

Editor's note: Reconsideration granted; decision vacated by Order dated April 20, 1988, See 101 IBLA 5A & B below.

AMELIA MARGLIN WHITSON

IBLA 85-833

Decided January 20, 1988

Appeal from a decision of the Arizona State office, Bureau of Land Management, declaring mining claims null and void ab initio. A MC 241244, A MC 41245.

Set aside and remanded.

1. Mining Claims: Lands Subject to--Exchanges of Land: Generally--Segregation

Mining claims located on land which was segregated in accordance with 43 CFR 2201.1(b) from appropriation under the mining laws by publication in the Federal Register of notice of realty action proposing the land for disposal by exchange are properly declared null and void ab initio.

2. Mining Claims: Extralateral Rights--Mining Claims: Lands Subject to--Mining Claims: Lode Claims

A lode mining claim located partially on land withdrawn or segregated from mineral location is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the ene lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

APPEARANCES: Amelia Marglin Whitson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Amelia Marglin Whitson has appealed from a July 15, 1985, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared her Maggie and Bellia Lode Mining Claims (A MC 241244 and A MC 241245) null and void ab initio.

The claims were located on June 27, 1985, and are situated in sec. 15 and sec. 22, T. 9 N., R. 2 E., Gila and Salt River Meridian, Yavapai County, Arizona.

The decision pointed out that the lands were not open to location of mining claims at the time of their location, stating:

The land has been withdrawn from location under the General Mining Laws by a Notice of Realty Action published in the Federal Register, Vol. 50, No. 59, March 27, 1985. Upon publication of the notice the land described was segregated from appropriation under the mining laws for a period of two years.

In her statement of reasons, appellant notes that the claims were originally located by her parents in 1900 and that on June 27, 1985, when she discovered that the 1983 assessment work filing had not been received by BLM for 1983, she immediately relocated the claims. 1/ Appellant requests that the Notice of Realty Action be set aside and that she be allowed to relocate the claims, arguing that "transfer of mining claim acreage, where both surface and sub-surface are public land, and where the mineral rights are totally claimed in any section, as is the case in this withdrawal, do [sic] not constitute efficient land management."

The Federal Register notice referred to in the BLM decision, entitled Realty Action; Exchange of Public Lands, Pinal, Maricopa and Yavapai Counties, Arizona, 50 FR 12083 (Mar. 27, 1985), notified the public that certain public lands in T. 9 N., R. 2 E., apparently including most of those where appellant's claims were located, were being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716 (1982). The notice stated that:

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination

1/ On her relocation notices, appellant advises that the claims were relocated because BLM alleges they did not receive her 1983 and 1984 affidavits of performance of annual assessment work. The relocation notices also list two BLM serial numbers, A MC 73653 and A MC 73654; however, the case file contains no reference to the original claims, or any action taken by BLM with respect to them.

NOTE: 101 IBLA 3 IS A DUPLICATE OF 101 IBLA 2.
101 IBLA 3

of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

No master title plat for T. 9 N., R. 2 E., is contained in the case file. It appears from comparing the map provided by appellant, Mineral Survey #4634 Arizona, which depicts the location of her claims on the ground with the land description in the notice, that not all of sec. 22 within the claims was considered for disposal.

[1] If appellant's claims were relocated entirely on the segregated land, the BLM decision declaring the relocated claims null and void ab initio would be correct. It is well established that a mining claim located on lands which are not open to mineral entry confers no rights on the locator and the claim is properly declared null and void ab initio. *Alexander & Martha Acker*, 90 IBLA 1 (1985); *Mineral Life Corp.*, 81 IBLA 103 (1984), and cases cited therein.

[2] However, the record in the case indicates that portions of appellant's claims may be located on lands in sec. 22 not affected by the Notice of Realty Action.

The validity of a lode mining claim located partially on lands withdrawn or segregated from mineral location depends on whether the discovery point is on land open to mineral location. A locator whose discovery is on land open to mineral location may extend the end lines and side lines of his claim across lands not open to location to define the extralateral rights to lodes or veins which apex within the claim. However, the locator will not have surface rights to these lands and depending on the circumstances may or may not have mineral rights in the subsurface land. *Donald R. Rowley*, 89 IBLA 248, 249 (1985); *Timberline Mining Co.*, 87 IBLA 264, 265 (1985); *Santa Fe Mining, Inc.*, 79 IBLA 48 (1984). In such cases the validity of such claims may only be adjudicated by the initiation of contest proceedings. See *James W. Phillips*, 92 IBLA 58 (1986).

