

HELMUT ROHRL

IBLA 92-247

Decided April 27, 1995

Appeal from a decision of the California State Office, Bureau of Land Management, declaring two lode mining claims null and void ab initio. CAMC 115622 and CAMC 115623.

Appeal dismissed.

1. Practice Before the Department: Persons Qualified to Practice—Rules of Practice: Appeals: Dismissal

Practice before the Interior Board of Land Appeals is controlled by 43 CFR 1.3. An appeal brought by a person who does not fall within any of the categories of persons authorized to practice before the Department is subject to dismissal.

2. Rules of Practice: Appeals: Dismissal—Rules of Practice: Appeals: Statement of Reasons

Pursuant to applicable Departmental regulations, an appeal is subject to summary dismissal where a statement of reasons in support of the appeal is not included in the notice of appeal and is not filed within 30 days after the filing of a notice of appeal. Submissions filed in connection with an appeal which do not affirmatively point out in what respect the decision appealed from is in error do not meet the requirements of the Department's rules of practice and such an appeal is also subject to summary dismissal.

APPEARANCES: Helmut Rohrl, La Jolla, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

By decision dated January 24, 1992, the California State Office, Bureau of Land Management (BLM), declared the San Pedro and the Senpe lode mining claims, CAMC 115622 and CAMC 115623, null and void ab initio. By Fax received on February 27, 1992, one E. W. Gresseth, identified merely as "agent," purported to file an appeal of this decision on behalf of Helmut Rohrl and Oscar Nuka. For reasons set forth below, we dismiss the subject appeal.

The claims involved herein were initially filed with BLM for recordation under section 314(b) of the Federal Land Policy and Management Act

of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1988), by Rohrl on October 8, 1982. According to the copies of the location notices for the claims which Rohrl filed with BLM, the claims are situated within the E $\frac{1}{2}$ sec. 24, T. 9 S., R. 2 W., San Bernardino Meridian (S.B.M.), San Diego County, California, 1/ and were located on September 28, 1982, 2/ with Helmut Rohrl as the sole locator. The cover letter accompanying the recordation filings noted that "[a]s I found out through a phone call to your office, the Senpe claim and the San Pedro claim in the Pala Mining District have never been registered with the BLM. I therefore wish to file with you for these claims."

Thereafter, Rohrl submitted annual filings as required by section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1988), for each year through 1991. On January 15, 1992, however, the Chairman, Pala Band of Mission Indians, transmitted a memorandum from the Indio Resource Area Manager to the California Desert District Manager, which had been written on October 5, 1988, and which had requested that State Office review be undertaken of certain mining claims, including the two at issue here, to determine whether they were improperly located on reservation or private lands. In his 1992 letter, the Chairman of the Pala Band of Mission Indians noted that, since 1988, activities on the claims had increased and he requested that some action be taken to prevent what he viewed as trespass on reservation lands.

In its decision of January 24, 1992, BLM concluded that the two mining claims at issue were null and void ab initio because the lands embraced by the claims were either patented without a mineral reservation or had been closed to mineral location when the claims were located on the September 28, 1982. Thus, BLM noted that the SW $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 24 had been patented pursuant to a Homestead Entry on December 2, 1893, without a mineral reservation. Moreover, all of sec. 24, including the SE $\frac{1}{4}$, had been withdrawn from entry and settlement for the Pala Band of Mission Indians on January 24, 1903, and BLM noted that the Bureau of Indian Affairs had submitted a Trust Patent application, CACA 8352, for the SE $\frac{1}{4}$ sec. 24, among others, on June 19, 1980. Therefore, since none of the lands included within the claims was open to mineral entry on the September 28, 1982, attempted location date, BLM concluded that both the San Pedro and the Senpe lode mining claims were properly declared null and void ab initio.

1/ According to the map which accompanied the initial recordation of the claims, the San Pedro claim was located partially within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 24, and partially within the SE $\frac{1}{4}$ sec. 24, while the Senpe claim was totally within the SE $\frac{1}{4}$ sec. 24. 2/ Although Rohrl neglected to furnish the location date on the appropriate line in the location notice for the San Pedro claim filed on Oct. 8, 1982, he submitted an amended location notice for that claim on Jan. 5, 1983, specifying that the claim was located on Sept. 28, 1982.

