

J. GARTH WOODWORTH

IBLA 83-770

Decided December 22, 1983

Appeal from the decision of the Oregon State Office, Bureau of Land Management, declaring lode mining claims null and void. OR MC 22989 through OR MC 22996.

Reversed.

1. Mining Claims: Generally

Where the Bureau of Land Management declares various lode mining claims null and void because the owner of record is not a United States citizen and, on appeal, evidence is submitted showing that the claims are currently owned in part by United States citizens, the decision will be reversed.

APPEARANCES: John L. Neff, Esq., Spokane, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

J. Garth Woodworth appeals the decision of the Oregon State Office, Bureau of Land Management (BLM), dated May 12, 1983, declaring eight lode mining claims, OR MC 22989 through OR MC 22996, null and void because Hugh MacCallum Woodworth was not a United States citizen and his estate maintains a Canadian mailing address. These claims were recorded timely pursuant to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), on behalf of the estate of Hugh MacCallum Woodworth by J. Garth Woodworth, appellant herein.

In his statement of reasons, however, appellant contends that the mining claims were recorded in the name of J. Garth Woodworth, as nominee for the record owners of the claims as established by state records, some of whom are United States citizens. He claims that the owners of the mining claims as established by state records include himself who owns an undivided one-fourth interest in a 92-1/2 percent interest in the claims, and Mark Southworth Adams, a United States citizen, who owns a similar interest. He asserts that since August 29, 1936, a 7-1/2 percent interest in the claims has been held by G. M. Watson, a United States citizen, and his successors, which interest is currently held by Ralph L. Watson, also a United States citizen. The remaining owners as well as appellant are not United States citizens.

Appellant also argues that BLM took this action not for a legitimate administrative purpose, but rather for the benefit of another private claimant which has purported to locate conflicting and overlying mining claims on the same lands.

The recordation regulations required that the name and current mailing address of the owner or owners of each claim located on or before October 21, 1976, and filed for recordation be provided to BLM. 43 CFR 3833.1-2(c) (1982). Furthermore, notice of any transfer of any interest in a recorded claim must also be filed with BLM. 43 CFR 3833.3. Review of the files reflects, as already noted, that the owner of the claims at issue at the time of recordation was the estate of Hugh MacCallum Woodworth. No notices of transfers of interests have been filed. In addition, the assessment work performed each year has been performed on behalf of the estate or J. Garth Woodworth and the estate. Although under current regulations the failure to record by or on behalf of all owners does not affect the validity of the instrument filed, 43 CFR 3833.4(c) (47 FR 56307 (Dec. 15, 1982)), owners who have not recorded or filed notices of transfer may be bound by proceedings initiated by the United States against the owners of record. See 43 CFR 3833.5(d) (47 FR 56307 (Dec. 15, 1982)); United States v. Montgomery, 75 IBLA 358 (1983).

The United States may contest the validity of a mining claim at any time for any purpose. Davis v. Nelson, 329 F.2d 840 (9th Cir. 1964). In this case, although the question of the citizenship of the owner of the claims at issue was initially raised by a potentially adverse claimant, BLM's action was based on the fact that the owner and address of record for the claims are alien and also upon the Department's 1965 decision captioned Hugh MacCallum Woodworth, 72 I.D. 233 (1965). That decision rejected a verified statement filed in support of a claim to surface resources within the boundaries of the claims by Hugh MacCallum Woodworth under the Act of July 23, 1955, 30 U.S.C. § 613 (1976), because as a declared alien he was not qualified to purchase a claim from the United States nor hold a claim under possession or occupancy against the United States. No action was apparently taken to declare the claims null and void following the 1965 decision, however. See Memorandum from Director to State Director dated April 7, 1983.

Appellant has the burden to demonstrate that these claims are owned, at least in part, by citizens of the United States. Therefore, by order dated September 26, 1983, the Board directed appellant to provide it with a list of the current owners of the claims and their current mailing addresses, to identify those owners who are United States citizens, and to supply evidence or proof of citizenship. As provided in 30 U.S.C. § 24 (1976), proof of citizenship

may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

In response, appellant has submitted a list of the current owners of the claims. The list identifies Ralph L. Watson of Milwaukee, Oregon, and Mark Woodworth Adams of Santa Barbara, California, who are both United States citizens and who hold an undivided 7-1/2 percent interest and an undivided one-quarter of 92-1/2 percent interest, respectively. Elizabeth Margaret Woodworth, Sabra Joan Woodworth, and James Garth Woodworth, who are residents and citizens of Canada, each holds an undivided one-fourth of a 92-1/2 percent interest in the claims.

Appellant has also submitted the affidavit of Ralph L. Watson and his own affidavit. Watson attests to the fact that he is a United States citizen born in St. Louis, Missouri, on July 12, 1898. He explains that his father, also a United States citizen, had acquired an undivided 7-1/2 percent interest in the claims in 1936 and that he acquired 5 percent from his father by two deeds recorded August 7, 1941, and December 22, 1945 (copies attached), and the remaining 2-1/2 percent by inheritance as his father's sole heir. ^{1/}

Appellant's affidavit attests that at the time of his death in 1978, his father, Hugh MacCallum Woodworth, owned 92-1/2 percent interest in the claims and that under his will the ownership of that interest in the claims passed to his children, Elizabeth M. Woodworth, Sabra J. Woodworth, Mark W. Adams, and appellant. Appellant adds that he "is informed and believes" that Mark W. Adams currently holds a United States passport issued on January 22, 1980.

Based on appellant's submissions we find that the lode mining claims at issue are owned in part by United States citizens and therefore BLM's decision must be reversed.

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 reversed.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge

^{1/} There is no mention of the Watson interest in Hugh MacCallum Woodworth, supra.

