

EDITOR'S NOTE: Reconsideration granted, Decision affirmed in part and set aside in part by Order at 131 IBLA 292A through D, found following this decision.

BUTTE LODE MINING CO.

IBLA 92-619

Decided November 30, 1994

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Excelsior, Lucky Strike, Butte Lode, and Mountain View lode mining claims (CAMC 41469-72) null and void ab initio and rejecting recordation filing for the Butte Wedge Quartz lode mining claim (CAMC 41473).

Affirmed in part; set aside in part and referred to Hearings Division.

1. School Lands: Generally--School Lands: Mineral Lands

Even where school land grant acts, such as the Act of Mar. 3, 1853, ch. 145, 10 Stat. 244, which granted secs. 16 and 36 to the State of California for the purpose of public schools, did not specifically mention that lands mineral in character were excepted from the grant, sections known to be mineral in character by the time of survey were excepted.

2. Mining Claims: Lands Subject to--School Lands: Generally

The validity of a lode mining claim located partially on school grant lands depends on whether the discovery point is on land open to mineral location.

3. Evidence: Presumptions--School Lands: Mineral Lands

There is a presumption that land granted to a state for school purposes was of the character contemplated by the grant, and that title to the land consequently passed to the state. If a mining claimant contends that land within a state school grant was mineral in character when survey was completed, and was therefore excluded from the statutory grant, the mining claimant bears the burden of proving the land was mineral in character.

4. Evidence: Generally--Hearings--Mining Claims: Lands Subject to--School Lands: Mineral Lands

Where, on appeal from a decision declaring mining claims abandoned and void ab initio on the basis that

they were located on school lands, the claimant tenders persuasive evidence in support of its contention that the lands in question were known mineral in character on the date of acceptance of the survey, but there is no evidence in the record regarding the position of the state and/or its successors-in-interest on the issue, we will decline to make a definitive determination on that issue and set aside BLM's decision and refer the case to the Hearings Division.

APPEARANCES: Carl Dresselhaus, Esq., Los Angeles, California, for appellant; Burton J. Stanley, Esq., Assistant Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE
JUDGE HARRIS

Butte Lode Mining Company has appealed from an August 7, 1992, decision of the California State Office, Bureau of Land Management (BLM), declaring the Excelsior, Lucky Strike, Butte Lode, and Mountain View lode mining claims (CAMC 41469-72) null and void ab initio and rejecting recordation of the Butte Wedge Quartz lode mining claim (CAMC 41473).

On October 5, 1979, BLM received recordation filings for these five claims in accordance with the requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1988), and the implementing regulations at 43 CFR 3833.1-2. The notices of location for the claims show that they were all located in 1896, and BLM stated in its decision that "the location notices and accompanying maps show them to be located in sections 35 and 36 of T. 29 S., R. 40 E., Mount Diablo Meridian (MDM)."

BLM declared the Excelsior, Lucky Strike, Butte Lode, and Mountain View lode mining claims null and void ab initio because "all of section 36 is School Grant land" (Decision at 1). BLM stated that "[p]ursuant to the Act of March 3, 1853, title to school grant lands vests in the state upon approval of an approved survey of that section," and "[t]he survey of Section 36 was approved on January 19, 1856." BLM, explaining that school grant lands were conveyed without a reservation of minerals to the United States, held that "[s]ection 36 was closed to the location and entry of mining claims on the day the survey was approved and remained closed between March and December 1896, the dates of attempted location" (Decision at 1).

BLM also held that the Butte Wedge Quartz lode mining claim (CAMC 41473), located in sec. 35, was patented to The Wedge Gold Mining, Milling and Water Supply Company on August 18, 1898 (M.S. 3473, patent number 29748). BLM, thus, rejected the recordation filings for that claim because under 43 U.S.C. § 1744 (1988) only owners of unpatented mining claims are required to record their claims with BLM.

In its statement of reasons for appeal (SOR), appellant does not specifically take issue with BLM's holding regarding the Butte Wedge Quartz lode mining claim. Accordingly, BLM's decision is affirmed to the extent it rejected the recordation of that claim, and the remainder of our opinion will address the four claims declared null and void by BLM.

