

TRI-STAR HOLDINGS, LTD.

IBLA 99-154          Decided August 7, 2000

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims null and void ab initio. NMC 791183 through NMC 791190, NMC 791209, NMC 791210.

Affirmed.

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

The notation on the public land records of the Department of the Interior of an offer to exchange lands segregates the land so noted from all forms of appropriation under the mining laws for a period not to exceed 5 years. A mining claim located while the segregation is in effect is null and void ab initio and affords the locator no rights.

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

A mining claimant who locates lode mining claims on lands segregated from appropriation under the mining laws gains no rights to those lands by virtue of such a location. However, to the extent the mining claimant holds placer claims for the same lands which predate the segregation, the mining claimant may have rights to known lodes or veins in accordance with 30 U.S.C. § 37 (1994).

APPEARANCES: Thomas H. Peterson III, Esq., Las Vegas Nevada, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Tri-Star Holdings, Ltd. (Tri-Star), has appealed from a December 14, 1998, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the TSL 77-84 (NMC 791183 through NMC 791190) unpatented mining claims located April 16, 1998, and the TSL 237 and 238 (NMC 791209, NMC 791210) claims, located April 15, 1998, null and void ab initio. BLM

stated in its decision that the lands on which these claims were located, sec. 13, T. 23 S., R. 61 E., and the W1/2 of sec. 17, T. 23 S., R. 62 E., Mount Diablo Meridian, Nevada, were segregated from appropriation under the mineral laws on July 23, 1997, in accordance with 43 C.F.R. § 2201.1-2, for a proposed land exchange. <sup>1/</sup>

The record shows that when Tri-Star's agent filed the location notices for these claims with BLM on July 10, 1998, it acknowledged in a cover letter its understanding that the lands were segregated. However, it expressed its belief that the claims had been "grandfathered in" and that "[t]o pursue the validation of the claims and to continue the validation process it is necessary to file lode claims on our existing placer claims."

On appeal, Tri-Star provides three reasons for appealing. First, it asserts that the lands in question were unlawfully removed from mineral entry on July 23, 1997, because they were encumbered by valid existing placer claims, and no mineral examination had been conducted to declare the claims invalid. Second, it contends that under the mining laws locating lode claims over previously-located placer claims does not invalidate the placer claims. Third, it argues that activity by a land developer would "destroy the mineral character of the placer claims" and "severely impair or destroy the ability of the claimants to develop the lode claims." (Statement of Reasons at 1.) By order of February 11, 1999, the Board granted Tri-Star's request for an extension of time within which to file a supplemental statement of reasons. However, no further filings have been received.

[1] The Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. § 1716(i)(1) (1994), provides in relevant part:

Upon receipt of an offer to exchange lands or interests in lands pursuant to this Act or other applicable laws, at the request of the head of the department or agency having jurisdiction over the lands involved, the Secretary of the Interior may temporarily segregate the Federal lands under consideration for exchange from appropriation under the mining laws. Such temporary segregation may only be made for a period of not to exceed five years. Upon a decision not to proceed with the exchange or the deletion of any particular parcel from the exchange offer, the Federal lands involved or deleted

---

<sup>1/</sup> Although BLM used the term "mineral laws" in its decision, we note that the memorandum from the Las Vegas District Manager to the Nevada State Director, dated July 7, 1997, entitled "Segregation of Public Lands in the Las Vegas Valley for Exchange Purposes," requested the segregation of 116,612.41 acres of public lands, including the lands in question, "from appropriation under the General Mining Law of May 10, 1872, as amended (17 Stat. 91)." See 43 U.S.C. § 1716(i)(1) (1994). A notation on that memorandum indicates that BLM's official records were posted with notice of the segregation on July 23, 1997.

shall be promptly restored to their former status under the mining laws. Any segregation pursuant to this paragraph shall be subject to valid existing rights as of the date of such segregation.

Under the implementing regulation, 43 C.F.R. § 2201.1-2, segregation of lands may occur where the authorized officer directs the appropriate BLM State office to segregate lands by notation on the public land records. Such segregation is subject to valid existing rights and effective for a period of 5 years from notation. John D. Bernt, 147 IBLA 352, 354 (1999); Washington Prospectors Mining Association, 136 IBLA 128, 129-30 (1996). In this case, the record shows that the lands in question were segregated from entry under the mining laws on July 23, 1997, almost a year prior to Tri-Star's location of the lode claims at issue.

It is well-settled that a claim located on land not available for appropriation is null and void ab initio and that such a location affords no rights, whatsoever, to the land included within the claim limits. Washington Prospectors Mining Association, *supra*, and cases cited therein. Thus, Tri-Star acquired no rights to the lands embraced by its lode claims by virtue of its lode locations because at the time of location those lands were segregated from appropriation under the mining laws. Accordingly, the lode claims at issue are null and void ab initio.

Although Tri-Star asserts that on the date of segregation the lands in question were encumbered by its placer mining claims, it does not identify those claims by recordation number or state upon what date those placer claims were located. Nevertheless, assuming the existence of such claims, they are not at issue in this appeal. Any rights Tri-Star may hold to placer mining claims on the lands in question are not affected by BLM's decision in this case.

[2] The mining law provides, as follows, at 30 U.S.C. § 37 (1994):

Where the same person, association, or corporation is in possession of a placer claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer claim, subject to [certain] provisions \* \* \*, including such vein or lode, upon the payment of \$5 per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer claim, or any placer claim not embracing any vein or lode claim, shall be paid for at the rate of \$2.50 per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section 23 of this title, is known to exist within the boundaries of a placer claim, an application for a patent for such placer claim which does not

include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer claim is not known, a patent for the placer claim shall convey all valuable mineral and other deposits within the boundaries thereof.

While we agree with Tri-Star's assertion that its location of lode claims over any previously-existing placer claims does not invalidate the placer claims, it gained no further rights through the filing of its lode claims because those claims were null and void ab initio. However, as provided in 30 U.S.C. § 37 (1994), to the extent a placer claim contains known lodes or veins unclaimed by others, a patent applicant for the placer claim may secure a patent to them, as described in the quote above. See Sullivan v. Iron Silver Mining Co., 109 U.S. 550, 552 (1883).

Tri-Star contends that activity by a land developer would adversely affect development of its claims. The case record contains no explanation of the purposes of the exchange segregation. Tri-Star represented in its notice of appeal that it had been informed that "the land in question ha[d] already been transferred by deed to the Del Webb Conservation Corporation." Even assuming that fact were true, it has no bearing on the present appeal because Tri-Star's lode mining claims at issue are null and void ab initio. With regard to any placer mining claims it may hold embracing the lands in question, it should consult BLM concerning its rights.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

---

Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

---

Lisa Hemmer  
Administrative Judge

