

HENRY J. HUDSPETH, SR.
BETTY A. HUDSPETH

IBLA 83-918

Decided January 9, 1984

Appeal from an August 2, 1983, decision of the Wyoming State Office, Bureau of Land Management, declaring the Pass No. 1 through Pass No. 6 unpatented lode mining claims null and void. W MC 168536 through W MC 168541.

Affirmed.

1. Mining Claims: Relocation

A relocater has no rights by relation to the date and priority of the title which he has destroyed by his relocation.

2. Patents of Public Land: Effect -- Patents of Public Land: Suits to Cancel

The effect of issuance of legal patent is to transfer title from the United States and to remove the lands from the jurisdiction of the Department of the Interior. When patent has been issued the Department of the Interior can exercise no further control over the lands and relief must be sought through the courts.

3. Patents of Public Land: Generally -- Patents of Public Land: Effect

A patent of land issued by the proper officers of the United States is presumed valid, and to pass title.

4. Mining Claims: Lands Subject to -- Mining Claims: Recordation -- Patents of Public Lands: Effect

Where a patent has been issued for the lands on which a claim is situated it is proper for BLM to refuse recordation of the claim, since it has no jurisdiction over the claim.

APPEARANCES: Henry J. Hudspeth, Sr., and Betty A. Hudspeth, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Henry J. Hudspeth, Sr., and Betty A. Hudspeth have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), declaring the Pass No. 1 through Pass No. 6 unpatented lode mining claims null and void ab initio because the claims were located on land previously patented to another under the provisions of 43 U.S.C. § 1171 (1970), 1/ which provided for the public sale of isolated tracts of Federal land.

The mining claims which are the subject of this appeal are situated in the W 1/2 of the NW 1/4 sec. 34, T. 32 N., R. 99 W., sixth principal meridian, Wyoming. Appellants have submitted location notices indicating that the claims were located by appellants and three others in August 1955. However, these location notices are not the same as those which were filed with BLM pursuant to the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA). 2/ The claim notices filed with BLM show a location date of December 30, 1975, and show appellants as being the only locators.

On June 27, 1961, the SW 1/4 of the NW 1/4 sec. 34, T. 32 N., R. 99 E., sixth principal meridian, Wyoming was conveyed to Vasile Lucas by patent issued pursuant to section 14 of the Act of June 28, 1934, as amended, 48 U.S.C. § 1171 (1970), reserving to the United States only the leasable minerals. On June 28, 1961, the NW 1/4 of the NW 1/4 sec. 34, T. 32 N., R. 99 E., sixth principal meridian, Wyoming, was conveyed to Giles Marcus Piper pursuant to the same act and reserving only leasable minerals. The issuance of the two patents conveyed to private ownership all of the land claimed by the appellants.

[1] The claims are located entirely within the land conveyed to Lucas and Piper in 1961. While the claim notices submitted by appellants indicate that the claims were located in 1955, the subsequent claim notices give rise to the assumption that the claims were relocated by appellants in 1976. If in fact the claims were relocated, the 1955 claims were abandoned at the time of relocation. The relocater has no rights by relation to the date and priority of the title which he has destroyed by his relocation. See Cheesman v. Shreeve, 40 F. 787 (C.C. Colo. 1889). Therefore, if a claimant has relocated a mining claim, the claimant has lost all rights to contest the validity of an intervening right based on the claimant's rights under the prior claim. The determination by the Wyoming State Office was correct and will not be overturned.

1/ Repealed by section 703 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 2787.

2/ Under section 314 of the FLPMA, 43 U.S.C. § 1744 (1976), the owner of an unpatented lode mining claim located prior to Oct. 21, 1976, is required to file a copy of the official record of the notice of location or certificate of location with BLM. The copy of the official record of the notice filed by appellants was a copy of the notice of location for the claims bearing the 1976 date. No record of the 1955 location notices was presented to the Department of the Interior until appellants filed their statement of reasons with the 1955 location notices attached.