In order to understand the basis for BLM's action, we will briefly discuss the law governing the designation of school grant lands. In accordance with the Federal land disposition program designed to promote education in new states entering into the Union, states were granted land for school purposes. Those lands, referred to as "school lands," usually consisted of secs. 16 and 36 in each township. In accordance with section 6 of the Act of March 3, 1853, ch. 145, 10 Stat. 244, 246, secs. 16 and 36 were granted to the State of California for "the purposes of public schools."

For sections already surveyed, this grant was immediately effective. For land surveyed subsequent to the enactment of section 6 of the Act of March 3, 1853, title did not vest until approval of the survey of the section. See Andrus v. Utah, 446 U.S. 500, 507 (1980); United States v. Wyoming, 331 U.S. 440, 443-44 (1947); George McDevitt, 113 IBLA 287, 289 (1990); State of Idaho, 101 IBLA 340, 342, 95 I.D. 49, 50 (1988).

[1] Even where school land grant acts, such as the Act of March 3, 1853, did not specifically mention that lands mineral in character were excepted from the grant, sections known to be mineral in character by the time of survey were excepted. Andrus v. Utah, supra at 508-09.

However, in 1927 Congress passed legislation entitled "An Act Confirming in States and Territories Title to Lands in Aid of Common or Public Schools," commonly referred to as the Jones Act, 1/ which

released to the states the in-place school lands that had been previously withheld because of mineral classifications. Although the Act was couched in terms of "extending" the state school land grants to "embrace," mineral lands, the Act was neither retroactive nor self-executing. The existing law governing the time and manner of vesting of title to nonmineral lands was declared to govern the vesting of the Act's grant of mineral lands. Moreover, in honoring existing rights in and to these mineral lands, the Act did not legislatively resolve the question of prior claims to such lands under the federal mining law * * *.

The 1927 Act did not, therefore, eliminate the problem of establishing mineral ownership through proof of the "mineral" or "nonmineral" character of the land on the effective date of the grant, a task involving events that might have occurred many

1/ Act of Jan. 25, 1927, 44 Stat. 1026 (codified as amended at 43 U.S.C. §§ 870-871 (1988)).

years earlier and which were extremely difficult or even impossible to prove. In 1934, Congress authorized the Secretary of the Interior, upon application by a state, to cause patents to be issued to the numbered school sections. [2/] This Act provided a vehicle for conclusive determination of the facts essential to determine ownership of minerals, and all limitations on the state's title, as well as the date when it vested, are consequently shown in the patent issued to the state pursuant to this Act. [Footnotes omitted].

3 Am. L. of Mining, § 61.02[3] (2d ed. 1984).

On appeal, appellant essentially makes three arguments. First, in reliance on a 1898 quiet title action, Wilson v. Grannis, Equity No. 788, (C.C.S.D. Cal.), it asserts that section 36 did not pass to the State upon acceptance of survey because at that time the land was known mineral in character. 3/ That suit sought to quiet title in favor of the original claim locators of the "'Butte' Quartz Mine, and mining claim" and their successor, Wilson, and against, F. R. Grannis and others, successors-in-interest to the State of California (Folio 1 at 2). 4/ On December 5, 1898, the court entered a consent decree, signed by the parties, ruling in favor of Wilson.

Second, appellant argues, in the alternative, that the controlling time for determining whether section 36 was known mineral land was the date of acceptance of the survey of that section and that the date stated by BLM in its decision is "false" (SOR at 7). It asserts that no valid interior section line survey had taken place at the time of location of the claims "and that the first purported survey was false and fraudulent and never took place." Id.

2/ Act of June 21, 1934, 48 Stat. 1185 (codified at 43 U.S.C. § 871a (1976)), repealed by the Federal Land Policy and Management Act of 1976 (FLPMA), § 705(a), 90 Stat. 2792. However, section (d)(4) of the Jones Act, as amended, was not repealed by FLPMA, and it provides that the Secretary "shall, upon application by a State, issue patents to the State for the lands granted by this section and section 871 of this title, in accordance with section 871a of this title." 43 U.S.C. § 870(d)(4) (1988).

3/ Appellant has provided a certified copy of pleadings, deposition testimony, and the decree in that case from the National Archives, Pacific Southwest Region (Folios 1-7, appended to the SOR).

4/ The complaint states that the "mining claim" was located on March 29, 1896, in the W½, sec. 36, T. 29 S., R. 40 E., Mount Diablo Meridian, by J. E. Ramey, H. C. Tate, B. B. Summers, and H. C. Ramey. The copy of the location notice for the Butte Lode claim involved in this case states that the actual claim name is the "Butte Lode Mine" mining claim. The date of location is Mar. 29, 1896, and the locators are listed as J. E. Ramey, H. C. Tate, B. B. Summers, and H. C. Ramey. Apparently, the Butte Lode claim is the same claim as that involved in the court suit.

