

RICK AND LINDA ANDERSON

IBLA 83-538

Decided October 17, 1983

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring mining claims null and void. N MC 179834 and N MC 179835.

Affirmed.

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 Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim located upon lands withdrawn from mineral entry is properly declared null and void.

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 Mining Claims: Lands Subject to -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Generally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

APPEARANCES: Rick Anderson, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Rick and Linda Anderson appeal from the April 12, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring null and void their mining claims Wooden Nickel, N MC 179834, and Wooden Nickel #1, MC 179835, located in Clark County, Nevada. More specifically, both claims are located in sec. 35, T. 32 S., R. 66 E., Mount Diablo meridian, an area which was withdrawn from the operation of the mining laws pursuant to the Fort Mohave Act of April 22, 1960, 74 Stat. 74, by notice published at 25 FR 4397 (May 18, 1960). The land in sec. 35 was not subsequently reopened to the location of mining claims.

By a notation on the notice of appeal, appellants contend their claims, which they state were originally located in 1945, were relocated on December 31, 1980, and were filed for record on January 9, 1981. In their statement of reasons filed with this Board appellants contend they have occupied the claims since March 1958 and, on December 31, 1980, made a mineral discovery on the claims. Appellants argue that, under the 1872 mining laws,

they have a possessory title to the claims based upon their occupation of the lands and their continuing search for mineral. They contend their rights to retain the claims are protected by the Fort Mohave Act, which preserves valid existing rights in the lands in sec. 35. Appellants also point out the land in sec. 35 remains public land of the United States, never having been conveyed to the State as contemplated by the Fort Mohave Act. They state an intention to proceed to patent the two claims.

[1] Appellants offer no evidence to show that the claims were located prior to 1960 when the land was segregated from mineral entry, except their assertion the land was occupied since 1958 and prospected since 1945. Accepting their statements at face value, however, there is no legal basis upon which to premise a different conclusion than that reached by BLM in this case. It is axiomatic that a mining claim located on land previously withdrawn from appropriation is null and void ab initio. J. Pat Kauffman, 71 IBLA 183 (1983). Appellants concede the withdrawal from appropriation under the mining laws in 1960 of the lands upon which their claims are located. They contend, however, the claims were relocated in 1980 and that location should date back to the initial entry onto the land in 1945, under the proviso of the Fort Mohave Act which saved valid existing rights.

[2] If, however, appellants are to establish the existence of rights prior to the 1960 withdrawal, they must establish that the 1980 location of the claims is an amended location rather than a relocation of a claim made prior to withdrawal. Withdrawal of land subject to valid existing rights will not generally prevent an amended location from relating back to the original location; however, a relocation will not relate back. See Grace P. Crocker, 73 IBLA 78 (1983); R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 530 (1979). As stated in Grace P. Crocker, 73 IBLA at 80:

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).

Appellants' statements indicate the possibility they intend to allege an amended location of the 1945 claims, even though they specifically state that a relocation rather than an amended claim was made. Yet it also appears there was no prior location in 1945 since, according to appellants, there was no mineral discovery until 1980. The validity of a mining claim depends upon the discovery of a valuable mineral deposit. See 30 U.S.C. § 22 (1976).

Appellants clearly state that no discovery of any valuable mineral was made until 1980. Until that time, therefore, 20 years after the lands upon which they seek to locate their claims were withdrawn from entry for mining purposes, they had no valid claim to any mineral deposit. Since, after 1960,

no claim could legally have been located on the withdrawn lands, no valid claim was possible under the circumstances described. 1/

Accordingly, 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.

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Franklin Arness  
Administrative Judge  
Alternate Member

We concur:

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Edward W. Stuebing  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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1/ Appellants challenge the affirmation of the withdrawal on the basis that conditions respecting the original intended transfer of the withdrawn lands to State ownership have not been met, at least so far as sec. 35 is concerned. So long, however, as the withdrawal remains in effect, the Department lacks authority to recognize claims upon the withdrawn lands. See John S. Fleming, 65 IBLA 357 (1982); George H. Fennimore, 50 IBLA 250 (1980).

