

LESLIE CORRIEA

IBLA 85-376

Decided September 11, 1986

Appeal from decision of California State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. CA MC-72940 and CA MC-152424.

Set aside and remanded.

1. Mining Claims: Lands Subject to -- Mining Claims: Location -- Mining Claims: Lode Claims -- Mining Claims: Powersite Lands -- Mining Claims: Withdrawn Land -- Mining Claims Rights Restoration Act -- Withdrawals and Reservations: Powersites

BLM may properly declare a lode mining claim null and void ab initio where it was located entirely on land which had been patented without a mineral reservation to the United States or was subject to a license for a power project under a powersite withdrawal and the land has not been restored to mineral entry in accordance with sec. 24 of the Federal Power Act, as amended, 16 U.S.C. § 818 (1982). However, where the record is unclear as to the exact situs of the claim on the ground and the claim may partially cover land which is open to mineral entry, the case will be remanded to BLM to first determine the location of the claim and then to adjudicate the claim accordingly.

APPEARANCES: Leslie Corriea, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Leslie Corriea has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 23, 1985, declaring the Old Crystal Mine lode mining claims null and void ab initio. 1/

The Old Crystal Mine lode mining claim (CA MC-72940) was originally located by appellant on August 5, 1980, amended October 2, 1980, and filed for recordation with BLM on October 3, 1980, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C.

1/ The decision also declared the Poison Oak lode mining claim (CA MC-77315) null and void. On appeal appellant states he is "dropping" that claim. Thus, the BLM decision is final as to that claim.

§ 1744(b) (1982). Appellant indicated on a diagram in the notice of location that the claim was situated in the NW 1/4 NW 1/4 sec. 21, T. 4 S., R. 16 E., Mount Diablo Meridian, Mariposa County, California. By decision dated February 3, 1984, BLM declared the 1980 location of the Old Crystal Mine mining claim null and void ab initio because the land had been withdrawn from mineral entry and reserved for reservoir sites by Exec. Order No. 4456-A, dated June 8, 1926, issued pursuant to section 1 of the Pickett Act of June 25, 1910, 43 U.S.C. § 141 (1970) (repealed by section 704(a) of FLPMA, P.L. 94-579, 90 Stat. 2792 (1976)). Appellant appealed from the February 1984 BLM decision.

On November 26, 1984, in Leslie M. Corriea, 84 IBLA 26 (1984), the Board set aside the February 1984 BLM decision because Exec. Order No. 4456-A had not specifically withdrawn the land from the location of a mining claim for metalliferous minerals. We noted, however, that the land had also been withdrawn from mineral entry pursuant to section 24 of the Federal Power Act, as amended, 16 U.S.C. § 818 (1982), by inclusion in Power Site Classification 267 on August 24, 1933, but that the land was subject to restoration to mineral entry by Secretarial order issued pursuant to section 24 of the Federal Power Act, supra, or to the location of mining claims, with certain exceptions, after August 11, 1955, pursuant to section 2(a) of the Mining Claims Right Restoration Act of 1955 (MCRRA), as amended, 30 U.S.C. § 621(a) (1982). We remanded the case to BLM to consider further whether the land was open to mineral entry because there was "no evidence" of a Secretarial restoration order or whether the land was open to mineral entry under 30 U.S.C. § 621(a) (1982). Id. at 27.

Section 2(a) of the MCRRA, supra, provides that all public lands "heretofore, now or hereafter withdrawn or reserved for power development or powersites shall be open to entry for location and patent of mining claims." However, the third proviso of that statutory provision states in relevant part: "That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress * * *." 30 U.S.C. § 621(a) (1982).

