

WESTERN AGGREGATES, LLC

IBLA 2004-25

Decided May 17, 2006

Appeal from a decision of the California State Office, Bureau of Land Management declaring 45 placer mining claims null and void ab initio in whole or in part.

Affirmed as modified.

1. Mining Claims: Lands Subject to

To the extent placer mining claims are located on land that has been patented without a reservation of minerals to the United States, the claims are properly declared null and void ab initio.

2. Act of Mar. 1, 1893--Mining Claims: Lands Subject to--  
Withdrawals and Reservations: Generally

Section 21 of the Act of March 1, 1893, 27 Stat. 507 (Caminetti Act), authorized the Secretary of the Interior to withdraw lands requested by the California Debris Commission "from sale or entry under the laws of the United States." Withdrawals made under that authority withdrew lands from sale or entry under the mining laws of the United States, including the General Mining Law of 1872. Lands included in a withdrawal remain withdrawn until the withdrawal is revoked, modified, or terminated by appropriate official action, and it is immaterial whether the purpose of the withdrawal is still being served as of the date of location.

3. Accretion--Navigable Waters

All accretions, whether resulting from natural or artificial causes and whether the water body at issue is navigable or non-navigable, belong to the upland owner.

4. Avulsion--Navigable Waters

The rule of avulsion states that sudden and perceptible changes in the course of a river do not deprive riparian owners of their land. In such case, the ownership must be determined based upon the ownership prior to avulsion.

5. Secretary of the Interior--Public Lands: Jurisdiction Over--Mining Claims: Lands Subject to--Navigable Waters

The Secretary of the Interior has both the authority and the duty to consider and determine what lands are public lands of the United States, including a determination of navigability of a river to ascertain whether title to the land underlying the river is in the United States or whether title passed to a state upon its admission into the Union. The bed of a non-navigable river is usually deemed to be the property of the adjoining landowners; under the "equal footing doctrine," title to land beneath navigable waters passed to the State upon its admission into the Union. Where the record shows that a portion of a river is non-navigable, and the State of California has treated it as non-navigable by statute, BLM did not err in deciding that the lands in the bed of that non-navigable river remained under the ownership of the United States at the time of California Statehood, provided that their uplands were owned by the United States.

6. Accretion--Mining Claims: Lands Subject to--Withdrawals and Reservations: Generally

Land which, following survey, has accreted to land owned by the United States takes the status of the Federal land to which it has accreted. If the Federal lands were withdrawn from entry under the mining laws of the

United States, any lands accreting to those Federal lands were also withdrawn.

7. Mining Claims: Lands Subject to--Navigable Waters--  
Withdrawals and Reservations: Generally

By withdrawing upland lots along the banks of a non-navigable river from entry under the laws of the United States, the Department also withdrew all Federally-owned lands within the riverbed to the thread of the river. The withdrawal attached to the lands in the bed of the non-navigable river deemed to be owned by the United States in conjunction with its ownership of each of the upland lots. The fact that the lots were depicted on contemporary plats as extending only to the meander lines of the river is not controlling.

APPEARANCES: Kerry Shapiro, Esq., Paul L. Warner, Esq., and Scott N. Castro, Esq., San Francisco, California, for appellants; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Cal Sierra Development Company (Cal Sierra) appealed from the September 16, 2003, decision of the California State Office, Bureau of Land Management (BLM), declaring 45 placer mining claims null and void ab initio, in whole or in part, because they were located on lands that had been either patented without a mineral reservation or withdrawn from mineral entry prior to the location of the claims. The claims at issue were located in April 1987 by Yuba Natural Resources, Inc. (YNR), and were subsequently transferred to Cal Sierra.<sup>1/</sup> On

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<sup>1/</sup> The 45 subject mining claims are located along the Yuba River in Secs. 22, 27, 28 and 32, T. 16 N., R. 5 E., Mount Diablo Meridian (MDM), Yuba County, California, in an area known as the "Yuba Goldfields." We shall refer to the claims by the names and numbers assigned to them by YNR. See Appendix.

YNR located some 237 mining claims in April 1987, essentially covering the bed of the historic Yuba River and some uplands, in Ts. 15 and 16 N., and Rs. 4 and 5 E., MDM. By decision dated Sept. 30, 1987, BLM declared 88 of the claims null and void ab initio in their entirety and 12 of the claims null and void ab initio in part because the lands on which they were located were patented without reservation  
(continued...)

January 12, 2004, we granted the motion of Western Aggregates, LLC (Western Aggregates) to replace Cal Sierra as appellant in this case, because Cal Sierra had, after filing its appeal, quitclaimed these mining claims to Western Aggregates.<sup>2/</sup>

The claims at issue are located in the Yuba Goldfields, an area composed of large piles of sediment debris adjacent to and in the former bed of the Yuba River. The Yuba Goldfields were created when mining debris washed down the Yuba River as a by-product of unregulated hydraulic mining in the Sierra Nevada Mountains

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<sup>1/</sup> (...continued)

of minerals to the United States. (BLM Decision dated Sept. 30, 1987.) BLM's Sept. 30, 1987, decision declared null and void ab initio portions of some of the 45 claims at issue in the present appeal. YNR appealed BLM's decision to this Board, but, by Order dated Feb. 26, 1988, its appeal was dismissed for failure to file a statement of reasons. Yuba Natural Resources, Inc., IBLA 88-112 (Order dated Feb. 26, 1988). In addition YNR abandoned some claims in whole or in part on Oct. 2, 1987. Finally, BLM declared some of the claims abandoned and void by decision dated Nov. 13, 1992, for failure to comply with section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (2000), and null and void ab initio by decision dated Nov. 18, 1992, because the lands on which they were located were patented without reservation of minerals to the United States.