[2] Assuming, for the sake of discussion, that the 1975 location notices were intended to be amendments of the 1955 notices and not a relocation of the claims, this Board has no authority to determine the rights of the appellants or to overturn the issuance of the patents. It is well established that the effect of issuance of legal patent is to transfer the lands from the United States and to remove the lands from the jurisdiction of the Department of the Interior. Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (1982). If the patent is issued without mineral reservation, 3/ even if by mistake or inadvertence, the jurisdiction of the Department of the Interior to consider disputed questions concerning rights to land is removed by the issuance of patent. United States v. State of Washington, 233 F.2d 811 (9th Cir. 1956). When the Government has issued its patent for public lands it can exercise no further control over them and relief must be sought through the courts. See Kirwan v. Murphy, 83 F. 275 (8th Cir. 1897), appeal dismissed, 170 U.S. 205, (1898).

[3] A patent of land issued by the proper officers of the United States is presumed to be valid, and to pass title; Minter v. Crommelin, 59 U.S. 87 (1856). Therefore, unless and until the patents issued to Lucas and Piper are overturned by a court of competent jurisdiction, the determination that claims wholly located on the same land are void will be upheld. 4/

[4] Under the circumstances of this case, we would also point out that BLM should more properly have rejected appellants' filings for recordation made in 1976 pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). See Harry J. Pike, 67 IBLA 100 (1982).

Whether appellants intended the 1975 location of the claims to constitute an amended location or a relocation is not a critical consideration here, since the issuance of patent for the land deprived BLM of jurisdiction to recognize the claims.

In Harry J. Pike, supra, this Board affirmed a BLM decision rejecting the recordation of the appellant's mining claim pursuant to FLPMA where the land was patented to the State of Alaska after location of the claim. In affirming that BLM decision we said therein at pages 101-02:

[1] BLM correctly refused appellant's filing of recordation information.
Appellant's claim was located in 1954, prior

3/ While leasable minerals were reserved, the location of a lode claim gave no rights to leasable minerals. Therefore, jurisdiction based upon mineral rights pertaining to locatable minerals was surrendered.

4/ A lode mining claim situated partly on public land and partly on private land, and whose discovery is on public land is technically not void with respect to that portion of the claim located on the private land, even though the claimant has no rights to the private land contrary to the rights of the private land owner. See Zula C. Brinkerhoff, 75 IBLA 179 (1983). In addition, under certain circumstances, a claim can be located on patented land if the locatable minerals have specifically been reserved by the United States at the time of issuance of the patent.

to the patenting of the lands to the State of Alaska in 1966. However, the issuance of this patent without a mineral reservation ended the Department's authority to resolve conflicting claims to the patented lands, including its authority to recognize the validity of mining claims situated on these lands. Silver Spot Metals, Inc., 51 IBLA 212 (1980); see Germania Iron Co. v. United States, 165 U.S. 379, 383 (1897). Accordingly, BLM was without authority to recognize appellant's claim, and it properly declined to accept notice of its location, since no purpose would be served by doing otherwise.

Similarly, this Board lacks jurisdiction to recognize appellant's claim. Accordingly, it is unnecessary to consider his arguments that he was not given constitutionally adequate notice of the State's selection and that his rights as holder of a valid existing claim have been diminished in violation of section 6(a) of the Alaska Statehood Act, 72 Stat. 339, 340 (1958), since we are unable to afford him any remedy.

Further, we cannot now recommend that the Attorney General take any action on behalf of the United States to vacate number 50-67-0124 in order to recognize any right that appellant may have in these lands. Suits brought by the United States to vacate or annul any patent shall only be brought within 6 years after the date of issuance of such patents or after the date of discovery of fraud leading to the conveyance. 43 U.S.C. § 1166 (1976); Exploration Co. v. United States, 247 U.S. (1918). More than 6 years have elapsed since the issuance of this patent, and there is no evidence of fraud. Accordingly, we cannot recommend that any action be taken. [Footnote omitted.]

Having accepted appellant's recordation filings, BLM had no alternative but to declare the claims null and void ab initio.

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 affirmed.

R. W. Mullen
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Gail M. Frazier
Administrative Judge

