



KAREN BRITTON

182 IBLA 128

Decided April 10, 2012



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

KAREN BRITTON

IBLA 2012-3

Decided April 10, 2012

Appeal from a decision of the Nevada State Office, Bureau of Land Management, denying a refund of maintenance fees for the Holloway Mill Site because the site was not void. NMC 47918.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally

BLM may refund annual maintenance fees if (1) at the time of location, the location was on land not open to mineral entry or otherwise not available for locating a mining claim, or (2) at the time the fees were paid, the mining claim or site was void. 43 C.F.R. § 3830.22(b).

2. Mining Claims: Determination of Validity

BLM is tasked with determining the status of mining and mill site claims on lands withdrawn for reclamation purposes, and BLM's decisions are subject to review by this Board.

3. Withdrawals and Reservations: Reclamation Withdrawals--Mining Claims: Withdrawn Land

Lands subject to a first form withdrawal under the Reclamation Act are closed to entry under the Mining Law, and mining claims located on such lands are null and void *ab initio*. It is also clear that lands subject to second form withdrawals, open to homestead entry, are open to mineral entry.

4. Withdrawals and Reservations: Reclamation Withdrawals

BLM has full administrative responsibility with respect to lands subject to a second form reclamation withdrawal, and BLM will provide the Bureau of Reclamation with expertise and assistance in the areas of land resource and mineral management on lands subject to a first form reclamation withdrawal.

APPEARANCES: Karen Britton, Fallon, Nevada, *pro se*.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Karen Britton has appealed from an August 23, 2011, decision sent by the Nevada State Office, Bureau of Land Management (BLM), denying a refund of maintenance fees for the Holloway Mill Site (NMC 47918) for the 2012 assessment year. For the reasons provided below, we affirm BLM's decision.

Factual Background

The subject mill site originally was located on January 14, 1979, in the NE $\frac{1}{4}$ of sec. 14, T. 27 N., R. 27 E., Mount Diablo Meridian, Churchill County, Nevada. Appellant acquired her interest in the mill site on October 2, 1985. Appellant appropriately maintained the site throughout her period of ownership, most recently paying the annual maintenance fees on April 15, 2011, for the 2012 assessment year.

The circumstances leading to BLM's decision apparently were triggered when appellant received a letter dated August 15, 2011, from the Area Manager, Lahotan Basin Area Office, Bureau of Reclamation (BOR), demanding that she cease and desist purported unauthorized mill site activities (BOR Letter). Specifically, the letter stated that the lands on which her mill site was located were withdrawn for the Newlands Reclamation Project, and that:

Reclamation has reviewed all existing documents of record to verify potential existing rights of third parties. This research indicates that no rights were reserved or conveyed to you on those lands withdrawn . . . [where the mill site is located]. **Therefore, your activities on those lands are unauthorized and constitute trespass and destruction of Federal property. You are hereby directed to cease all activities and to remove all equipment and property from those lands by September 16, 2011.**

BOR Letter at 1 (emphasis in original). The letter continued by referencing a field inspection conducted by BOR personnel on June 24, 2011, that “identified an unauthorized mine milling operation,” and charged that appellant would be held responsible for reclamation and associated costs. *Id.* The BOR Letter made no reference to any specific legal authority as the basis for the demand that appellant cease and desist her activities or for the conclusion that appellant was in trespass, other than the obscure reference to the Newlands Project withdrawal.¹ Neither did the BOR Letter even describe the nature of appellant’s activities that purportedly constituted trespass and “destruction of Federal property.”

After receiving the BOR Letter, appellant apparently tried to satisfy BOR’s demands and notified BLM of the BOR Letter. In a letter to BLM, appellant stated that she had spoken to a BOR employee “and he is working with me so I have until Sept. 16, 2011, to resolve this problem”; she also requested from BLM a refund of the maintenance fee she paid “for the use of this [Holloway] mill site they [BOR] are taking away from me.” Letter from Karen Britton to BLM, dated Aug. 16, 2011. BLM then issued its decision, denying appellant’s request for a refund of maintenance fees, stating “[a]t the time of location of the mill site, the land was open to the location of a mill site, and the site was not void at the time you paid the 2012 maintenance fees. Therefore, we cannot issue a refund of these fees.” Appellant then appealed, stating in her Notice of Appeal (NOA) that “I have done everything [the BOR employee] has ask[ed] of me. The property has been cleared and [BOR] has released me from any more reclamation. I comple[]ted my reclamation on Sept. 9, 2011. [BOR] did an inspection of the property on Sept. 15, 2011. [BOR] said I had met all [BOR’s] requirements.” NOA at 1.