The claims at issue in this appeal were quitclaimed from YNR to Cal Sierra on Dec. 18, 1992.

<sup>2/</sup> The claims were quitclaimed from Cal Sierra to Western Aggregates on Nov. 13, 2003. (Western Aggregate's Notice of Substitution of Counsel, etc., filed Nov. 14, 2003, Ex. 1.)

By order dated Mar. 11, 2004, we granted the petition of Operating Engineers Local Union No. 3 (Union) to intervene as a respondent. Appellant filed a request for reconsideration of that order on Apr. 2, 2004.

On May 21, 2004, the Union withdrew its petition to intervene. In that letter, counsel noted that the Union's Joint Apprenticeship and Training Committee (JATC), "whose interests, among others, the Union was representing in its earlier intervention," had determined that its (JATC's) interests would best be represented by its own intervention; a request for intervention by JATC in its own right accompanied the letter. A month later, on June 21, 2004, appellant filed an opposition to JATC's petition to intervene. Two months after that, on Aug. 20, 2004, JATC filed a reply to that opposition.

We have considered JATC's motion to intervene and conclude that it has not presented an adequate basis to justify delaying our issuance of the present decision by allowing it an opportunity to file an answer, thereby opening the proceeding to another round of pleading and reply. Accordingly, JATC's request for intervention is denied.

between 1852 and 1884, following the discovery of gold in California. Hydraulic miners used high-pressure water jets to separate rock and ore from the hillside. The separated material was then processed to extract gold, and the tailings were carried downstream by the rivers that drain the mountains. The Yuba River bore a heavy share of the load. The debris-laden rivers caused significant flooding in downstream communities as the debris settled out of the water and built up in the riverbed. See State of California, ex rel. State Land Commission v. Yuba Goldfields, Inc., 752 F.2d 393, 394 (9th Cir. 1985); Declaration of Philip Sutherling in Support of Western Aggregate's Notice of Appeal and Petition For Stay (Sutherling Declaration) at 2; Statement of Reasons (SOR) at 7.

In 1893, to reconcile the conflicting needs of the miners and the downstream communities, Congress passed the Act of March 1, 1893 (the Caminetti Act), which created the California Debris Commission (CDC).<sup>3/</sup> 27 Stat. 507. The CDC was charged with regulating hydraulic mining and maintaining (and in some cases re-establishing) the navigability of the Sacramento and San Joaquin river systems, of which the Yuba River is a part. See 27 Stat. 507; State of California ex rel. State Lands Commission v. Superior Court of Sacramento County, 900 P.2d 648, 664 (Cal. 1995). To this end, section 21 of the Caminetti Act authorized the Secretary of the Interior to withdraw lands "from sale and entry under the laws of the United States" after CDC's filing of notice with the General Land Office (GLO) "setting forth what public lands are required by it." 27 Stat. 510.

The Secretary approved two Caminetti Act withdrawals from T. 16 N., R. 5 E., MDM, California, of import to this case. The first, a Secretarial Order dated October 25, 1899, withdrew "from sale and entry under the laws of the United States" (among other lands) Lots 2 through 4 and NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 22, and Lots 1 through 5 and NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 27, T. 16 N., R. 5 E., MDM. The second, a Secretarial Order dated February 3, 1905, withdrew Lots 5 through 8 and SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 32, T. 16 N., R. 5 E., MDM, "for the use of the [CDC], as provided by said Sec. 21, act of March 1, 1893, supra." With one exception, those withdrawals have remained in effect to the present.<sup>4/</sup>

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<sup>3/</sup> Congress eliminated the CDC in 1986 by the Act of Nov. 17, 1986, and its functions were transferred to the United States Army. See 33 U.S.C. § 661 et seq. (2000).

<sup>4/</sup> By Order dated Jan. 3, 1922, a copy of which is in BLM's case record, the Department restored to entry Lots 2 through 4 and NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 22, T. 16 N., R. 5 E., MDM, after CDC informed it that those lands were "no longer needed by the" CDC.

(continued...)

The CDC enlisted the aid of dredge-mining operators to help it carry out the “Project of 1899.” See, e.g., Dredging Permit issued to Yuba Consolidated Gold Fields, Inc., Mar. 8, 1920 (Sutherland Declaration, Ex. 10) (Dredging Permit). The Project of 1899 was an independently authorized rehabilitation project on the Yuba River. See Act of June 13, 1902, 32 Stat. 331, 369. The CDC acquired the land, or rights to the land, in the Yuba Goldfields necessary to achieve its goal of storing mining debris in the Yuba River and its tributaries through the use of restraining barriers and settling basins, with the ultimate goal of preventing further movement of the debris downstream. See War Department Quitclaim Deed, dated Oct. 12, 1943, set out in BLM Answer, Attachment 7; Yuba Investment Co. v. Yuba Consolidated Gold Fields, 184 Cal. 469, 475-77 (1920). The CDC allowed bucket-line dredge miners to extensively mine the tailings produced by hydraulic mining that had settled in lands to which the CDC had acquired rights. In return, the miners used the tailings of their bucket-dredge mining operations to create training walls to alter the course of the river. See, e.g., Dredging Permit. The end results of the Project of 1899 were the northern movement of the channel of the Yuba River, separating the Yuba Goldfields from the channel of the river, and the exposure of the channel of the historic Yuba River in the Yuba Goldfields as dry land.

