

LAMAR & CHRISTINE BURNETT

IBLA 99-137

Decided August 31, 2000

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring the Butcher association placer mining claim, IMC-36909, null and void ab initio in its entirety.

Affirmed in part; reversed in part.

1. Mining Claims: Lands Subject To—Mining Claims: Location—Mining Claims: Placer Claims—Mining Claims: Relocation

When an association of claimants, who have acquired title to all or part of contiguous 20-acre placer mining claims attempt to consolidate the claimed land into a single association placer location, the association claim constitutes a new location, and the date of location does not relate back to the original dates of location.

2. Mining Claims: Lands Subject To—Mining Claims: Location—Mining Claims: Placer Claims—Mining Claims: Relocation—Mining Claims: Withdrawn Land—Wild and Scenic Rivers Act

It is proper for BLM to declare null and void ab initio that portion of a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1280(b) (1994).

3. Estoppel—Mining Claims: Location

BLM's acceptance of a location notice for recordation and acceptance of filings and fees is not an affirmative misrepresentation or concealment of the fact that the land encompassed by a mining claim was withdrawn from mineral entry at the time of location, and will not preclude BLM from declaring the claim null and void ab initio.

APPEARANCES: Dennis L. Albers, Esq., Grangeville, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

LaMar and Christine Burnett (the Burnetts) have appealed a November 23, 1998, decision issued by the Idaho State Office, Bureau of Land Management (BLM), declaring the Butcher association placer mining claim, IMC-36909, null and void ab initio in its entirety because the Butcher claim had been located on land withdrawn from mineral entry by section 9(b) of the Wild and Scenic Rivers Act (WSRA), as amended, 16 U.S.C. § 1280(b) (1994), at the time of location.

On October 2, 1968, Congress designated the Salmon River from the town of North Fork, Idaho, to its confluence with the Snake River as a "potential addition" to the national wild and scenic rivers system pursuant to section 5(a) of the WSRA, Pub. L. No. 90-542, 82 Stat. 910 (1968) (codified at 16 U.S.C. § 1276(a) (1994)). 16 U.S.C. § 1276(a)(23) (1994). The Federal lands constituting the bed or bank of the river or within 1/4 mile of the bank of the river were withdrawn "from all forms of appropriation under the [United States] mining laws." 16 U.S.C. § 1280(b) (1994). 1/ The withdrawal was subject to "valid existing rights." United States v. Brown, 124 IBLA 247, 253, 255 (1992).

On October 18, 1979, LaMar Burnett filed a copy of an "Amended Placer Location," for the Butcher placer claim for recordation pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1994). The amended placer location notice for the Butcher placer claim, which was dated April 2, 1972, stated that the claim was being amended to form a single claim from six claims which had been located between October 8, 1897, and January 26, 1904. 2/ The amended

1/ The withdrawal was to run for a 5-year period. Section 7(b) of the WSRA, Pub. L. No. 90-542, 82 Stat. 914 (1968) (codified at 16 U.S.C. § 1278(b) (1972)). 16 U.S.C. § 1280(b) (1994). However, it was to continue if the Secretary of the Interior did not conclude that the river should not be included in the national wild and scenic rivers system and published notice to that effect in the Federal Register prior to Oct. 2, 1973. 16 U.S.C. § 1278(b) (1972); Lamar Burnett, 78 IBLA 349, 351 (1984). The Secretary did not conclude, prior to Oct. 2, 1973, that the portion of the Salmon River designated as a potential addition should not be included in the national wild and scenic rivers system. Thus the land within 1/4 mile of the bank of the Salmon River remains withdrawn from entry.

