

LILLIAN BARLOW

IBLA 81-486

Decided October 21, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring Lucky Lady mining claims and millsite claim (N MC 121280 through N MC 121285) to be abandoned and void.

Affirmed.

1. Res Judicata--Rules of Practice: Appeals: Generally

Where a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

2. Administrative Procedure: Generally--Rules of Practice: Generally

Service of a BLM decision is accomplished when it is delivered to the addressee's last address of record by certified mail and such delivery is substantiated by postal authorities, regardless of whether it was in fact received by the person to whom it was addressed, and the prescribed period for initiating an appeal from such decision commences on the date of such delivery.

3. Administrative Procedure: Hearings--Constitutional Law: Due Process--Mining Claims: Generally--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of

law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

4. Color or Claim of Title: Adverse  
Possession--Conveyances: Generally--Public Lands: Generally

Adverse possession cannot be asserted against the United States. Mere occupancy of public lands and the making of improvements thereon give no vested right against the United States. An occupant of Federal land must show that he occupies the same under some proceeding or law that at least authorized his right of possession.

APPEARANCES: Lillian Barlow, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lillian Barlow appeals from a decision dated December 19, 1980, by the Nevada State Office of the Bureau of Land Management (BLM). The decision "rejected" five mining claims and one millsite for which she had recorded certificates of location and proof of annual labor for the assessment year ending September 1, 1979. 1/ The decision noted that the subject claims had been held null and void ab initio by a decision dated October 1, 1973. 2/

Review of the case record discloses that Lillian Barlow had located on the described land five lode mining claims (the Lucky Lady Nos. One, Two, Three, Four, and Five) in April and June 1971, and the

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1/ The file reflects that appellant failed to file evidence of annual assessment work or notices of intention to hold for any of the subject claims for calendar year 1980 as required by 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a). This raises a conclusive statutory presumption that the claims are abandoned and void, although the decision which is the subject of this appeal did not so hold.

2/ Actually the claims were declared null and void ab initio in a June 26, 1973, decision which informed Lillian Barlow of her appeal rights. Subsequently, on October 1, 1973, BLM issued a "notice" informing her as follows:

"Failure of the claimant to file an appeal to the decision of June 26, 1973, within the time allowed by the Rules of Practice, is considered an admission of the truth of the statements contained in the decision. Therefore, \* \* \* [the claims] having been declared null and void, the cases are closed on the records of the Nevada State Office."

Lucky Lady lode millsite in June 1972. However, the lands on which these claims were located had been segregated from appropriation under the general mining laws effective June 27, 1968, by Classification Order No. N-1280, 33 FR 9415 (June 27, 1968).

Subsequently, she remained in occupancy of the land, and suit was filed by the United States to recover possession and damages. By its "Order Granting the United States Partial Summary Judgment," the Court found Barlow to be in trespass and decreed that the United States recover possession of the property. United States v. Barlow, Civ. No. R-76-137 BRT (D. Nev. June 23, 1978).

Thereafter, it was necessary for BLM to enter the premises and remove the property (including a house trailer) which occupied the site, after Barlow failed to vacate.

On October 20, 1979, she filed with BLM the certificates of location and proof of annual labor for the five lode mining claims and the millsite, in purported compliance with the recordation requirements of 43 U.S.C. § 1744 (1976). These were received by BLM and assigned serial numbers. However, when it was realized that these were the same claims which had been declared null and void ab initio with finality by the 1973 decision, BLM issued its rejection decision of December 19, 1980. Strangely, the return receipt card evinces that this decision was not delivered to her until January 29, 1981. Her notice of appeal was timely filed on February 27, 1981.

[1] On appeal she (appellant) asserts that this land, comprising 186 plus acres, had been occupied by herself and her family for more than 50 years, that they had resided thereon and used the land for agriculture, grazing, mining, and as the site of a dynamite factory built by her parents.

Appellant states, "Zella Hamlin, the last of the previous generation of predecessors, did sign 'Her,' rights back to the Government in 1969. \* \* \* For she gave me exclusive rights on June 6, 1969, to this land." Appellant does not further identify the relationship, if any, between Zella Hamlin (now deceased) and herself, nor does she indicate what "rights" Hamlin assigned to the Government in 1969, or why such assignment was made, or whether that assignment was prior or subsequent to the assignment to appellant, or what form such assignment took. However, these questions would seem to be irrelevant, as what we are concerned with here is the status of the Lucky Lady claims which were located by appellant in 1971 and 1972, after the death of Zella Hamlin and after the lands were segregated from mineral location.

Even if the Lucky Lady locations by appellant were amended locations of earlier claims to which appellant had title, which has not been alleged, they would not have survived BLM's 1973 decision holding that they were null and void ab initio, as that decision became final when Lillian Barlow failed to appeal within the prescribed time. Where

a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration. David Loring Gamble, 26 IBLA 249 (1976).

[2] Appellant asserts that BLM assumed that she received the 1973 decision when it was mailed to her last known address, adding, "Perhaps this is why no appeal was taken." This suggests, inferentially, that she did not receive the decision. However, it is provided by regulation that such a communication will be deemed to have been received by the person to whom it is addressed if delivery thereof to the addressee's last address of record is substantiated by the postal authorities, regardless of whether it was in fact received by the person to whom it was addressed. 43 CFR 1810.2; Lite Sabin, 51 IBLA 226, 87 I.D. 610 (1980); Robert D. Nininger, 16 IBLA 200 (1974), *aff'd*, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975). Therefore, service of the decision of June 26, 1973, was accomplished by BLM when a copy was delivered by certified mail to her address of record, and the decision became final 30 days thereafter when no appeal was filed.

[3] Appellant's complaint that the 1973 decision was in error because it was issued without affording her notice and an opportunity for hearing is not properly before us, as that contention should have been raised in an appeal filed timely after the decision was rendered. Nevertheless, we will note that there was no failure of due process in that case. The lands on which appellant located the Lucky Lady claims in 1971-72 were segregated from mineral entry at that time and therefore the claims were null and void ab initio. No property rights are created by the location of mining claims on lands which are not open to mineral entry and location, and such claims are void as a matter of law, and thus no contest proceeding or hearing is required. United States v. Consolidated Mines & Smelting Co. Ltd., 455 F.2d 432 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966); see Lutzenhizer v. Udall, 432 F.2d 328 (9th Cir. 1970).

[4] Finally, appellant asserts a continuing interest in these lands based on "squatters rights" or adverse possession. The short answer to this contention is that adverse possession cannot be asserted against the United States. Mere occupancy of Federal lands and making improvements thereon give no vested right therein against the United States. Sparks v. Pierce, 115 U.S. 408, 413 (1885); Engle v. United States, 258 F.2d 50 (6th Cir. 1958). An occupant of Federal land must show that he occupies the same under some proceeding or law that at least gives him the right of possession. Southern Pacific Transportation Co., 23 IBLA 232, 83 I.D. 1 (1976). Mining and millsite claims which are null and void from their inception do not give rise to any possessory right.

Inasmuch as the Lucky Lady claims were found to have been null and void ab initio by a final decision of BLM in 1973, BLM properly rejected them for purposes of recordation.

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.

Edward W. Stuebing

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Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