Finally, appellant contends that to the extent that the recordation documents for these claims indicate that they are all completely located in sec. 36, that is incorrect. It states that "this case should give appellant the opportunity to show that the principally worked and productive claim, which is the Butte claim, is partially in Section 35 and that it has a vein system which if adjudicated, a Federal valid mining claim would need extralateral rights to continue exploitation of this proven vein system at depth" (SOR at 6).

Appellant also filed a request for a hearing in this case. On February 17, 1993, this Board issued an order taking the request for hearing under advisement and providing BLM with 30 days within which to file an answer in the case and a response to the request for hearing.

On March 24, 1993, counsel for BLM forwarded to the Board a document styled "Response to Order of February 17, 1993," and an accompanying memorandum. The response stated that BLM's position on the merits of the appeal and the necessity for a hearing were summed up in the accompanying memorandum dated March 17, 1993, from the Deputy State Director, Operations, California State Office, BLM, to the Regional Solicitor, Pacific Southwest Region. Counsel provided no additional arguments in the case. He merely concluded that "[f]or the reasons contained in that memorandum, the Bureau of Land Management is of the opinion that this appeal should be dismissed." Counsel's conclusion, however, contradicts the accompanying one-page memorandum, which stated in pertinent part:

The maps and proofs of labor for the [four] claims * * * show them to be situated in Sec. 36. The survey for the township was approved in 1856 (see attached survey) and thus passed to the State under the School Grant Act without a reservation of minerals.

If the claimants now claim that portions of the claims declared void are in fact situated in Sec. 35, we do not object to the decision being vacated as to those claims. Before mining any portions of the claims in Sec. 36, the claimant should contact the State to check on current ownership.

We do not feel that a hearing is necessary.

[2] Thus, while BLM has made no attempt to address the merits of appellant's assertions, it does not object to having its decision set aside as to any claim which appellant asserts lies partially within sec. 35. In its SOR and its request for hearing, appellant contends that part of the Butte Lode is within sec. 35. This Board has stated:

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).

Amelia Marglin Whitson, 101 IBLA 1, 4 (1988). BLM may not declare a lode mining claim null and void ab initio merely because it is located partially on land unavailable for mineral location. Based on appellant's representation, even assuming that title to sec. 36 passed to the State of California upon approval of the survey, the present record does not support declaring the Butte Lode claim null and void ab initio. In addition, there are other reasons why the record does not support BLM's action.

[3] In its memorandum, BLM did not respond to appellant's argument that title to sec. 36 did not pass to the State prior to location of the claims in question because at the time of survey sec. 36 was known mineral in character. Apparently, BLM is relying on the principle that there is a presumption that land granted to a state for school purposes was of the character contemplated by the grant, and that title to the land consequently passed to the state. George McDevitt, 113 IBLA at 290; State of Idaho, 101 IBLA at 347, 95 I.D. at 53; Margaret Scharf, 57 I.D. 348, 356 (1941). We have stated that if a mining claimant contends that land within a state school land grant was mineral in character when the survey was completed, and was therefore excluded from the statutory grant, the mining claimant bears the burden of proving the land was mineral in character at that time. George McDevitt, supra at 290; State of Idaho, 101 IBLA at 349, 360, 95 I.D. at 54, 60; Margaret Scharf, supra.

If the land was mineral in character in 1856 when the survey was approved, title to the land would not vest until January 27, 1927, the effective date of the Jones Act permitting the passage of land mineral in character under the school grant. However, the Jones Act did not constitute an absolute grant; it excluded land "subject to or included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, unless or until such reservation, application, claim, or right is extinguished, relinquished, or canceled * * *." 43 U.S.C. § 870(c)(1988). Thus, if the Excelsior, Lucky Strike, Butte Lode, and Mountain View lode mining claims were valid claims (i.e., a discovery existed on the claims) on January 27, 1927, the land embraced therein could not pass to the State of California. See State of Idaho, 101 IBLA at 343, 95 I.D. at 50.