2/ The original notices, which were recorded with the Idaho County Recorder, listed the six claims as: (1) Dandy -- located by George H. Harding and Rudolph Schulz on Oct. 4, 1897; (2) Dandy No. 1 (or "Dandy Placer") -- located by Harding and Schulz on Oct. 4, 1897, and amended Dec. 14, 1897; (3) Dandy No. 2 -- located by E.W. Butcher, J.M. Butcher, Ola Butcher, Millie Butcher, Della Dillingham, and Lydia Ellis (Butcher et al.) on Jan. 28, 1904; (4) Dandy No. 4 -- located by Butcher et al.

notice was signed by Clayton Butcher on behalf of himself, Mable Odell, Florence Downen, Lovina Sullivan, Stella Bosworth, and Pauline Hoover (Odell et al.), as owners and heirs of E.W. Butcher. Burnett also submitted a check for five dollars in payment of the filing fee for one claim, as required by 43 C.F.R. § 3833.1-2(d) (1979). BLM recorded the location notice and assigned the serial number IMC-36909 to the Butcher claim.

The amended notice described the Butcher claim, IMC-36909, by metes and bounds, as follows:

[B]eginning at Cor No. 1 on section line common to secs. 26-35; thence West 470 ft to cor No. 2 the SW cor, sec. 26; thence North along West line of sec. 26 3300 ft to cor No. 3; thence East to West bank Salmon river to cor No. 4; thence following the meanders of the West bank of Salmon river to cor No. 1 the place of beginning, as being 3,300 feet long and of uneven width, and containing approximately 107 acres of public land in the S½ of lot 3, lot 6, and lot 7 of sec. 26, T. 26 N., R. 1 E., Boise Meridian, Idaho County, Idaho.

This claim lies between the western boundary of sec. 26 and the west bank of the Salmon River.

On October 15, 1980, Burnett notified BLM that he and his wife had purchased the Butcher placer claim.

In its November 1998 decision, BLM declared the Butcher claim null and void *ab initio*, in its entirety, because the public land in lots 3, 6, and 7 of sec. 26, T. 26 N., R. 1 E., Boise Meridian, Idaho County, Idaho, had been withdrawn from mineral entry by section 9(b) of the WSRA on October 2, 1968, and remained withdrawn on April 2, 1972, the date the Butcher claim was located. BLM recognized that the Butcher claim was created by combining six claims located prior to the 1968 withdrawal, but concluded that the Butcher claim did not afford any rights predating the withdrawal. It reasoned that:

No prior rights can be derived from the earlier locations because two or more contiguous placer mining locations cannot be combined, by means of an amended location, and substitute for a single location. Such an amendment would constitute a new location. Garden Gulch Bar Placer, 38 LD 28 (1909); Charles H. Head, 40 LD 135 (1911).

fn. 2 (continued)

on Jan. 26, 1904; (5) Dandy No. 5 – located by Butcher et al. on Jan. 25, 1904; and (6) Mountain Queen – located by I.B. Alkire and George S. Alkire on Nov. 29, 1899. We note that notices were also submitted for the Dandy No. 3 claim, located by Butcher et al. on Jan. 29, 1904, and the Zebra claim, located by E. Brooks, George H. Harding, and Rudolph Schulz on Dec. 10, 1897. All of the claims were 20-acre placer claims. None of the claims were tied to the United States system of public-land surveys.

(Decision at 1–2.) BLM concluded that the April 2, 1972, location was null and void ab initio because the land was withdrawn from mineral entry at the time of location. The Burnetts appealed. ^{3/}

On appeal, the Burnetts contend that BLM erred when declaring the Butcher claim null and void ab initio. They explain that in 1972 the original locations were amended after a private survey to straighten the property lines preparatory to patenting. (Notice of Appeal at 1.) The Burnetts assert that the Butcher claim was an amendment of the preexisting claims reflecting "surveying corrections [which] * * * do little to change the original claims," and therefore it was the successor to claims predating the withdrawal. ^{4/} (Supp. SOR at 2.) The Burnetts conclude that Congress intended that their valid existing rights in the Butcher placer claim not be invalidated, and argue that BLM's declaration is contrary to Congress' intent in withdrawing the land from mineral entry, leaving "intact claims that had been * * * properly filed and laid out prior to the time of the * * * withdrawal in 1968." ^{5/} (Supp. SOR at 1–2.)

