

Editor's note: Reconsideration granted; decision reaffirmed -- See 77 IBLA 261 (Nov. 30, 1983); See 77 IBLA 261 for litigation history

SHINY ROCK MINING CORP.

IBLA 83-428

Decided August 15, 1983

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring a portion of mining claim, OR MC 18926, null and void ab initio and rejecting in part mineral patent application OR 26755.

Affirmed.

1. Applications and Entries: Generally--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Mistakes--Words and Phrases

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule generally applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

APPEARANCES: M. Craig Haase, Esq., Reno, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

The Shiny Rock Mining Corporation has appealed the decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 20, 1983, declaring a portion of the Mandalay lode mining claim, OR MC 18926, null and void ab initio because it is situated within an area withdrawn from appropriation under the mining laws by Public Land Order No. (PLO) 3502 (29 FR 16862 (Dec. 9, 1964)), and rejecting the corporation's mineral patent application for the claim, OR 26755, as to the lands in the withdrawn area. ^{1/}

^{1/} BLM properly did not declare the entire claim null and void or reject the entire patent application on the basis of the withdrawal, since the discovery point of the Mandalay claim lies outside the withdrawn area. See The Hidee Gold Mining Co., 30 L.D. 420 (1901).

PLO 3502 withdrew from appropriation under the mining laws in aid of programs of the Department of Agriculture all lands lying within 200 feet on each side of the center line of existing Forest Road 580 2/ in the NE 1/4 sec. 30, T. 8 S., R. 5 E., Willamette meridian, among other lands. The Mandalay claim was located on July 17, 1979, in the NE 1/4 sec. 30, and SE 1/4 sec. 19, T. 8 S., R. 5 E., Willamette meridian, in such a manner as to overlie the road. 3/

In its statement of reasons, appellant argues that there were various errors, deficiencies, or violations of applicable statutes and regulations in the formulation, drafting, and publication of PLO 3502. Appellant questions the notice given as to the proposed withdrawal, asserts that no actual notice was given to its predecessors-in-interest 4/ and concludes that the withdrawal was made in violation of the due process clause of the United States Constitution.

Except for documents supplied by appellant, we do not have the records concerning the promulgation of PLO 3502 before us, but, as we shall explain later, they are not necessary to the resolution of this appeal. Nevertheless, we do find that on December 30, 1954, BLM published a notice of proposed withdrawal and reservation of lands as a result of the Forest Service's application for withdrawal of various lands, including those at issue, from appropriation under the general mining laws for administrative sites, public

2/ The record reflects that the actual designation of the road was S80, not 580, although no correction was ever made to the PLO.

3/ The location of the Mandalay claim (Mineral Survey (MS) 991) is described as follows:

"BEGINNING at Corner No. 1 of the Mandalay lode; from which the North 1/4 corner of Section 30 bears N. 82 degrees 24' W., 277.48 feet; Thence N. 82 degrees 31' E., 600.00 feet to Cor. No. 2; Thence S. 7 degrees 29' E., 1500.00 feet to Cor. No. 3; Thence S. 82 degrees 31' W., 600.00 feet to Cor. No. 4; Thence N. 7 degrees 29' W., 1500 feet to Cor. No. 1, and PLACE OF BEGINNING, containing 20.661 acres, and forming a portion of the Southeast 1/4 of Section 19 and the Northeast 1/4 of Section 30, Township 8 South, Range 5 East, Willamette Meridian, Oregon."

See Notice of Application for Mineral Patent.

4/ In its application for mineral patent, appellant identified five mining claims that conflict with the Mandalay claim (MS 991). The claims are Bee Fraction (MS 924), Mandalay Lode (MS 924), Ajax (MS 887), Bull Moose (MS 889), and Bull Moose Extension (MS 889). Appellant asserted ownership of the claims and waived all rights to the claims to the extent of the conflicts if a mineral patent to the Mandalay claim is issued. Each of the claims was located long before the 1964 withdrawal and presumably it is the previous owners of these claims whom appellant refers to as its "predecessors-in-interest." The Mandalay claim as located by appellant in 1979 includes a portion of each of these claims. See MS 991 (plat).

The record also reflects that BLM informed appellant that the Bull Moose and Bull Moose Extension claims were declared null and void by contest No. 116 (Oregon), and the Ajax was declared null and void by contest No. 117 (Oregon) on Aug. 13, 1953. Affirmed, United States v. Amcol Mining and Milling Co., A-28405 (June 27, 1960).

service sites, recreational areas, or other public purposes specific to the particular area. A period of 30 days was provided for comment. 19 FR 9356 (Dec. 30, 1954). Such notice was permitted, but not required, by Departmental regulations at the time. See 43 CFR 295.11(a) (1954). Under 43 CFR 295.10(a) (1954), the noting of the receipt of the Forest Service's application for a withdrawal in the BLM serial register and on the official BLM plats temporarily segregated the identified lands from appropriation under the public land laws to the extent that the withdrawal if effected would prevent such appropriation. Therefore, the lands in this case were segregated from mining location from the time that the Forest Service application was noted to the BLM records, regardless of the notice provided about the application.

In 1963, BLM published another notice in the Federal Register as required by 43 CFR 295.12(a) (1963) indicating that Forest Service had amended its application to add certain lands and drop others from the withdrawal notice. 28 FR 2748 (Mar. 20, 1963). The withdrawal effected by PLO 3502 in 1964 was made subject to valid existing rights. Thus BLM recognized the rights of existing mining claim owners.

[1] It is well settled that a mining claim located on land previously withdrawn from appropriation is null and void ab initio. Alan Kaiser, 72 IBLA 387 (1983); Floyd E. Benton, 62 IBLA 243 (1982); Sally Lester, 31 IBLA 43 (1977). Appellant's challenge to the validity of the withdrawal, however, brings into play another longstanding rule. The Department has repeatedly held that the availability of land for appropriation or lease must at least initially be determined by recourse to the public records of BLM. Under this so-called "notation rule," if the BLM records have been noted to reflect the devotion of land to a particular use that is exclusive of another conflicting use, no incompatible rights in the land can attach by reason of any subsequent application until the record has been changed to reflect the availability of the land for the desired use. This rule generally applies even where the notation was posted to the records in error or where the segregative use so noted is void, voidable, or has terminated or expired. Irvin D. Bird, Jr., 73 IBLA 210 (1983); Paiute Oil and Mining Corp., 67 IBLA 17 (1982); John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (1981). Thus, regardless of whether PLO 3502 was properly issued or not, since the official BLM records reflected the status of the lands at issue as withdrawn from mining location in 1977, BLM properly declared the portion of the claim in the withdrawn area null and void ab initio. 5/

In its statement of reasons, appellant requested to be advised whether a fact-finding hearing would be appropriate. In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing are required only where there is a disputed question of material fact. Where the validity of a claim turns on the legal effect to

5/ This ruling does not affect any rights appellant may hold to other claims located on the same lands prior to the Forest Service's withdrawal application which have been maintained in accordance with applicable laws and regulations. W. R. and G. R. Strickler, 27 IBLA 267 (1976).

be given facts of record concerning the status of the land when the claim was located, no hearing is required. United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971); H. B. Webb, 34 IBLA 362 (1978). Thus, a mining claim located at a time when the land is withdrawn from mineral entry may properly be declared null and void without a hearing. Heirs of M. K. Harris, 42 IBLA 44 (1979); Edward L. Macauley, 35 IBLA 202 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Oregon State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