As noted above, in 1987, YNR located placer mining claims encompassing both the now-dry historic riverbed and historic uplands.<sup>5/</sup> The claims at issue in this appeal largely cover the bed of the historic Yuba River.

On September 16, 2003, BLM issued its decision declaring 45 of the claims null and void ab initio in whole or part because, as of the date of location of the

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<sup>4/</sup> (...continued)

The Mining Claims and Land Status Plats (BLM Land Status Plats) filed by BLM on appeal reflect Lots 3 and 4 as “public lands open to mining” to the thread of the historic Yuba River. (Response to Stay Petition, Ex. B.)

The historical index (HI) for T. 16 N., R. 5 E., MDM, reflects that homestead entry patent No. 1193847 was issued for Lot 4, Sec. 22, on Mar. 23, 1959. BLM’s Land Status Plats show the patented lands as extending to the center or thread of the historic Yuba River.

We also note that the HI shows that cash entry patent No. 8420 for Lot 1, Sec. 22, was issued on Feb. 10, 1886, prior to the Caminetti Act. BLM’s Land Status Plats also show the patented lands as extending to the thread of the historic Yuba River.

<sup>5/</sup> “Uplands” are defined as follows: “1) Land situated above ordinary high water. 2) Land situated above riparian land or land adjacent to riparian areas but remote from the body of water and having no riparian rights.” (Glossary of BLM Surveying and Mapping Terms at 61.)

claims, some or all of the lands on which they were located were either (1) patented without mineral reservation to the United States or (2) withdrawn from location under the mining laws. Of the lands that were withdrawn, some lands were directly withdrawn by the Department as requested by the CDC and authorized by the Caminetti Act; other lands, being within the historic riverbed, assumed the legal character of their uplands, which uplands had been directly withdrawn as requested by the CDC and authorized by the Caminetti Act. After reciting the history of withdrawals undertaken at CDC's request, BLM noted the "official position" of the U.S. Army Corps of Engineers that the Yuba River was not navigable in 1850 where it ran through the lands withdrawn at the CDC's request. As a result, BLM held, "the withdrawals included the riverbed lands to the median line of the historic Yuba River." (BLM Decision at 1.) BLM also noted that the Yuba River "was diverted northward as a result of extensive bucket-line dredging of gold-bearing alluvium and mine tailings" (as discussed above) and that, "[a]s a result, new lands (which were previously submerged beneath the historic Yuba River) accreted to the withdrawn public uplands," which new lands had been surveyed as described above. BLM ruled that "[i]t is a Department of Interior precedent that lands which accrete to federal withdrawals become part of those withdrawals," citing Margaret C. More, 5 IBLA 252, 255 (1972); and Palo Verde Color of Title Claims, M-36684, 72 I.D. 409, 411 (1965). BLM concluded that "accretions to those portions of public lands in Sections 27 and 32 which were withdrawn from mineral entry also became subject to the [CDC] withdrawals of 1899 and 1905 as of the moment of accretion" and held, accordingly:

At the time the [CDC] withdrawals were established, the adjacent river bed lands to the median of the historic Yuba River were also withdrawn because this river segment was non-navigable. When the bucket-line dredging resulted in the accretion of lands where the adjacent riverbed lands used to be, the accreted lands became subject to the withdrawals. The 1987 locations of the subject mining claims on the accreted lands were made subsequent to the 1899 or 1905 withdrawals. Therefore, the portions of those claims located on the accreted land withdrawn are null and void ab initio.

(Decision at 2.)

In addition, BLM ruled that "[m]any of Cal Sierra's claims include private riverbed lands not subject to the Mining Law" and held, accordingly, that "[t]he portion of those claims located on private lands are also null and void ab initio." Id.

Cal Sierra, then the owner of the claims, filed a timely notice of appeal from that decision on October 16, 2003.<sup>6/</sup> As noted above, upon the transfer of ownership of the claims, Western Aggregates assumed responsibility for prosecuting this appeal. Western Aggregates petitioned for a stay of the Decision, which we denied on January 12, 2004. (Order dated Jan. 12, 2004, at 5.)

We note that BLM's case record does not identify with precision which lands are deemed open to entry and which are not. That is not surprising, as that issue presents difficult survey questions requiring either reference to plats of survey or, in some cases, on-the-ground survey. Further, although BLM's decision specifies which claims were declared null and void ab initio in whole and which in part, we find no readily apparent basis to make that determination in BLM's record.

On appeal, counsel for BLM has rectified those problems by including Mining Claims and Land Status Plats for Sections 22, 27, 28, and 32, depicting both the claims at issue and the status of the lands on which they were located and their respective uplands, viz., "Public Lands Open to Mining," "Withdrawn Lands Not Open to Mining," or "Patented Lands." (BLM's Response to Stay Petition, Ex. B.) We have scrutinized those plats and summarized whether the claims were declared void because the lands on which they were located (or their uplands) were patented, because they were themselves withdrawn, or because their uplands were withdrawn, or some combination of those reasons. See Appendix.

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<sup>6/</sup> On Oct. 10, 2003, counsel for Cal Sierra wrote BLM advising (1) that he had been unable to obtain a copy of the Secretarial Order dated Oct. 25, 1899, cited in BLM's decision and (2) that BLM's decision apparently contained two citations to sections of the Code of Federal Regulations (CFR) that were no longer in effect. The record suggests that, in an Oct. 14, 2003, telephone conversation, BLM agreed to file an amended decision making corrections and providing a new 30-day period to file a notice of appeal.