The Burnetts argue that the Butcher placer claim is not a new location, but is an amendment of the Dandy et al. claims, located by their predecessors—in-interest well before the 1968 withdrawal. When a valid mining claim is amended, the amended claim relates back to the original date of location, so long as no adverse rights have intervened. J&J Building Supply, 145 IBLA 196, 197–98 (1988); Patsy A. Brings, 119 IBLA 319, 325 (1991); Fletcher De Fisher, 93 IBLA 68, 73 (1986), aff'd sub nom., Northwest Silver Corp. v. Hodel, No. 88–4090 (D. Idaho Sept. 26, 1989); Grace P. Crocker, 73 IBLA 78, 79–80 (1983); R. Gail Tibbetts, 43 IBLA 210, 216–17, 86 I.D. 538, 541–42 (1979), overruled in part on other grounds, Hugh B. Fate, Jr., 86 IBLA 215 (1985). By relating back, an amended claim benefits from all of the interim efforts made by the original locator and any

^{3/} On Jan. 22, 1999, this Board issued an order staying the effect of BLM's decision, pending final resolution of the appeal.

^{4/} In their Supplemental Statement of Reasons for Appeal (Supp. SOR), the Burnetts state that the Butcher claim includes land formerly subject to the Dandy, Dandy Nos. 1 through 4, and Mountain Queen claims. See Notice of Appeal at 1. They do not include the Dandy No. 5. This is borne out by the map depicting the relative location of the original claims and the 1972 location (Ex. A attached to Supp. SOR) submitted by the Burnetts. We conclude that the Dandy No. 5 and Zebra claims are not within the Butcher claim, which actually encompasses all or part of the original Dandy, Dandy Nos. 1 through 4, and Mountain Queen claims. This group of five claims will be referred to as the Dandy et al. claims.

^{5/} The Burnetts allege that Congress' "attempted withdrawal" in 1968 was "not properly completed until 1988, well after the location of the Butcher Placer Claim." (Supp. SOR at 2.) This reference to an event which occurred in 1988 is unclear. We find no evidence that the Federal land within 1/4 mile of the banks of the portion of the Salmon River at issue was not withdrawn when the Butcher claim was located in 1972. 16 U.S.C. § 1280(b) (1994).

successors-in-interest in locating and maintaining the original claim. Therefore, when the original date of location is prior to an intervening withdrawal, the rights acquired by location are valid existing rights, and an amendment of that claim is excepted from the effect of the withdrawal. Fletcher De Fisher, 93 IBLA at 73; Grace P. Crocker, 73 IBLA at 79-80; R. Gail Tibbetts, 43 IBLA at 218-19, 86 I.D. at 542-43.

In its November 1998 decision, BLM held that the Butcher claim cannot be considered an amendment of the Dandy et al. claims, because the consolidation of two or more contiguous placer claims into a single location is a new location and not an amendment of the prior claims. BLM relied on the holding in Charles H. Head, 40 L.D. 135 (1911), and Garden Gulch Bar Placer, 38 L.D. 28 (1909), for this conclusion.

In Garden Gulch Bar Placer, a single locator (S.K. Goldtrap) had filed a document described as a notice of location for a 129-acre "amended" placer claim. This claim included portions of three previously located claims and 26 acres of previously unappropriated land. The claims included in the "amended" placer claim were: A 60-acre portion of the Garden Gulch Bar Placer which had been located by four individuals and subsequently conveyed to Goldtrap; an 8-acre portion of the Reservoir Gulch placer which had been located by a single individual and conveyed to Goldtrap; and a 35-acre portion of the Eureka placer which had been located by two individuals, but not conveyed to Goldtrap. See 38 L.D. at 28-31.

The First Assistant Secretary held that the amended placer location was "of no effect for any purpose whatsoever," because it sought to include more land in the location than was permitted by 30 U.S.C. § 35 (1994), which limited placer locations to no more than 20 acres for each individual claimant. 38 L.D. at 31. He found that a claimant or association of claimants holding a single placer claim containing the maximum acreage permitted by the statute could not add acreage to that claim or consolidate it with other contiguous placer claims "under the guise of amending" to encompass more acreage than is permitted by the statute. 6/ Id.

