

PATSY A. BRINGS

IBLA 86-135

Decided August 5, 1987

Appeal from a decision of the Arizona State Office, Bureau of Land Management, denying the appeal of a decision of the Phoenix Resource Area Manager rejecting a mining plan of operations. A MC 86958.

Reversed and remanded.

1. Mining Claims: Contests -- Notice: Generally

BLM may not properly reject a plan of operations for a mining claim on the basis that the claim was declared null and void in 1956 when the claimant failed to answer the contest complaint, where the record shows that BLM failed to serve a copy of the complaint on the person who actually owned the claim at the time the complaint was issued, and, thus, the contest was a nullity.

APPEARANCES: W. Scott Donaldson, Esq., Phoenix, Arizona, for appellant; 1/ Fritz L. Goreham, Esq., Office of the Field Solicitor, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On September 9, 1985, the Phoenix Resource Area Manager, Bureau of Land Management (BLM), issued a decision rejecting the mining plan of operations submitted by Lalor Materials and Trucking Incorporated (Lalor) for operations on the Turkey Track #1 placer mining claim located in SW 1/4 sec. 22, T. 4 N., R. 3 E., Gila and Salt River Meridian, Maricopa County, Arizona. The Area Manager stated that the Turkey Track #1 placer claim had been declared null and void by decision in contest No. 10009 on November 1, 1956, and that the land in question was subsequently segregated from mineral entry on April 26, 1973, by the filing of Recreation and Public Purposes Act application A 6390.

The Area Manager's decision informed Lalor of a right to appeal to the State Director pursuant to 43 CFR 3809.4(a). Patsy A. Brings, as the owner of the claim, filed a timely appeal. 2/ On October 11, 1985, the Acting State Director denied the appeal. He rejected Brings' arguments that contest No. 10009 should be set aside because of a failure to serve

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1/ On June 8, 1987, Donaldson withdrew as counsel for appellant.

2/ Lalor is the lessee of Brings.

the owner of the claim. He granted Brings' request for a stay of the decision in part, extending the time for removal of buildings, fixtures, and equipment for an additional 15 days. Brings timely appealed that decision to this Board.

The Turkey Track #1 placer mining claim was located on September 1, 1954, by Rachelle Lora Landriault. On February 29, 1956, Landriault transferred the Turkey Track #1 placer claim to Hiram B. Webb by quitclaim deed. <sup>3/</sup> On June 23, 1956, Webb recorded an affidavit of assessment work with the Maricopa County Recorder's Office; this affidavit named Webb as the owner of the Turkey Track #1 claim. The quitclaim deed was not filed in the Maricopa County Recorder's Office until June 20, 1961.

On October 1, 1956, BLM served Landriault with the complaint in contest No. 10009 against the Turkey Track #1 placer mining claim. <sup>4/</sup> The complaint, dated September 24, 1956, charged that (1) the land embraced by the claim was nonmineral in character, (2) minerals had not been found in sufficient quantities to constitute a discovery, and (3) the claim had been abandoned. On November 1, 1956, BLM issued a decision declaring the Turkey Track #1 placer mining claim null and void because Landriault failed to respond to the complaint within 30 days of its receipt, as required. There is no indication in the file that Webb was served with either the complaint or the November 1, 1956, decision.

On September 25, 1956, BLM issued a complaint in contest No. 10013 against a total of eight lode claims including the Turkey Track #1 lode, situated in sec. 22, T. 4 N., R. 3 E., Gila and Salt River Basin Meridian. BLM notified Webb of this contest action, and he filed an answer dated October 29, 1956, denying BLM's allegations that the lands embraced within the claims were nonmineral in character and that minerals had not been found within the claims in sufficient quantities to constitute a discovery. At the beginning of the evidentiary hearing in contest No. 10013, which took place on May 27-28, 1957, the parties stipulated that Webb owned the eight lode claims in question (Tr. 3, 8-9). However, during the hearing, Webb and his counsel insisted that the Turkey Track #1 claim was, in fact, a placer claim (Tr. 26-27). Donald F. Reed, a BLM mining engineer, who testified on behalf of BLM, stated that he found the Turkey Track #1 placer claim on record in the county recorder's office, but that he could not find a Turkey Track #1 lode claim on record (Tr. 8). Reed testified that he found the location notice for the Turkey Track #1 placer claim in March 1956, but that he did not examine the

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<sup>3/</sup> Webb sold the Turkey Track #1 placer claim to Brings on Nov. 16, 1978.

