

Appeal from decision of the California State Office, Bureau of Land Management, declaring the Big Meadows placer mining claim null and void in part. CA MC 32155.

Vacated and remanded.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim located for a nonmetalliferous mineral when the land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

2. Mining Claims: Lands Subject to -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Generally

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

3. Mining Claims: Lands Subject to -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Generally

To establish that a location of a claim after a withdrawal is an amendment of a location made before the withdrawal, a claimant must show that the earlier location included the portion of the claim subject to the withdrawal, that the persons making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

4. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Grace P. Crocker, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Grace P. Crocker has appealed from the February 10, 1982, decision of the California State Office, Bureau of Land Management (BLM), declaring the Big Meadows placer mining claim null and void in part. CA MC 32155. Pursuant to the requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), a copy of the notice of location of this claim was filed with the BLM, and that notice stated that the claim was located in 1940. BLM determined that the presence of a hot spring on the claim meant that part of the claim, the SE 1/4 SW 1/4 sec. 34, T. 5 N., R. 25 E., Mount Diablo meridian, was withdrawn from mining for nonmetalliferous metals by Exec. Order No. 5389 (July 7, 1930). Because BLM determined that appellant was mining travertine, a nonmetalliferous mineral, BLM declared that portion of the claim affected by the hot spring withdrawal null and void.

[1] BLM made a correct decision on the basis of the record before it. A mining claim located for a nonmetalliferous mineral when the land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio. David Budinski, 31 IBLA 139 (1977). Appellant does not dispute the withdrawal. Appellant contends, however, that the Big Meadows mining claim first came into existence in 1895 and was known as the Mono Travertine, and was subsequently owned and operated by family heirs in good standing to the present day. Although appellant has submitted some evidence purporting to show that the land was mined prior to the date of withdrawal in 1930, this alone is not sufficient to reverse BLM's decision and decide the appeal in her favor.

[2] In order to establish rights predating the 1930 withdrawal, appellant must establish that the 1940 location of the claim is an amended location rather than a relocation of a claim made prior to the date of withdrawal because an amended location notice generally relates back to the date of the original location only if no adverse rights have intervened. Withdrawal of

the land subject to valid existing rights will not prevent the amended location from relating back to the original location; a relocation, however, will not relate back. See R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979). Nothing on the face of the notice indicates that it was an amended notice or relocation, and although there is no requirement that an amended location or a relocation state on its face that this is its purpose, the omission does give rise to an inference that such was not the intent. R. Gail Tibbetts, *supra* at 228-29, 86 I.D. at 547.

In the Tibbetts case at page 219-20, 86 I.D. at page 543, the Board held:

[T]o 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 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 to an amended location, a relocation is, by terms of the applicable statute, adverse to the original claim and is authorized where the owners of the original claim have failed to perform assessment work. 30 U.S.C. § 28 (1976); J. B. Shaffer, 67 IBLA 64 (1982); R. Gail Tibbetts, *supra* at 216, 86 I.D. at 541. A relocation does not relate back to the date of filing of the original notice of location. Fairfield Mining Co., 66 IBLA 115 (1982); American Resources, Ltd., 44 IBLA 220 (1979).

[3] To establish that the 1940 location is an amendment of a location made before the withdrawal, appellant must show that the earlier location included that portion of the claim subject to the withdrawal. Fairfield Mining Co., *supra*. Appellant must also establish that the location predating the withdrawal was properly made, and that the persons making the amended location in 1940 have an unbroken chain of title with the original locators. See R. Gail Tibbetts v. Bureau of Land Management, 62 IBLA 124 (1982). In United States v. Consolidated Mines and Smelting Co., *supra*, the court 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 the prior locators (i.e., whether the filing is "a relocation") or whether instead the present owner was the successor to the earlier interest (i.e., whether the filing is an amended location). See also R. Gail Tibbetts, *supra*. Before a hearing is held, however, appellant should be required to submit a copy of the location filed prior to the 1930 withdrawal which the 1940 location is said to amend. Appellant should also be required to set forth an

unbroken chain of title from the location which predated the 1930 withdrawal to the 1940 notice of location. 1/

[4] However, another matter should be clarified before BLM undertakes the task of adjudicating whether the 1940 notice of location was an amended location or a relocation. A memorandum to the file dated March 12, 1982, indicates that BLM's mining claim recordation unit states that no 1980-81 proof of annual labor was filed for the Big Meadows placer mining claim. Under section 314 of FLPMA, supra, the owner of a mining claim must file a copy of evidence of performance of annual assessment work or notice of intention to hold the claim on or before December 30th of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void. James A. Huff, 69 IBLA 31 (1982). If the required proof was not filed, the entire claim must be deemed abandoned, thereby mooted the issue raised in the instant appeal.

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 case remanded for further action consistent with this opinion.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

1/ We also note an indication in the record that the claim at issue was originally composed of ten 20-acre claims. Inasmuch as a claimant may not consolidate two or more subsisting placer locations in the guise of amending one of those claims (see Gorden Gulch Bar Placer, 38 L.D. 28 (1909)), any attempted consolidation would necessarily be treated as a relocation. Such a relocation would require the necessary number of colocators for each 20 acres embraced in the claim and must have occurred prior to 1930. See Centerville Mine and Milling Co., 49 L.D. 508 (1923).