By memorandum dated July 27, 1984, BLM requested the Federal Energy Regulatory Commission (FERC) to indicate whether the "third proviso" of section 2(a) of the MCRRA, supra, applies to the NW 1/4 NW 1/4 sec. 21., T. 4 S., R. 16 E., Mount Diablo Meridian, Mariposa County, California. FERC responded to BLM's request on August 14, 1984, stating that the "third proviso" does apply to lands depicted within Power Project 2179 (Merced River Development Project) on FERC map No. 2179-101. 2/ That map indicates that most of the

2/ In Leslie M. Corriea, supra, we had noted that the land encompassed by appellant's mining claim had also been withdrawn pursuant to a notice issued by the Federal Power Commission (the predecessor of FERC) on Feb. 21, 1963, for Power Project 2179. We pointed out that the "notice stated that a 'completed application for license' was filed but nothing in the record * * *

land in the NW 1/4 NW 1/4 sec. 21 is situated within the power project. In its January 1985 decision, BLM declared the Old Crystal Mine mining claim (CA MC-72940) null and void ab initio because the land was not open to mineral entry on the date of location of the claim.

During the pendency of the original appeal before the Board, appellant filed another notice of location for the Old Crystal Mine lode mining claim (CA MC-152424) for recordation with BLM on July 3, 1984. The notice of location states that the claim was located on July 2, 1984, and bears the notation "File Under Public Law 359," *i.e.*, the Mining Claims Rights Restoration Act of 1955. The notice of location contains a diagram depicting the claim in the SW 1/4 NW 1/4 NW 1/4 sec. 21, T. 4 S., R. 16 E., Mount Diablo Meridian, Mariposa County, California. Because of a discrepancy between the diagram and the description of the claim, BLM, in an October 12, 1984, letter, required appellant to depict the claim on an attached "quad map." BLM stated: "Since there is an active power project in this area, it is essential that you show as accurately as possible exactly how your claim is located in the NW 1/4 of Sec. 21." BLM concluded from the map submitted by appellant, that the claim is situated in the N 1/2 SW 1/4 NW 1/4 sec. 21. The "quad map," unlike the previous diagrams in appellant's notices of location, is a topographic depiction of the area. A red square located the NW 1/4 of sec. 21. This was apparently done by BLM. Appellant has indicated in pencil the location of the mine and discovery site. Some of the penciled lines indicating the quarter section lines within the NW 1/4 of sec. 21 have been erased. While the discovery site does appear to be located below the East West 1/4 1/4 section line within the NW 1/4, because of erasures it is difficult to determine that the location is in fact intended to be in the SW 1/4 NW 1/4 as BLM concluded. In its January 1985 decision, BLM declared the Old Crystal Mine mining claim (CA MC-152424) null and void ab initio because the land in the S 1/2 NW 1/4 sec. 21 had been patented to John Williams (patent No. 153822) on September 26, 1910, without a reservation of minerals to the United States.

In his statement of reasons for appeal, appellant contends that his mining claim, which has been in operation for "over 50 years," is "not close to the project boundaries."

In its January 1985 decision, BLM treated appellant's 1980 and 1984 notices of location as if they represented two separate mining claims. Indeed, the record indicates that the 1980 location is situated in the NW 1/4 NW 1/4 sec. 21 and the 1984 location is situated in the SW 1/4 NW 1/4 sec. 21. While most of the land encompassed by appellant's second mining claim location notice (CA MC-152424) was closed to mineral entry on the date of location, a portion of that claim may have been located on land which was open to mineral entry.

fn 2. (continued)

establishes that a license was ever issued." *Id.* at 27. The FERC map contains a notation that the map was "filed in compliance with article 35 of the license for Federal Power Commission Project No. 2179 submitted * * * this 15th day of December, 1969."

It is well established that land which is covered by a license for a power project issued by FERC is not open to mineral entry under section 2(a) of the MCRRA, supra, unless the land has been restored to such entry in accordance with section 24 of the Federal Power Act, supra. Lairy D. Brookshire, 56 IBLA 73 (1981); Harold M. Voris, 48 IBLA 206 (1980); see also Sam Rosetti, 15 IBLA 288, 81 I.D. 251 (1974). Where a mining claim is located at a time when the land is closed to entry under section 2(a) of the MCRRA, supra, BLM properly declares the claim null and void ab initio. Id. Likewise, BLM properly declares a mining claim null and void ab initio where it was located on land which has been patented without a reservation of minerals to the United States. Lynn M. Sheppard, 90 IBLA 23, 92 I.D. 12 (1985).

