

E.J. BELDING, JR.

MELINDA S. BELDING

IBLA 87-722

Decided June 12, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. CA MC 39435, CA MC 39436, CA MC 49073.

Affirmed.

1. Mineral Lands: Generally--Mining Claims: Determination of Validity--Mining Claims: Lands Subject to

A necessary element in any determination respecting the validity of a mining claim is the availability of the land for mining location. Until it has been determined that land is subject to mining location, any decision relating to the mineral character of land embraced in a mining claim or the sufficiency of a purported discovery is premature insofar as the validity of the claim is concerned.

2. Mining Claims: Determination of Validity--Mining Claims: Possessory Right--Mining Claims: Powersite Lands--Mining Claims: Withdrawn Land--Mining Claims Rights Restoration Act

The Mining Claims Rights Restoration Act of 1955 did not unqualifiedly reopen all lands withdrawn from entry by the Federal Power Act. Sec. 4 of the Mining Claims Rights Restoration Act of 1955 required locators to file location notices as to otherwise void claims within 1 year from the effective date of the Act, or within 60 days of the date of a new location.

Where the requirements of sec. 4 of the Mining Claims Rights Restoration Act of 1955 were not met, claimants could not achieve valid existing rights in the claims by application of the principle of adoption, which does not apply against the United States.

3. Mining Claims: Assessment Work--Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally--Mining Claims: Withdrawn Lands

Substantial compliance with the 1872 Mining Law, in the form of good faith acts of discovery and performance of assessment work, cannot confer vested rights, or valid existing rights, where Congress has withdrawn lands from location prior to the good faith acts of the locator.

4. Mining Claims: Determination of Validity--Mining Claims: Withdrawn Land--Mining Claims Rights Restoration Act--Wild and Scenic Rivers Act

Where lands were withdrawn from mineral entry in 1922 pursuant to the Federal Power Act of 1920, and in 1975 pursuant to the Wild and Scenic Rivers Act, and claimants could not show that their claims were located prior to 1975 in accordance with the Mining Claims Rights Restoration Act of 1955, appellants had no valid existing rights, and the claims were properly declared null and void ab initio.

APPEARANCES: Richard Keith Corbin, Esq., Sacramento, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

E.J. and Melinda S. Belding have appealed from the July 8, 1987, decision of the California State Office, Bureau of Land Management (BLM), declaring the Lucky B quartz (CA MC 39436) and Payday (CA MC 39435) and Golden Wonder (CA MC 49073) placer mining claims null and void ab initio because the lands in issue were withdrawn from location or entry by the

Federal Power Commission on August 2, 1922, as part of power project 334, and because the lands are withdrawn from mineral entry pursuant to the Wild and Scenic Rivers Act of 1968 (WSRA), as amended January 3, 1975.

Appellants' claims are located within the N\ of sec. 36, T. 16 N., R. 12 E., Mount Diablo Meridian, along the North Fork of the American River. In their statement of reasons (SOR) at page 2, appellants state that the Lucky B quartz and the Payday placer claims were located by John L. Beecroft on July 1, 1927. Beecroft located the Golden Wonder placer claim on April 18, 1930. On September 11, 1964, Beecroft transferred the claims to Ralph C. and Helen I. Roper. The Ropers filed location and all other documents required by section 314 of the Federal Land and Policy Management Act of 1976 (FLPMA) in October 1979. The Ropers transferred the three Beecroft claims to appellants herein by quitclaim deed on April 17, 1987. Id.

A Notice of Intent to Operate the claims and an operating plan were filed by appellants with the U.S. Forest Service on May 21, 1987 (SOR at 2). They were informed by the Forest Service by letter dated June 10, 1987, that they could not operate until the validity of the claims was cleared by BLM. Id. BLM's decision declaring the claims null and void ab initio issued on July 8, 1987.

BLM's decision declaring their claims null and void ab initio is improper, appellants argue, because it has not considered the statutory

exception in the WSRA that withdrawal of lands thereunder is subject to "valid existing rights." Appellants contend that the 1922 withdrawal of their lands embracing their claims is subject to the Mining Claims Rights Restoration Act of 1955 (MCRRA), which reopened to mining location powersite lands that had previously been withdrawn from mineral entry pursuant to the Federal Water Power Act of 1920.

Appellants contend that possessory title to a mining claim staked during a period of withdrawal may be achieved, despite the withdrawal, by operation of the principle of adoption. According to appellants, the disputed claims were adopted by Beecroft in 1955 when MCRRA reopened lands previously closed to mineral entry under the Federal Power Act, and appellants are successors to this adoption. Appellants claim that Beecroft's adoption constitutes a "valid existing right" under WSRA. Appellants further argue that "[they] and their predecessors have substantially complied with the 1872 Mining Law for 60 years," and that performance in compliance with the 1872 Mining Law creates a valid existing right in the claim (SOR at 3).