<sup>4/</sup> A report dated Sept. 12, 1956, by Donald F. Reed, a BLM mining engineer, stated that the description on the Turkey Track #1 placer mining claim "is so garbled as to be impossible to trace and it does not conform to the public land surveys as required by Section 2331 of the Revised Statutes (30 U.S.C. 35)." Reed concluded that the claim had been abandoned, based upon the statement of Rachelle Lora Landriault's husband: "He told me that all of the claims in Sec. 22 were lode claims and that he had no placer claims therein." The Reed report served as the basis for the initiation of contest No. 10009.

claim as a placer claim during either his March 2 or April 19, 1956, examinations of the claims (Tr. 81-82). Reed stated that Webb did not accompany him during his April 19, 1956, examination of the Turkey Track #1 claim, but that Webb "was with me one time I went around" (Tr. 28). Reed stated that he talked with Mr. Landriault, "the man who recorded the claims," and that Mr. Landriault stated that he had no placer claims (Tr. 82). William P. Crawford, a mining engineer, testified as a witness for Webb (Tr. 147). He examined the onground location of the Turkey Track #1 claim and found it monumented as both a lode and a placer claim (Tr. 212). However, he found no location notices on the site (Tr. 213). The hearing examiner responded to evidence that the Turkey Track #1 claim was operated as a placer claim as follows:

Mr. Mackenzie [Webb's counsel], if your client spends a lot of money on the Turkey Track placer mining operation and, in fact, removes and sells gravel from that placer mining claim, it no doubt would be a valid placer mining claim. I see no reason for litigating that here, especially in view of the fact that the charges originally do not encompass nor challenge a placer mining claim.

(Tr. 210). The hearing examiner concluded that the status of the Turkey Track #1 claim, as a placer mining claim, was not properly in issue in contest No. 10013, and he denied Webb's motion to include in contest No. 10013 the question of the validity of the Turkey Track #1 placer claim (Tr. 211). In his December 23, 1957, decision in contest No. 10013 the hearing examiner held four lode claims, including the Turkey Track #1 lode, null and void and dismissed the contest as to the other four claims.

In her statement of reasons to this Board, Brings argues that the default decision in contest No. 10009 should be set aside since the mining claim had not been abandoned and that Webb, the owner of the claim at the time contest No. 10009 issued, did not receive notice of the contest and was not served with a copy of that complaint. Those arguments both turn upon the fact that only the original locator of the Turkey Track #1 placer claim was served with notice of contest No. 10009. "Had Webb been served with process in No. 10009, he would undoubtedly have asserted his continued use of the Turkey Track #1 as is evidenced by his Affidavit of Labor \* \* \*, amended location notices \* \* \* and his production from the Turkey Track" (Statement of Reasons (SOR) at 7). Moreover, according to Brings, BLM had notice of Webb's ownership interest in the Turkey Track #1 placer claim prior to initiating contest No. 10009, because the affidavit of labor was recorded prior to issuance of the contest complaint, and, as evidenced by the transcript from contest No. 10013, Reed conversed with Webb about his operations on the claims. Thus, Brings argues, BLM was "put on inquiry notice by the existence of the [gravel] pit on the Turkey Track #1 and the fact that Donald Read had conversations with Webb" (SOR at 8). Brings refers extensively to the transcript from contest No. 10013, arguing that it demonstrates that Reed knew Webb to be the owner of the Turkey Track #1 claim, since Reed presumed that claim to be a lode claim despite the fact that his search of the county records showed it to be a placer claim; that there was equipment on the claim;

and that gravel had been removed from the claim and sold. Thus, Brings concludes that Webb, as owner of the Turkey Track #1 placer claim, was entitled to notice of the contest action.

In response BLM argues that Brings did not offer any evidence that BLM had actual notice at the time of its November 1, 1956, decision that the Turkey Track #1 placer mining claim belonged to anyone other than Landriault. BLM also asserts that the appeal should be time barred to the extent it challenges and seeks to set aside the November 1, 1956, final decision.

[1] The question raised by this appeal is whether BLM's failure to serve Webb with a copy of the contest complaint in contest No. 10009 is fatally defective to the outcome of that contest. The relevant facts are that when Reed investigated the county records in March 1956 he found a location notice identifying Rachelle Lora Landriault as the owner of the Turkey Track #1 placer claim. Prior to that search Landriault transferred her interest in the claim to Webb, but Webb did not record the quitclaim deed until 1961. However, on June 23, 1956, before initiation of the contest by complaint dated September 24, 1956, Webb recorded with the county recorder an affidavit of labor for the "Turkey Track #1" claim. It is this document which Brings asserts should have alerted BLM to the fact that Webb was the owner of the Turkey Track #1 placer claim and was, therefore, entitled to service of the complaint in contest No. 10009.

Examination of the affidavit of labor reveals that it does, in fact, identify Webb as the owner of the claim. While the "Turkey Track #1" is not described in the affidavit as either a placer or a lode claim, it does make reference to the recordation (Docket 1443 of Records of Mines, at page 69) of the location notice for the Turkey Track #1 placer claim.

Clearly, a search of the pertinent county records at the time of issuance of the complaint would have revealed Webb as the owner or, at least, an apparent owner of the claim, such that he would have been required to have been served with a copy of the complaint. 5/ There is no indication that BLM

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5/ We note that the regulations governing Government contests, in effect when contest Nos. 10009 and 10013 were initiated, provided that notice of the contest action had to "name [the] entryman or claimant or other known parties in interest," and "may \* \* \* be served personally upon the proper party \* \* \* or by registered letter mailed to the last address of the party to be notified, as shown by the record, and to the post office nearest to the land." 43 CFR 222.4 and 222.6 (1954).