To the extent that the case held that the amended claim contained excess acreage, Garden Gulch Bar Placer was followed in Fred B. Ortman,

6/ In referring to the addition of contiguous acreage to an existing claim, the First Assistant Secretary alluded to Goldtrap's attempt to amend his 60-acre Garden Gulch Bar claim, by adding the 26 acres of contiguous unappropriated land and the 35 acres of contiguous land claimed by someone else (under the Eureka claim). This clearly exceeded the maximum acreage permitted for a single claimant. He also alluded to Goldtrap's attempt to amend his 60-acre Garden Gulch Bar claim and consolidate it with the 8 acres in his contiguous Reservoir Gulch claim, which also exceeded the maximum acreage permitted for a single claimant.

52 L.D. 467, 468, 471 (1928). See also Grace P. Crocker, 73 IBLA at 81 n.1; Centerville Mine & Milling Company, 49 L.D. 508, 511 (1923).

There is an important factual difference between this case and the Garden Gulch Bar Placer, which renders the Garden Gulch Bar Placer case inapplicable. In this case, there is no evidence of an effort by a single claimant to locate a placer claim in plain contravention of the acreage limitations set out in 30 U.S.C. § 35 (1994), by consolidating claims owned by him with contiguous acreage or consolidating several individual claims. The amended Butcher placer claim, which contained 107 acres, was held by six people, a sufficient number to hold an association placer claim containing 120 acres.

The facts in Charles H. Head, supra, are closer to those in this case. In the Head case, John Randolph, Head and six others sought to consolidate a 20-acre placer claim owned by Randolph with 140 acres of contiguous unappropriated land by amending the placer claim. As noted above, the consolidated acreage encompassed by the amendment in Garden Gulch exceeded the statutory maximum acreage allowed for a single claimant. However, the consolidated acreage in Head did not exceed the statutory maximum for eight claimants, and the amended location in Head did not run afoul of 30 U.S.C. § 35 (1994). Nevertheless, relying on the underlying premise set out in Garden Gulch, the First Assistant Secretary stated that:

The [original] Randolph location of 1887, so far as is made to appear, was made by one locator for about 20 acres, and any amendment of such a location for the purpose of effecting conformity to the public-land surveys, or for any other purpose, could not include a greater area than 20 acres, whether the amendment was attempted by one or more claimants[.]

40 L.D. at 137. The First Assistant Secretary held that an amendment of a placer location which increases the acreage to an acreage in excess of the acreage that could have been located by the original locator must be treated as a "new location." Id. at 138. In a similar case, Junior L. Dennis, 133 IBLA 329, 334 (1995), this Board applied Head, and found:

Appellant's stated purpose is to amend the location notices to enlarge the acreage for the claims. This he cannot do. An amended location cannot enlarge the rights appurtenant to the original location. Fairfield Mining Co., 66 IBLA 115, 117 (1982). Therefore, rather than amending the original claims, appellant is, in reality, creating new association placer claims. The new mining claims of 160 acres would be adverse to the original 20-acre claims, requiring a relocation or a new location. American Resources[, Ltd.], 44 IBLA 220, 223 (1979). Relocation or locating new claims, however, would require appellant to abandon whatever rights he may have

in the original claims for the new location. See Jon Zimmers, 90 IBLA 106, 110 (1985). The expressed intention of appellant in this instance is to amend the claims, not to relocate them or file new claims. Accordingly, BLM properly rejected the amended notices of location.

Id. at 333–34.

