

Appeal from decisions of the Arizona State Office, Bureau of Land Management, declaring mining claims, A MC 37908 through 37917, null and void ab initio.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Relocation --  
Mining Claims: Withdrawn Land

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. In making such a finding it may be necessary to draw the distinction between an amended location of a claim which predated the withdrawal and a relocation or new location made subsequently.

APPEARANCES: R. J. Wall, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HARRIS

R. J. Wall appeals from two decisions of the Arizona State Office, Bureau of Land Management (BLM), one dated April 2 and the other April 6, 1982. The April 2 decision declared null and void ab initio the A Dream mining claim (A MC 37908). The April 6 decision declared the Second Chance, Third Chance, Fourth Chance, Fifth Chance, and Flip 1-5 mining claims (A MC 37909 through 37917) null and void ab initio. All the claims were located January 11, 1979, and location notices filed with BLM on March 29, 1979.

Each decision stated as follows:

The above described lands were included in an application for withdrawal for the Kofa National Wildlife Refuge, A 7950, on

February 19, 1974. <sup>1/</sup> The application segregated the subject lands from location of mining claims under the General Mining Law of 1872. The withdrawal application was posted on the official records of the Bureau of Land Management, on February 21, 1974.

43 CFR 2091.2-5(a) states in pertinent part: "The noting of the receipt of the application . . . on the official plats maintained in the proper office shall temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and mineral leasing laws. . . ."

Since the above listed mining claims were located after the segregative date and noting of the records, said claims are invalid locations and are hereby declared null and void ab initio.

On March 29, 1979, Wall filed documents with BLM concerning 23 mining claims, including documents involving the claims at issue. On April 5, 1979, BLM assigned serial numbers A MC 37895 through A MC 37917 to the claims. Subsequently, on August 7, 1979, BLM sent a letter to Wall stating:

On March 29, 1979 you filed amended location notices for the A Dream, Second Chance through Fifth Chance and Flip #1 through #5 mining claims. These were assigned serial numbers A MC 37908 through A MC 37917, respectively.

Regulations in 43 CFR 3833.1-2 (copy enclosed) require a copy of the original location notice be filed for recording with

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<sup>1/</sup> A required republication of that action as published in the Federal Register reads as follows:

"The Federal Land Policy and Management Act of 1976, 90 Stat. 2754, established new procedures for publishing and processing withdrawal applications. This notice is a republication of the withdrawal application in accordance with the requirements of the Act to give notice that the application for withdrawal A 7950 is still pending and to give notice of the opportunity for further public hearings.

\* \* \* \* \*

"Upon the filing of the application for withdrawal on February 19, 1974, all the lands were temporarily segregated from the operation of the public land laws, including the mining laws and the mineral leasing laws to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976 the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior."

42 FR 4148 (Dec. 22, 1977).

the Bureau of Land Management as well as the latest amendment. Please furnish a copy of the original location notices for the above mentioned claims.

Your location notices for the above claims are not complete for the reason shown above. Failure to furnish original location notices will cause a decision to be issued which rejects your filings and it will be necessary for you to refile under the requirements of 43 CFR 3833.1-2. (Emphasis added.)

In response, BLM received a letter dated August 19, 1979, from an attorney stating:

This letter is in response to your letter directed to my client, Mr. R. J. Wall, of August 7, 1979, a copy of which is attached hereto.

I am writing you at the instruction of your local office given to Mr. Wall. There is a very simple explanation for the problem concerned in your letter of August 7, 1979. Mr. Wall simply went to an office supply store and purchased the location notice forms and used them for filing his claims. Mr. Wall simply did not notice the word "AMENDED" at the top of each form, and intended the forms to be the original location notices. The notices are in fact original location notices filed by Mr. Wall and recorded. (Emphasis added.)

If your office so requires, Mr. Wall will simply strike the word "AMENDED" from each notice and re-record and re-file the location notices. However, as you know, there are timing problems involved in this procedure.

It is our understanding that upon your being advised of the above facts, that the BLM will acknowledge the notices as original notices.

On appeal Wall submitted a copy of two quitclaim deeds. One deed was dated August 13, 1942, and provided for the conveyance of two mining claims, the Night Hawk No. 1 and the White Dike No. 2, from Maude Hart to J. R. Livingston and Alice Livingston. The other deed which was dated September 3, 1942, provided for the conveyance of one-half interest in the White Dike Nos. 1, 3, 4, and 5, and the Night Hawk Nos. 3, 4, and 5 mining claims from Maude Hart to J. R. Livingston and Alice Livingston. Both deeds were notarized on December 2, 1942, and were filed and recorded in Yuma County, Arizona, on December 12, 1942. Wall also submitted copies of checks drawn on his account dated March 15, 1979, and payable to one Evelyn Livingston, as well as a copy of a note dated April 20, 1979, from Evelyn Livingston to Wall which stated that she had accepted his offer. Wall also enclosed copies of "Affidavits of Labor Performed and Improvements Made" which had been filed by Evelyn Livingston with Yuma County, Arizona, on August 26 and 29, 1978.