However, on Oct. 16, 2003, before BLM could issue any amended decision, Cal Sierra filed its notice of appeal with BLM. The next day BLM, acknowledging that its Sept. 16, 2003, decision "cited obsolete citations," attempted to issue an amended decision making appropriate corrections. Cal Sierra filed a protective notice of appeal of that amended decision, which was docketed as Cal Sierra Development, Inc., IBLA 2004-67.

In our Jan. 12, 2004, Order, we ruled that, because BLM's attempted amended decision was issued after Cal Sierra had filed its notice of appeal, BLM did not have jurisdiction to issue the amended decision, which was therefore a nullity. At that time, we dismissed the appeal docketed as IBLA 2004-67.

Nevertheless, recognizing BLM's desire to make the corrections it noted on Oct. 17, we hereby modify its Sept. 16, 2003, decision to reflect them.

Prior to addressing the merits of the appeal, we note that, although determining with precision the extent of BLM's decision declaring these claims null and void ab initio may require surveying the claims and the patented and/or withdrawn lands on the ground, such determination is not essential to our review of the legal basis of BLM's decision.<sup>7/</sup> We have scrutinized both the status plats in the record and the BLM Land Status Plats filed on appeal to determine which claims were located in the bed of the historic Yuba River and which in the uplands of those lands. That information is also listed in the Appendix.

[1] We first consider the claims BLM found to have been located in whole or in part on patented lands. BLM declared the Yuba Nos. 72 through 77, 114 through 116, 124 through 127, 131 through 134, 139 through 141, 147 and 148, and 198 through 200 null and void ab initio in whole or in part because they were located in whole or in part on lands that were patented without mineral reservation. Western Aggregates presents nothing establishing that BLM's decision was in error and, in fact, has presented a plat depicting "lands for which no patent has been issued" (Sutherling Declaration Ex. 5 and 7), thereby necessarily showing that the lands not depicted have been patented.<sup>8/</sup> It is well established that lands that have been patented without reservation of minerals to the United States are not available for location of mining claims, and that mining claims located on such lands are null and void ab initio. Yellow Aster Mining and Milling Co., 130 IBLA 234, 235 (1994); Seth M. Reilly, 112 IBLA 273, 275 (1990). BLM correctly concluded that these claims were null and void ab initio to the extent that they have been patented without a mineral reservation.

[2] We now consider the claims that were located on Federally-owned lands located outside the bed of the historic Yuba River. There is no doubt that those lands are owned by the United States and, being outside the bed of the historic Yuba River,

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<sup>7/</sup> Although the precise extent of the patenting of the lands can be determined only by survey on the ground, the BLM Land Status Plats ostensibly depict land status with clarity. (Response to Stay Petition at Ex. B.) Appellant's own depiction of the patented and unpatented lands (Sutherling Declaration Ex. 5 and 7) agrees fairly well with BLM's, the only notable exception being along the western boundary of Section 32, where the BLM Land Status Plats show a small sliver of land within the section as patented and appellant's plat does not.

The factual question of what specific claimed lands are affected by the withdrawals and patents is left to BLM to determine upon return of the case to it.<sup>8/</sup> BLM notes that appellant has effectively abandoned its challenge to BLM's holding on this point. See SOR at 2.

were fast lands at all times in question in this matter. These lands are described as Lots 1 through 5, Sec. 27, and Lots 5 through 8, Sec. 32, T. 16 N., R. 5 E., MDM. <sup>9/</sup>

Section 21 of the Caminetti Act authorized the Secretary of the Interior to withdraw “from sale or entry under the laws of the United States” public land identified by the CDC as necessary to achieve its purpose. It is established that the term “laws of the United States” includes the mining laws of the United States. Thus, section 24 of the Federal Power Act of 1920, as amended, 16 U.S.C. § 818 (2000), provides that “[a]ny lands of the United States included in any proposed project \* \* \* shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress” (emphasis supplied). That phrase has been consistently interpreted as including the mining laws of the United States. *E.g., Allen C. Kroeze*, 153 IBLA 140, 142 (2000); *Daddy Del’s L.L.C.*, 151 IBLA 229, 231-32 (1999). <sup>10/</sup>

The two orders creating the withdrawals, Secretarial Orders dated October 25, 1899, and February 3, 1905, cite Section 21 of the Caminetti Act for their authorization. The former expressly withdrew the specified lands “from sale and entry under the laws of the United States”; the latter withdrew the specified lands “for the use of the [CDC], as provided by said Sec. 21, act of March 1, 1893,” which in turn authorized the Secretary of the Interior to withdraw public lands “from sale or entry under the laws of the United States.” There is no doubt that both Secretarial Orders withdrew the specified lands from entry under the Mining Law of 1872, which is plainly a “law of the United States” within the meaning of Sec. 21. Nothing in the record shows that those withdrawals are no longer in effect.

It is well established that mining claims located on lands that are closed to mineral entry as of the date of location of the claims are properly declared null and void ab initio. Lands included in a withdrawal remain withdrawn until the

<sup>9/</sup> There are other Federally-owned lands along the bed of the historic Yuba River on which mining claims were located, namely Lot 5, Sec. 22, Lot 5, Sec. 28, and Lots 1 through 3, Sec. 32, T. 16 N., R. 5 E., MDM. However, those Federally-owned lands were not subject to any withdrawals as of the date of location, and BLM accordingly did not declare the claims located on them null and void ab initio. As discussed below, it is significant that BLM has treated all of those lots as extending to the thread of the historic Yuba River.