ANALYSIS

[1] BLM is authorized to refund annual maintenance fees if (1) at the time of location, the location was on land not open to mineral entry or otherwise not available for locating a mining claim, or (2) at the time the fees were paid, the mining claim or site was void. 43 C.F.R. § 3830.22(b). In this case, appellant clearly believes that her mill site is now void (“taking away from me”), a belief resulting from her interactions with BOR. The BOR Letter also implies that the mill site is void, by stating that the lands on which the mill site was located were withdrawn and that “no rights were reserved or conveyed to you on those lands withdrawn” and that appellant’s activities “constitute trespass.”

¹ There is no evidence in the record that BOR made any effort to involve BLM in its investigation of appellant’s activities. We note, however, that the BLM State Office and the BLM Carson City District Office were sent copies of the BOR Letter.

[2] The BOR Letter clearly conflicts with BLM's determination of the status of appellant's claim. But, BLM, *not* BOR, is tasked with determining the status of mining and mill site claims on lands withdrawn for reclamation purposes, and BLM's decisions are subject to review by this Board. *See generally, e.g., Sam McCormack*, 52 IBLA 56 (1981); *M.G. Johnson*, 2 IBLA 106, 78 I.D. 107 (1971). Accordingly, our review of this matter turns inevitably to the status of the involved land.

The Reclamation Act of June 17, 1902 (32 Stat. 388), authorized the use of monies from the sale and disposal of certain public lands for the construction of irrigation works for the reclamation of arid lands.² Section 3 of that Act authorized the Secretary of the Interior to "withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this Act . . . [and to] withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works." 32 Stat. 388.³ These two forms of withdrawal, the first for lands to be used for the construction of irrigation works and the second for lands that could be irrigated and reclaimed by those irrigation works (and also were open to homestead entry), were soon recognized by the Department as separate and distinct, and came to be known as "first form" and "second form" withdrawals. *Instructions*, 33 L.D. 607, 608 (1905).

[3] It is well established that lands subject to a first form withdrawal under the Reclamation Act are closed to entry under the Mining Law, and mining claims located on such lands are null and void *ab initio*. *Sam McCormack*, 52 IBLA at 57, and cases cited. It is also clear that shortly after the passage of the Reclamation Act, the Department concluded that lands subject to second form withdrawals, open to homestead entry, were open to mineral entry also.

[L]ands valuable for the mineral deposits contained therein, altho [sic] embraced within the limits of a withdrawal of lands susceptible of irrigation from any contemplated works, are not affected by such withdrawal, and are not taken out of the operation of the mining laws. Hence, the privilege of exploring for minerals in such lands remains in full force, notwithstanding the withdrawal.

² Shortly after passage of the Act, to carry out its mandates, the Secretary of the Interior created the United States Reclamation Service (now the Bureau of Reclamation) within the United States Geological Survey.

³ This authority to withdraw lands was repealed effective Oct. 21, 1976, by the Federal Land Policy and Management Act. *See* Pub. L. No. 94-579, § 704(a), 90 Stat. 2743, 2792 (1976). But, withdrawals existing on that date were not affected, subject to review by the Secretary. 43 U.S.C. § 1714(l).

Instructions, 35 L.D. 216, 217-18 (1906); *see also M.G. Johnson*, 2 IBLA at 110, 78 I.D. at 109 (“[L]ands within a second form withdrawal remained open to mineral entry.”)

[4] The particular form of withdrawal also impacts the day-to-day administration of the lands, as between BOR and BLM. The respective responsibilities of BOR and BLM are set forth in the Interagency Agreement Between the Bureau of Reclamation and the Bureau of Land Management, December 1982 (BOR/BLM 1983 Agreement), executed Mar. 25, 1983. On lands subject to a first form withdrawal, “Reclamation [BOR] has full management jurisdiction.” BOR/BLM 1983 Agreement Sec. 5.A. But even with respect to those BOR administered lands [first form withdrawal], particularly involving mineral resources, the Agreement states: “BLM will, when requested, provide expertise in the areas of land resource . . . and mineral management, to be utilized by Reclamation when preparing its land management plans, and in managing Reclamation administered [first form withdrawal] public lands.” *Id.* Sec. 1. And, with respect to lands subject to a second form withdrawal, other than those within national forests or under another agency administration, “BLM has full administrative responsibility.” *Id.* Sec. 5.B.

CONCLUSION

In this case, one thing is certain: BOR’s statement that it “has reviewed all existing documents of record to verify potential existing rights of third parties” appears to be simply untrue. To determine whether the land on which appellant’s mill site was located has been affected by withdrawals under the Reclamation Act, the most fundamental inquiry involves consulting the public lands records, which consist of the Master Title Plats, Historical Indices, and Tract Books. 43 C.F.R. § 2091.0-5(e); *David Cavanagh*, 89 IBLA 285, 297 n.7 (1985) (“The Board accepts limiting the scope of [the public lands records] records to the MTP, HI and other use plats.”). The Master Title Plat for the involved township (T. 19 N., R. 27 E.) includes a notation that the entire township was withdrawn for a reclamation project by Secretarial Order dated July 2, 1902.⁴ That notation does not specify whether the