[1] When an association of claimants who have acquired title to all or part of contiguous 20-acre placer mining claims attempts to consolidate the claimed land into a single association placer location, the location constitutes a new location which does not relate back to the original dates of location. A logical application of the doctrine applicable to mining claim amendment illustrates why two or more placer claims cannot be amalgamated into a single association placer claim by amendment. As stated above, an amendment made in furtherance of a valid mining claim relates back to the original date of location of that claim, so long as no adverse rights have intervened. In the case now before us the Butcher placer was either amended or located to cover land previously subject to six separate placer claims. The Dandy and Dandy No. 1 were located on October 4, 1897; the Mountain Queen was located on November 29, 1899; the Dandy No. 4 was located on January 26, 1904; the Dandy No. 2 was located on January 28, 1904; and the Dandy No. 3 claim was located on January 29, 1904. If the Butcher placer was an amendment, the Butcher placer would have been located (by relation back) on five separate dates. This cannot be. The only logical conclusion is that the location of one association placer claim on the same ground previously covered by six separate placer claims constitutes an abandonment of the six Dandy claims and relocation of the same ground with a single association placer claim. The Butcher placer claim is properly considered a relocation rather than an amendment of the six Dandy claims.

[2] A mineral entry located entirely on public land withdrawn from entry pursuant to the United States mining laws at the time of entry is properly declared null and void ab initio. Ronald W. Froelich, 139 IBLA 84, 85 (1997); James E. Morgan, 104 IBLA 204, 205 (1988); J. Pat Kaufman, 71 IBLA 183, 185 (1983); Marvin Mack 51 IBLA 30 (1980). On October 2, 1968, the Federal lands constituting the bed or bank of the Salmon River or within 1/4 mile of the bank of the Salmon River were withdrawn from all forms of appropriation, including appropriation under the mining laws. See Clarence E. Fitzgerald, 55 IBLA 31, 33 (1981); Robert Connett, 36 IBLA 84, 86 (1978). The Butcher Placer was located on April 2, 1972. This was well after the October 2, 1968, withdrawal. BLM properly declared the Butcher placer mining claim, IMC–36909, null and void ab initio, to the extent it lies within the withdrawn land. Robert L. Payne, 107 IBLA 71, 72–73 (1989).

To the extent the Butcher placer claim was located on public land more than 1/4 mile from the west bank of the Salmon River, it was not located on land withdrawn as a potential addition to the national wild and scenic rivers system. The record contains a copy of a July 3, 1984, Master

Title Plat Supplemental (MTP SUPPL), for secs. 26, 34, and 35, T. 26 N., R. 1 E., Boise Meridian, Idaho County, Idaho. The plat depicts the United States public-land survey for that portion of the township, including the boundaries of lots 3, 6, and 7 of sec. 26, and the banks of the Salmon River. Following the sinuosities of the west bank of the river and using the scale on the map, it appears that portions of lots 6 and 7 of sec. 26 are more than 1/4 mile from the bank of the river, and thus outside the area of land withdrawn by section 9(b) of the WSRA. To this extent, we must conclude that the November 1998 BLM decision is in error, and must be reversed. Clayton S. Hale, 62 IBLA 35, 36-37 (1982).

The MTP SUPPL, also indicates that lots 3, 6, and 7 of sec. 26 were withdrawn from mineral entry as part of Power Site Reserve No. 8, pursuant to Executive Order No. 5937 of July 2, 1910, and pursuant to section 24 of the Federal Power Act, as amended, 16 U.S.C. § 818 (1994). Lamar Burnett, 78 IBLA at 352. However, on August 11, 1955, Congress enacted section 2(a) of the Mining Claims Rights Restoration Act, as amended, 30 U.S.C. § 621(a) (1994), which immediately reopened lands withdrawn or reserved for power sites to mineral entry if the lands were not subject to a preliminary permit or license for a power project. J&J Building Supply, 145 IBLA at 197; Bob Alejandre, 125 IBLA 104, 105 (1993); Lamar Burnett, 78 IBLA at 352. There is nothing in the MTP SUPPL that indicates that the portions of lots 3, 6, and 7 more than 1/4 mile from the west bank of the Salmon River were not reopened. ^{7/}

The Burnetts argue that BLM is estopped from claiming that the Butcher claim is null and void ab initio because BLM accepted the location notice for the Butcher claim for recordation in 1972 and accepted filings and fees after the date of recordation, but failed to indicate any "difficulty," with the claim. (Supp. SOR at 2; see id. at 1; Notice of Appeal at 2.)

