

AMERICAN RESOURCES, LTD.

IBLA 79-215

Decided December 11, 1979

Appeal from decisions of the California State Office, Bureau of Land Management, declaring mining claims null and void ab initio, and denying a petition for deferment of obligation to do assessment work.

Affirmed in part; vacated in part and referred for hearing.  
Correlative decision reversed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

Where mining claims were originally located on land which was withdrawn from mineral location, the claims will be declared null and void ab initio.

2. Mining Claims: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Location -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

3. Mining Claims: Generally -- Mining Claims: Determination of Validity -- Mining Claims: Location -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land

Where there are factual questions relating to whether re filings subsequent to a withdrawal were in the nature of an "amended locations" or whether they constituted "relocations," the matter must be referred for a hearing to allow the claimant the opportunity to show that subsequent filings have been amended locations, and that it is thus the successor in an unbroken chain of title dating back to the original location.

4. Mining Claims: Assessment Work

Where the National Park Service bars a claimant from entering mining claims by posting no-trespassing signs, barricading access roads, and threatening criminal action, the claimant is entitled to a deferment of its obligation to perform annual assessment work on the claims during the period access was denied.

APPEARANCES: Joei Netolicki, President, American Resources, Ltd.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

American Resources, Ltd. (appellant), has appealed from the December 13, 1978, decision of the California State Office, Bureau of Land Management (BLM), declaring the Ward Nos. 1, 2, and 6-9, and the New Dawn Nos. 1-6 lode mining claims null and void ab initio insofar as they are situated in secs. 23, 24, 26, and 35, T. 2 S., R. 12 E., San Bernardino meridian. A correlative appeal, docketed under the same number, is taken from BLM's decision of August 30, 1979, denying appellant's petition for deferment of annual assessment work on the subject claims.

As BLM noted in its decision of December 13, 1978, all of T. 2 S., R. 12 E., San Bernardino meridian, was withdrawn from mineral location on August 10, 1936, by Proclamation No. 2193, which created the Joshua Tree National Monument. This proclamation was partially revoked by the Act of September 25, 1950, which reopened the lands in secs. 1-12 and 14-22 in this township to mineral location, but left secs. 13 and 23-36 still closed.

On September 28, 1977, appellant submitted material describing these claims to the Superintendent, Joshua Tree National Monument, National Park Service, in compliance with the recordation requirements set out in section 8 of the Act of September 28, 1976, 16 U.S.C. § 1907 (1976) and 36 CFR Part 9. This material was forwarded for review to BLM, which held that the claims had been located after the withdrawal of the area from mineral location and that they were accordingly null and void ab initio, from which decision this appeal followed.

[1] In order to prevail, appellant must establish that it is the successor to an interest in mining claims located on this land before its withdrawal from mineral entry in 1936, as claims which are located on land which is withdrawn from mineral location are null and void ab initio. Leo J. Hottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheizer v. Udall, 432 F.2d 328 (9th Cir. 1970); Gerald Byron Bannon, 40 IBLA 162 (1979); Janelle R. Deeter, 34 IBLA 81, 83 (1978).

None of the material submitted by appellant shows that the Ward claims were located any earlier than August 5, 1976, and appellant has not challenged BLM's decision to declare these claims null and void ab initio insofar as they are located within the Joshua Tree National Monument. Accordingly, we affirm BLM's decision insofar as it concerns these claims.

[2] Appellant alleges that the New Dawn claims predate the withdrawal of the land from mineral location in 1936. According to appellant, these claims were actually located in 1928 and 1929, and its title to them dates back continuously to this date, viz:

Title to the Mission Mine Properties dates back to 1929. Huff & Lane, to Thomas Ake, to Mission Mining Co., to McGuire Mining Co., to Stephen Netolicky, to American Resources, Ltd. \* \* \* American Resources hereby state that they hold valid title to all of their claims within the Joshua National Park [sic] and that the title predates the establishment of the Park.

Notices of location for the "New Dawn" claims were first filed by one Clyde McGuire in January 1958, long after the withdrawal of the land in question from mineral location. BLM held that these claims were therefore null and void ab initio. Appellant asserts that the New Dawn claims are the same as a group of claims known as the Water Well and Lone Star claims (the Water Well group) 1/ which

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1/ While the record contains actual copies of the notices of location only for two claims, the unnamed and the Water Well No. 3 claims, there is other evidence suggesting that the following claims made up this group: Water Well Nos. 1-3, Water Well Millsite, Lone Star Nos. 1 and 2, and the unnamed claim.

date back to 1928, before the withdrawal, and that McGuire simply renamed the claims in 1958.

A "relocation" of a claim is the subsequent location of a claim which is adverse to an earlier location, as where the earlier locator has abandoned the claim or failed to make annual expenditure as required. The "relocation" of the claim by another person after the withdrawal of the land where it is situated does not give him the rights associated with the earlier location, including the right to mine the property even after it is withdrawn. Thus, if a claimant "relocates" a claim, it is irrelevant that the claim was originally located and used by other persons prior to the withdrawal. Janelle R. Deeter, supra at 83-84.

