

Appeal from decision of Administrative Law Judge R. M. Steiner providing for prohibition of mining operations on placer mining claims within land withdrawn for powersite purposes. CA MC 25979 and CA MC 25981.

Vacated; claims declared void ab initio.

1. Act of August 11, 1955 -- Mining Claims Rights Restoration Act -- Mining Claims: Withdrawn Land -- Powersite Lands -- Withdrawals and Reservations: Powersites

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

2. Mining Claims: Location -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land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. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal, where the location notice describes additional or new land not contained in the original location.

APPEARANCES: Lairy D. Brookshire, pro se, and on behalf of the other mining claimants.

## OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lairy D. and Julie Brookshire, Wilma Brookshire, Robert Campbell, Doug and Betty Phillips, and Les and Linda Mills have appealed from a decision of Administrative Law Judge R. M. Steiner, dated January 21, 1980, providing for the prohibition of mining operations on the Never Again placer mining claims, CA MC 25979 and CA MC 25981, located within land withdrawn for powersite purposes. The decision was made pursuant to section 2(b) of the Act of August 11, 1955 (the Mining Claims Rights Restoration Act), as amended, 30 U.S.C. § 621(b) (1976).

Section 2(b) of the Mining Claims Rights Restoration Act, supra, provides that the Secretary of the Interior may prohibit placer mining operations on land withdrawn for powersite purposes after notice and a public hearing "to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim." Appellants were notified of a public hearing on this question with respect to their two claims by notices dated August 1 and 29, 1979. A hearing was subsequently held on November 5, 1979. Based on evidence adduced at this hearing, the Administrative Law Judge concluded that placer mining operations would substantially interfere with "other uses" of the land, notably a proposed timber sale program, wildlife habitat and recreation. He, therefore, held that "[w]hen this decision becomes final, an appropriate order will be issued providing for the prohibition of placer mining operations."

During the pendency of this appeal, BLM received a letter dated March 28, 1980, which it forwarded to the Board, from the Director, Office of Electric Power Regulation, Federal Energy Regulatory Commission (FERC), formerly the Federal Power Commission (FPC), the agency administering licenses issued for power projects. This letter, indicating that it affected placer mining claim CA MC 25979, states:

The S 1/2 N 1/2 NE 1/4, N 1/2 SE 1/4 NE 1/4 and SW 1/4 NE 1/4 of sec. 31, and the S 1/2 NW 1/4 NW 1/4 and SW 1/4 NW 1/4 of sec. 32 have been found to be within the project boundary of licensed Project No. 2088. Therefore, these lands are not open to mineral location. A copy of the pertinent map (Exhibit K, F.P.C. No. 2088-134) is enclosed.

[1] Pursuant to section 2(a) of the Mining Claims Rights Restoration Act, as amended, 30 U.S.C. § 621(a) (1976), land which is covered by a license for a power project issued by FERC is not open to mineral entry and any mining claim located on such land is void ab initio, unless that land has been restored to such entry in accordance with section 24 of the Federal Power Act, 16 U.S.C. § 818 (1976). Harold M. Voris, 48 IBLA 206 (1980), and cases cited therein.

According to documents in the case files, appellants' mining claims were originally located February 2, 1974, and "amended" locations were filed for recordation with BLM on May 22, 1979. Both CA MC 25979 and CA MC 25981 were subsequently "amended" in June and July 1979, respectively. Mining claim CA MC 25979 was amended to include only the N 1/2 SE 1/4 NE 1/4 sec. 31 and the N 1/2 SW 1/4 NW 1/4 sec. 32, T. 21 N., R. 9 E., Mount Diablo meridian, Sierra County, California, and was filed with BLM on June 11, 1979. Mining claim CA MC 25981 was amended to include only the N 1/2 SE 1/4 NE 1/4, E 1/2 SW 1/4 NE 1/4, and the SW 1/4 SW 1/4 NE 1/4 sec. 31, and the N 1/2 SW 1/4 NW 1/4 sec. 32, T. 21 N, R. 9 E., Mount Diablo meridian, Plumas County, California, and was filed with BLM on July 9, 1979. <sup>1/</sup> The effective date of the licensed South Fork Power Project (Project No. 2088), within the Oroville Wyandotte Irrigation District, was July 9, 1951.

