

Appeal from a decision of the California State Office, Bureau of Land Management, closing cases on mining claim notices of location. CA MC 27004 through CA MC 27009.

Affirmed as modified.

1. Administrative Procedure: Adjudication -- Mining Claims: Contests -- Mining Claims: Relocation -- Rules of Practice: Government Contests

The final ruling of a Government contest of unpatented mining claims which are the subject of amended locations where the claims were declared null and void for lack of discovery of a valuable mineral deposit, which declaration was sustained on appeal, will not be applied to amended locations where the record shows that these amended locations were specifically excluded from the contest action.

2. Mining Claims: Location -- Mining Claims: Relocation

Where a mining claimant seeks to amend mining claims, and it is subsequently determined the original claims are void for lack of discovery of a valuable mineral, the amendments may not properly be considered amended locations as they cannot relate back to amend underlying locations which are void. Further, the attempted amendments need not be treated as new locations where the record shows they cover substantially the same lands included in previous claims declared void by the Department in prior adjudications, and where it appears the miner's clear intent was to have these filings considered only as amendments to the prior void locations.

APPEARANCES: Jon Zimmers, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Jon Zimmers has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated July 5, 1983, closing the case files

on mining claim notices of location, CA MC 27004 through CA MC 27009. <sup>1/</sup> On June 14, 1979, Zimmers filed notices of location for these mining claims with BLM pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). The July 5, 1983, BLM decision states the "Northwest Mining Association #1, 2, 3, 6, 8, and the Monday Creek placer claims" were declared null and void by Administrative Law Judge Dean F. Ratzman under mining claim contest CA 4949, which was upheld by this Board in United States v. Zimmers, (Zimmers I), 44 IBLA 142 (1979), aff'd, Zimmers v. Andrus, Civ. No 81-424 (9th Cir. 1982). BLM concluded "the decisions pertaining to the mineral contest also apply to the recordation files of CA MC 27004 thru 27009," and closed the cases, effectively finding the claims to be invalidated by Zimmers I.

This is the third appeal which Jon Zimmers has brought to this Board involving essentially the same lands in the same area, but in which the names of the claims have been changed under different location notices. Most recently in United States v. Zimmers, (Zimmers II), 81 IBLA 41 (1984), the Board examined appellant's alleged mining operations on four claims (the Lucky Strike lode mining claim, the Sunday Creek PMC #1, Sunday Creek PMC #2, and Sunday Creek PMC #3 placer mining claims). This case involved a contest of four claims which fall within land described in this appeal in CA MC-27007, i.e., lands within the E 1/2 of SW 1/4 and the W 1/2 of SE 1/4 of sec. 18, T. 35 N., R. 9 W., Mount Diablo Meridian, California. The second examination by this Board of appellant's use of this same general area as was considered by Zimmers I resulted in this finding:

[T]he evidence clearly demonstrates that the intended use for the claims was other than for bona fide mining of minerals from the claim. The evidence presented did not demonstrate that there was sufficient mineral on the claim to justify a prudent man's expenditure of his time and means in the further development of a mine. The claims were neither located nor held for legitimate mining purposes. We therefore hold that the contestant sustained the burden of proof that there was no discovery on the claims and that the claims had not been located in good faith.

Zimmers II, supra at 48.

In undertaking yet another review of appellant's mining locations in this appeal, it becomes apparent appellant is attempting to maintain a continuing active mining location on BLM records despite successive adjudications that the lands lack a valid discovery of valuable minerals. In his statement of reasons on appeal, appellant contends the Zimmers I declaration of invalidity did not apply to "the amended locations in CA MC-27004, 27005, 27008 and

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<sup>1/</sup> The mining claims are: Northwest Mining Association #1 (CA MC-27004); Northwest Mining Association #2 (CA MC-27005); Northwest Mining Association #3 (CA MC-27006); Monday Creek PMC (CA MC-27007); Northwest Mining Association #6 (CA MC-27008); and Northwest Mining Association #8 (CA MC-27009). Although the location notices list as co-locators Claire Kelley, Matt Kempny, Ron Laforge, Bill Hoppe, Laura Paul, Alex Paul, and Gordon Van Zee, these individuals have not joined in this appeal.

27009" and that, therefore, the BLM case files were improperly closed. Appellant states the amended locations were filed "approximately six weeks" before issuance of the contest complaint. Appellant also argues the Government admitted the declaration of invalidity did not apply to the amended locations. See Government answer on appeal to the U.S. District Court, Eastern District of California, Zimmers v. Andrus, Civ. No. S-80-140LKK.

BLM originally filed a contest complaint on April 17, 1978, on behalf of the Forest Service, U.S. Department of Agriculture, charging in part that the Northwest Mining Association #1 through #12 and the Monday Creek P.M.C., formerly the Northwest Mining Association #4, placer mining claims were not supported by the discovery of a valuable mineral deposit. <sup>2/</sup> The claims were described as follows:

The claims are situated in SW 1/4 Sec. 8; N 1/2 Sec. 17; all sec. 18; and W 1/2 sec. 20, T. 35 N., R. 9 W., and N 1/2 Sec. 13, T. 35 N., R. 10 W., Mount Diablo Meridian. The claims are more fully described in the notices as recorded in Mining Records Book 63, pages 661 through 672; the Northwest Mining Association #4 claim amended notice is recorded in Mining Records Book 63, page 746, and the Monday Creek P.M.C., formerly Northwest Mining Assn #4, amended notice is recorded in Mining Records Book 64, page 166 of Trinity County, California.