BLM's decision states that the original locations in 1927 and 1930 are null and void because the lands were withdrawn under the Federal Water Power Act by the Federal Power Commission on August 2, 1922, for inclusion in Federal Power Project 334. As the claims were not relocated from the period of 1955 through 1975, when the lands were open for entry, BLM maintains that there are no "valid existing rights," to which the land is

subject, and that entry upon the claims is now barred pursuant to 1975 amendments to WSRA.

[1] Under WSRA, appellants argue, designated lands may only be removed from mineral location subject to "valid existing rights." Appellants do not dispute that their claims are within one-quarter mile of the bank of the North Fork of the American River and are thus subject to the geographical limitations imposed by WSRA; rather, they claim that the withdrawal of lands on which their claims are located is subject to valid existing rights which derive from "the discovery of a valuable mineral deposit and a physical location of the claim," by their predecessors in possession, John Beecroft and Ralph and Helen Roper. 1/

As appellants contend, BLM does not claim that no discovery has been made (SOR at 4). According to appellants, "[a] claimant who has made a discovery and properly located a claim has a valid existing right by his actions under the [1872] statute; * * *" (SOR at 4-5). Appellants argue

1/ 16 U.S.C. | 1280(a)(iii) (1982), pertains to minerals in Federal lands which are determined to be situated within one-quarter mile of the bank of any designated river under WSRA, as follows:

"Nothing in this chapter shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that * * *.

* * * * *

"(iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this chapter or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto."

that BLM has admitted the existence of their discovery, and therefore has acknowledged that the claims are valid. Id.

The Mining Law of 1872, 30 U.S.C. | 22 (1982), as derived and amended, provides, in pertinent part:

Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, * * * shall be free and open to exploration and purchase * * * by citizens of the United States * * * under regulations prescribed by law, and according to the local customs or rules of miners in the several districts, so far as the same are applicable and not inconsistent with the laws of the United States. [Emphasis added.]

The 1872 statute, as amended, is thus not indifferent to the limitations that Congress might impose upon the right of the public to explore and purchase valuable mineral deposits. Indeed, the Mineral Leasing Act of 1920 is such a limitation, and was contemplated by the proviso, "[e]xcept as otherwise provided." 2/

As Congress has reserved the right to limit public exploration and purchase of valuable minerals under the 1872 Mining Law, a necessary element in any determination respecting the validity of a mining claim is the availability of the land for mining location. Until it has been determined that land is subject to mining location, any decision relating

2/ 30 U.S.C.A. | 22 (1986), indicates by Historical Note that the words, "[e]xcept as otherwise provided," were added by amendment "on authority of act of Feb. 25, 1920, c. 85, 41 Stat. 437, [the Mineral Leasing Act]," and that the language of R.S. | 2319 is "derived from Act May 10, 1872, c. 152, | 1, 17 Stat. 91."

to the mineral character of land embraced in a mining claim or the sufficiency of a purported discovery is premature insofar as the validity of the claim is concerned. Appellants' assumption that BLM acquiesced in the existence of a discovery on their claims is therefore misguided; rather, BLM determined that the lands were unavailable for discovery as they had been withdrawn from the operation of the 1872 Mining Law by act of the Federal Power Commission in 1922, pursuant to authority granted by Congress under the Federal Power Act of 1920, and again in 1975, pursuant to WSRA.

[2] Appellants claim, however, the land was reopened for mineral entry under MCRRA, and that under the rule of Noonan v. Caledonia Mining Co., 121 U.S. 393 (1887), they have adopted the Becroft and Roper locations and thereby obtained valid existing rights. Appellants argue that,

[a]lthough in the instant case, the DECISION states, that in regard to the claims in question, they are "without legal effect from the beginning," the Noonan case bestows rights later on, that date back to the restoration date. These rights are based upon the original act of location, and subsequent performance of the requisite labor and improvements. [3/]

Noonan involved location of mining claims upon lands located in the Black Hills that were set apart as a reservation for the Sioux Indians. In 1877, the Sioux relinquished lands containing mineral deposits to the United States, and the Black Hills region was opened to exploration under

3/ SOR at 6 (emphasis in original).

the mining laws. The controversy in Noonan arose between miners who had established possessory interests on or before congressional ratification of the treaty with the Sioux on February 28, 1877, and those who entered the lands for prospecting subsequent to those already in possession. The Supreme Court held, as between adverse locators,

where a party was in possession of a mining claim on the 28th of February, 1877, with the requisite discovery, with the surface boundaries sufficiently marked, with the notice of location posted, and with a disclosed vein of ore, he could, by adopting what had been done, causing a proper record to be made, and performing the amount of labor or making the improvements necessary to hold the claim, date his rights from that day; and that such location and labor and improvements would give him the right of possession.