Under the circumstances we deem it appropriate to set aside the BLM decision and remand the case file to BLM to determine whether appellant's claims are in fact situated entirely within the segregated portions of sec. 22.

2/ On May 18, 1987, BLM forwarded to the Board a copy of a decision dated May 12, 1987, which advised appellant that the Maggie and Bellia lode claims, A MC 241244 and A MC 241245, were declared abandoned and void because of failure to file evidence of annual assessment work or a notice of intent to hold the claims for 1986. The notice provided a 30-day period for appellant to establish that the filing was made. No appeal was taken from this decision and BLM has not indicated whether appellant established that she did submit her annual filing for 1986. If she did not, the claims would be abandoned and void pursuant to section 314(c) of FLPMA, 43 U.S.C. § 1744 (c) (1982) and 43 CFR 3833.4, and no further action would be warranted in this matter.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision of July 15, 1985, is set aside and remanded

Gail M. Frazier

We concur:

Wm. Philip Horton

Will A. Irwin

101 IBLA 5

April 20, 1988

IBLA 85-833 : A MC 241244; A MC 241245
: :
AMELIA MARGLIN WHITSON : Mining Claims
: :
: Reconsideration Granted; Board
: Decision Vacated; Mining
: Claims Declared Null and
: Void ab initio

ORDER

In Amelia Marglin Whitson, 101 IBLA 1 (1988), the Board reviewed a decision dated July 15, 1985, by the Arizona State Office, Bureau of Land Management (BLM), declaring the Maggie and Bellia lode mining claims (A MC 241244 and A MC 241245) null and void ab initio. The claims were located on June 27, 1985, in secs. 15 and 22, T. 9 N., R. 2 E., Gila and Salt River Meridian, Yavapai County, Arizona. BLM's decision was based on a Notice of Realty Action, 50 FR 12083 (Mar. 27, 1985), which notified the public that certain public lands in T. 9 N., R. 2 E., were being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716 (1982). In accordance with the provisions of 43 CFR 2201.1(b), the Notice advised the public that publication thereof segregated the lands from appropriation under the public land laws, including the mining laws.

Because no master title plat for T. 9 N., R. 2 E., was included in the case file, we were unable to determine, in our initial review, whether appellant's claims were situated entirely on segregated land within sec. 22. We therefore set aside the BLM decision and remanded the case file to BLM to determine whether appellant's claims were in fact situated entirely within the segregated portions of sec. 22.

On February 23, 1988, the Arizona State Director filed a Petition for Reconsideration of our decision in Amelia Marglin Whitson, supra. Included with the petition was a copy of the master title plat and serial register page for T. 9 N., R. 2 E., along with the Federal Register notice and the original Classification Order describing the lands in secs. 15 and 22 which were segregated by the Notice of Realty Action to show that appellant's claims are situated entirely on segregated lands. The Director further points out that the segregation of these lands was extended by publication of a Federal Register notice captioned "Realty Action: Exchange of Public Lands, Pinal, Maricopa and Yavapai Counties, Arizona." 52 FR 9950-9951 (Mar. 27, 1987). That Notice included all of secs. 15 and 22 among the segregated lands. Appellant was served with copies of the documents filed by the State Director, but did not respond.

Based on our review of the documents provided, we consider the evidence presented by the State Director sufficient to warrant reconsideration of our previous decision. See 43 CFR 4.403. The master title plat shows that all the lands described in the 1985 Notice, including secs. 15 and 22, are subject to State Exchange Application, A 20346 B, and not open to mining. As the official land records are noted to reflect the exchange application covering the lands subject to the Notice, it has the effect of segregating the lands from all subsequent appropriation consistent with the Notice. 43 CFR 2201.1(b). See David D. Beal, 90 IBLA 91 (1985).

In light of our reconsideration of the record as presently constituted, it is apparent that appellant's claims are located entirely on segregated lands. Thus, we conclude that BLM's decision declaring the claims null and void ab initio was correct. It is well established that a mining claim located on lands which are not open to mineral entry confers no rights on the locators and the claim is properly declared null and void ab initio. Alexander & Martha Acker, 90 IBLA 1 (1985); Mineral Life Corp., 81 IBLA 103 (1984), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Petition for Reconsideration is granted, the Board's decision in Amelia Marglin Whitson, supra, is vacated, and the BLM decision declaring the above-referenced mining claims null and void ab initio is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Wm Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

APPEARANCES:

Amelia Marglin Whitson
P.O. Box 232
Black Canyon, Arizona 85324

State Director
Bureau of Land Management
3707 N. 7th Street
P.O. Box 16563
Phoenix, Arizona 85011

