

GOLD DEPOSITORY AND LOAN CO., INC.

v.

MARY BROCK ET AL.

IBLA 82-1091; 83-49

Decided December 15, 1982

Consolidated appeals from separate decisions of the Arizona and California State Offices, Bureau of Land Management, dismissing private contests A-17834, A-17835, and CA 13090.

Affirmed.

1. Contests and Protests: Generally -- Mining Claims: Abandonment -- Mining Claims: Contests -- Mining Claims: Recordation -- Rules of Practice: Private Contests

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

2. Contests and Protests: Generally -- Mining Claims: Abandonment -- Mining Claims: Contests -- Mining Claims: Recordation -- Rules of Practice: Private Contests

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

3. Constitutional Law: Generally -- Contests and Protests: Generally --  
Mining Claims: Contests -- Rules of Practice: Private Contests

Where a statute limits the Department's authority to consider contests between rival mining claimants, the Department has no authority to consider favorably an argument that it is a denial of equal protection to recognize the right of a nonmineral claimant to contest a mining claim while denying such an opportunity to a rival mining claimant.

APPEARANCES: Bartholomew Lee, Esq., Hinda Greenberg, Esq., F. Raymond Marks, Esq., Alois E. Lemke, Esq., San Francisco, California, and John C. Hughes, Esq., Phoenix, Arizona, for appellant; Fred E. Ferguson, Jr., Esq., Phoenix, Arizona, for appellee Phelps Dodge Corporation; and William C. Porter, Esq., for appellees Mary Brock, Gerald Brock, Mary Pemberton, and Crown Resource Corporation.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

On April 29, 1982, Gold Depository and Loan Company, Inc. (Gold), filed a private contest complaint (A-17834) against Mary and Gerald Brock, Mary Pemberton, and Crown Resource Corporation. On May 6, Gold filed a private contest complaint (A-17835) against Phelps Dodge Corporation. On August 16, 1982, Gold filed a private contest complaint (CA 13090) against Comstock Kell, C. M. Nickerson, W. J. Poates, Jake L. Zanooco, and Vicki J. Zanooco. In each complaint, Gold asserts that several mining claims became conclusively abandoned and void upon failure by the owners of the claims to file timely the affidavits of assessment work required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). Gold asserts that it has superior title to the claims because its relocations predate those of the (putative contestees herein). <sup>1/</sup>

By separate decisions, the Arizona State Office dismissed contests A-17834 and A-17835. Although the State Office recognized that Gold framed its complaints so as to raise an issue of validity of title rather than one involving rival possessory interests, the State Office considered the respective parties as rival locators and that the contest raised an issue of their right to possession, not one of title. The State Office referred to the Department's consistent position that it is without authority to determine the question of right of possession as to claims between rival claimants, citing W. W. Allstead, 58 IBLA 46 (1981); John R. Meadows, 43 IBLA 35 (1979); John W. Pope, 17 IBLA 73 (1974); and Estate of Arthur C. W. Bowen, 14 IBLA 201 (1974).

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<sup>1/</sup> As used in this decision, the term "appellees" will include the contestees in CA 10390 even though they have not responded to Gold's appeal.

The California State Office likewise dismissed contest CA 13090, citing the Department's lack of jurisdiction over suits between rival claimants, and holding that the elements of a private contest did not appear in Gold's complaint. Gold appealed from the dismissal of these contests and pursuant to Gold's request, the appeal regarding the Arizona contests (IBLA 82-1091) is consolidated with the appeal regarding the California contest (IBLA 83-49).

[1] The California State Office and the Arizona appellees correctly point out that appellant's contests are expressly precluded by the requirements of the Departmental regulation concerning private contests, 43 CFR 4.450-1. That regulation provides for a contest to have a claim "invalidated for any reason not shown by the records of the Bureau of Land Management." Because compliance with section 314 of FLPMA can only be resolved by the records of Bureau of Land Management (BLM), no private contest based on that issue can be maintained under that regulation. While the requirement limiting private contests to matters not of record was provided mainly to prevent rival homestead entrymen from claiming a preference right based on information already available to the Government, <sup>2/</sup> it applies to all contests. This is appropriate because a contest proceeding consists of a formal evidentiary hearing and no such hearing is required where the claim is void as a matter of law and its invalidity can be determined on the basis of a record without a hearing. See United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 445 (9th Cir. 1971). Thus, appellant errs initially when it states: "It is conceded that the government may bring a contest to adjudicate invalidity under section 314." This is incorrect, because failure of a claimant to comply with the requirements of section 314 results in the claim being conclusively presumed to be abandoned and void without a hearing or a contest proceeding. See Francis Skaw, 63 IBLA 235 (1982).

