

SAMUEL A. CHESEBROUGH

IBLA 80-695

Decided August 18, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting filing of notices of location for the Shannon Nos. 2 and 7 lode mining claims, NMMC 94768 and 94773.

Affirmed in part; reversed in part and remanded.

1. Mining Claims: Lands Subject to – Mining Claims: Recordation

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and BLM properly rejects a copy of a notice of location of a lode claim insofar as it covers patented land. However, BLM should not reject the notice insofar as it concerns unpatented lands, provided that the claim conforms to the rules governing lode claims after being amended to exclude the patented areas.

APPEARANCES: Samuel A. Chesebrough, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On April 25, 1980, Samuel A. Chesebrough (appellant) filed copies of notices of location for six mining claims with the New Mexico State Office, Bureau of Land Management (BLM), which were designated as NMMC 94768-94773. On May 13, 1980, BLM issued a decision partially rejecting the notices of location for NMMC 94768 (Shannon No. 2 lode mining claim) and NMMC 94773 (Shannon No. 7 lode mining claim). In this decision, BLM held as follows:

NMMC 94768 or Shannon # 2 is rejected to the extent that it covers land in section 12, Township 25 South, Range 19 West NMPM. Part of this claim is located on a patented mining claim which passed to private ownership without reservation of minerals to the United States.

NMMC 94773 or Shannon # 7 is rejected to the extent that it covers land in section 7, Township 5 South, Range 18

West, NMPM. Part of this claim is located on a patented mining claim which passed to private ownership without reservation of minerals to the United States. [Emphasis supplied.]

Thus, BLM's decision rejected the Shannon Nos. 2 and 7 claims to the full extent that they are situated in secs. 12 and 7, respectively, not just to the extent that they cover patented lands therein.

[1] BLM's decision correctly rejected appellant's claims insofar as they covered the patented lands. Once mineral rights have passed from public to private ownership, the provisions of the mining laws no longer apply, and the land is not available for the location of mining claims. Cole V. Mullen, 43 IBLA 102 (1979); John F. Drobnick, 41 IBLA 164 (1979), and cases cited.

However, BLM's decision went too far by rejecting the Shannon Nos. 2 and 7 lode claims to the full extent that they cover lands in secs. 12 and 7, respectively, and we therefore reverse it. The record shows that only small portions of the claimed lands in secs. 12 and 7 have been patented. We see no reason why appellant should not be allowed to claim any of the unpatented lands in these sections, provided that the claims conform to the rules governing lode claims after being amended to exclude the patented areas.

Appellant filed amended notices of location of the claims with BLM on July 16, 1980, while the matter was before this Board. BLM has forwarded these notices to us. These amended notices purportedly eliminate the patented lands from these claims. On remand, BLM is directed to review these amended notices to determine whether appellant altered these claims to eliminate the patented lands and whether they now conform to the requirements governing lode claims.

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 affirmed in part, reversed in part, and remanded.

Edward W. Stuebing
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