Like the McDevitt case, supra, this appeal comes before us as a result of a decision declaring mining claims null and void ab initio. However,

unlike McDevitt, in which the claimant made no effort to rebut the presumption of passage of title, appellant herein has marshalled extensive evidence seeking to rebut the presumption that sec. 36 was known nonmineral in character on the date of approval of the survey.

The copy of the record in the Wilson v. Grannis case, provided by appellant on appeal, contains deposition testimony taken of witnesses for Wilson. Two witnesses, in addition to Wilson, testified to the known mineral character of sec. 36.

G. M. Rose, a 50-year old miner with 21 years of experience in mining and operating mines, reported that "there is a large portion of [sec. 36] which is highly mineralized and it would be very easy for any one looking over the ground to determine it was mineral land" (Folio 2, Rose Deposition Testimony at 11). When questioned concerning what a reasonable person would have concluded upon observing the sec. 36 land in 1853 or 1855, Rose replied: "Why he would certainly have had to decide it was mineral land. I don't think there has been any changes there within that time; there has been no material changes to change the general surface, the general character, within that time." Id. at 13.

P. H. McMahon, a 44-year old mine superintendent who had been engaged in mining for over 20 years, testified that he was familiar with surface mineral indications and soil characteristics generally and specifically on sec. 36 and was of the opinion that the surface characteristics "are such that to an intelligent observer it would invariably show it to be mineral land" (Folio 5 at 20). Based on his experience, he stated that the character of sec. 36 was "[m]ineral land without a doubt." Id. When questioned whether there would be any difference between the surface "of that land in 1853 or 1855 and today," McMahon responded: "No difference." Id. at 21.

In addition, in its consent decree, the court concluded, regarding the character of sec. 36:

That said Section Thirty-six was and is, in fact, mineral land and could have been known to be mineral land by any person going upon the land in 1853 the date of the Act of Congress granting certain lands to the State of California for school purposes, but excepting from the grant mineral lands; that said Section Thirty-six is barren desert land and of no value as agricultural or grazing land and only valuable for its mineral wealth; that the character of said land has not changed or could have changed, but that the mineral could have been seen at any time since the [---] day of March, 1853, the date of the passage of the Act referred to granting the 16th and 36th Sections of land to the State of California, but excepting from the grant all mineral lands, among other lands.

That said Section Thirty-six, being in fact mineral land, and such fact being apparent to any reasonable person going upon the ground in 1853, the same was excepted from the said grant to

the State of California and was reserved by the Government of the United States to be disposed of under the laws governing the disposition of mineral lands belonging to the Government of the United States.

(Folio 8 at 2-3).

[4] The present record in this case does not provide a sufficient basis to support BLM's determination that the four claims in question are null and void ab initio. 5/ Although appellant has tendered persuasive evidence in support of its contention that the lands in question were known mineral in character on the date of acceptance of the survey, we decline to make a definitive determination on that issue at this time because there is no evidence in the record regarding the position of the State of California and/or its successors-in-interest on the issue. 6/

Under the circumstances, we believe the proper procedure is to set aside BLM's decision as to the four claims and refer this case to the Hearings Division for assignment of an Administrative Law Judge to conduct a hearing to determine whether sec. 36 was mineral in character on January 19, 1856. 7/ If so, it did not pass to the State upon the approval of the survey, and, according to this record, would have been open to location of appellant's claims in 1896. If it is determined that sec. 36 was mineral in character on January 19, 1856, appellant's claims may survive

5/ There is no evidence in the present record that the State sought by application to the Secretary to have the lands in sec. 36 patented to it.

6/ The Board has stated that before a mineral classification can become conclusive as to a state's interest in a school section, notice and an opportunity for a hearing must be provided. See State of Idaho, 101 IBLA at 349; 95 I.D. at 54. However, it is not necessary that a hearing actually be held in such a matter; it is sufficient that a state be notified of the matter and be given an opportunity to be heard. Id.; Mahogany No. 2 Lode Claim, 33 L.D. 37, 38 (1904). While this case does not presently involve a mineral classification, the initial issue is whether sec. 36 was known mineral in character at the time of survey approval. The position of the State and/or its successors-in-interest is relevant.