An "amended location" of a claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. 2/ In contrast to a "relocation," an "amended location" does relate back to the date of the filing of original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. Withdrawal of the land subsequent to the original location will thus not preclude the amended location, provided that the original claim was properly located. United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 441 (9th Cir. 1970) 3/ ; R. Gail Tibbetts, 3 IBLA 210, 219, 86 I.D. 538 (1979).

Thus, the critical issue is whether, as appellant alleges, it has succeeded to rights established prior to the withdrawal of the lands in 1936, and that the documents in the record subsequent to this date are "amended locations" of the original claims and not "relocations."

The record strongly indicates that McGuire intended to relocate the claims in 1958. First, he did not designate the documents as "amended locations," which failure properly gives rise to the inference that he did not intend them as such. R. Gail Tibbetts, supra

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2/ The original discovery point may not be excluded in an amended location.

3/ See n.4, infra.

at 229; see The Heirs of M. K. Harris, 42 IBLA 44, 45 (1979). Further, the proofs of labor filed by McGuire for the New Dawn claims state that the original notices of location for them were recorded in 1958 in the official records of Riverside County, California. These original notices of location are in the record and contain no reference to the alleged fact that these claims were being renamed or that they were actually located earlier than 1958, and plainly state to the contrary that the date of location was in 1958. Between 1959 and 1966 McGuire frequently filed separate proofs of labor for both the New Dawn group and the Water Well group, thus strongly indicating that he regarded them as separate groups of claims. It was not until 1970 that McGuire first associated the New Dawn claims with the Water Well group, when, allegedly at BLM's request, he updated the notices of location for the New Dawn claims.

It is possible that McGuire was relocating these claims in 1958 and wished to establish his own rights to them by topfiling in his own name because he had acquired no ownership rights to them by conveyance from the owners. McGuire apparently leased the Water Well group of claims from Mission Mining Corporation, Ltd., on May 20, 1955, with right of first refusal to purchase them. However, there is no evidence that McGuire ever actually did purchase the claims, and he therefore may have been attempting independently to establish his own rights to them in 1958. Of course, topfiling by McGuire would have been adverse to the underlying reversionary interest retained by Mission Mining Corporation, Ltd., the succeeding locator, so that McGuire's right would not relate back to the establishment of any earlier rights.

[3] However, despite the strong appearance that appellant is, at best, the successor to claims dating back only to 1958 when McGuire relocated them, it is necessary to inquire further into the matter, in view of appellant's assertion that it is the successor to claims predating the withdrawal. In United States v. Consolidated Mines & Smelting Co., supra at 441, the Court of Appeals for the Ninth Circuit held that a hearing is required where there is a disputed issue of fact as to whether the interests of the present mining claimant are adverse to the interests of prior locators (i.e., whether the filing is a "relocation") or whether instead the present owner was the successor to these earlier interests (i.e., whether the filing is an "amended location"). <sup>4/</sup> As appellant may yet be able to establish an

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<sup>4/</sup> While not adopting the same terminology which the Board employs, in United States v. Consolidated Mines & Smelting Co., supra at 441, the Ninth Circuit in principle recognized the distinction between a "relocation" and an "amended location." While referring to both alternatives as "relocations," it recognized that a refiling could

unbroken chain of title through previous claimants back to the Water Well group, which interests predate the withdrawal, it is appropriate to refer the matter for a hearing to allow it the opportunity to do so. R. Gail Tibbetts, supra at 230; cf. Janelle R. Deeter, supra (holding that no hearing is necessary where it appears clearly from the admission of the mining claimant that the chain of title is broken).

There is presently no showing in the record that appellant is a successor to an unbroken chain of legal title to the claims extending back before the withdrawal of the land in 1936, as suggested in its statement of reasons. The record shows only that two quartz claims, one unnamed and the other called the "Water Well No. 3 Claim," were located in 1928 and 1929 by E. C. Huff and G. A. Lane. The record is silent about them until 1939, after the withdrawal of the land from mineral location, when one T. J. Ake filed a proof of labor on behalf of the Mission Gold Mining Company, described therein as the "lessee" of the claims. The lessor of the claims is not identified, and nothing in the record shows that the Mission Gold Mining Company had succeeded, or subsequently did succeed, to the underlying ownership interest of Huff and Lane in these claims. Appellant's alleged interest in the claims is traced from the Mission Gold Mining Company. In order to establish an unbroken chain of title dating back to 1928, i.e., that it "takes through" these claims, appellant must submit copies of deeds or other evidence showing that Mission Gold Mining Company received the property interest created by the original locators in 1928 and 1929. Janelle R. Deeter, supra. Otherwise, appellant's claims will, at best, be seen as dating only from 1939.