<sup>10/</sup> Similarly, an exclusion under the Act of Jan. 25, 1927 (Jones Act), 43 U.S.C. § 870(c) (2000), of land subject to or included in any valid claim initiated or held “under any of the existing laws of the United States” was held to cover claims under the mining laws. *Butte Lode Mining Co.*, 131 IBLA 284, 289 (1994), modified on reconsideration on other grounds, 131 IBLA 284A (1995).

withdrawal is revoked, modified, or terminated by appropriate official action, and it is immaterial whether the purpose of the withdrawal is still being served. Richard L. Goergen, 144 IBLA 293, 297-98 (1998); Kathryn J. Story, 104 IBLA 313, 315 (1988); James E. Morgan, 104 IBLA 204, 205 (1988); Ronald W. Ramm, 67 IBLA 32, 34 (1982). To the extent that portions of the claims were located in the uplands contained in Lots 1 through 5, Sec. 27, and Lots 5 through 8, Sec. 32, T. 16 N., R. 5 E., MDM, the claims were properly declared null and void ab initio, as those lands were not open to mineral entry as of the date of location. There being no question that those uplands were withdrawn by the 1899 and 1905 Secretarial Orders, BLM properly declared the Yuba Nos. 77, 126 through 130, 135, 136, 143, 150, 202, 203, 216, 229, and 230 claims null and void ab initio in whole or in part to the extent that they are located in those uplands.

The question remains whether unpatented lands in the bed of the historic Yuba River were also closed to mineral entry. It is evident from a review of the BLM Land Status Plats that BLM regards the Federally-owned lots as including lands adjacent to the uplands that are within the bank of the historic Yuba River, to the center, or “thread,” of the river. However, BLM’s decision is based on an underlying determination that the lands in the bed of the historic Yuba River were created by accretion. The problem is that, on appeal, counsel for BLM expressly disavows the theory that the lands in the bed of the historic Yuba River were created by accretion. (Response to Stay Petition at 20-22.) BLM explains that “[c]onstruction of training walls in the Yuba Goldfields by the CDC resulted in the movement of the Yuba River to its current channel, thereby exposing a significant portion of the historic riverbed.” BLM states that it “believes the construction of these training walls is more consistent with an avulsive action,” although “some courts have defined this type of action as artificial accretion rather than as avulsion.” Id. at 21.

Whether the lands in the bed of the historic Yuba River arose through accretion, avulsion, or artificial accretion is a factual question. We are reluctant to affirm a BLM decision when the factual basis for the decision has been abandoned on appeal and would normally vacate the decision and remand the matter to BLM to issue a decision applying relevant law to the circumstances in the case, as BLM may have finally determined them to be. However, BLM has shown that the result reached in its decision would be the same regardless of whether the lands in the bed of the historic Yuba River arose through accretion, avulsion, or artificial accretion. In this case, nothing would be gained by remanding the matter to BLM, which would simply issue a decision along the lines set out in its pleadings on appeal. To avoid the delay attendant to that approach, we review alternative bases for the decision to declare the claims null and void ab initio advanced by BLM on appeal.

[3] The first possibility is that the lands in the bed of the historic Yuba River arose by accretion, as BLM found in the decision under appeal. “Accretion” is a “gradual and imperceptible addition of land to a shoreline.” Philadelphia Co. v. Stimson, 223 U.S. 605, 624 (1912); Nebraska v. Iowa, 143 U.S. 359, 360 (1892); Quinton Douglas, 166 IBLA 257, 260 n.4 (2005). The legal principle governing ownership of accreted lands is set out in California ex rel. State Lands Commission v. United States, 457 U.S. 273, 284-88 (1982), to-wit, that all accretions, whether resulting from natural or artificial causes and whether the water body at issue is navigable or non-navigable, belong to the upland owner. See Quinton Douglas, 166 IBLA at 260 n.4; Lawrence F. Baum, 67 IBLA 239, 241 (1982). As noted above, BLM’s decision is based on the fact that the lands within the bed of the historic Yuba River arose by accretion, accreting in equal measure to the uplands on either side of the river bed. If they did, those lands would, we hold, be owned by the owner of the uplands to which they accreted. Thus, BLM correctly held that the lands, if arising by accretion, were owned by patentees of the uplands or by the United States, depending on the ownership of the uplands.

The second possibility is that those lands were created by “artificial accretion,” which, under California law, refers to land along rivers that “accretes by artificial means, such as local dredging and construction of wing dams and levees.” State of California ex rel. State Lands Comm’n v. The Superior Court of Sacramento Co., 900 P.2d at 650. That case involved artificial accretion to the bank of a navigable river, such that the State acquired ownership of the riverbed upon admission to the Union. Id. at 651. California’s artificial accretion rule holds that “[a]s between the state and private upland owners, land \* \* \* that accretes by artificial means \* \* \* remains in state ownership.” Id. at 650. By extension to the present case, under California’s artificial accretion rule, land along a non-navigable river accreting by artificial means such as local dredging would remain either in Federal ownership or in the ownership of Federal patentees, the lands having remained in Federal ownership at Statehood as submerged lands of a non-navigable waterbody, as discussed below.

