

ERNEST SMART

IBLA 91-428

Decided October 12, 1994

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented Grey Flat Placer Claim, CA MC 245102, null and void ab initio.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land

A placer mining claim was properly declared null and void because it was located within a licensed power project withdrawn from mineral entry and the claimant failed to show it was connected by an unbroken chain of title to a claim located prior to withdrawal.

APPEARANCES: Ernest Smart, Mariposa, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Ernest Smart has appealed from a July 10, 1991, decision of the California State Office, Bureau of Land Management (BLM), declaring the unpatented Grey Flat Placer Claim, CA MC 245102, null and void ab initio because the lands located were not open to mineral entry. The notice of location filed with BLM on June 19, 1991, states that the "Grey Flat Placer Claim" was located on June 11, 1991, on lands situated in "the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  and NW $\frac{1}{4}$  of SE $\frac{1}{4}$ " in sec. 9, T. 4 S., R. 17 E., Mount Diablo Meridian, Mariposa County, California. The claim was filed under the Mining Claims Rights Restoration Act of 1955 (MCRRA), as amended, 30 U.S.C. §§ 621-625 (1988). An attachment to the location notice states that "this claim takes in all of lower part of Grey's Flat Placer Claim Lot 38 in Southwest quarter of Northeast quarter, Section 9." BLM found the location notice was null and void because it was made on land (lot 38) withdrawn from mineral entry for the New Exchequer Reservoir Project No. 2179, and also because it claimed land (lots 5, 7, 8, and 9 and NE $\frac{1}{4}$  SE $\frac{1}{4}$  sec. 9) which had been conveyed out of Federal ownership.

On appeal, Smart alleges that the decision relied on inaccurate information and was made without full knowledge of the facts. He argues that the Grey Flat Placer Claim was a "legal placer mining claim before and at the

time Charles Campbell Derby received his Patent 11574." (Emphasis in original.) He explains that the Grey Flat Placer Claim was located in 1875 and surveyed in April 1876, a survey map being filed with the U.S. Surveyor General on August 5, 1876. Commenting that the claim did not include lot 5 as stated in the decision, he argues that the subject lands were not withdrawn by Power Site Reserves Nos. 204 and 412 at the time of his 1991 location because they were restored to mineral entry under the Federal Power Act (FPA), 16 U.S.C. § 818 (1988). He asserts the Grey Flat Placer Claim was properly located in 1945 and has been adequately maintained since. He argues that he never intended to abandon the claim, which he purchased in 1967, quit-claimed in 1985, and repossessed in 1991. Smart contends that Power Project 2179 could not have withdrawn the land from mineral entry in 1958 because the Grey Flat claim represented an existing, valid right.

Concerning the land described in his 1991 location notice, Smart argues that BLM erroneously found that the 1904 Derby patent affected his claim. In addition to the general descriptions provided in the location notice, Smart identified his claim location by a sketch-map. The sketch depicts a square with its east and west boundaries running northwesterly at a 60° angle from south to north. This box is drawn on an aliquot-styled map to include almost all the SW¼ NE¼ and about one-half of the NW¼ SE¼ of a section, with a small portion of the southeast corner of the box extending into the SE¼ NE¼ and NE¼ SE¼. The sketch indicates that the section depicted is sec. 9, T. 4 S., R. 17 E. Projecting this sketch onto the Master Title Plat (MTP) of sec. 9 shows that BLM's references to lot 5 and the 1904 patent were justified. First, the southwest corner of the claim as depicted by the sketch lies within lot 5. Moreover, other parts of the claim as drawn lie within lots 7, 8, and 9, which were patented to Derby without mineral reservation. These lands were therefore closed to mineral location in 1991; to the extent the claim includes such lands, it is null and void.