Noonan v. Caledonia Mining Co., supra at 403. The Court summarized that, "[b]y this rule substantial justice is done to all parties who were entitled to protection in their mining claims when the new agreement took effect." Id.

Appellants argue that by placing the appropriate stakes and notices upon the land in 1927 and 1930, by filing location notices, and by filing and continuing to file proof of assessment work or notices of intention to hold the claim in accordance with local requirements, and by complying with the filing requirements of FLPMA, appellants' predecessors in possession adopted the Beecroft claims, and appellants, for good and valuable consideration, have purchased the adoption. While these arguments might be tellingly made against a rival locator, they are not controlling as against the United States. Crucial to an understanding of Noonan was that, in

1877, what had been Indian land was unreservedly opened to location. There must be a statute validating a prior illegal entry before adoption will lie. See Ogala Sioux Tribe v. Homestake Mining Co., 722 F.2d 1407, 1412 (8th Cir. 1983). In Noonan, the Supreme Court decided, as between adverse locators, that the one having possession, who had adopted the prior illegal entry and location, had the superior right. This doctrine, which is an application of the doctrine of pedis possessio, does not apply against the United States. See United States Forest Service v. Milender, 104 IBLA 207, 222, 95 I.D. 155, 164 (1988).

While MCRRA reopened lands previously withdrawn from mining location by the Federal Power Act, it did not unqualifiedly reopen all lands with-drawn from entry under the mining law by the Federal Power Act of 1920. Section 4 of the Act, 30 U.S.C. | 623 (1982), provides, in pertinent part, that:

The owner of any unpatented mining claim located on land described in section 621 of this title shall file for record in the United States district land office of the land district in which the claim is situated * * * within one year after August 11, 1955, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim.

Section 2 of the Act, 30 U.S.C. | 621(b) (1982), provides, in pertinent part, that:

The locator of a placer claim under this chapter, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 623 of this title. If the Secretary of the Interior, within

sixty days from the filing of the notice of location, notifies the locator * * * of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with the other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining [with restrictions]; or (3) a general permission to engage in placer mining.

In George L. Hawkins, 66 IBLA 390, 392 (1982), this Board held that:

Public Law 84-359, 30 U.S.C. | 621 (1976), known as the "Mining Claims Rights Restoration Act of 1955," had as its purpose "[t]o permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development * * *." After enactment of the statute on August 11, 1955, such lands were open to mineral location (with certain exceptions). However, mining claims which were located prior to that date after the land had been closed to mineral entry were simply null and void from their inception and the Mining Claims Rights Restoration Act, supra, did not operate retroactively to validate claims which were void when located. John C. Farrell, 55 IBLA 42 (1981); Day Mines, Inc., 65 I.D. 145 (1958).

See also United States Forest Service v. Milender, supra at 222-23, 95 I.D. at 164.

While appellants claim that recent Board decisions have ignored the rule in Noonan, and have decided cases falling under MCRRA "in a vacuum," ^{4/} the statutory basis for our prior decisions is apparent: MCRRA did not unqualifiedly reopen lands withdrawn from mineral entry, as was the

^{4/} SOR at 6.

case in Noonan, but required locators to file location notices as to otherwise void claims within 1 year from the effective date of the Act, or within 60 days of the date of a new location. By the terms of 30 U.S.C. | 621 (1982), if the locator who complied with section 623 was not notified within 60 days after locating under section 623 that a hearing would be held concerning the status of the location, then the claim was established. BLM has no evidence, nor has appellant provided proof, which would establish that Beecroft filed notices of location with BLM after August 11, 1955, and prior to August 11, 1956, as to the Lucky B quartz and Payday and Golden Wonder placer claims; nor did Beecroft ever attempt to locate the three placer claims in accordance with 30 U.S.C. | 623 (1982).

Since the lands had been withdrawn from entry in 1922 pursuant to the Federal Power Act, and were not reopened until August 11, 1955, Beecroft's 1927 and 1930 locations were in the nature of a trespass. Trespass does not establish a "valid existing right." United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 447 (9th Cir. 1971). ^{5/} Beecroft could have established himself as more than a mere trespasser--as a locator with

^{5/} See United States v. Consolidated Mines & Smelting Co., *supra*, where the Court of Appeals quoted Chanslor-Canfield Midway Oil Co. v. United States, 266 F. 145, 151 (9th Cir. 1920), pertaining to the analogous situation of one who is attempting to acquire a claim through adverse possession, pursuant to 30 U.S.C. | 38 (1982):

"But the statute just referred to [30 U.S.C. | 38 (1982)] is a part of the statutory chapters on mineral and mining resources, having to do with the evidence which will be regarded as sufficient to establish the right of one in possession and who has worked a mining claim to obtain a patent. The statute is based upon the premise that the lands had been open to entry and could be patented under the mining laws of the United States. It * * * has no application in the case of a trespasser on land, title to which cannot be acquired under the laws of the United States."

transferable valid existing rights in the claims--had he complied with the filing requirements under MCRRA, 30 U.S.C. | 623 (1982).