[4] The third possibility is that those lands arose by avulsion. The rule of avulsion, enunciated in St. Louis v. Rutz, 138 U.S. 226, 245 (1891), states that sudden and perceptible changes in the course of a river do not deprive riparian owners of their land. See Quinton Douglas, 166 IBLA at 260 n.4. In such case, the ownership must be determined based upon the ownership prior to avulsion. Id.; Holly H. Baca, 97 IBLA 126, 130-31 (1987). <sup>11/</sup>

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<sup>11/</sup> This situation may also be considered “reliction,” that is, the addition to riparian lands caused by the withdrawal of water. Quinton Douglas, 166 IBLA at 160 n

[5] The ownership of the relevant portion of the bed of the historic Yuba River must therefore be determined. As we held in State of Montana, 88 IBLA 382, 384 (1985),

[t]he Secretary of the Interior has both the authority and the duty to consider and determine what lands are public lands of the United States. See State of Montana, 11 IBLA 3, 80 I.D. 312 (1973).<sup>12/1</sup> Such authority and duty include a determination of navigability of a lake to ascertain whether title to the land underlying the lake remains in the United States or whether title passed to a state upon its admission into the Union. Id. The first of two principles relevant here is that the bed of a nonnavigable lake is usually deemed to be the property of the adjoining landowners. 12 Am. Jur. 2d, Boundaries § 15 (1964). The second principle is that, under the “equal footing doctrine,” title to land beneath navigable waters passed to the State upon its admission into the Union. Montana v. United States, 450 U.S. 544, 551 (1981). Thus, ownership of the lakebed turns on whether or not the lake is deemed navigable.

BLM has treated the portion of the Yuba River at issue as non-navigable; it indicates that the relevant portion of the Yuba River lies upstream from the head of navigation (BLM Response to Stay Petition at 6; BLM Answer at 11), strongly suggesting that the non-navigability of the relevant portion likely was not the result of the effects of hydraulic mining and that it, therefore, predates California Statehood. The State of California has treated it as non-navigable by statute. See Cal. Harb. & Nav. Code § 105 (2006). It is clear from the passage quoted above that, where lands were submerged under non-navigable rivers at the time of statehood, they remained under the ownership of the United States, provided that their uplands were owned by the

<sup>12/</sup> See Lawrence F. Baum, 67 IBLA at 241 n.3; Gary Willis, 56 IBLA 217, 224 (1981). We held in Gary Willis that

“if the State of Alaska does properly have jurisdiction over the creek and the land beneath it, this Board would obviously be without jurisdiction to declare what rights, if any, appellant has to develop mining claims there. Such powers are vested in the State. But this does not impair the jurisdiction of the Board to rule upon the validity of unpatented mining claims purporting to be located on Federal lands and recorded under section 314 of FLPMA and, therefore, this Board can and does declare, for the foregoing reasons, that appellant has no valid claim or right under Federal law, and that BLM has acted properly in rejecting the mining claim filings and declaring those claims null and void ab initio.”

56 IBLA at 224.

United States, a fact which is clear from the record. <sup>13/</sup> Finding nothing in the record disputing the non-navigability of the relevant portion of the Yuba River, we conclude that, if that land has risen up due to avulsion, that land was owned by the United States as of the date of location of the claims, except to the extent that it had been patented by the United States.

[6] Our determination that the lands at issue within the bed of the historic riverbed are Federally owned does not resolve whether those lands were open to mineral entry when the mining claims at issue were located in 1987. There is a specific rule concerning status of lands that accrete to other lands, *viz.*, that land which, following survey, has accreted to land owned by the United States takes the status of the Federal land to which it has accreted. David A. Provinse, 35 IBLA at 227, 85 I.D. at 157; Margaret C. More, 5 IBLA at 255; David W. Harper, 74 I.D. 141, 145 (1967); Myrtle White, 56 I.D. 300, 304 (1938); see Johnson v. Jones, 66 U.S. 117, 119 (1861). That rule ostensibly applies to artificial accretion (which results from “artificial causes” within the meaning of California ex rel. State Lands Commission v. United States, *supra*). Presuming that the lands in the bed of the historic Yuba River rose by accretion, it is clear that they accreted, following survey of the meanders of the river in 1867, to their respective upland lots, some of which (Lots 1 through 5, Sec. 27, and Lots 5 through 8, Sec. 32, T. 16 N., R. 5 E., MDM) were expressly withdrawn on the date of location by the 1899 or 1905 Secretarial Orders, as we have set out above. Accordingly, under the above rule, any lands within the bed of the historic Yuba River accreting to those withdrawn lots would also have been withdrawn, as BLM correctly held.

[7] However, as far as we can determine, there is no separate rule for determining the status of lands that arise by avulsion within a river bank of a non-navigable river. Instead, the general rule governing ownership of the submerged lands within a non-navigable river, as an incident of ownership of the uplands, applies.

Surveyors establish meander lines only to calculate acreage, not to establish boundaries. United States v. Pappas, 814 F.2d 1342, 1344 (9th Cir. 1987); United States v. Ruby Co., 588 F.2d 697, 700 (9th Cir. 1978), *cert. denied*, 442 U.S. 917

<sup>13/</sup> It is established that, “[i]nsofar as the title to non-navigable water *beds* is concerned, federal law looks to the law of the state in which the land lies.” Bourgeois v. United States, 545 F.2d 727, 730 (Ct. Cl. 1976). Under California State law, the bed of a non-navigable body of water, from the bank to the middle of the water, is held by the upland estate. Cal. Civil Code § 830 (2006). Since the uplands were Federally-owned at the time of California Statehood, so was the bed of the relevant portion of the Yuba River, since it was non-navigable.

