

BIG HORN LIMESTONE CO.

IBLA 80-62

Decided February 28, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring mining claims null and void ab initio. Mineral patent application M-28202.

Set aside and remanded.

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

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

2. Administrative Procedure: Adjudication -- Applications and Entries: Generally -- Mining Claims: Contests -- Mining Claims: Determination of Validity

The BLM may not summarily reject a mineral patent application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

APPEARANCES: William G. Mouat, Esq., Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On April 4, 1974, the Big Horn Limestone Company filed its mineral patent application M-28202 for six placer mining claims, the Holly Nos. 1 through 6.

The facts of record show that the Holly Nos. 1 through 6 claims were originally located July 23, 1973, by an association of eight locators, *i.e.*, Neil P. Stadtmiller (or N. P. Stadtmiller), G. W. Miles, Jr., J. E. Maudru, John C. Cooper, J. E. A. Rich, S. F. Force, M. D. Gladem, and Blake McFeely, for a total of 160 acres. On November 12, 1973, the claims were quitclaimed by these eight locators to the Big Horn Limestone Company. The Bureau of Land Management (BLM) issued a mineral entry final certificate for the Holly claims January 6, 1977. The application was subsequently forwarded to the surface managing agency, the Forest Service, U.S.D.A., for mineral examination.

Upon inquiry to the Big Horn Limestone Company, the Montana State Office, BLM, learned that four of the original locators were officers of the Big Horn Limestone Company. From this information the BLM concluded that "the locations of the Holly #1, Holly #2, Holly #3, Holly #4, Holly #5, and Holly #6 placer mining claims were made for the exclusive benefit of the Big Horn Limestone Company for the purpose of obtaining title to not only the twenty acres allowed under the mining law for a placer mining claim, but also to an additional 140 acres." The State Office found the locations invalid and declared the claims null and void *ab initio*.

On appeal appellant did not deny the relationship of the four locators to the corporation. It denies, however, that these locators, who were officers of the Big Horn Limestone Company, were "dummy locators." It contends there is no proof that the locators agreed in advance to convey the "claims" to the Big Horn Company or that they did not locate in good faith.

[1] BLM has found a crucial deficiency in appellant's application determining that the eight original locators were "dummy locators" acting on behalf of the corporation. The law clearly provides that no placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2. Within the meaning of 30 U.S.C. § 35 it has been determined that a corporation is an "individual claimant," and therefore may not locate placer claims of more than 20 acres each. United States v. Toole, 224 F. Supp. 440 (D. Mont. 1963); United States v. Schneider Minerals, Inc., 36 IBLA 194 (1978). There is, however, no statutory limitation to the number of placer claims that may be located by any individual claimant, but each such placer location must possess a discovery of a valuable mineral deposit in order to be a valid location.

[2] However, whether appellants' actions in this case amounted to an attempt to circumvent this 20-acre limitation is a question of fact which cannot be decided on the face of the record. Appellants specifically dispute this conclusion and have not had the opportunity

to establish the bona fides of their intentions concerning the location and the conveyance of their interests to the corporation.

As we have recently indicated in the same circumstances, this application cannot be rejected on the face of the record without further inquiry by quasi-judicial proceedings. BLM should initiate contest proceedings to determine the validity of the claims. Big Horn Calcium Co., 44 IBLA 289 (1979). BLM may not summarily reject the application for reasons related to disputed issues of fact without notice and an opportunity for hearing. Big Horn Calcium Co., *supra*; Brattain Contractors, Inc., 37 IBLA 233, 240 (1978); United States v. O'Leary, 63 I.D. 341 (1956).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the case is remanded for further action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