Nor is there evidence that appellants' predecessors Ralph and Helen Roper made an attempt to locate the claims at any time prior to their filings pursuant to section 314 of FLPMA. The North Fork of the American River was designated for study under WSRA on January 3, 1975, and became part of the wild and scenic rivers system on November 10, 1978. The bed or banks and land situated within one-quarter mile of the river have been withdrawn from appropriation under the mining laws since January 3, 1975. Since the Ropers did not record their claims until October 1979, they had no valid existing rights to the claims on January 3, 1975, which would be transferable to appellants. See Clarence E. Fitzgerald, 55 IBLA 31 (1981).

[3] Appellants argue that their predecessors' omissions under MCRRA, 30 U.S.C. | 623 (1982), should not be detrimental to them, as Beecroft, the Ropers, and now appellants have "substantially complied" with the requirements of the mining law, by complying with the filing requirements of section 314 of FLPMA, and by performing assessment work on their claims as required by 30 U.S.C. | 28 (1982). 6/ This compliance, according to appellants, is sufficient to establish "valid existing rights" in the claims.

6/ 30 U.S.C. | 28 (1982), as amended, generally provides, in addition to an archaic provision that miners may make regulations in accordance with local custom, not inconsistent with Federal or state laws, for the location and manner of recording mining claims, that all mining locations must be marked on the ground, and that a minimum of \$100 must be annually expended upon the claim in order to preserve one's rights in the claim as against another claimant.

Appellants cite Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639 (1935), and Hickel v. Oil Shale Corp., 400 U.S. 48 (1970), in support of their contention that substantial compliance with the 1872 Mining Law should constitute possession sufficient to constitute a valid existing right. Union Oil Co. v. Smith, 249 U.S. 337, 350 (1918), cited by Ickes, supra at 640, acknowledged that assessment work was "the condition subse-quent prescribed by Congress to be performed in order to preserve the exclusive right to the possession of a valid mineral land location upon which discovery [has] been made." (Emphasis added.) It is of course, the existence of a valid mineral land location which is at issue here.

Congress has been granted the exclusive power to dispose of the public lands by the United States Constitution. In Lutzenhiser v. Udall, 432 F.2d 328, 331 (9th Cir. 1970), with regard to the power of Congress to manage the public lands, the Court of Appeals stated:

The United States owned the lands and could constitutionally manage them in any way that it saw fit. As part of that freedom to manage, Congress could grant and withdraw rights to locate mining claims upon the public lands. The withdrawal could be accomplished in any way that Congress saw fit, with or without notice, at least prior to the time that private rights had vested. [Footnotes omitted.]

Derivative of the exclusive power granted to Congress to manage the public lands is that the lands may be both opened and closed to mineral entry by congressional action. Congress, therefore, may open lands to or withdraw

lands from the exploration, discovery, and location of mining claims. It would thus seem axiomatic that congressional intent to withdraw lands from the operation of the general mining law cannot be subverted by the performance of the very acts which withdrawal of the lands would prohibit, and that private rights may not vest during a time when Congress has expressly prohibited entry. Thus, even good faith acts of discovery and performance of assessment work cannot confer vested rights, or valid existing rights, where Congress has withdrawn the lands from location prior to the good faith acts of the locator. John Boyd Parsons, 22 IBLA 328 (1975).

[4] Appellants' claims are located within the N\ of sec. 36, T. 16 N., R. 12 E., Mount Diablo Meridian, and are within lands withdrawn from mineral entry pursuant to WSRA, subject to "valid existing rights." See Clarence E. Fitzgerald, supra; 45 FR 58634 (Sept. 4, 1980). Appellants do not have "valid existing rights" in the Lucky B quartz and Payday and Golden Wonder placer claims because they were located in 1927 and 1930, when the lands were withdrawn from entry pursuant to the Federal Power Act of 1920, by their inclusion in Federal Power Project 334 by the Federal Power Commission on August 2, 1922. Location notices were not filed within the time prescribed by MCRRA; thus, no rights exist in the claims which would render them valid. They are properly declared null and void ab initio. See Clarence E. Fitzgerald, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member