(1979). The patentee of the upland on a non-navigable river owns land to the thread of the river even if the description in his patent or deed refers only to the portion up to the meander lines, because proprietors bordering on non-navigable streams take to the center of the stream even if the non-navigable stream is identified as a boundary to the land. Railroad Co. v. Schurmeir, 74 U.S. 272, 287 (1868). It is clear that the purchaser of an upland lot on the bank of the historic Yuba River receives title to all the lands up to the thread of the river, notwithstanding that the lot is depicted on the BLM Land Status Plats as being bordered by the meander line. That conclusion is confirmed by the fact that Lot 4, Sec. 22, was patented in 1959 and that BLM's status plat depicts the patented lands as extending to the thread of the river, notwithstanding that Lot 4 is elsewhere depicted as being bordered by the meander line of the river. See n.5, supra. Similarly, the acreage of the patented lands is far greater than the acreage of Lot 4 as depicted on the status plat bounded by the meander line. <sup>14/</sup>

By analogy, the 1899 and 1905 Secretarial Orders withdrew Lots 1 through 5, Sec. 27, and Lots 5 through 8, Sec. 32, T. 16 N., R. 5 E., MDM, the acreage of which lots was not limited to the uplands, but instead included lands to the thread, or center, of the non-navigable river. We hold as a matter of law that, by withdrawing those upland lots from entry under the laws of the United States, the Department also withdrew all Federally-owned lands within the riverbed to the thread of the river. The fact that the lots were depicted on contemporary plats as extending only to the meander lines of the river is not controlling. Although the 1899 and 1905 Secretarial orders only specifically refer to the withdrawn land by the lot numbers of the fast land along the original meander lines of the river, ownership of each of those lots extended out to the thread of the river.

We conclude that the withdrawals attached to the lands in the bed of the non-navigable river owned by the United States in conjunction with its ownership of each of the upland lots. This conclusion is consistent with the way in which BLM has treated unpatented Lots 2 and 3, sec. 22, which are open to mineral entry. See n.5, supra. Those lots are not limited to the lands as bounded by the meander lines; instead, those lots (and the lands that are open to mineral entry) have been found to extend to the thread of the river. If lots that are open to mineral entry cover avulsed land extending to the thread of the river, consistency requires that lots that are closed to mineral entry also cover avulsed land extending to the thread of the river.

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<sup>14/</sup> Lot 1, Sec. 22, which was patented on Feb. 10, 1886, prior to the Caminetti Act, is also depicted on BLM's Land Status Plats as extending to the thread of the historic Yuba River and containing far greater acreage than Lot 1 as bounded by the meander line. See n.5, supra.

In support of their respective positions, both parties refer to a letter dated October 23, 1899, from the Commissioner of GLO, stating:

The land described between the meander lines of the Yuba River in its course through townships 16 north, range 4 east, 16 north, range 5 east, and 16 north, range 6 east, and which the [CDC] also asks to have withdrawn, is not subject to disposal, nor is it considered to be under the jurisdiction of this office, and [I] therefore make no recommendation relative thereto.

(Sutherling Declaration, Ex. 6 at 4.) BLM argues that this statement shows that interpreting the withdrawal such that the withdrawn lots are deemed to include the lands in the riverbed is consistent with the Caminetti Act, which provides the Department with authority to withdraw those lands “requested by the” CDC, since the Commissioner of the GLO expressly states that CDC had “ask[ed] to have withdrawn” the “land described between the meander lines of the Yuba River.” Appellant argues that the Secretary’s withdrawal order cannot be viewed as applying to the lands in the riverbed where the Commissioner of the GLO expressly stated that he made no recommendation that those lands should be withdrawn. (SOR at 13-15.)

We accept neither party’s position on this question. We do not know why the Commissioner of the GLO believed in 1899 that the lands between the meander lines of the historic Yuba River were not under the GLO’s jurisdiction, but we may speculate that he thought (apparently erroneously) that the portion of the river was navigable and that, as a result, those lands belonged to the State of California. The important point is that the legal effect of the withdrawal of the various uplands lots was the same regardless of which lands the CDC had requested be withdrawn or what the Commissioner of GLO or even the Secretary might have believed the effect of the withdrawal to be. We have held that the legal effect of the withdrawal of the various upland lots was to withdraw the lands in the bed of the non-navigable river deemed to be owned by the United States in conjunction with its ownership of each of the upland lots. That the Commissioner of GLO might not have understood in 1899 the extent of the ownership of the United States does not alter that effect.

Accordingly, we conclude, the lands within the bed of the non-navigable historic Yuba River, being owned by the United States, were withdrawn along with their upland lots. As claims located on lands that are withdrawn from mineral entry are properly declared null and void ab initio, BLM properly declared the Yuba Nos. 74 through 77, 114 through 116, 124 through 130, 133 through 136, 141 through 143, 147 through 150, 200 through 202, 214 through 216, and 227 through 230 claims null and void ab initio in whole or in part.

To the extent not expressly addressed herein, appellant's arguments have been considered and rejected.

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.