In his answer, Zimmers disputed the situs of the mining claims, apparently because amended locations had been filed prior to the contest complaint which resulted in a shift in the location of the claims, as described by Emmett B. Ball, the Government's mineral examiner:

Under Mr. Ball's analysis of the amended location notices, the Northwest Mining Association No. 8 claim was moved south a quarter of a section; the Northwest Mining Association No. 1 was extended to include more than 160 acres; a portion of the Northwest Mining Association No. 2 was subtracted and a portion added; the Northwest Mining Association No. 3 was reduced to a 20-acre claim; the Lady Claire took up most of the area that was within the Northwest Mining Association No. 6. Tr. 27.

Zimmers I, supra, 44 IBLA at 149-50. In his decision, which was adopted by this Board on appeal, Judge Ratzman declared appellant's mining claims which had not been abandoned, null and void, and stated:

The Contestant became aware of the Amended Notice for the contested Monday Creek P.M.C. placer mining claim (recorded in Trinity County in January, 1978) and incorporated a reference to that claim in the Complaint. However, as to the five other contested claims \* \* \* the Complaint refers to location notices

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<sup>2/</sup> In his answer to the complaint, appellant stated that the Northwest Mining Association #5, 7, 9, 10, 11, and 12 mining claims had been abandoned. Accordingly, these claims were not considered by Judge Ratzman or the Board. Zimmers I, supra, 44 IBLA at 144, 149.

filed in 1976, rather than to amended notices filed approximately six weeks prior to issuance of the Complaint. This may provide an area for continued jousting by the parties. <sup>3/</sup>

Id. at 160.

In his complaint for judicial review in Zimmers v. Andrus, Civ. No. S-80-140LKK, appellant stated at page 2: "7." The administrative law judge sustained the charge (a) as to the original locations, but not the amended locations filed approximately six weeks before the issuance of the complaint, and held the NWMA #1, 2, 6, 8, and the Monday Creek PMC to be null and void." In its answer to the complaint, the Government admitted the allegations in paragraph 7, quoted above, and therefore admitted the proceedings did not involve the attempted amended locations which are the subject of this latest review (Answer at 1).

The record indicates the amended notices of location were filed with respect to the Northwest Mining Association #1, 2, 3, 6, and 8 mining claims on March 6, 1978, with the Trinity County Recorder. The amended Northwest Mining Association #6 mining claim was renamed the Lady Claire. Also, on December 20, 1976, an amended notice of location was filed with respect to the Northwest Mining Association #4 (renamed the Monday Creek PMC) mining claim. <sup>4/</sup> These attempted amendment notices filed for recording with BLM June 14, 1979, were filed for virtually the same lands previously adjudicated by the Department in contest action CA-4949, Zimmers I, supra, subsequently affirmed in the court action Zimmers v. Andrus, supra. Both cases involve lands in secs. 18 and 20, T. 35 N, R. 9 W., Mount Diablo Meridian. However, the amended locations describe 120 acres of land not previously considered by the Department. This land lies within T. 35 N., R. 9 W., in CA MC-27008, identified as the Northwest Mining Association #6, now the Lady Claire, a relocation of Mayday PMC, and is in an area described as the NW 1/4 and the

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<sup>3/</sup> The record contains a letter from the Regional Attorney, Office of General Counsel, U.S. Department of Agriculture, to BLM, dated Dec. 6, 1983, which reports that Judge Ratzman denied a motion to amend the complaint to

"include not only the areas originally covered by the then on file claims, but also to cover whatever new areas may be encompassed by the amended location notices' [Tr. at 31] because he believed contestant should have provided the additional information and descriptions in the complaint in a more timely request [Tr. 32 at 10-22].

"Judge Ratzman stated, however, that by his denial of the motion he was not taking a view 'one way or the other on the legal effect of what has been done by the contestees in the amendments' [Tr. 32 at 18-23]."

<sup>4/</sup> Additional amended location notices were filed with the county recorder on Jan. 10, 1978, and Mar. 30, 1979 (Monday Creek PMC), and on June 30, 1980 (Lady Claire). The dates these notices of location were filed with the county recorder are as follows: CA MC-27004 (Mar. 6, 1978); CA MC-27005 (Mar. 6, 1978); CA MC-27006 (Mar. 6, 1978); CA MC-27007 (Monday Creek PMC) (Mar. 30, 1979); CA MC-27008 (Lady Claire) (June 30, 1980); and CA MC-27009 (Mar 6. 1978). While the contest complaint covered the Jan. 10, 1978, amendment of the Monday Creek PMC placer mining claim (formerly the Northwest Mining Association #4), it did not cover the Mar. 30, 1979, "[a]mended" location.