On appeal, numerous copies of quitclaim deeds affecting ownership interests in claims denominated as the Senpe or San Pedro, or recording the performance of annual assessment work therefor, have been submitted to the Board, presumably for the purpose of showing that the claims predate the withdrawal of the subject lands. ^{3/} But it is clear, quite apart from any substantive consideration, that the appeal purportedly filed on behalf of Rohrl must be dismissed.

[1] In the first place, the individual who signed the appeal (G.W. Gresseth) on behalf of Rohrl (and Oscar Nuka, who is himself a total stranger to the record) is neither a claim owner of record nor has he shown on what basis he can represent Rohrl before this Board. The applicable regulation, 43 CFR 1.3, limits practice before the Department to, inter alia, attorneys and individuals on their own behalf or on behalf of a member of their family or on behalf of a partnership of which the individual is a member or on behalf of an association, if such individual is a full-time employee of that association. It does not authorize practice before the Department by self-denominated "agents" on behalf of other individuals who are not otherwise qualified to practice. There is absolutely no evidence that Gresseth is qualified to practice before the Department within the strictures of 43 CFR Part 1. An appeal brought by a party who is not qualified to practice before the Department is subject to dismissal. See, e.g., Leonard J. Olheiser, 106 IBLA 214 (1988); Ganawas Corp., 85 IBLA 250 (1985).

[2] Moreover, while appellant has supplied the Board with numerous documents, never once does appellant attempt to explain what bearing he believes these documents have on the correctness of the State Office decision declaring his claims null and void ab initio. Indeed, appellant has failed to submit any argument supporting reversal of the decision below. In this regard, the Board has repeatedly noted that, where an appeal does not affirmatively point out why a decision appealed from is in error, the appeal will be treated as if no statement of reasons has been filed and will be dismissed. See, e.g., Burton A. McGregor, 119 IBLA 95 (1991); Alexander Acker, 90 IBLA 1 (1985); John F. Brown, 16 IBLA 185 (1974).

^{3/} Thus, appellant has furnished copies of a June 7, 1901, location notice for the Senpe lode mining claim and a Jan. 8, 1903, location notice for the San Pedro lode mining claim. We note that, while both these dates follow the Dec. 2, 1893, patenting of the SW¹/₄ NE¹/₄ sec. 24, the maps submitted with the 1982 location notices indicate that only a small portion of the San Pedro lode claim lies within that area. In any event, while a locator may not locate a lode claim based on a discovery on patented land or other land not open to the operation of the mining laws, a locator whose discovery is on land open to location may, under certain circumstances, extend the side lines of the lode claim across patented or withdrawn land for the purpose of acquiring extralateral rights emanating from veins or lodes located on land open to mineral appropriation. See Santa Fe Mining, Inc., 79 IBLA 48, 50 (1984).

Appellant has totally failed to provide any argument which could serve as a premise for reversing the decision below. We have no choice but to dismiss the instant appeal. ^{4/}

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

James L. Burski
Administrative Judge

I concur.

Will A. Irwin
Administrative Judge

^{4/} To the extent that appellant may be attempting to show the existence of earlier claims, pre-dating the withdrawal of the land, we merely note that his chain of title to the claims at issue commences only with the 1982 location. See Hugh B. Fate, Jr., 86 IBLA 215 (1985). As appellant, himself, noted prior to recording his 1982 locations, previous claims covering the land had not been recorded under FLPMA. Because those claims were not recorded, all rights thereto were, by the express declaration of that statute, conclusively presumed to be abandoned and void. See, e.g., United States v. Locke, 471 U.S. 84 (1985). Even if appellant were able to show privity between himself and the prior locations (see United States v. Webb, 132 IBLA 152, 176 (1995)), his rights could not relate back to the earlier locations since those locations are a nullity. See generally, Ed Bilderback, 90 IBLA 319, 321 (1986); Florian L. Glineski, 87 IBLA 266, 268-69 (1985).