

**Editor's note: Overruled to the extent inconsistent with Zula C. Brinkerhoff, 75 IBLA 179 (Aug. 22, 1983)**

SILVER SPOT METALS, INC.

IBLA 80-223

Decided December 10, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring mining claims, NM MC 69583-69592, and NM MC 69594, void to the extent that they cover patented lands.

Set aside 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 refuses recordation of such claims.

2. Patents of Public Lands: Effect

The effect of the issuance of a patent without a mineral reservation, even if issued by mistake or inadvertence, is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land.

APPEARANCES: John W. Reynolds, Esq., Silver City, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Silver Spot Metals, Inc., has appealed the decision of the New Mexico State Office, Bureau of Land Management (BLM), declaring

lode mining claims, NM MC 69583-69592 and NM MC 69594, 1/ void to the extent that they cover lands in sec. 9 and sec. 10, T. 18 S., R. 14 W., New Mexico principal meridian, which have been patented without reservation of any minerals which are locatable under the General Mining Law.

[1, 2] We note that the decision below was not particularly informative as to the exact nature of the conflict between the various claims and the patented lands. As a result, appellant argues on appeal that the claims were "valid existing claims prior to any application for Homestead Entry or Patent" and that any patent issued subsequent to valid location of the claims is subject to the claims. Homestead entry patent No. 44757, however, covering the SW 1/4 NE 1/4 sec. 10, issued on February 2, 1909. Cash entry patent No. 261020, SE 1/4 sec. 10, issued on April 22, 1912. Indemnity lieu patent No. IL 80, consisting of the SE 1/4 SW 1/4, and S 1/2 SE 1/4 sec. 9, issued on March 29, 1917. The Spot lode mining claim, which has the earliest location date, was not located until February 2, 1918. These three patents predate all of appellant's claims, since the earliest location of any of appellant's claims was in 1918.

In addition, homestead entry patent No. 762593, embracing the E 1/2 NE 1/4 NW 1/4 and E 1/2 SE 1/4 NW 1/4 sec. 10, issued on July 17, 1920, prior to the dates of location of the Spot No. 6, Spot No. 7, the Louise, and the Iron Mask lode mining claims. Finally, public purposes patent No. 1065841, consisting of the E 1/2 NE 1/4 SW 1/4 sec. 10, was signed on August 29, 1933. 2/

1/ The various claims involved in this appeal, with their respective dates of location are as follows:

<u>Name of Claim</u>	<u>Date of Location</u>	<u>Recordation No.</u>
Spot	2/2/1918	NM 69583
Spot No. 1	4/10/1918	NM 69584
Spot No. 2	4/10/1918	NM 69585
Spot No. 3	9/25/1919	NM 69586
Spot No. 4	12/3/1919	NM 69587
Spot No. 5	12/3/1919	NM 69588
Spot No. 6	12/26/1926	NM 69589
Spot No. 7	12/26/1926	NM 69590
Junction	9/15/1919	NM 69591
Iron Plume	6/27/1918	NM 69592
Iron Shoe	4/10/1918	NM 69594

Four other claims, Iron Spike, Oversight, The Louise, and Iron Mask were apparently determined not to be in conflict.

2/ We note that the State Office indicated in its decision that patent No. 1065841 issued without a mineral reservation. The plat for T. 18 S., R. 14 W., which was submitted with the appeal shows only a reservation for ditches and canals under the Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. § 945 (1976). Patents issued under the Recreation and Public Purposes Act, Act of June 14, 1926, 44 Stat. 741, as amended, 43 U.S.C. § 869-1 (1976), however, were required to contain a

To the extent which appellant's predecessor in interest located claims on lands which were at that time patented without a mineral reservation, those claims or portions thereof were null and void ab initio. <sup>3/</sup> As concerns those claims which appellant alleges predated the patenting of the land, we would note that the effect of the issuance of a patent without a mineral reservation is to transfer legal title from the United States and to remove from the jurisdiction of the Department the resolution of conflicting claims to the land. See Germania Iron Co. v. United States, 165 U.S. 379 (1897). To the extent that the Department may have residual authority to seek cancellation of a patent on the grounds of improper issuance, we note that, absent fraud, such suits must be commenced within 6 years of the date of patent issuance. See 43 U.S.C. § 1166 (1976); 43 CFR 1862.5(a). The time period has long since expired as regards the instant patents and appellant has made no allegations of fraud.