Applying this settled law to the facts in this case is complicated by an inability to pinpoint the location of appellant's mining claim. As noted above, the 1980 location places the mining claim in the NW 1/4 NW 1/4 sec. 21. The 1984 notice of location also places the claim in the SW 1/4 NW 1/4 NW 1/4 sec. 21. It is not until appellant had the benefit of the topographic map that the claim shifts into the SW 1/4 NW 1/4 sec. 21. Under the circumstances, we must set aside the January 1985 BLM decision and remand the case to BLM to determine the exact location of appellant's mining claim. 3/

If it is determined that appellant's claim is situated wholly within the boundaries of Power Project 2179, which was subject to a license issued by FERC as of December 15, 1969, BLM could properly declare the claim, i.e., both the 1980 and 1984 locations, null and void ab initio where there has been no restoration of the land to mineral entry in accordance with section 24 of the Federal Power Act, supra. Similarly, if it is determined that appellant's claim is situated wholly within patent No. 153822, issued September 26, 1910, BLM could properly declare the claim, i.e., both the 1980 and 1984 locations, null and void ab initio.

However, it is possible that appellant's mining claim straddles the survey line between the NW 1/4 NW 1/4 and the SW 1/4 NW 1/4 sec. 21. There is a portion of land, irregular in shape, which is north of that line and which is neither included in Power Project 2179 nor encompassed by patent No. 153822 and, thus, is apparently open to mineral entry. Indeed, in its January 1985 decision, BLM states that a "fractional portion" of the NW 1/4 NW 1/4 sec. 21 is not withdrawn "for Project 2179." Appellant's mining claim may entirely or partially cover that land. In such circumstances, appellant's mining claim would only partially include land which is closed to mineral entry and its validity would depend on whether the claim is supported by a discovery on the land which is open to mineral entry, regardless of where the discovery point is identified in either notice of location. Timberline Mining Co., 87 IBLA 264 (1985). A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across patented or

3/ It should be remembered that, in determining the location of a mining claim, its situs on the ground as disclosed by its monuments will control over a conflicting description in the notice of location. United States v. Kincanon, 13 IBLA 165, 168 (1973).

withdrawn land to define the extralateral rights to lodes or veins which apex within the claim, although he will not have any rights to the surface of these lands, and, depending on the circumstances, may or may not have any mineral rights in the subsurface of such land. Santa Fe Mining, Inc., 79 IBLA 48, 52 (1984). In any case, it is improper for BLM to declare a mining claim null and void ab initio in whole or in part where, by virtue of having been partially located on land open to mineral entry, that claim may have these attendant rights. Leo Crowley, 84 IBLA 7 (1984); Amoco Minerals Co., 81 IBLA 23 (1984).

Nevertheless, until the exact location of appellant's mining claim is determined it is impossible to determine whether the claim is null and void ab initio in its entirety or whether the claim is partially located on land open to mineral entry with the potential for attendant rights. Accordingly, we must set aside the January 1985 BLM decision where it declared all of appellant's Old Crystal Mine mining claim null and void ab initio either because it encompassed land which had been licensed for a Federal power project under a powersite withdrawal or patented without a reservation of minerals to the United States until those facts are conclusively determined. ^{4/} See Wesley Laubscher, 4 IBLA 246 (1972). The case will be remanded to BLM to determine the location of appellant's mining claim on the ground and then to again adjudicate the claim accordingly. Appellant will, of course, have the right to appeal from any adverse BLM decision. However, he will have the burden of establishing the location of his mining claim. Barry C. Binning, 39 IBLA 390 (1979).

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 set aside and the case is remanded to BLM for further action consistent herewith.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Anita Vogt
Administrative Judge
Alternate Member

^{4/} In determining the location of appellant's mining claim, BLM should determine whether the 1980 and 1984 locations refer to the same claim. If they do, BLM should merge the two case files, canceling the later BLM recordation serial number. Fred Chaffin, 89 IBLA 137 (1985); Ralph C. Memmott, 88 IBLA 377 (1985).

