

NANCY LEE MINES, INC.

IBLA 84-495

Decided October 31, 1985

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims null and void ab initio, in whole or in part. M MC 47352 etc. (See appendix.)

Affirmed in part and vacated in part.

1. Mining Claims: Generally--Mining Claims: Lands Subject To

Where a lode mining claim is located partially on patented land or land in which the United States does not hold a mineral interest, such a claim is not properly held 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 onto 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.

2. Mining Claims: Generally--Mining Claims: Lands Subject To

Where a mining claim is located entirely on patented land or land in which the United States does not have a mineral interest, such claim is properly held to be null and void ab initio.

3. Administrative Procedure: Hearings--Hearings--Mining Claims: Hearings

No hearing is required to declare a mining claim invalid when there is no issue of material fact and it is clear from the record that at the time of location of the claim the land was not open to location.

APPEARANCES: Wm. Fremming Nielsen, Esq., Spokane, Washington, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE GRANT

Nancy Lee Mines, Inc., has appealed from the March 27, 1984, decision of the Montana State Office, Bureau of Land Management declaring 61 lode mining claims null and void, ab initio, in whole or in part, because the claims were located, in whole or in part, on lands not open to mineral entry.

Certificates of location for the subject claims were filed with BLM on October 17, 1979, pursuant to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982). It appears from the record that the claims were all located in 1966.

In the statement of reasons for appeal, appellant contends that BLM's conclusion that the lands were not open to mineral entry is erroneous. Appellant states that its investigation has shown that many of the claims are located on lands open to mineral entry. Appellant has submitted a list of claims with BLM serial numbers, locations, status of the lands and additional documents to support its position. In addition, appellant has requested a hearing.

[1,2] It is well established that lode mining claims located entirely on lands patented without reservation of locatable minerals are properly declared null and void ab initio. Santa Fe Mining, Inc., 79 IBLA 48 (1984). A locator whose discovery is on lands open to location may, however, project the side lines of the claim across such lands for the purpose of making the end lines parallel and to acquire the extralateral rights to lodes and veins which apex within the claim. Santa Fe Mining, Inc., supra at 50-51.

In Santa Fe Mining, Inc., supra, the Board stated that:

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 mill-sites partly located on such prior patented or withdrawn lands to be null and void to the extent of their encroachment.

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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.

Id. at 52. Further, while projection of the side lines of the claim across patented land to make the end lines parallel may not afford claimant any rights in the patented land, it may in the proper circumstances afford the claimant with extralateral rights beyond or adjacent to the land which is closed to mineral entry. Id. at 51. Therefore, that portion of BLM's decision declaring certain mining claims null and void, ab initio, in part, is vacated.

Of those claims which BLM determined to be null and void ab initio, in their entirety, appellant has contested only six: the Sloway Nos. 28, 31, 32, 35, 36 and 39. The claims are located in sec. 1, T. 17 N., R. 27 W., MPM. The surface of the S 1/2 NE 1/4, S 1/2 of sec. 1 was reconveyed to the United States by Anaconda Copper Mining Company by deed, identified as GF 080093, on September 24, 1936. This reconveyance however expressly reserved the mineral estate in the above identified lands to the grantor. Consequently, these lands are not subject to the federal mining laws. The record discloses that Lots 1, 2, and 3, the NW 1/4 NW 1/4, and S 1/2 NW 1/4 of sec. 1 were patented in 1903 to the Northern Pacific Railway Company. Appellant argues the land is open to mineral entry because the patent contains language excluding all mineral lands. In Burke v. Southern Pacific R.R. Co., 234 U.S. 669 (1914), the Supreme Court held that the Department of the Interior was without authority to issue patents reserving or excluding unknown mineral lands because the authorizing statute contemplated conveyance only of nonmineral lands and, further, contemplated that patents issued thereunder would unconditionally pass title. Issuance of a patent under the Railroad Land Grant Acts is determinative of the nonmineral character of the land for purposes of the grant. Northern Pacific Railway Co., 32 L.D. 342, 344 (1903). Thus, the phrase "mineral land excluded" is not effective to reserve the mineral estate and the United States has no interest in minerals later discovered on the land. August F. Plachta, 88 IBLA 304 (1985); Diane B. Katz, 48 IBLA 118, 119, 120 (1980).

In addition, a portion of Sloway 39 intrudes upon mineral patent 993919. This patented area is also not open to mineral location. Therefore BLM's decision is affirmed as it relates to each of those claims declared null and void ab initio in their entirety.

[3] As to appellants request for hearing, the Board has held that no hearing is required to declare a mining claim invalid when there is no issue of material fact and it is clear from the record that the land was not open to location at the time of location of the claims. Rudolph Chase, 8 IBLA 351 (1972).

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 in part and vacated in part.

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C. Randall Grant, Jr.  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Will A. Irwin  
Administrative Judge

## APPENDIX

The following is a list of those claims declared null and void ab initio, each in its entirety:

<u>Claim Name</u>	<u>Serial No.</u>
CAROLYN #2	M MC 47353
CAROLYN #3	M MC 47354
CAROLYN #24	M MC 47375
CAROLYN #25	M MC 47376
CAROLYN #26	M MC 47377
CAROLYN #27	M MC 47378
SLOWAY	M MC 47399
SLOWAY #1	M MC 47400
SLOWAY #23	M MC 47422
SLOWAY #24	M MC 47423
SLOWAY #26	M MC 47425
SLOWAY #27	M MC 47426
SLOWAY #28	M MC 47427
SLOWAY #29	M MC 47428
SLOWAY #30	M MC 47429
SLOWAY #31	M MC 47430
SLOWAY #32	M MC 47431
SLOWAY #33	M MC 47432
SLOWAY #34	M MC 47433
SLOWAY #35	M MC 47434
SLOWAY #36	M MC 47435
SLOWAY #39	M MC 47438
SLOWAY #40	M MC 47439
SLOWAY #43	M MC 47442
SLOWAY #44	M MC 47443
SLOWAY FRACTION	M MC 47445

The following is a list of claims declared null and void ab initio in part:

<u>Claim Name</u>	<u>Serial No.</u>
CAROLYN #1	M MC 47352
CAROLYN #4	M MC 47355
CAROLYN #5	M MC 47356
CAROLYN #6	M MC 47357
CAROLYN #7	M MC 47358
CAROLYN #10	M MC 47361
CAROLYN #11	M MC 47362
CAROLYN #14	M MC 47365
CAROLYN #15	M MC 47366

CAROLYN #18	M MC 47369
CAROLYN #19	M MC 47370
CAROLYN #20	M MC 47371
CAROLYN #21	M MC 47372
CAROLYN #22	M MC 47373
CAROLYN #23	M MC 47374
CAROLYN #28	M MC 47379
CAROLYN #29	M MC 47380
CUB #1	M MC 47381
CUB #2	M MC 47382
CUB #3	M MC 47383
CUB #4	M MC 47384
SLOWAY #2	M MC 47401
SLOWAY #5	M MC 47404
SLOWAY #6	M MC 47405
SLOWAY #16	M MC 47415
SLOWAY #19	M MC 47418
SLOWAY #20	M MC 47419
SLOWAY #21	M MC 47420
SLOWAY #22	M MC 47421
SLOWAY #25	M MC 47424
SLOWAY #37	M MC 47436
SLOWAY #38	M MC 47437
SLOWAY #41	M MC 47440
SLOWAY #42	M MC 47441
SLOWAY #45	M MC 47444