Close examination of the documents received by BLM establishes that the lands at issue include lot 38 as shown on the MTP. Lot 38 appears to be land originally depicted by the 1876 mineral survey referred to by Smart. The 143.84 acres of lands patented to Derby consists of lots 4, 5, 7, 8, and 9 and the NE¼ SE¼ of sec. 9. Lots 7, 8, and 9 were created from the S½ NE¼ of sec. 9 to depict lands in aliquot segments not included in the irregular-shaped lot 38, which carves a U-shaped slice across the S½ NE¼. There is no record of the disposition of the 1875 location that created lot 38, which was apparently never taken to patent. In any event, the claim has no relevance here, since Smart does not assert a chain of title thereto. It is the status of the lands at issue in 1991 that is the subject of inquiry in this appeal, which must consider the efficacy of Power Site Order No. 204 as determined by subsequent events.

Executive Order No. 204, dated September 4, 1911, withdrew approximately 8,378 acres of land along the Merced River for a water power site, including land at issue in sec. 9. While Smart asserts that lot 38 was restored to mineral entry under section 24 of the FPA, 16 U.S.C. § 818 (1988), the record does not support this assertion. There is nothing to

indicate any such action was taken to restore withdrawn lands in sec. 9 to mineral entry, although the MTP for the township in question does indicate that lands in secs. 6, 10, and 11, also withdrawn under Power Site Order No. 204, were opened to entry under FPA, section 24.

[1] Section 2(a) of MCRRA, 30 U.S.C. § 621(a) (1988), reopened lands withdrawn or reserved for power development to entry for location and patent of mining claims, subject to exceptions. The first of these is that the statute does not open "any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act." In such cases, BLM properly declares any portion of a placer mining claim located within a power project to be null and void ab initio. See John Wright, 112 IBLA 233, 238 (1989). The record shows that successive permits for Power Project 2179 were issued effective August 4, 1958, February 21, 1963, and July 24, 1970. The MTP and Project Map indicate the withdrawal for this project remains in effect and includes Lot 38 of sec. 9, land at issue here. Therefore, when Smart attempted to locate his claim on June 11, 1991, he located it on land that was not opened for location of mining claims by section 2(a) of MCRRA because it was included in a licensed power project. His 1991 location was therefore properly declared null and void ab initio. Bob & Kayla Alejandre, 125 IBLA 104 (1993).

Smart argues that the Grey Flat Placer Claim was a legally recognized claim before the Power Project 2179 withdrawal. He has failed, however, to provide evidence of a connection between the location here at issue and any prior locations. Consequently, he has not established that his 1991 location was a successful amendment of a prior claim so as to avoid the withdrawal by application of the doctrine allowing him to relate his 1991 claim back to an earlier location. See Grace P. Crocker, 73 IBLA 78, 80 (1983), and authorities cited therein. To do so, he must show that the earlier location included the portion of the claim subject to the withdrawal, that the person making the amended location had an unbroken chain of title with the original locators, and that the location made before withdrawal was proper. Id. Smart has failed to show that an unbroken chain of title connects his 1991 claim to a prior location.

In 1988 BLM found that the Grey Flat placer mining claim, CA MC 43489, became void and abandoned when no document satisfying the annual mining claim recordation filing requirement imposed by 43 U.S.C. § 1744(c) (1988), was received in 1987. See United States v. Locke, 471 U.S. 84 (1985). Following abandonment of a mining claim, the claimant's right of possession is lost. A former claimant cannot acquire any interest in the lapsed claim except by making a new location; rights acquired under a relocation of an abandoned claim, whether by a former claimant or another, do not relate back to the date of location of the original claim. See Florian L. Glineski, 87 IBLA 266, 268-69 (1985). Because Smart's 1991 location was made after withdrawal of the lands comprising Lot 38, he could not claim a right to a prior mineral entry made before withdrawal. Nor can he relocate on a theory that a lapsed claim encumbered the lands at the time of the withdrawal.

Location of a mining claim does not remove claimed lands from Federal ownership or management by authorized agencies of the Federal Government. Jack Stanley, 103 IBLA 392, 394 (1988), aff'd sub nom. Ptarmigan Co. v. Dept. of the Interior, No. 90-35369 (9th Cir. May 15, 1991).

Therefore, BLM properly concluded that the location attempted by Smart on June 11, 1991, was null and void ab initio because the lands in question were not then open to mineral entry.

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 affirmed.

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Franklin D. Arness  
Administrative Judge

I concur:

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James L. Byrnes  
Chief Administrative Judge