

DOUGLAS AND JANE WELDY

IBLA 2002-94

Decided December 8, 2004

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring a mining claim null and void ab initio. NMMC 169264.

Affirmed as modified.

1. Mining Claims: Generally--Mining Claims: Abandonment--Mining Claims: Lands Subject to--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Withdrawn Land

A mining claim located on lands withdrawn from mineral entry at the time of location is null and void ab initio. Where claimants argue that their claim predates the effective date of the withdrawal, they must establish that they are the successors to an interest in a mining claim that was located on this land before its withdrawal from mineral entry; to do so, they must show an unbroken chain of title to a valid claim located prior to the withdrawal of the land and, further, if a new notice of location is filed after the effective date of the withdrawal, the claim had to be an “amended location” rather than a “relocation.” A new notice of location filed after a claim has been declared abandoned and void for failure to meet Federal recording and/or rental or fee requirements is a relocation, since such failure extinguishes the prior claim. Where a claim that is located prior to the effective date of a withdrawal is abandoned and void by operation of law for failure to comply with the rental or fee requirements, a subsequent claim located for the same land is a

relocation and does not relate back to the location date of the previous claim. Where the subsequent claim is located on lands segregated from mineral entry by the filing of an application for withdrawal, the claim is properly declared null and void ab initio.

APPEARANCES: Douglas and Jane Weldy, pro sese. ^{1/}

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Douglas and Jane Weldy (appellants) have appealed the October 3, 2001, decision of the New Mexico State Office, Bureau of Land Management (BLM), declaring the Queen of the Guadalupe lode mining claim (NMMC-169264) null and void ab initio.

According to the notice of location, claim NMMC-169264 was located on October 12, 2000. It was located on lands within sec. 36, T. 25 S., R. 21 E., and sec. 1, T. 26 S., R. 21 E., NMPM, in Eddy County, New Mexico. The notice indicates that the claim was “formerly NMMC 167549.” A copy of the notice of location was filed with BLM on October 16, 2000.

BLM ruled that the claim was located entirely on lands that were not open to mining claim location because those lands are “within [Public Land Order (PLO)] 7479 withdrawal of National Forest System Land of Guadalupe Cave Resource Protection Area from mining and mineral leasing for 20 years to protect the Guadalupe Cave Resource Protection.” ^{2/} (Decision at 1.) BLM failed to appreciate that PLO 7479 took effect on January 22, 2001, after the claim in question was located. 66 FR 6663 (Jan. 22, 2001). As the withdrawal effected by PLO 7479 was expressly subject to valid existing rights, it could not terminate a valid claim that had been located prior to its effective date. If that was the only withdrawal in effect, we could not affirm BLM’s decision.

However, the record shows that the lands on which their claim was located had been segregated from mineral entry on the date it was located by another action. Thus, on August 31, 1999, “[t]he United States Department of Agriculture, Forest Service * * * filed an application to withdraw approximately 27,299.50 acres of

^{1/} On Mar. 4, 2002, the firm of Modrall, Sperling, Roehl, Harris & Sisk, P.A., which represented the Weldys in the filing of their appeal, withdrew as counsel for them.

^{2/} The BLM decision incorrectly states that the mining claim is located in the NE^{1/4} sec. 36, T. 25 S., R. 21 E., and NW^{1/4} sec. 1, T. 26 S., R. 21 E., NMPM. The claim was actually located in the SE^{1/4} of sec. 36 and the NE^{1/4} of sec. 1.

National Forest System land to protect the Guadalupe Cave Resource Protection Area.”^{3/} Further, the notice application “segregate[d] the land for 2 years from location and entry under the United States mining laws.” 64 FR 51784 (Sept. 24, 1999). That segregation included all of the lands in the SE¼ of sec. 36 and the NE¼ of sec. 1 encompassed by appellants’ claim and was in effect on the date of location. BLM’s decision is hereby amended to reflect that it was the segregation imposed by the August 31, 1999, filing of the Forest Service’s application for withdrawal (not PLO 7479) that rendered the lands at issue closed to mineral entry as of the date claim NMMC-169264 was located.

[1] It is well established that mining claims located on lands segregated from mineral entry at the time of location are null and void ab initio. William H. Shepherd, 157 IBLA 134, 138 (2002); Tri-Star Holdings, Ltd., 153 IBLA 201, 203 (2000); Gerald Byron Bannon, 40 IBLA 162 (1979); Janelle R. Deeter, 34 IBLA 81, 83 (1978); Leo J. Hottas, 73 I.D. 123 (1966), aff’d sub nom. Lutzenheizer v. Udall, 432 F.2d 328 (9th Cir. 1970).

However, appellants state that “this claim has been held by the Weldy family since approximately the early 1930’s” and “has been properly maintained as a valid claim since that time.” (Statement of Reasons (SOR) at 1.) In order to prevail, appellants must establish that they are the successors to an interest in a mining claim that was located on this land before its segregation or withdrawal from mineral entry. That is, a claim located on lands that are withdrawn or segregated from entry is null and void ab initio if the claimant does not show an unbroken chain of title to a valid claim located prior to the withdrawal of the land. See J & J Building Supply, 145 IBLA 196, 197 (1998), and cases cited.