There are other gaps in the chain of title upon which appellant rests its claim of ownership. First, the Mission Gold Mining Company, a partnership, deeded whatever interest it had in these claims to the Mission Mining Corporation, Ltd., in December 1939 (after the withdrawal), but retained one half of its interest in the Water Well

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fn. 4 (continued)

either be an attempt to establish a conflicting claim and so be adverse to the interests of prior locators, so that the refiler "claimed against" them (a "relocation" under our parlance), or could be an attempt to extend the interests of the prior locators so that the refiler "claimed through" them (an "amended location" under our parlance). If a refiler can show that he "claims through" a prior locator, the refiling dates back to the original filing date of the original location and survives any subsequent withdrawal. Ibid. Thus, the court recognized that an amended location does relate back to the date of the original location and so may survive an intervening withdrawal.

No. 3 claim. Nothing in the record shows that this one-half interest was subsequently deeded to Mission Mining Corporation, Ltd., from which appellant's interest flows.

Second, while Mission Mining Corporation, Ltd., did lease its purported interest in these claims to Clyde McGuire in May 1955 and granted him the right of first refusal to buy them, there is no evidence that it ever deeded full title to these interests to him. As noted above, McGuire's apparent relocation of the claims in 1958 in his own name as the New Dawn claims is a strong indication that Mission Mining Corporation, Ltd., never did so.

Finally, the putative transfer in March 1975 of McGuire's interests in the claims located in 1928 and 1929 (which interests appear to be nonexistent) to Steven Netolicky, from whom appellant purchased its interests, is of questionable effect. The agreement between McGuire and Netolicky merely transfers an option, and there is no deed transferring McGuire's interests in the Water Well claims, such as they were, to Netolicky, although an affidavit by Netolicky made in March 1976 declares that he "acted on his own behalf to acquire all McGuire's right, title and interest in [the New Dawn] claims \* \* \*."

Appellant must overcome these shortcomings in its present proof of the chain of title back before the withdrawal, or its claims properly will be declared null and void.

[4] While the appeal from BLM's decision declaring its claims null and void was pending, another issue concerning the New Dawn claims arose. Appellant alleges that, following BLM's decision of December 13, 1978, it was barred from entering these claims by no-trespassing notices, barricades, and threats of criminal action by National Park Service (NPS) officials at the Joshua Tree National Park, so that it could not complete assessment work on the claims for the assessment year ending on August 31, 1979. Accordingly, appellant attempted to petition BLM to defer its obligation to do this assessment work, filing copies with NPS at Joshua Tree and with this Board. NPS apparently returned the petition to appellant as it has no jurisdiction to take the requested action. Similarly, this Board lacked initial jurisdiction and, accordingly, we referred the matter to the California State Office, BLM, for action. On August 30, 1979, BLM denied this petition, declaring that it did not relate conditions under which deferment could be granted. 5/

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5/ Appellant did not specify that it had been denied access to the claims in its petition for deferment, so that BLM had no way to determine that it fell within the protection of the regulations. In its decision, BLM also noted that appellant had not filed the

Appellant filed a timely notice of appeal of this decision. We are persuaded that appellant's allegations on appeal that it has been denied access to the claims are correct. On September 13, 1979, Rick T. Anderson, Superintendent of Joshua Tree, advised appellant that it was "not permitted to do annual assessment work within the boundaries of Joshua Tree," owing to BLM's decision declaring its claims null and void.

While it does not bear directly on the question of whether BLM properly denied appellant's petition for deferment, we note that it was improper for NPS to bar appellant's access to its claims on the strength of BLM's decision declaring them null and void. Under 43 CFR 4.21(a), the effect of this decision was suspended upon the timely filing of a notice of appeal. The effect remains suspended until final action on the appeal. Thus, appellant's claims are still extant, and appellant was (and is) entitled to enter the claims to do annual assessment work on them as required by the mining laws pending final action on the appeal. NPS is advised that it may not bar appellant's access to these claims until this appeal is finally resolved.

NPS having barred appellant's access in 1979, it remains to determine whether it is entitled to a deferment of its obligation to do assessment work in this period. Appellant falls under the protection of 43 CFR 3852.1, which provides as follows:

§ 3852.1 Conditions under which deferment may be granted.

The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access the boundaries thereof. [Emphasis supplied.]

It is difficult to imagine a case presenting a greater "legal impediment" affecting a claimant's right to enter upon the surface of a group of claims than is demonstrated here by the action of NPS in barricading appellant's access and threatening criminal action to bar its entry. Accordingly, we reverse BLM's decision denying appellant's application for deferment.

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fn. 5 (continued)

\$10 fee as required. We note that it had tendered this fee along with the petition filed with NPS and, in any event, has apparently since remitted this fee.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision of December 13, 1978, is affirmed in part, vacated in part, and the matter is referred to an Administrative Law Judge for hearing; and BLM's decision of August 30, 1979, is reversed.

Edward W. Stuebing  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Frederick Fishman  
Administrative Judge

