

SANTA FE MINING, INC.

IBLA 83-280

Decided February 9, 1984

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring mining claims to be null and void ab initio in part. U MC 258447 through U MC 258449.

Reversed in part; set aside and remanded in part.

1. Mining Claims: Generally -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Public Lands: Classification -- Recreation and Public Purposes Act -- Withdrawals and Reservations: Effect of

Lands segregated on the public records by a Recreational and Public Purposes lease are not available for the location of mining claims, but a claimant may establish the exterior boundaries of a lode claim on land under a Recreation and Public Purposes lease, with the permission of the lessee, for the purpose of making end lines parallel so as to obtain extralateral rights to a vein or lode discovered on lands available for location.

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 Mining Claims: Generally -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

Where a lode mining claim is located partially on patented or withdrawn land, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Zula C. Brinkerhoff, 75 IBLA 179 (1983), modified.

APPEARANCES: Edward L. Devenyns, division landman, Santa Fe Mining, Inc., Albuquerque, New Mexico.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Santa Fe Mining, Inc. (Santa Fe), appeals from the December 6, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), which declared the Kanarra Nos. 9 through 11 lode mining claims, U MC 258447 through U MC 258449, to be null and void ab initio in part. The claims in question were located in September 1982. ^{1/} BLM stated in the decision:

On February 21, 1968, pursuant to the Recreation and Public Purposes Act of 1926, [^{2/}] a lease was issued in the NE 1/4 of sec. 3. The issuance of this lease had the effect of withdrawing these lands from mineral entry. The Kanarra Nos. 9-11 are located on such lands.

On April 15, 1898, State Selection 1 was issued covering lands in the NE 1/4. The mineral rights to these lands were not retained by the Federal Government. The Kanarra No. 11 lies on this patented land.

Accordingly, the Kanarra Nos. 9 through 11 were declared to be null and void ab initio in part as to the segregated and patented lands described. The decision was sent to Sedi-Met, Inc., which was the owner of record at the time the decision was issued. With the notice of appeal Santa Fe included copies of deeds showing that it acquired the mining claims on December 12, 1982.

In stating the reasons for appeal, Santa Fe acknowledges that a lease was entered into pursuant to the Recreation and Public Purposes Act of 1926 and that the land covered by the lease was effectively withdrawn from mineral entry. Santa Fe contends that those parts of the Kanarra Nos. 9 through 11 not in conflict with the Recreation and Public Purposes lease are positioned on lands open to location. Santa Fe further contends that the Kanarra No. 11 mining claim is not located on lands subject to State Selection 1. With its statement Santa Fe filed a map showing the exact location of the claims as it relates to the lease and the state selection patent.

Santa Fe is correct in its contention that the Kanarra No. 11 mining claim is not located on lands subject to State Selection 1. Land status plats included with the case file show State Selection 1 to be located in the W 1/2 NE 1/4 of sec. 3, T. 38 S., R. 12 W., Salt Lake meridian. The Kanarra No. 11 mining claim, as originally filed, is located in the N 1/2 NE 1/4 NE 1/4 of sec. 3, T. 38 S., R. 12 W., Salt Lake meridian. To the extent BLM declared the Kanarra No. 11 claim null and void because of a conflict with State Selection 1, it was in error and must be reversed.

[1] Portions of the Kanarra No. 11 mining claim, as well as portions of the Kanarra Nos. 9 and 10 claims, however, are located on land covered by the Recreation and Public Purposes lease. A classification by BLM of land

^{1/} The claims are located in the NE 1/4 NE 1/4 sec. 3, T. 38 S., R. 12 W, Salt Lake meridian.

^{2/} As amended, 43 U.S.C. § 869 to 869-3 (1976).

for disposition under the Recreation and Public Purposes Act segregates the land from mineral location. Delmar McLean, 40 IBLA 34 (1979). Here not only was the land so classified but, a lease exists for the land which predates the filing of the location notices for the Kanarra Nos. 9 through 11 mining claims. However, for the reasons stated below, it was improper for BLM to declare the three claims null and void ab initio to the extent they conflicted with the Recreation and Public Purposes lease.

A locator may not locate a lode mining claim based on a discovery on patented land or on land withdrawn from location under the mining law because such land is not open to the operation of the mining laws, but a locator whose discovery is on lands open to location may extend the side lines of the claim across patented lands or withdrawn land for the purpose of making the end lines parallel and to acquire the extralateral rights to lodes and veins, which apex within the claim. ^{3/} See Zula C. Brinkerhoff, 75 IBLA 179 (1983).

We feel that further comment on the Brinkerhoff decision is warranted as that decision is expressed in such a way that it easily may be misunderstood and in one particular it is demonstrably in error. Brinkerhoff is correct in its main holding, *i.e.*, that a lode mining claim which is partially located on patented land is not null and void ab initio to the extent that it includes such patented land. In certain circumstances it may be voidable to that extent, but such a claim is not a nullity from its inception as to the patented land. However, the Brinkerhoff decision might lead the reader to believe that a mining claimant has a perfect right to extend his lode claim location onto another's patented land and to exploit the lode which lies beneath the surface of the patented land, both within the claim's boundaries and any extralateral extension of the lode beyond those boundaries. Such an interpretation would be incorrect.