Although it is clear that BLM was required to dismiss appellant's contests as a matter of procedure, we will address appellant's substantive argument that it is entitled to some determination of validity of its rivals' claims since the contest complaint arguably could have been treated as a protest under 43 CFR 4.450-2. In W. W. Allstead, *supra*, the Board considered one claimant's protest against BLM's acceptance for recordation of a notice of location filed by a rival claimant. In essence, there is no difference between that protest and Gold's complaint. The Board affirmed the dismissal of the protest, holding that a notice of location which is in proper form and timely filed with the correct fee must be accepted and recorded by BLM notwithstanding the protest of a rival mining claimant that he has a superior and exclusive possessory right to the same ground. We further held that such disputes are not within the jurisdiction of this Department, and can be resolved only by private litigation between the parties in courts of competent jurisdiction.

Appellant recognizes the well established principle that mere possessory actions belong in the courts, not before the Department. See, e.g., Duguid v. Best, 291 F.2d 235 (9th Cir. 1961). Appellant contends, however, that the passage of FLPMA changed this. Appellant asserts that prior to the passage of FLPMA, all title was a matter of state law, and possessory actions

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<sup>2/</sup> See generally Christie v. O'Glesbee, 23 IBLA 155 (1973).

encompassed only disputes between rival mineral entrymen (Appellant's Brief at 8). Appellant states that by enacting section 314, Congress created a new class of nonpossessory disputes between private persons, who may or may not be rival claimants, as long as one of them holds a mining claim. Appellant argues that prior to FLPMA, a private contest by a rival claimant would have been self-defeating, inasmuch as the claimant would have to allege either that the land was nonmineral in character or that there was no discovery on the claim. <sup>3/</sup> Appellant maintains that because Congress changed the law by creating a new basis for invalidity of a claim, cases arising prior to the enactment of FLPMA provide no authority for holding that one claimant cannot contest the validity of another's claim under that statute. Appellant says that its contests put the Government on notice of the invalid claims, and that it was the duty of BLM to adjudicate the allegation of invalidity rather than shirk it as a mere possessory dispute. Appellant further contends that it is a denial of equal protection of the laws to permit nonmineral entrymen to bring a private contest, yet deny such a right to rival mineral entrymen.

[2] Although appellant tries to present these actions as something other than a dispute of possession between rival claimants, there is no other way they can be characterized. Because paramount legal title is in the United States, the disputes between the claimants concern only the possessory right to the claims. Even where one claimant seeks title to the land by filing a patent application, rival claimants may not privately contest the claim administratively but are required by statute to do so "in a court of competent jurisdiction." 30 U.S.C. § 30 (1976). There is even less reason for the Department to consider such disputes where no patent application has been filed. Nothing in section 314 of FLPMA alters this. In decisions issued after the enactment of FLPMA, we have continued to adhere to the view that under 30 U.S.C. § 30 (1976), the Department is without authority to determine the question of right of possession to claims as between rival claimants, regardless of whether a patent application has been filed, and that a suit filed in a court of competent jurisdiction is the proper method of resolving such disputes. W. W. Allstead, *supra* at 48; John R. Meadows, *supra*. Thus, this Department has no authority to decide whether one claimant has a better right to possession of a claim by virtue of his relocation of the claims following his rival claimant's failure to file the documents required by section 314.

[3] In view of the fact that this limitation on our authority arises from statute, we have no jurisdiction to resolve appellant's constitutional argument that it is a denial of equal protection to recognize the right of a nonmineral claimant to contest a mining claim while denying such an opportunity to a rival mineral claimant. See generally Lynn Keith, 53 IBLA 192,

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<sup>3/</sup> This is incorrect also. One rival claimant might challenge another on lack of personal qualification (*e.g.*, citizenship), or which of them actually made the discovery of a valuable mineral deposit, or whether the claim should be located as a lode claim or a placer claim, or whether the right of pedis possessio had been violated, or whether an entitlement had vested pursuant to 30 U.S.C. §§ 38 (1976), or any number of other allegations or issues unrelated to a showing of lack of discovery or the mineral character of the land.

88 I.D. 369 (1981). In a dispute solely between rival mining claimants, the Government's title is not drawn into question. See 30 U.S.C. § 53 (1976). In a dispute between claimants under different land laws, the Government has the responsibility of determining whether the land is mineral or nonmineral in character since it has no authority to recognize a mineral claim if the land is nonmineral, and vice versa. See 30 U.S.C. § 21 (1976); see generally United States v. Sweet, 245 U.S. 563, 567-72 (1918). 4/ The law recognizes other differences between a challenge to a mining claim brought by a rival mining claimant and one brought by someone else. For example, if a contest is brought by the Government or by a nonmineral entryman, the mining claimant must establish a discovery of a valuable mineral deposit on his claim according to the prudent man test. See, e.g., Thomas v. DeVilbiss, 10 IBLA 56 (1973), aff'd, Thomas v. Morton, 552 F.2d 871 (9th Cir. 1977). The standard of discovery applied in court actions between rival mining claimants is less strict. See Chrisman v. Miller, 197 U.S. 313, 323 (1905); Lange v. Robinson, 148 F. 799, 803 (9th Cir. 1906); 1 Rocky Mountain Mineral Law Foundation, American Law of Mining, § 460 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

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4/ Lands valuable for certain minerals are open to nonmineral entries if the minerals are reserved to the United States. See, e.g., 30 U.S.C. §§ 81-85, 121-124 (1976).