⁴ Section 4 of the Reclamation Act provides that the Secretary may, upon a determination that an irrigation project is practicable, contract for construction of the project and give public notice of the lands irrigable under that project. 32 Stat. 389. Section 3 of the Act provides that before giving that public notice, the Secretary shall withdraw from public entry the lands required for the project. 32 Stat. 388. The Truckee-Carson Project was authorized in 1903, and it was renamed the Newlands Project in 1919. *THE NEWLANDS PROJECT* Wm. Joe Simonds, BOR, at 5 n.11 (1996) (http://www.usbr.gov/projects//ImageServer?imgName=Doc_1305124117489.pdf, (continued...))

withdrawal was a first form or second form withdrawal. A notation on page 1 of the Historical Index, however, indicates that the Secretarial Order was amended on August 26, 1902, “to allow H[omestead]E[ntry].” This notation is shown as applying to the entire township, and is described as a “S[ecretarial]O[rder] Wdl [withdrawal] Truckee-Carson Recl Proj (2nd Form).”

The only other notations potentially pertinent to this appeal involve section 14 of the township. On page 3 of the Historical Index there is a notation for section 14 indicating that a Secretarial Order dated May 4, 1907, partially changed the withdrawal for the Truckee-Carson Reclamation Project from a second form withdrawal to a first form withdrawal. However, that change is shown to apply only to the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of sec. 14, while the mill site is in the NE $\frac{1}{4}$ of sec. 14, where there was no change noted to the second form withdrawal. The other pertinent notation is on page 4 of the Historical Index, where a notation suggests that most of the land in the NE $\frac{1}{4}$ of sec. 14, by order dated November 6, 1925, was subject to a first form withdrawal for the Newlands Reclamation Project. However, page 7 of the Historical Index includes a notation entered on April 7, 2004, indicating that the notation on page 4 was entered in error, and that the first form withdrawal applies to the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of sec. 14.

Our examination of the public lands records leads us to the conclusion that the land on which appellant’s mill site was located was subject to a second form withdrawal under the Reclamation Act at the time of location. As a result, the land was open to entry under the Mining Law and appellant’s mill site was not null and void *ab initio* or at the time she paid the maintenance fee for the 2012 assessment year. Accordingly, BLM appropriately denied appellant’s request for a refund of the maintenance fees for the 2012 assessment year.

AFTERWARDS

What is troubling, however, is the action taken by BOR. Based on the record before us, BOR did not request BLM’s assistance in dealing with appellant’s mill site, as called for under the BOR/BLM 1983 Agreement. In fact, from information available on the public land records, it appears that BLM, *not* BOR, has full administrative responsibility over the land on which appellant’s mill site is located. If so, then under the BOR/BLM 1983 Agreement, issuance of the BOR Letter was *ultra vires*.⁵

⁴ (...continued)
last visited Apr. 9, 2012).

⁵ Considering the BOR Letter was devoid of citations to any statutory or regulatory (continued...)

This situation is particularly distressing, however, because we have seen it before. In 2008, we reviewed a BLM decision declaring six unpatented mill sites owned by Union Gulf Resources Corporation (UGRC) that were located in the same NE¼ of sec. 14, T. 19 N., R. 27 E., of the Mount Diablo Meridian, Nevada, null and void *ab initio* because they had been located on lands withdrawn from mineral entry. In a brief order dated March 27, 2008, the Board reversed the BLM decision, finding that those lands were open to mineral entry at the time of the location of the mill sites, a determination we reconfirm here.

Several years after our 2008 Order, the Board received a letter from a corporate officer of UGRC (UGRC Letter) alerting us to what UGRC characterizes as “recent illegal actions of the Bureau of Reclamation.” According to UGRC, less than a year after we issued our Order, “the Bureau of Reclamation (BOR) threatened and forcibly removed our tenants . . . with whom we had a lease-purchase agreement.” UGRC Letter at 1. What followed was UGRC’s receipt of a letter from BOR virtually identical to that received by the appellant in this case. After UGRC’s personal contact with BOR employees, including providing the BOR Area Office with a copy of the Board’s 2008 Order, BOR persisted in its efforts to the extent that during recent contact with a BOR employee, UGRC asserts that “to paraphrase his [the BOR employee’s] words [he] said that it didn’t matter that the claims were valid; that we had violated so many laws . . . that they could still remove us from the claims even though they are valid.” UGRC Letter at 1-2.

Regardless of the issues that may have existed with the operations of the UGRC mill sites and appellant’s mill site, BOR seems to have acted, and continues to act, without authority. That authority rests with BLM, which also bears some responsibility for its failure to assert its authority with respect to mining claims and operations, and land management, on the involved lands. Unfortunately, we have no authority to do more than comment on BOR’s action.

⁵ (...continued)

authority, or any specific description of the alleged unauthorized acts of appellant, it may have been legally unenforceable under any circumstance.

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.

_____/s/_____
H. Barry Holt
Chief Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge