

RED MOUNTAIN MINING CO. ET AL.

IBLA 84-410

January 30, 1985

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring mining claims A MC 208235 through A MC 208237 null and void ab initio.

Affirmed as modified.

1. Mining Claims: Lode Claims -- Mining Claims: Placer Claims -- Mining Claims: Special Acts

BLM may properly declare a placer mining claim null and void ab initio if the location was not perfected by performance of a condition precedent set forth in the order opening the land in a reclamation withdrawal to mineral entry pursuant to sec. 1 of the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1982), i.e., execution and recordation of a required stipulation. The mining claimant cannot take advantage of the execution and recordation of the required stipulation in conjunction with a prior lode mining claim allegedly covering the same land when the locator is not the successor in interest with respect to the lode claim.

APPEARANCES: Hale C. Tognoni, Esq., Phoenix, Arizona, for appellants; Fritz L. Goreham, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Red Mountain Mining Company (Red Mountain), Theodore W. Dyke (Dyke), Gloria Cathleen Blackburn (Blackburn), Margaret French Adams (M. F. Adams), and Delmar Lavoy Adams (D. L. Adams) have appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated February 28, 1984, declaring the Red Mountain Nos. 1 through 3 association placer mining claims, A MC 208235 through A MC 208237, null and void ab initio. 1/

1/ Delmar Lavoy Adams, Margaret French Adams, and Theodore W. Dyke are owners of Red Mountain. All four individuals are the co-locators of the Red Mountain Nos. 1 through 3 association placer mining claims.

On October 31, 1983, Dyke, Blackburn, M. F. Adams, and D. L. Adams filed notices of location for three 80-acre association placer mining claims with BLM pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). These notices of location state that they were posted on the ground on October 13, 1983, and that the claims were located by the four claimants "under the placer mining laws (30 U.S.C.A. Section 35)."

The association placer mining claims (Red Mountain Nos. 1 through 3) are situated in lot 4, the SW 1/4 SE 1/4, SW 1/4 sec. 24, T. 2 N., R. 6 E., Gila and Salt River Meridian, Maricopa County, Arizona. The location notices for each of the association placer claims contains the following statement:

This mining claim * * * is located by legal subdivision under the placer mining laws (30 U.S.C.A. Section 35), situate on public lands belonging to the United States of America, open to mineral entry, was first entered upon for the purposes of development and production of decorative stone and other valuable mineral deposits by V. V. Burd with lode claims on the 27th day of February, 1956 and such mineral rights were thereafter transferred [sic] through mesne conveyances to Red Mountain Mining Company. Delmar Lavoy Adams and his wife Margaret French Adams * * * and Theodore W. Dyke * * * are the owners of Red Mountain Mining Company. The Adams' and Mr. Dyke now join with the Adams' daughter, Gloria Cathleen Blackburn * * * all citizens of the United States, the undersigned, on this 13th day of October, 1983 and claim their rights to possession and patent under 30 U.S.C.A. Section 38 without abandoning the Red Mountain Mining Company's rights under its lode claims, in the event that the B.L.M. should determine this decorative stone and other valuable mineral occurrences [sic] are lode.

On January 26, 1984, the association placer mining claims were conveyed to the "Red Mountain Grubstake."

The land subject to the various locations was closed to mineral entry pursuant to Secretarial orders dated July 2, 1902, and February 10, 1906, and reopened to mineral entry by order dated February 14, 1956 (21 FR 1205 (Feb. 22, 1956)), pursuant to section 1 of the Act of April 23, 1932, 43 U.S.C. § 154 (1982). The February 1956 order opened the land to mineral entry on February 27, 1956. The order provided that mineral entry would be subject to a stipulation "to be executed and acknowledged in favor of the United States by the locators for themselves, their heirs, successors and assigns, and recorded in the county records and in the United States Land Office at Phoenix, Arizona, before any rights attached thereto." The stipulation provides for the protection of the Salt River bottom lands from the runoff from mining and milling operations and reserves to the United States the right to construct, operate, and maintain dams, canals, electric transmission lines, roadways, and other structures, subject to certain conditions.

In its February 28, 1984, decision BLM noted that the file for appellants' placer mining claims did not contain the required stipulation and that, for this reason, the claims were null and void ab initio, citing Wayne M.

Mann, 54 IBLA 8 (1981). BLM also states that it has no record that lode mining claims located by V. V. Burd in 1956 were filed for recordation with BLM on or before October 22, 1979, as required by section 314(b) of FLPMA, and, therefore, the placer mining claims are considered "original locations" and not amended locations which could relate back to the date of location of the lode locations.

