

R. C. JIM TOWNSEND
(On Reconsideration)

IBLA 74-318

Decided February 10, 1975

Petition for reconsideration of the decision of the Board of Land Appeals in R. C. Jim Townsend, 18 IBLA 100 (1974).

Reconsideration denied; decision reaffirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Land Subject to -- Mining Claims: Relocation -- Withdrawals and Reservations: Effect of

On petition for reconsideration, the assertion of rights to a mining claim under an August 1968 location does not demonstrate error in or require reconsideration of this Board's decision, which affirmed that a mining claim located in 1969 for the same land, after the land was withdrawn from mineral location in October 1968, was null and void ab initio. Neither this Board's decision initially or on petition affects petitioner's rights, if any, under such a prior location.

APPEARANCES: R. C. Jim Townsend, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

R. C. Jim Townsend has petitioned for reconsideration of the decision of the Board of Land Appeals (18 IBLA 100 (1974)) affirming the decision of the Oregon State Office, Bureau of Land Management (BLM), that declared null and void ab initio a lode mining claim for which petitioner filed proof of labor. The claim the BLM declared void was located in 1969 and recorded in 1970 as the Silver Creek Mine, embracing land described by metes and bounds in sec. 8, T. 40 N., R. 13 E., W.M., in Whatcom County, Washington. This Board affirmed that the claim described in the decision was

void because the land involved was withdrawn from mineral location by the creation of North Cascades National Park by P.L. 90-544, 82 Stat. 926, 16 U.S.C. § 90 (1970), on October 2, 1968.

In his original appeal, petitioner asserted that the claim declared invalid was not a new location, but a relocation of an old claim filed in the 1890's. We noted that the 1969 location, because it was void, could not and did not affect any rights petitioner might have under the old location, and that the BLM decision likewise did not affect petitioner's rights under the prior location.

In his letter-petition, petitioner asserts for the first time the existence of a recent relocation of the Silver Creek Mine claim made "at the Sedro Woolley office" in August 1968, prior to the October 1968 withdrawal. He says he made this filing expressly to protect his rights to the old claim against the then-pending withdrawal for the national park.

We reiterate that the only issue decided in the case was that petitioner has no rights to this land under the 1969 location captioned in the BLM decision. We did not determine petitioner's rights under the 1890's location; we do not now determine petitioner's rights under the newly-asserted 1968 filing. The existence or nonexistence 1/ of this 1968 filing does not in any way affect the decision of this Board regarding the void 1969 filing. Nor is the issue of how the 1968 filing may have affected or amended the original location before us now.

Petitioner remains free to assert his rights under the original 1890's location and the 1968 filing. When his possession or occupancy of land in these locations against the United States is challenged he will be required to come forward with adequate evidence to establish his rights under these locations. J. Everett

1/ Petitioner states that he was recently at "the Sedro Woolley office" and that the record of the mine location was no longer in those files. The facts as submitted do not support an accusation of foul play, insofar as such an accusation is implied by the petition, nor does it appear that this problem is one for which this Board is the proper forum for relief.

Petitioner did not submit documentation of the existence of the 1968 claim with his letter. On this point, we note our confusion about what was filed in what office in Sedro Woolley, as we take official notice under 43 CFR 4.24(b) of the fact that that town is not in Whatcom County, where the claimed lands are situated. Washington State law requires that the notice of location be recorded in the office of the County Auditor of the county in which the land is located. REV. CODE OF WASH. 78.08.050.

Nelson, A-29174 (February 4, 1963), quoted in R. C. Jim Townsend, 18 IBLA 100, 102, n. 3 (1974). However, petitioner submitted nothing with his letter-petition indicating error in the Board's decision, which affirmed the BLM decision, that the 1969 location described therein was void from its inception because it was filed after the land was withdrawn from such location. Jerry Bellezza, 15 IBLA 64 (1974); Dredge Corp., 65 I.D. 336, 341 (1958), aff'd, Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied and the decision of this Board in R. C. Jim Townsend, supra, is reaffirmed.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

