

VISINTAINER SHEEP CO.

IBLA 86-402

Decided April 27, 1987

Appeal from a decision of the Colorado State Office, Bureau of Land Management, approving a mineral claimant's surface protection bond.

Affirmed.

1. Act of December 29, 1916 -- Mineral Lands: Mineral Reservation -- Mining Claims: Surface Uses -- Rules of Practice: Protests -- Stock-Raising Homesteads

A decision approving a bond filed by a mineral claimant of reserved minerals on land patented under the Stock-Raising Homestead Act will be affirmed when the owner of the surface estate failed to file objections to issuance of the bond pursuant to 43 CFR 3814.1(d), notwithstanding the fact that the surface owner has filed a civil complaint against the mineral claimant and intends to initiate a private contest against the mineral claimant.

APPEARANCES: Rebecca Love Kourlis, Esq., Craig, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Visintainer Sheep Company appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), approving a mineral claimant's bond for protection of the rights of the surface owner filed by Centennial Gold Corporation (Centennial) pursuant to section 9 of the Stock-Raising Homestead Act of December 29, 1916, 43 U.S.C. § 299 (1976). <sup>1/</sup>

Appellant is the owner of the surface estate of certain land situated in Moffat County, Colorado. The land in question was patented under section 1 of the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1976). Patents issued under the Act contain a "reservation to the United States of all minerals in said lands and the right to prospect for, mine, and remove the same." BLM

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<sup>1/</sup> The Stock-Raising Homestead Act was impliedly repealed by the Taylor Grazing Act of June 28, 1934, and expressly repealed by section 702 of the Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2787, 2789. See Les, 24 IBLA 308 (1976); Samuel Joyner, A-28558 (Nov. 15, 1960).

records show Centennial to be the locator, owner, or lessee of mining claims located within the boundaries of appellant's surface estate. 2/

On July 19, 1985, Centennial executed a bond in the amount of \$ 1,000 for the benefit of the owner of the surface estate. A return receipt card in the file verifies that Centennial served appellant with a copy of this bond on August 7, 1985. The bond was filed with BLM on August 23, 1985. On January 15, 1986, BLM issued its decision approving the surface protection bond, stating that no objection to the bond had been received as of the date of the decision. On February 21, 1986, Visintainer Sheep Company filed its notice of appeal.

In its statement of reasons, appellant explains that it has filed a complaint for declaratory relief and injunction in the District Court, Moffat County, Colorado. In this complaint appellant alleges that Centennial has trespassed upon appellant's land in an attempt to stake mining claims and perform assessment work on the claims. Appellant states that it intends to file a private contest against Centennial with BLM. In light of these two proceedings, in which appellant seeks to vitiate Centennial's right to enter appellant's property, appellant requests approval of the surface protection bond be stayed pending final determination of the two proceedings, in order that no inference of permission to enter the property can be raised from BLM approval of the bond.

As noted previously, all patents issued under the Stock-Raising Homestead Act reserve to the United States all minerals in the land, together with the right to prospect for, mine, and remove the same. Section 9 of the Act further states that by reason of the reservation of mineral rights, a mining claimant

shall have the right at all times to enter upon the lands \* \* \* for the purpose of prospecting for \* \* \* mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the \* \* \* patentee, and shall be liable to and shall compensate the \* \* \* patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the \* \* \* mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the \* \* \* minerals, first, upon securing the written consent or waiver of the homestead \* \* \* patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the

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2/ Centennial's claims are located within secs. 15, 17, 20, 21, 25, 26, 27, 28, 29, 33, 34, and 35, T. 9 N., R. 91 W., sixth principal meridian, Moffat County, Colorado.

United States for the use and benefit of the \* \* \* owner of the land, to secure the payment of such damages to the crops or tangible improvements of the \* \* \* owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon \* \* \*.

43 U.S.C. § 299 (1976).

[1] Departmental regulation 43 CFR 3814.1(c), issued in furtherance of 43 U.S.C. § 299 (1976), provides that the bond, and other required documents, must be filed with the authorized BLM officer in the proper BLM office. At the time the bond is filed, the claimant must file evidence of service of a copy of the bond upon the homestead entryman or owner of the land. 43 CFR 3814.1(d) provides that if, at the expiration of 30 days after his receipt of the copy of the bond, the entryman or owner of the land does not file an objection with the authorized officer, the authorized officer may, all else being regular, approve said bond. The case file contains the bond and proof of service of a copy of the bond upon the owner of the surface estate, as required by 43 CFR 3814.1(c) and (d). There having been no objections filed, BLM properly approved the bond. Cf. Robert M. Michael, 79 IBLA 255 (1984); Elmer Silvera, 42 IBLA 11 (1979).

It is well established that the stock-raising homestead patentee or his successor in interest, as holder of title to the land (except for the reserved minerals) has standing to challenge the validity of a mining claim on the patented land for lack of discovery of a valuable mineral deposit by initiation of a private contest pursuant to 43 CFR 4.450-1. Robert M. Michael, *supra*; Joanne M. Massirio v. Western Hills Mining Association, 78 IBLA 155, (1983). A decision approving a surface bond is a distinct procedure from a private contest. See Robert M. Michael, *supra*; Elmer Silvera, *supra*. BLM's approval of the bond will have no adverse affect upon appellant's court proceeding or its initiation of a private contest. In any event, the bond was properly approved, and there has been no showing made on appeal which would justify reversing that decision.

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.

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R. W. Mullen  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Bruce R. Harris  
Administrative Judge