In their statement of reasons for appeal, appellants contend that the placer mining claims are valid locations which have been held and worked pursuant to 30 U.S.C. § 38 (1982) "since February 27, 1956." Appellants allege that the land was originally included in various lode mining claims, the B.G.G.B. Nos. 1 through 10 claims located on February 27, 1956, by V. V. Burd. ^{2/} Appellants advance the argument that the required stipulation for the V. V. Burd claims had been filed with the county recorder and the land office. ^{3/} In addition, appellants state that the lode claims were duly "filed with the B.L.M. before October 22, 1979, in accordance with Section 314 of FLPMA," and that the placer claims, located October 13, 1983, constitute amended locations which relate back to the date of location of the lode claims, taking advantage of the stipulations filed in conjunction with the lode claims. Appellants state that the fact that the claims were amended from lode to placer does not affect the relation back where the claims were held and worked for the requisite period of time under 30 U.S.C. § 38 (1982), citing United States v. Guzman, 18 IBLA 109, 81 I.D. 685 (1974) and Springer v. Southern Pacific Co., 248 P. 819 (Utah 1926). Appellants conclude that declaring the placer mining claims null and void ab initio constitutes a taking of property without due process of law.

In a response to appellants' statement of reasons, BLM states that the "BLM records" contain no reference to the "V. V. Burd 1956 mining claims" but that at the time of the February 1984 BLM decision, BLM had a record of the B.G.G.B. Nos. 1 through 16 lode mining claims, located December 11, 1961. BLM submits copies of notices of location of these mining claims (serial numbers A MC 77199 through A MC 77214) recorded with it by C. A. Hudson on October 18, 1979. ^{4/} BLM argues that the February 1984 BLM decision should be affirmed.

^{2/} Appellants further state that C. A. Hudson, "Burd's successor," located the B.G.G.B. Nos. 11 through 16 lode mining claims on Dec. 11, 1961.

^{3/} Appellants submit copies of the stipulations dated Feb. 24, 1956, and Jan. 5, 1962, which applied, respectively, to the B.G.G.B. Nos. 1 through 10 lode mining claims and the B.G.G.B. Nos. 11 through 16 lode mining claims. The former stipulation is signed by V. V. Burd and the latter by C. A. Hudson. Attached to a reply to BLM's answer, appellants submitted a copy of a letter dated Jan. 10, 1962, from the Manager, Land Office, Phoenix, Arizona, stating that the two stipulations were received, respectively, on Feb. 24, 1956, and Jan. 8, 1962. The record indicates that the two stipulations were also filed with the county recorder.

^{4/} BLM also submits a map of the area included in appellants' placer mining claims, which was filed with the lode location notices and indicates that the land was formerly included in the B.G.G.B. Nos. 1 through 16 lode mining claims. In a reply to BLM's answer, appellants state that C. A. Hudson, Burd's successor in interest with respect to the B.G.G.B. Nos. 1 through 10

In reply to BLM's answer, appellants contend that compliance with 30 U.S.C. § 38 (1982), *i.e.*, holding and working the land included in its lode claims since February 27, 1956, precludes BLM from declaring the claims null and void ab initio in the face of appellants' continuing possessory rights. Appellants also reiterate that the locations of the placer mining claims in October 1983 do not constitute relocations.

[1] This case raises only the question of the validity of the Red Mountain Nos. 1 through 3 association placer mining claims, located and recorded with BLM in October 1983. Appellants have not challenged BLM's determination that the stipulation required by the February 1956 order opening the land to mineral entry was not filed in conjunction with the October 1983 locations. It is well settled that where land is opened to mineral entry pursuant to 43 U.S.C. § 154 (1982) subject to the condition precedent, as authorized by the statute, the mining claimant must execute and record a stipulation for the benefit of the United States. If the claimant does not do so, BLM may properly declare the mining claim null and void ab initio. *See Wayne M. Mann, supra; Vearl Martin*, 18 IBLA 234 (1974). Indeed, 43 U.S.C. § 154 (1982) provides that the stipulation must be executed and recorded "by any locator or entryman of such land before any rights in their favor attach thereto." (Emphasis added.) Thus, the Red Mountain Nos. 1 through 3 association placer mining claims have never been perfected and, thus, have been null and void from their inception.

We turn next to the question of whether the association placer mining claims located by the four individuals can be deemed amended locations of the lode claims owned by Red Mountain such that the four individuals can take advantage of the stipulations executed and recorded in conjunction with the B.G.G.B. Nos. 1 through 16 lode mining claims, by Red Mountain's predecessors-in-interest.

BLM concludes in its February 1984 decision that the placer claims cannot relate back to the lode claims because the prior lode locations were void for failure to record copies of the notices of location timely with BLM pursuant to section 314(b) of FLPMA. *See R. Gail Tibbetts*, 43 IBLA 210, 218, 86 I.D. 538, 542 (1979). However, in its answer, BLM essentially admits that the lode claims were properly recorded, *i.e.*, on or before October 22, 1979. *See* 43 CFR 3833.1-1. Accordingly, the lode claims cannot be deemed void for lack of compliance with section 314(b) of FLPMA. Thus, an amended location of the lode claims is not precluded for this reason.

In any case, the association placer mining claims cannot be treated as amended locations of the lode claims for the simple reason that the parties who purport to amend the lode claims did not hold title to the lode mining claims at the time they located the association placer mining claims. The association placer mining claims were located by Dyke, Blackburn, M. F. Adams, and D. L. Adams. The documents filed by appellants indicate ownership of the

fn. 4 (continued)

lode claims, made amended locations of these claims on Dec. 11, 1961, and, in addition, located the B.G.G.B. Nos. 11 through 16 lode claims in order to include all of the land actually held and worked by the original locators.

lode mining claims is in Red Mountain. This fact was recognized by the association placer locators on the face of the location notice.

A mining claim will be treated as an amended location, rather than a relocation, only where the locator can establish a chain of title from the prior claimant to him and ownership at the time of amendment. Ronald R. Graham, 77 IBLA 174 (1983). As we said in Tibbetts v. BLM, 62 IBLA 124, 130 (1982): "Intrinsic to the right to amend a claim is the prerequisite that the amender have present title to the claim, for if such title is lacking, an individual is not claiming through a prior location, but rather is initiating a claim of right adverse to the original location." In such circumstances, the "amended location" will be treated as a relocation. The four individual co-locators of the Red Mountain Nos. 1 through 3 association placer mining claims did not have the "right" to amend the lode claims in their own name by virtue of any privity of title. 5/ Thus, the placer claims must be treated as new locations, which cannot take advantage of the stipulations executed and recorded in conjunction with the B.G.G.B. Nos. 1 through 16 lode mining claims. 6/ See R. Gail Tibbetts, *supra* at 220, 86 I.D. at 543.

The record indicates that Dyke, Blackburn, M. F. Adams, and D. L. Adams recorded new association placer mining claims, A MC 219799 through A MC 219801, subsequent to the BLM decision on appeal, and filed the required stipulation with BLM on April 12, 1984. The location notices state the date of posting location notice as March 20, 1984, and that the claims involve the same land. These notices of location also purport to "relate back" to the original V. V. Burd 1956 locations, stating that they will be considered "original" locations only if the Burd entry is deemed to be "void for any reason." Accordingly, where there is no indication in the record that the land has been withdrawn or otherwise appropriated by adverse claims, appellant locators lose nothing by asserting rights in the land with priority from that date. We must, however, instruct BLM to determine whether the land was open to mineral entry on the date appellants located their latest placer mining claims and that they have otherwise complied with all requirements under the mining laws. 7/

5/ If these individual co-locators were to argue that they located the association placer mining claims on behalf of Red Mountain, such that Red Mountain was the locator-in-fact, the claims would fail as a violation of public policy. United States v. Brookshire Oil Co., 242 F. 718 (S.D. Cal. 1917); United States v. Toole, 224 F. Supp. 440 (D. Mont. 1963). It would be considered a subterfuge for the purpose of enabling a single individual (Red Mountain) to acquire more land than is permitted under 30 U.S.C. § 35 (1982), which limits nonassociation placer mining claims to 20 acres.

6/ We do not reach the question of what rights Red Mountain may have, if any, to any placer deposit by virtue of holding and working the land encompassed by the lode claims in accordance with 30 U.S.C. § 38 (1982). This case focuses only on the validity of the three association placer mining claims located in October 1983 by Dyke, Blackburn, M. F. Adams, and D. L. Adams.

7/ The statement on the face of the Mar. 20, 1984, location notices again raises the question of good faith location of an association placer mining claim. See note 5. However, the validity of these claims is not in issue in this case.

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 as modified by this decision.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