In his reasons for appeal Wall states that the claims which are the subject of this appeal were originally known as the White Dike Nos. 1 through 5, the Night Hawk Nos. 1 through 8, and the Renegade Nos. 1 through 5 mining claims; 2/ that the claims, under their original names, were sold in 1941 to J. R. Livingston; that Wall acquired the claims in March of 1979; 3/ and that Wall changed the names of the claims when he took possession and "set up legal description to meet the requirement in 1980." 4/ Although not specifically alleged by Wall, it can be deduced that, for purposes of this appeal, he is claiming that location of the subject mining claims predates segregation of the lands upon which the claims are situated and as such the subject claims are not null and void ab initio.

[1] In order to prevail Wall must establish that he is the successor to an interest in mining claims located on the land before its segregation from mineral entry, as claims which are located on land which is segregated from mineral location by a proposed withdrawal are null and void ab initio. George H. Fennimore, 63 IBLA 214 (1982); Allen L. Brannon, Sr., 53 IBLA 251 (1982).

The essential question in this appeal is whether the documents filed in 1979 were amended notices of location or whether they were new locations or relocations made after the land had been withdrawn. There is no requirement that an amended location or a relocation state that this is its purpose on its face. Fairfield Mining Co., 66 IBLA 115 (1982); R. Gail Tibbetts, 43 IBLA 210, 228, 86 I.D. 538, 543 (1979).

In Tibbetts, supra at 219, 86 I.D. at 543, the Board held

that to the extent that an amended location, i.e., one made in furtherance of an original location, merely changes a notice of location without attempting to enlarge the rights appurtenant to the original location, such amended location relates back to the original. Examples of such amended locations would be a change in the name of the claim (Butte Consolidated Mining Co. v. Barker, 35 Mont. 327, 89 P. 302, aff'd on rehearing, 90 P. 177 (1907); Seymour v. Fisher, 16 Colo. 188, 27 P. 240 (1891)), the exclusion

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2/ Wall filed documents for 23 claims in March of 1979. BLM's letter of Aug. 7, 1979, is only concerned with 10 of the 23 claims; 15 claims are referenced here; 10 claims were declared null and void by BLM. Ten claims were listed in total on the quitclaim deeds, eight of which were one-half interest conveyances.

3/ The actual wording in the statement of reasons is: "I accured these claims in March 15, 1979. From Mrs. Evelyn Levinston [apparently Livingston] who was the wife of Joe Levinston \* \* \*." The Mar. 15, 1979, date corresponds to the date on checks, copies of which were provided by Wall, made out by Wall to Evelyn Livingston. The quitclaim deeds list J. R. Livingston and Alice Livingston as grantees.

4/ The record provides no further evidence of what is meant by this statement.

of excess acreage so long as the original discovery point is preserved (see Waskey v. Hammer [223 U.S. 85 (1912)], and a change in the record owners of a claim where such change is reflective of an existing fact (United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 441 (9th Cir. 1971); Thompson v. Spray, 72 Cal. 528, 14 P. 182 (1887)).

In contrast, a relocation does not relate back to the date of filing of the original notice of location. Fairfield Mining Co., *supra* at 117, 118. <sup>5/</sup>

In United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971), the Court of Appeals for the Ninth Circuit held that a hearing is required where there is a disputed issue of fact whether the interests of the present mining claimant are adverse to the interests of prior locators (*i.e.*, whether the filing is a "relocation") or whether instead the present owner was the successor to these earlier interests (*i.e.*, whether the filing is an "amended location").

In the present situation, the face of the March 29, 1979, notices indicated that they were amended notices. This was not dispositive; however, upon BLM's request that Wall file a copy of the original location notices, pursuant to 43 CFR 3833.1-2, Wall's attorney specifically stated that "[t]he notices were in fact original location notices filed by Mr. Wall and recorded."

None of the submissions filed by Wall with his appeal give any indication that the lands located in the mining claim location notices of 1979 are the same referred to in earlier documents other than that all the lands are situated in New Water Mining District and all are located in Yuma County, Arizona. Further, the lack of evidence of the original location notices, from which Wall purports to claim a chain of title; the lack of evidence showing conveyancing from J. R. Livingston and Alice Livingston to Evelyn Livingston, and from Evelyn Livingston to J. R. Wall; the fact that one quitclaim deed only conveys one-half interest in enumerated claims, together with the statements of Wall's attorney noted above, leave us with no choice but to conclude that Wall's location of these mining claims does not predate segregation of the lands in question from mineral entry.

We note also that Wall states that he acquired the claims in March 1979. He does not attempt to explain the discrepancy of having filed amended location notices on which indicate he located the claims in January 1979.

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<sup>5/</sup> In the same case at page 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." ----- END

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.

Bruce R. Harris  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Edward W. Stuebing  
Administrative Judge.