On Oct. 4, 1956, these regulations were revised, setting forth with greater specificity what information had to be included in a contest complaint. See 21 FR 7622. Notably, 43 CFR 221.54 provided that the complaint must contain "[t]he name and address of each party interested, including the age of each heir of any deceased entryman." In addition, 43 CFR 221.58 sets forth detailed procedures for serving the complaint upon "every contestee," whether or not such contestee is of record in the land office.

updated its record ownership search between March 1956, when it identified Rachelle Lora Landriault as the claim owner, and September 24, 1956, when it issued the complaint.

In United States v. Prowell, 52 IBLA 256 (1981), the Government issued a contest complaint on January 27, 1976, challenging the validity of certain mining claims. Following a hearing, the claims were declared null and void. On appeal to the Board, Virgil and Melinda Prowell argued that the contest was fatally defective because BLM failed to serve all owners of the claim with a copy of the contest complaint. They stated that on August 30, 1976, Virgil Prowell had executed a quitclaim deed in favor of two other individuals, who, therefore, should have been served.

The Board stated that when the two individuals acquired Virgil Prowell's interest in the claim, they took it subject to the contest, and that it was their obligation to seek to join the proceeding if they so desired. We further stated:

We hold that where the contest complaint, when filed and received by the mineral claimants, correctly identifies all claimants as of that time, the addition or substitution of subsequent transferees is the obligation of those who have acquired such an interest and their failure to so move will not vitiate the effectiveness of an adjudication of the validity of a mining claim.

Id. at 258. 6/

The Prowell case establishes the date of issuance of the complaint as the critical date for determining real parties in interest, and that prior to that date, it is BLM's obligation to search the appropriate records to obtain ownership information. BLM claims that at that time it had no "actual notice" that Webb was the claim owner. While it is true that Webb had not recorded the quitclaim deed for the Turkey Track #1 at that time, a diligent search of the county records immediately prior to issuance of the complaint would have disclosed Webb's claim of ownership. 7/ Moreover, the transcript of

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6/ The Board pointed out that under 43 CFR 4.451-2(b) even if the two individuals had acquired Virgil Prowell's interest prior to issuance of the contest complaint, the complaint would not be subject to dismissal for failure to name all interested parties. Id. at 258 n.1. The Department promulgated that regulation, originally at 43 CFR 1852.2-2(b) (35 FR 17997 (Nov. 24, 1970)), principally in response to the result reached by the court in Johnson v. Udall, 292 F. Supp. 738 (C.D. Cal. 1968), which held that a contest complaint must name every real party in interest and be served thereon, or it must be dismissed. 7/ On June 22, 1987, Brings submitted certain documents in support of her appeal. She filed a copy of a complaint in contest No. A 19996, dated Oct. 16, 1984, which listed one individual as a contestee and contained an additional notation that "[a]lthough not shown on the location notices

the hearing in contest No. 10013 further indicates that Reed knew or should have known that Webb was the owner of the Turkey Track #1 placer claim (Tr. 28, 82). In addition, there was much discussion at the hearing in contest No. 10013 concerning the Turkey Track #1 placer claim, and at no time during that proceeding did BLM inform Webb that the Turkey Track #1 placer was the subject of a prior contest. Furthermore, the quitclaim deed under which Webb acquired title to the Turkey Track #1 placer claim also listed six other claims as having been purchased by Webb from Rachalle Lora Landriault, including four which were included in contest No. 10013 -- the Minnie, Leo #2 Leo #4, and Turkey Track #3. If BLM had reason to believe Webb was the owner of those four claims, the ownership of which was passed in the same document conveying the Turkey Track #1 placer, we can find no explanation for BLM's failure to serve Webb with a copy of the complaint in contest No. 10009.

We find that BLM should have served Webb with the complaint and that its failure to do so was fatally defective to contest No. 10009. The default judgment in that contest is, therefore, not binding on Webb or his successors-in-interest, and BLM's null and void determination in contest No. 10009 may not be utilized as a basis for rejecting the mining plan of operations filed by Lalor.

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 reversed, and this case is remanded to BLM for action consistent herewith.

Bruce R. Harris  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

R. W. Mullen  
Administrative Judge

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fn. 7 (continued)

the latest affidavits of assessment indicate that Archie I. McCune is one owner of these mining claims." This document and a subsequent decision declaring McCune's interest in the claims null and void, appellant asserts, establishes that "[t]he United States of America does notify parties whose ownership interest appears on affidavits of labor."

Although under section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982), affidavits of assessment are now filed with BLM and represent a ready source to determine claim ownership, that does not mean that in 1956 BLM was free to ignore such information when it was a matter of public record in the county prior to initiation of the contest.