Moreover, the more recent claim had to be an “amended location” rather than a “relocation”:

A “relocation” of a claim is the subsequent location of a claim which is adverse to an earlier location, as where the earlier locator has abandoned the claim or failed to make annual expenditure as required. The “relocation” of the claim by another person after the withdrawal of the land where it is situated does not give him the rights associated with the earlier location, including the right to mine the property even after it is withdrawn. Thus, if a claimant “relocates” a claim, it is irrelevant that the claim was originally located and used by other persons prior to the withdrawal. Janelle R. Deeter, supra at 83-84.

^{3/} That application was apparently granted to establish the Guadalupe Cave Resource Protection Area described above.

An “amended location” of a claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a “relocation,” an “amended location” does relate back to the date of the filing of original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. Withdrawal of the land subsequent to the original location will thus not preclude the amended location, provided that the original claim was properly located. United States v. Consolidated Mines & Smelting Co., 455 F. 2d 432, 441 (9th Cir. 1970); R. Gail Tibbetts, 43 IBLA 210, 219, 86 I.D. 538 (1979) .

American Resources, Ltd., 44 IBLA 220, 223 (1979) (footnotes omitted).

Most critically to the instant case, it is established that a mining claim located after an earlier claim has been declared abandoned and void for failure to meet Federal recording and/or rental or fee requirements is a relocation, since such failure extinguishes the prior claim and breaks the chain of title. J & J Building Supply, supra; see Richard L. Goergen, 144 IBLA 293, 297 (1998).

By order dated March 12, 2002, we allowed appellants the opportunity to establish that they are the successors to an interest in this mining claim that was located on this land before its withdrawal from mineral entry. We advised them that, in order to prevail, they would either have to show that their claim is not located in the area withdrawn in August 1999 or present a chain of title showing that it is an amended location of a valid claim located at a time when the lands were open to mineral entry, citing William R. Smith, 149 IBLA 358, 366 (1999).

On April 12, 2002, Douglas Weldy filed a letter briefly describing the history of the claim, from which it appears only that he filed on the claim in his own name in around 1972. Although he asserts that the claim is an amended location and not a relocation, no documentation is provided concerning the history of that claim. The material is inadequate to meet appellants’ burden of showing an unbroken chain of title in the claim to a time preceding initiation in August 1999 of the segregation in question following the filing by the Forest Service of its application for withdrawal.

The record does contain information showing that appellants filed a copy of notice of location for the Queen of the Quadalupes lode claim (dating back to 1932)

with BLM in the early 1980's and that it was assigned serial number NMMC-90244. That claim apparently became abandoned and void by operation of law for failure to comply with the recordation requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (2000). See Letter dated Nov. 22, 1982, from BLM to Weldy.

The record indicates that many other notices of location for claims bearing the name the Queen of the Guadalupe claim and ostensibly covering the same lands were filed over the years. ^{4/} The location that is relevant to the present appeal was made on March 20, 1998. Shortly afterwards, Douglas Weldy filed a copy of a notice of location of a lode claim covering the same lands and also named the Queen of the Guadalupe, which claim was assigned serial number NMMC-167549. That claim is relevant because, assuming arguendo that the lands on which it was located were open to entry in March 1998, ^{5/} it could serve as the claim to which any valid amended location related back, since it was located prior to the segregation imposed on August 31, 1999, when the Forest Service filed its application for withdrawal.

However, the record leaves no doubt that claim NMMC-167549 was voided automatically by operation of law for failure to file a mining fee waiver or pay such fee on or before September 30, 2000. See W. Douglas Sellers, 160 IBLA 377, 378 (2004). As a result, when BLM received the copy of the notice of location for NMMC-169264 (the claim at issue in the present appeal) in October 2000, it properly regarded it as a relocation of the Queen of the Guadalupe, since the failure to meet Federal recording and/or rental or fee requirements had extinguished the prior claim. See J & J Building Supply, supra; Richard L. Goergen, supra.

^{4/} BLM's list of active and closed claims in Eddy County, New Mexico, shows no less than five claims filed by Douglas M. (D. M.) and W. E. Weldy in sec. 36, T. 25 S., R. 21 E., and sec. 1, T. 26 S., R. 21 E., NMPM, all denominated the Queen of the Guadalupe: NMMC-90244, NMMC-133107, NMMC-161604, NMMC-162051, and NMMC-167549. These appear to be relocations necessitated by the voiding of claims previously located. For example, claim NMMC-90244 was declared abandoned and void for failure to comply in 1981 with FLPMA recordation requirements. This apparently led to the filing of a copy of another notice of location for the Queen of the Guadalupe in late 1984 and the assignment of serial number NMMC-133107 to the new claim. As it followed the voiding of the claim for failure to file under FLPMA, that was plainly a relocation of the claim. See J & J Building Supply, supra; Richard L. Goergen, supra.

^{5/} The record shows that part of the claim covered lands within a wilderness study area and may not, therefore, have been open to entry.

The extinguishing of claim NMMC-167549 broke the chain of title between claim NMMC-169264 and other previous claims located prior to the segregation of the lands pursuant to the filing of the Forest Service's application for withdrawal on August 31, 1999. BLM accordingly properly declared claim NMMC-169264 null and void ab initio, since it was located on lands that were segregated from mineral entry on the date of location and since it was not an amended location of a claim located at a time when the lands were open to mineral entry.

Therefore, 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 as modified.

David L. Hughes
Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge