed to the land. We agree.

Accordingly, we must examine the facts in the record in light of the criteria of Haynes to determine if Curtiss' trailer was or was not permanently affixed to the land.

The pertinent principles and criteria set forth in Haynes, and their application therein, were as follows:

The term "improvements" is defined in the Bureau's Glossary of Public Land Terms as "[s]tructures or developments of a permanent nature which tend to increase the value of land, such as buildings, fences, clearing, wells, etc." (Italics added.) This definition is in accord with standard definitions of the term [footnote omitted].

In explaining the language of the bill which ultimately became the act of October 23, 1962, the Senate Committee on Interior and Insular Affairs stated that:

The term "valuable improvements" is intended to include a presently habitable residence which has been used for this purpose, plus other accessory buildings incidental to residence, such as a tool shed, garage, barn, or chickenhouse presently fit for use. S. Rept. No. 1984, 87th Cong., 2d Sess. 7 (1962).

The explanation thus given does not suggest a different meaning for "improvements" from that which is ordinarily to be understood. It merely emphasizes that the "valuable improvements" which qualify an applicant under the act must include a structure which is suitable, and has been used, for residence and that the improvements must be presently fit for use. The "habitable residence," then, must be a permanent building which tends to increase the value of the land.

It is, perhaps, not possible to state categorically whether or not a mobile trailer home may be considered an improvement. \* \* \*

\* \* \* \* \*

\* \* \* Thus, while it would seem obvious that moving a trailer house onto a tract of land does not, per se, constitute improvement of the land, we think it is equally clear that a trailer house may, by use and intent, be permanently affixed to the land in such a manner as to become an improvement.

There are, in the present case, certain factors which could suggest appellant's intent permanently to affix the house trailer to the land, notably, the period of time over which the trailer has been left on the mining claim without being moved (presumably since sometime in 1962) and the connection of the trailer to a cesspool or septic tank and, through a meter, to electricity. On the other hand, the electrical and sanitary connections are not necessarily indicative, in themselves, of permanent attachment, for it does not appear that any problem would be encountered in disconnecting them. Moreover, it appears that the trailer has been set on blocks which do not constitute a permanent foundation and that it can readily be made mobile again by replacing the wheels and removing the blocks. Finally, the appellant stated in his application that "I now have \* \* \* [the trailer] advertised for sale and as soon as I sell it, I will have money enough to rebuild on my original cement slab," thus, precluding a finding that he intended the trailer to become a permanent structure on the land. The evidence as a whole, then, does not warrant the conclusion that appellant's trailer has become a part of the realty; therefore it does not constitute a "valuable improvement" within the meaning of the act, supra.

As we have noted, it does not appear that the right to the use of the land is essential to appellant's control over, or use of, his trailer house, for it appears that he has already contemplated the removal and sale of the trailer house. What appellant, in fact, appears to seek is simply a site upon which he can build in the future or which he can sell. The act does not extend to the granting of this form of relief. Accordingly, the Bureau properly found that the appellant is not a qualified applicant under the act \* \* \*.

73 I.D. at 374-377.

There are in the instant case certain factors which could suggest appellant's intent permanently to affix the house trailer to the land, notably, the period of time over which the trailer has been left on the mining claim without being moved (presumably since sometime in 1947) and the connection of the trailer to electricity.

On the other hand, the electrical connection is not necessarily indicative, in itself, of permanent attachment, for it does not appear that any problem would be encountered in disconnecting it. Moreover, it appears that the trailer has been left setting on its wheels, in contrast to removing the wheels and setting it on a permanent type foundation or at least on blocks, this despite its having been on the claim for over 20 years. Accordingly, the trailer is and always has been immediately and totally mobile. In this regard it should be noted that H. W. Mallery in his mineral report of April 4, 1968, stated that Curtiss "\* \* \*" said that a number of years ago he had been told by a BLM spokesman not to put anything on the claim that could not be moved."

The evidence as a whole, does not warrant the conclusion that appellant's trailer has become a part of the realty; therefore it does not constitute a "valuable improvement" within the meaning of 30 U.S.C. § 702 (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision which declared the appellant's Twin Metals Vein No. 2 lode mining claim to be null and void ab initio is reversed, and the decision which rejected the appellant's application, Nev-065769, to purchase a part of that claim pursuant to the Mining Claims Occupancy Act is affirmed.

Frederick Fishman, Member

We concur:

Douglas E. Henriques, Member

Anne Poindexter Lewis, Member