S 1/2 of the NE 1/4 sec. 20, Mount Diablo Meridian. Further, it also appears both cases also involve nearly the same lands in sec. 13, T. 35 N., R. 10 W., Mount Diablo Meridian. However, in the attempt to amend the location notice filed for recording in CA MC 27009, identified as the Northwest Mining Association #8, claimants have described an area of 80 acres not previously considered by the Department. This additional area is described as the N 1/2 of the SW 1/4 sec. 13, T. 35 No., R. 10 W., Mount Diablo Meridian.

[1] The first question to consider is whether contest CA 4949, brought against appellant's mining claims and upheld on appeal, which resulted in a declaration of invalidity for lack of the discovery of a valuable mineral deposit under 30 U.S.C. § 22 (1982), should be applied to invalidate appellant's amended locations. The final determination in the contest did not declare such a result. Judge Ratzman denied a motion by BLM to amend the contest complaint to include the amended locations. As a result, the contest decisions did not directly and by expressed description exactly apply to the amended locations.

[2] However, this does not end the matter. A mining claimant may not amend a void mining claim. Frank Melluzzo, 71 IBLA 178, 182 (1983); R. Gail Tibbetts, 43 IBLA 210, 218, 86 I.D. 538, 542 (1979). In Tibbetts, the Board found the essence of an "amended" location to be that it is made in furtherance of an earlier location; by amending the earlier location, the amendment relates back to the original date of location. But an amended location cannot relate back if the original location is void. See also Mac A. Stevens (On Reconsideration), 85 IBLA 33 (1985). A void claim is generally one where the claimant has failed to comply with a material statutory requirement. Flynn v. Vevelstad, 119 F. Supp. 93 (D. Alaska 1954) aff'd, 230 F.2d 695 (9th Cir. 1956). A crucial statutory requirement, of course, is the discovery of a "valuable mineral [deposit]." 30 U.S.C. § 22 (1982). Where a mining claim is not supported by such a discovery it is properly declared null and void. Chrisman v. Miller, 197 U.S. 313 (1905). Accordingly, it follows that where an original location is declared null and void for lack of discovery, the claimant may not then amend that claim. If the attempted amendments are to survive, they must stand on their own merits.

The next question, therefore, is whether appellant's amendments should properly be treated as relocations and be carried forward on the BLM records as new claims. There is no requirement that an amended location or a relocation declare its character on its face. R. J. Wall, 68 IBLA 122 (1982); Fairfield Mining Co., 66 IBLA 115 (1982); R. Gail Tibbetts, *supra*, at 228. Here, however, appellant's declared purpose was to accomplish an amendment of earlier claims. He specifically labeled these filings as amendments. He apparently wished BLM to treat these filings as amendments. In the absence of intervening rights, a mining claimant may relocate a mining claim, abandoning whatever rights he may have had in the original location. Henry J. Hudspeth, Sr., 78 IBLA 235 (1984). The relocation may then be treated as a new location. The question whether the location of a mining claim, already located, should be treated as an amended location or a relocation, is a factual question which depends in part upon the intent of the locator. R. Gail Tibbetts, *supra*.

Review and comparison of the two prior decisions of appeals brought by appellant with this case indicate the only area appellant could have possibly

intended as new location was that additional area described within CA MC-27008 and CA MC-27009, which has not yet been considered by the Department in earlier adjudications. It appears that appellant has redescribed his prior claims and refiled location notices to permit him to maintain occupancy of the improved area located within those claims. In cases where mining claims have been declared null and void for lack of discovery, and a claimant makes new location for the same or extensions of the same land, this Board has warned that a claimant may subject himself to a charge of not holding a claim in good faith for mining purposes. United States v. Prowell, 52 IBLA 256 (1981). As previously indicated, such a finding was already made in Zimmers II, *supra*.

Under the circumstances of this case, where original locations of these claims were found to be void, it is not factually possible to find that appellant's intent was to file new location notices. Such an interpretation of appellant's actions would be inconsistent with appellant's prior conduct, and would ignore this Board's holding in Zimmer II which found Zimmers did not hold his claims in good faith. Appellant cannot now be allowed to assert he has amended his prior locations while at the same time contending he has filed new locations. This approach may in principle be compared to the application of judicial estoppel made in United States v. Haskins, 59 IBLA 1, 92, 88 I.D. 925, 971 (1981), where the Board quoting from the Tenth Circuit Court of Appeals opinion in In Re: Johnson, 518 F.2d 246 (1975), observed:

Under the doctrine of judicial estoppel a party and his privies who have knowingly and deliberately assumed a particular position are estopped from assuming an inconsistent position to the prejudice of the adverse party. This rule ordinarily applies to inconsistent positions assumed in the course of the same judicial proceeding or in subsequent proceedings involving identical parties and questions.

It must therefore be concluded BLM improperly closed the cases on appellant's mining claims notices of location for the stated reason those notices were decided by contest CA 4949 (Zimmers I). BLM need not, however, treat these locations as valid new locations, in view of the circumstances of this case, and the cases may properly be closed on the records for the reason they constitute an attempt to amend void claims, an action which has no legal effect.

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.

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Franklin D. Arness  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