As we have indicated above, however, the State Office did not attempt to delineate the extent to which any individual claim embraced patented lands. We have no doubt that part of the problem facing the State Office in identifying the specific areas of conflict arose from the fact that the map which appellant submitted does not correlate with the official supplemental plat of survey, accepted by the General Land Office on March 2, 1923. However, inasmuch as the State Office should have recorded those portions of the claims which did not

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fn. 2 (continued)

reservation of all mineral deposits, which would be available for disposal under regulations approved by the Secretary. While no implementing regulations have ever issued, inasmuch as the instant claims predated the patenting, these claims would still be subject to the jurisdiction of the Department. See City of Phoenix v. Reeves, 14 IBLA 315, 81 I.D. 65 (1974), aff'd, Reeves v. Morton, Civ. No. 74-117 PHX-WPC (D. Ariz. 1974). Inasmuch as we are remanding this case for further action, we request that the State Office explore this matter further.

<sup>3/</sup> We note that appellant states that

"[i]n 1924, there was filed with the Bureau of Land Management, Las Cruces, New Mexico, The Matter of Silver Spot Mines vs. Juan Gonzales 'Contest 4857 HE 025174 made August 7, 1924, Lots 3, 4, 5, 6, and 7, Sec. 9, T. 18 S., R. 14 W., conflicting with Iron Shoe, Spot, Iron Plume, Iron Spike, Spot No. 3, Junction and Oversight lode mining claims.' This file contains documents that are thought to be pertinent in this case and should be produced since Appellant does not have copies in its possession." Additional homestead entry No. 025174 consisted only of Lots 6 and 7, and in any event was canceled on June 16, 1930. This entry did not serve as a predicate of the decision below. Lots 3, 4, and 5 were patented under the Stock Raising Homestead Act, patent No. 1050703, in 1931 with a reservation of minerals to the United States. Lots 6 and 7 are unpatented.

embrace patented lands (see Samuel A. Chesebrough, 49 IBLA 249 (1980)), it was incumbent upon the State Office to seek clarification of the physical situs of the claims and specifically identify those portions of the relevant claims which were being voided. We find it impossible on the basis of the present record to determine which claims are void in their entirety, which claims partially cover patented lands, and which, if any, claims are totally situated on lands which have not been patented.

We note that acceptance of a claim for recordation under section 314 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744 (1976), does not constitute recognition of its validity. See 43 CFR 3833.5(a). Nor is there anything improper in declaring claims void where they are totally located on lands previously patented or withdrawn. If, however, the State Office decides to invalidate portions of a claim for such a reason, the State Office must describe the specific impact of its decision, and accept for recordation those parts of a claim which are not subject to the patent or withdrawal. It is, of course, obvious that in many instances the remaining parts of a claim may themselves be invalid for other reasons. But until such time as these portions are specifically invalidated by proper decision, BLM must record them to permit a claimant to remain in compliance with the recordation provisions of FLPMA. Accordingly, while we hold that all claims located totally within lands patented without a mineral reservation, as well as those portions of claims located within lands patented without a mineral reservation, are void, we are remanding the case files to the State Office for a determination as to which specific claims, and parts thereof, are affected by this determination.

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 files are remanded for further action consistent herewith.

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James L. Burski  
Administrative Judge

I concur:

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Edward W. Stuebing  
Administrative Judge

## ADMINISTRATIVE JUDGE GOSS CONCURRING IN PART:

The decision conflicts with Don P. Smith, 51 IBLA 71 (1980). In Smith, the Board affirmed a BLM determination that the portion of a claim located in a particular section is void ab initio. The particular portion of the claim was not further described. Here, BLM rejected appellant's claims only to the extent they included land in two sections. Appellant does not indicate there is any question as to which portions of the claims were declared void; rather, he argues that the claims are valid because they were located before the homestead applications.

It is helpful to the mining claimants for BLM to issue a decision such as that here and in Smith, for it places them on notice of pre-existing claims without being unduly burdensome on BLM resources. Because of the workload imposed by FLPMA upon BLM, however, I do not feel it is essential at this point for the BLM decision to contain greater specificity.

I concur that the mining claims are void to the extent they are within patented lands, and also agree that it is proper for BLM to accept for recordation the remaining portions.

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Joseph W. Goss  
Administrative Judge