A party seeking estoppel must be ignorant of the true facts and have reasonably relied on BLM's conduct to its detriment. Raymond A. Naylor, 136 IBLA 153, 156 (1996) (citing Ptarmigan Co., Inc., 91 IBLA 113, 117 (1986), aff'd sub nom., Bolt v. United States, No. A87! 106! HRH (D. Alaska Mar. 30, 1990), aff'd, 944 F.2d 603 (9th Cir. 1991)). The Burnetts cannot be said to be ignorant of the fact that the land in question was designated by Congress as a potential addition to the national wild and scenic rivers system. All members of the public are deemed to have constructive knowledge of all Federal statutes. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Mt. Gaines Consolidated, 144 IBLA 49, 52 (1998).

^{7/} Land in the immediate vicinity of the Salmon River was included in an Aug. 22, 1960, Federal Power Commission (now Federal Energy Regulatory Commission) withdrawal for Power Project No. 2273. This withdrawal did not extend more than a quarter of a mile from the bank of the river. See Lamar Burnett, 94 IBLA 374, 375, 377 (1986).

[3] BLM's acceptance of a location notice for recordation and acceptance of filings and fees will not be considered an affirmative misrepresentation or concealment of the fact that the land encompassed by a mining claim was statutorily or otherwise withdrawn from mineral entry at the time of location. Nor will it preclude BLM from later declaring the claim null and void ab initio, when it determines that the land was so withdrawn at the time of location. 8/ Ronald W. Froelich, 139 IBLA at 87; Robert L. Payne, 107 IBLA at 73–74. Therefore, there is no evidence of affirmative misrepresentation or concealment of a material fact by BLM upon which the parties relied. Reliance on misrepresentations or concealment of a material fact is necessary for the imposition of estoppel against the Federal Government. United States v. Ruby Co., 588 F.2d 697, 703! 04 (9th Cir. 1978), cert. denied, 442 U.S. 917 (1979); Ptarmigan Co., Inc., 91 IBLA at 117.

Nor are we persuaded that BLM's silence, to the extent that BLM "provid[ed] assistance * * * to the claimants without ever indicating that any difficulty existed," somehow constitutes an affirmative misrepresentation or concealment of the material fact of the withdrawal. (Supp. SOR at 2.) The Burnetts can point to no crucial misstatement by BLM in an official written decision, which would serve as the basis for a finding of affirmative misconduct. Raymond A. Naylor, 136 IBLA at 156. Moreover, BLM's alleged silence came well after the location of the Butcher placer in 1972, and thus the claimants could not have relied upon that silence when locating the claim. Ronald W. Froelich, 139 IBLA at 88. Even if the Burnetts had relied on "information" or an "opinion" expressed by BLM in continuing to maintain their claim following its recordation, it would not entitle them to avoid a finding that the claim was null and void if the claim was located at a time when the public land was not open to mineral entry; to do otherwise would afford them a "right not authorized by law." 43 C.F.R. § 1810.3(c); see Raymond A. Naylor, 136 IBLA at 156–57.

BLM properly declared the Butcher placer mining claim null and void ab initio to the extent that it encompasses public land within 1/4 mile of the west bank of the Salmon River, which was withdrawn from entry under the United States mining laws at the time of location.

8/ 43 C.F.R. § 3833.5(f) (1979) expressly provides that BLM's failure to notify the Burnetts that the land had not been earlier open to mineral entry at the time of location did not preclude BLM from later declaring the claim null and void ab initio. See Mt. Gaines Consolidated, 144 IBLA at 52. Nor will BLM's subsequent "acquiescence" in the continued maintenance of the Burnetts' claim or its "failure to act" to declare the claim null and void ab initio cause BLM's "authority * * * [to] protect [the] public interest," by invalidating the claim and thus preserving the integrity of the withdrawal, to be vitiated or lost. 43 C.F.R. § 1810.3(a); see Mt. Gaines Consolidated, 144 IBLA at 51.

Accordingly, 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 in part, and reversed in part.

R.W. Mullen
Administrative Judge

I concur:

James P. Terry
Administrative Judge