7/ The copy of the survey plat accompanying the BLM memorandum shows that the survey for T. 29 N., R. 40 E., including the section lines, was approved on Jan. 19, 1856. That is prima facie evidence of the correctness of the survey, and we have accepted the approval date for the purposes of framing the issues in this case. However, because we are referring this case for a hearing and because BLM has not responded to appellant's assertion that the actual interior section line survey took place at a later date, appellant may present evidence to the Administrative Law Judge in an attempt to establish that the official survey of sec. 36 occurred at a different date. If appellant were to so establish, it would affect the other issues raised.

the Jones Act only if they were valid claims on January 27, 1927. 8/ That issue, and any others determined by the Administrative Law Judge to be relevant to the case, may be explored at the hearing. 9/ The State and/or its successors in interest should be provided notice and an opportunity to participate in the proceedings before the Administrative Law Judge.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed in part, and the case is referred to the Hearings Division for the assignment of an Administrative Law Judge, whose decision in the matter shall be final for the Department absent an appeal to this Board.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

8/ We note in this regard that appellant submitted on appeal a copy of various pages of County Report 1, "Mines and Mineral Resources of Kern County, California," issued by the California Division of Mines and Geology (CDMG), and authored by two CDMG mining geologists, Bennie W. Troxel, and Paul K. Morton. The report is dated 1962. On page 102 of that report, the authors stated:

"Butte (Big Butte, Butte Lode, Butte Wedge), Mine. Location: SW 1/4, sec. 36, T. 30 S., R. 40 E., M.D.M., at east end of Town of Randsburg. Ownership: Butte Lode Mining Co., P.O. Box 195, Randsburg, Bert Wegman, pres., Louis Meehl, sec., owns five claims (1958)

"The Butte gold deposit was discovered in 1896 * * *. By 1899, when the Butte Lode Mining Co. was formed, ore valued at approximately \$140,000 had been produced. The most productive mining periods were 1896-1912, 1916-21, and 1925-42. Most of the mining was done by lessees; the ore being milled by the owners. During the depression years of the 1930's, when several groups of lessees covered nearly all of the mine, one group swept fines from the floors of stopes and milled them. The mine has been idle since 1942 except for a few short periods when the prospecting of old workings has yielded small lots of ore."

9/ Although we refer this case for hearing, it may be possible for the parties to resolve the status of appellant's claims without resort to a hearing.

May 25, 1995

IBLA 92-619 : CAMC 41469-73
131 IBLA 284 (1984) :
: :
: :
BUTTE LODE MINING CO. : Mining Claims Null and Void
(ON RECONSIDERATION) : :
: :
: Petition for Reconsideration
: Granted;
: 131 IBLA 284 Vacated in
: Part;
: BLM Decision Affirmed in
: Part and Set Aside in Part

ORDER

On January 30, 1995, the California State Office, Bureau of Land Management (BLM), petitioned for reconsideration of that part of the Board's decision in Butte Lode Mining Co., 131 IBLA 284 (1994), in which we set aside the August 7, 1992, decision of the California State Office, Bureau of Land Management (BLM), to the extent it declared the Excelsior, Lucky Strike, Butte Lode, and Mountain View lode mining claims (CAMC 41469-72) null and void ab initio and referred the case to the Hearings Division for a determination of whether sec. 36, T. 29 S., R. 40 E., Mount Diablo Meridian, was mineral in character on January 19, 1856, the time of survey approval. 1/

BLM charged that the Board's decision was erroneously based on an ex parte communication between appellant and the Board. In that regard, BLM asserts that in its decision the Board relied on the decision and various documents from a 1898 quiet title action, Wilson v. Grannis, Equity No. 788, (C.C.S.D. Cal.), which appellant filed with the Board but did not serve on counsel for BLM.

1/ Also, in our decision we stated that BLM had held that the Butte Wedge Quartz lode mining claim (CAMC 41473), located in sec. 35, was patented to The Wedge Gold Mining, Milling and Water Supply Company on August 18, 1898 (M.S. 3473, patent number 29748). For that reason, BLM had rejected the recordation filings for that claim because under 43 U.S.C. § 1744 (1988) only owners of unpatented mining claims are required to record their claims with BLM. Appellant did not take issue with that part of BLM's decision, and we affirmed it in that regard.

131 IBLA 292A

Next, BLM contends that "[a]ppellant failed to give due process to hundreds of individuals whose property rights are affected by appellant's appeals" (Petition at 2). By asserting that title to section 36 never passed to the State of California as school land pursuant to section 6 of the Act of March 3, 1853, ch. 145, 10 Stat. 244, because the land was mineral in character at the time of survey, BLM claims that appellant has clouded the title of approximately 360 different individuals who own property in that section.