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David L. Hughes  
Administrative Judge

I concur:

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Christina S. Kalavritinos  
Administrative Judge

## APPENDIX

Name	BLM Serial No.	Date of Location	Description*	Claims Voided in Whole or Part	Located on Patented Riverbank or Its Uplands?	Located on Withdrawn Historic Riverbed?	Located on Withdrawn Uplands of Historic Riverbed?
Yuba No. 72	CAMC-191607	April 16, 1987	S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 32	Whole	Yes	No	No
Yuba No. 73	CAMC-191608	April 16, 1987	N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 32	Whole	Yes	No	No
Yuba No. 74	CAMC-191609	April 16, 1987	S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 32	Whole	Yes	Yes	No
Yuba No. 75	CAMC-191610	April 24, 1987	N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 32	Whole	Yes	Yes	No
Yuba No. 76	CAMC-191611	April 20, 1987	S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 32	Whole	Yes	Yes	Yes
Yuba No. 77	CAMC-191612	April 20, 1987	N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 32	Whole	Yes	Yes	Yes
Yuba No. 114	CAMC-191649	April 4, 1987	S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 28	Whole	Yes	Yes	No
Yuba No. 115	CAMC-191650	April 4, 1987	N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 28	Part	Yes	Yes	No
Yuba No. 116	CAMC-191651	April 24, 1987	S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 28	Part	Yes	Yes	No
Yuba No. 124	CAMC-191659	April 1, 1987	S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 27	Whole	Yes	Yes	No
Yuba No. 125	CAMC-191660	April 1, 1987	N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 27	Whole	Yes	Yes	No
Yuba No. 126	CAMC-191661	April 2, 1987	S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 27	Whole	Yes	Yes	Yes
Yuba No. 127	CAMC-191662	April 2, 1987	N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 27	Whole	Yes	Yes	Yes
Yuba No. 128	CAMC-191663	April 1, 1987	S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 27	Whole	Yes	Yes	Yes
Yuba No. 129	CAMC-191664	April 2, 1987	N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 27	Whole	No	Yes	Yes
Yuba No. 130	CAMC-191665	April 1, 1987	S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 27	Whole	No	Yes	Yes
Yuba No. 131	CAMC-191666	April 3, 1987	N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 22	Part	Yes	No	No
Yuba No. 132	CAMC-191667	April 3, 1987	S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 22	Part	Yes	No	No
Yuba No. 133	CAMC-191668	April 1, 1987	N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 27	Part	Yes	Yes	No
Yuba No. 134	CAMC-191669	April 1, 1987	S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 27	Whole	Yes	Yes	No
Yuba No. 135	CAMC-191670	April 1, 1987	N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 27	Whole	No	Yes	Yes
Yuba No. 136	CAMC-191671	April 1, 1987	S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 27	Whole	No	Yes	Yes

\* All of the listed claims are situated in T. 16 N., R. 5 E., MDM, Yuba County, California.

Name	BLM Serial No.	Date of Location	Description*	Claims Voided in Whole or Part	Located on Patented Riverbank or Its Uplands?	Located on Withdrawn Historic Riverbed?	Located on Withdrawn Historic Riverbed?
Yuba No. 139	CAMC-191674	April 3, 1987	N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 22	Part	Yes	No	No
Yuba No. 140	CAMC-191675	April 3, 1987	S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 22	Part	Yes	No	No
Yuba No. 141	CAMC-191676	April 3, 1987	N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 27	Part	Yes	Yes	No
Yuba No. 142	CAMC-191677	April 3, 1987	S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 27	Whole	No	Yes	No
Yuba No. 143	CAMC-191678	April 3, 1987	N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 27	Whole	No	Yes	Yes
Yuba No. 144	CAMC-191679	April 3, 1987	S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 27	Whole	No	No	Yes
Yuba No. 147	CAMC-191682	April 3, 1987	N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 27	Whole	Yes	Yes	No
Yuba No. 148	CAMC-191683	April 3, 1987	S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 27	Whole	Yes	Yes	No
Yuba No. 149	CAMC-191684	April 3, 1987	N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 27	Whole	No	Yes	Yes
Yuba No. 150	CAMC-191685	April 3, 1987	S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 27	Whole	No	Yes	Yes
Yuba No. 198	CAMC-191696	April 7, 1987	S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 32	Part	Yes	No	No
Yuba No. 199	CAMC-191697	April 7, 1987	N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 32	Part	Yes	No	No
Yuba No. 200	CAMC-191698	April 8, 1987	S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 32	Part	Yes	Yes	No
Yuba No. 201	CAMC-191699	April 8, 1987	N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 32	Whole	No	Yes	No
Yuba No. 202	CAMC-191700	April 9, 1987	S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 32	Whole	No	Yes	Yes
Yuba No. 203	CAMC-191701	April 9, 1987	N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 32	Whole	No	No	Yes
Yuba No. 214	CAMC-191712	April 8, 1987	S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32	Part	No	Yes	No
Yuba No. 215	CAMC-191713	April 8, 1987	N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 32	Whole	No	Yes	No
Yuba No. 216	CAMC-191714	April 8, 1987	S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 32	Whole	No	Yes	Yes
Yuba No. 227	CAMC-191725	April 11, 1987	N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32	Part	No	Yes	No
Yuba No. 228	CAMC-191726	April 11, 1987	S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32	Part	No	Yes	No
Yuba No. 229	CAMC-191727	April 11, 1987	N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 32	Whole	No	Yes	Yes
Yuba No. 230	CAMC-191728	April 11, 1987	S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 32	Whole	No	Yes	Yes

\* All of the listed claims are situated in T. 16 N., R. 5 E., MDM, Yuba County, California.