It is evident from the record that both of appellants' mining claims were wholly within a licensed power project at the time of their location. However, in their statement of reasons for appeal, appellants contend that "[t]he Never Again Placer location, Plumas County, contains within its boundaries the locations of two placer claims by assignment," which predated the withdrawal of the land for powersite purposes and which were being "diligently worked" at the time of the withdrawal. They argue that, therefore, those portions of "the Never Again Placer Claims in Plumas County" were covered by section 5 of the Mining Claims Rights Restoration Act, as amended, 30 U.S.C. § 624 (1976).

Section 5 of the Mining Claims Rights Restoration Act, supra, provides:

Nothing in this chapter contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: Provided, That nothing in this chapter shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

In support of their argument, appellants submitted an undated "Agreement," "between R. M. Merian (Heir to A. T. Merian) the assignor and Lairy Brookshire and associates the assignee," by which the assignor "does assign, grant and let unto the assignees, tenants in common title to those portions of the Jumbo and Lucky bend placer claims located in Plumas and Yuba Counties as they desire to have and to hold and to work

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<sup>1/</sup> While CA MC 25979 and CA MC 25981 both describe the N 1/2 SE 1/4 NE 1/4 sec. 31 and the N 1/2 SW 1/4 NW 1/4 sec. 32, the claims are apparently separated by the county line. All of CA MC 25979 lies in Sierra County; all of CA MC 25981 in Plumas County.

on their own." In return for the assignment, R. M. Merian was granted a lifetime mining permit, which indicates that the claims are "to be known hereafter as the Never Again Placer Claim" and that Brookshire and his associates "will assume responsibility for Proof of Labor Forms and taxes as of September 1, 1974."

Other documents submitted by appellants indicate that the Jumbo placer mining claim was located on August 14, 1946, by A. T. and Elizabeth Merian for the S 1/2 S 1/2 NE 1/4 and the N 1/2 SE 1/4 NE 1/4 sec. 31, T. 21 N., R. 9 E., Mount Diablo meridian, Plumas County, California, that the Lucky Bend placer mining claim, located on August 10, 1932, by Peter Kepon, John Sorikoff, L. Ronko, and Henry Lilja, partially within sec. 31, Mount Diablo meridian, Plumas County, California, was subsequently quitclaimed to A. T. Merian by Peter Kepon and Mary Meadowcraft (formerly Mary Kepon) on March 8, 1952, and that A. T. and Elizabeth Merian filed a proof of labor on August 14, 1952, for the Jumbo and Lucky Bend placer mining claims with the Plumas County Recorder for the assessment year ending July 1, 1952.

[2] The question presented is whether these documents create any rights in appellants which survive the July 9, 1951, effective date of the withdrawal. In order to do so, the subsequent locations of the Never Again Placer claims would necessarily have to be amended locations of the Jumbo and Lucky Bend claims. The amended location notices would then relate back to the date of the original location thereby predating the withdrawal. See R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979).

The notices of location of the Jumbo and Lucky Bend claims indicate that the Jumbo claim was located entirely in sec. 31, T. 21 N., R. 9 E., Mount Diablo meridian, Plumas County, while the Lucky Bend claim was located partially in that section in the same county. Neither claim encompassed land in sec. 32, T. 21 N., R. 9 E., Mount Diablo meridian, Plumas County.

The Never Again Placer mining claim (CA MC 25979) cannot be an amended location of the Jumbo or the Lucky Bend claims because, as filed with BLM on June 11, 1979, it encompasses only land in Sierra County. Nor can the Never Again Placer mining claim (CA MC 25981) be considered an amended location of those two claims. While CA MC 25981 is located in Plumas County, it contains land in sec. 32, T. 21 N., R. 9 E. In distinguishing between a "relocation" of a mining claim and an "amended" location, the Board stated in American Resources, Ltd., 44 IBLA 220, 223 (1979):

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. [Emphasis added.] [2/]

Clearly, CA MC 25979 cannot be an amended location of the Jumbo or Lucky Bend claims because it does not contain any land embraced by either of those claims. Likewise, since CA MC 25981 includes land not contained in either of the claims, it is not an amended location.

We must conclude that any rights appellants might have had in the Jumbo and Lucky Bend claims were not perpetuated by the locations of the Never Again Placer claims.

There is no evidence that the lands in question have been restored to mineral entry in accordance with section 24 of the Federal Power Act. Therefore, the Never Again Placer claims, having been located on powersite lands, are declared void ab initio.

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 vacated and the Never Again placer mining claims (CA MC 25979 and CA MC 25981) are declared void ab initio.

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Bruce R. Harris  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

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2/ In the same case at 223 the Board described a "relocation" as "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."