Finally, BLM argues that appellant failed to pay the rental fees or file a certification of exemption on or before August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1378-79 (1992), for the Excelsior, Lucky Strike, and Mountain View lode mining claims, CAMC 41469, CAMC 41470, and CAMC 41472, respectively. Further, BLM asserts that although appellant paid the necessary rental fees for the Butte Lode claim, it did not pay the maintenance fee for that claim on or before August 31, 1994, as required by sections 10101-10106 of the Omnibus Budget Reconciliation Act of August 10, 1993, P.L. 103-66, 107 Stat. 312, 405-06. Accordingly, BLM contends that the issues identified by the Board for a hearing are moot.

On February 6, 1995, BLM forwarded to the Board a copy of a decision dated February 1, 1995, declaring the Excelsior, the Lucky Strike, the Mountain View, and the Butte Wedge lode mining claims (CAMC 41469, CAMC 41470, CAMC 41472, and CAMC 41473) abandoned and void for failure to pay the necessary rental fees on or before August 31, 1993. 2/ BLM made no mention in that decision of the Butte Lode claim (CAMC 41471), although in its petition it had indicated that appellant had failed to pay the required maintenance fee for that claim on or before August 31, 1994.

On February 13, 1995, appellant filed a response to the petition. First, it asserts that no reconsideration is warranted based on a claim of failure to serve counsel for BLM with a copy of the decision and various documents from the case of Wilson v. Grannis. Appellant contends that those documents were, in fact, served and provides evidence in support of that assertion.

Second, appellant concedes nonpayment of the rental fees for CAMC 41469, CAMC 41470, and CAMC 41472 and "abandons its Appeal with Respect thereto" (Response at 1).

2/ As noted, we had previously affirmed BLM's decision rejecting recordation filings for CAMC 41473. BLM improperly included this claim in its decision. Rental fees were not required for this patented claim.

Third, appellant "elects not to adduce, put on proof, that on the 19th of January, 1856 * * * the Butte claim [CAMC 41471] within Sec. 36 T29 S R 40 E MDM was known mineral in character; or, in other words, Butte Lode Mining Co. elects to assert the title it possesses to the area within Section 36 under State Law; and Appellant would stipulate and agree to such a finding and decision of the I.B.L.A." (Response at 2). However, appellant continues to assert that the portion of the Butte Lode mining claim in sec. 35 is a valid claim under federal law.

In a reply received on March 17, 1995, BLM denies that counsel for BLM received a copy of the documents in Wilson v. Grannis. However, it believes that the hearing ordered in this case by the Board is no longer necessary because appellant abandoned all claims except the Butte Lode and, as to that claim, appellant no longer desires to prove the mineral character of sec. 36. Further, BLM believes the only existing issue is the validity of that portion of the Butte Lode claim within sec. 35. As to that portion of the claim, BLM has no objection to having its previous decision set aside.

On May 17, 1995, counsel for appellant filed a document withdrawing his request for a hearing on the mineral character of sec. 36 and offered to stipulate that "the portion of the Butte Lode Mining Claim, CAMC 41471, which is within Section 36 T29S R40E M.D.M. is invalid as being within the boundaries of a State of California School Section." Counsel maintains that the portion of that claim in sec. 35 is a valid claim.

We grant the petition for reconsideration. Based on the submissions of the parties, it is clear that the parties do not now disagree over whether sec. 36 was mineral in character at the time of survey. Accordingly, resolution of that issue is no longer necessary, and we vacate our earlier decision to the extent it discussed that issue and set aside BLM's decision and referred the case for hearing. To the extent the BLM decision declared the Butte Lode mining claim null and void in sec. 36, it is affirmed. ^{3/} BLM has no objection to having its decision, as it relates to that part of the Butte Lode claim located in sec. 35, set aside. We do so.

By this order, we direct the Hearings Division to cancel the hearing scheduled in this case for June 27, 1995, and return the case file to the California State Office for determination of the validity of that part of the Butte Lode claim located in sec. 35.

^{3/} Appellant has conceded nonpayment of rental fees for the Excelsior, Lucky Strike, and Mountain View claims (CAMC 41469, 41470, and 41471) and abandoned the appeal as to those claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's petition for reconsideration is granted; 131 IBLA 284 is vacated in part as discussed herein; and BLM's decision is affirmed in part and set aside in part as discussed herein.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

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