Extralateral rights, based upon the occurrence of the apex of a vein or lode inside the surface lines of a location, are conditional, not absolute. There are many circumstances which would preclude the lode mining claimant from obtaining any underground extralateral rights beyond the defined boundaries of his claim; and, where the claim is located partially on patented land or land withdrawn from operation of the general mining laws, preclude his mining even within that portion of the claim's boundaries. For example, a patent to a placer location conveys all the minerals within its boundaries except the lodes known to exist at the time of patent. If, subsequent to issuance of patent to a placer claim, a lode is discovered on adjacent land, the lode claimant will obtain no rights to the surface or the minerals on the patented placer claim, even if the definition of his lode claim partially extends across the boundary and includes some of the patented placer claim. See Woods v. Holden, 26 L.D. 198, 205 (1898), reciting the following quotation

^{3/} Although we have stated that a claimant may extend end lines into patented or withdrawn land, we do not mean to infer that such extension may be made without the permission of the owner of those lands. Where lands have been withdrawn from the operation of the mining law, such a withdrawal is an indication that there is no permission to go on the withdrawn land; however, in such a case a claimant may make an extension by projection and use of witness corners as permitted by applicable law

from section 2333, Revised Statutes: "[B]ut where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof."

Similarly, prior agricultural patents which effectively conveyed the mineral estate in the patented land would bar a subsequent locator of a lode claim from obtaining any mineral or surface rights within the patented land, extralateral or otherwise, notwithstanding the location of a portion of a lode claim within the bounds of the patented land. 4/ See 2 Lindley on Mines § 597 (3rd ed. 1897). Other forms of conveyances which included the mineral estate and vested prior to the discovery of a lode would also bar mineral and surface intrusion by a lode claimant. These would include state school grants, railroad grants, cash entries, and the like.

Lands withdrawn by the Government from the operation of the mining laws prior to a claimant's acquisition of any mineral rights thereon would assuredly preclude a claimant from subsequently establishing such rights, as the right to locate mining claims and the extralateral rights attendant to certain lode claims are purely the creations of the general mining law, which is inapplicable to such withdrawn lands.

By an extension of the same logic, we might hypothesize that a lode claim located across a state line into a state where the mining laws are inapplicable (as a North Dakota claim extended into Minnesota, or a New Mexico claim extended into Texas) would gain the claimant no rights of any kind in the lands within the state where the mining law is inoperative.

[2] Notwithstanding everything that has been said heretofore concerning the partial location of lode claims on patented or withdrawn land, or upon land in states not subject to the mining law, we must repeat that, as Brinkerhoff holds, such claims are not null and void ab initio to the extent of their inclusion of such lands. While those claims may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of claim of that kind might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry. See, e.g., Woods v. Holden, supra. Therefore, Brinkerhoff's holding that the portions of lode claims embracing patented lands are not void is correct.

The vice of the Brinkerhoff decision lies in its statement that:

To the extent that these [BLM] decisions require a finding that a lode location based on a discovery on unappropriated land was null and void ab initio as to any portion of the claim lying on

4/ "There is an apparent conclusive presumption as to the non-mineral character of the land on the date an agricultural patent issues as to mining claims coming into existence subsequent to the date of patent." R. Driscoll, Jr., "Present Application of the Doctrine of Extralateral Rights," 7 Rocky Mountain Mineral Law Institute, 337, 340 (1962), citing Burke v. Southern Pacific R.R., 234 U.S. 669 (1914); and 2 American Law of Mining § 6.39 (1960).

patented land, rather than merely stating that they convey no surface rights to the patented lands, they must be overruled. [Emphasis added.]

75 IBLA at 182. The language underscored seems to constitute a holding that by partial location of the claim on patented land, the locator in each such case has acquired rights in the mineral estate which BLM must recognize, and that BLM should merely warn the locator that no rights to the patented surface have accrued to him thereby. As shown by the foregoing discussion, this is not true in every case, and may never be treated as a foregone conclusion. While it is true that a partial location on patented land never invests the lode claimant with any right to the patented surface, the question of whether he thereby acquired any mineral rights in the subsurface of the patented land must be determined on a case-by-case basis. Therefore, BLM should never "merely state that [such locations] convey no surface rights to the patented lands," and Brinkerhoff should be modified accordingly.

In the Board's view, BLM should simply discontinue its practice of attempting to adjudicate the validity of those portions of lode claims which lie partly on patented or withdrawn land on the sole basis of a notice of location filed for record pursuant to 43 U.S.C. § 1744 (1976). However, BLM may continue to hold null and void all mining claims of every kind which are found on the record to have been entirely located on patented or withdrawn land after the issuance of a patent has divested the United States of its title to the locatable minerals or after land has been withdrawn from location under the mining law. Likewise, BLM should continue to declare placer claims and millsites partly located on such prior patented or withdrawn lands to be null and void to the extent of their encroachment.

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 reversed in part, and set aside and remanded in part.

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge.

