



DAVID C. AND DEBRA J. KNIGHT LIVING TRUST

187 IBLA 114

Decided March 2, 2016



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Interior Board of Land Appeals  
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DAVID C. AND DEBRA J. KNIGHT LIVING TRUST

IBLA 2016-20

Decided March 2, 2016

Appeal from and petition to stay a decision of the Bureau of Land Management declaring placer mining claims forfeited because claims were not properly described in Notices of Location. AMC427882, AMC427883.

Affirmed.

1. Administrative Procedure: Generally -- Mining Claims:  
Location -- Mining Claims: Placer Claims

A party appealing a BLM decision declaring a placer mining claim forfeited bears the burden of showing BLM's decision is not supported by a rational basis or does not comply with the governing statute or regulations. Conclusory allegations of error, standing alone, do not discharge this burden.

2. Mining Claims: Location -- Mining Claims: Placer Claims

A claimant must describe a placer mining claim by aliquot part and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions unless exceptions to that rule apply. Concerning the gulch placer exception, BLM regulations define a "gulch placer claim" as "a placer claim located on the bed of a river contained within steep, nonmineral canyon walls." 43 C.F.R. §§ 3830.5, 3832.12(c).

APPEARANCES: David C. Knight, Trustee, for the David C. and Debra J. Knight Living Trust, Elko, Nevada.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

The David C. and Debra J. Knight Living Trust (Appellant) appeals from an October 7, 2015, Decision of the Arizona State Office, Bureau of Land Management

(BLM). In that Decision, BLM declared the following mining claims forfeited: BB 8 and BB 9 (BLM Serial Nos. AMC427882 and AMC427883). BLM declared the placer claims forfeited because they were not described according to the rule codified at 43 C.F.R. § 3832.12. Pursuant to that rule, placer mining claims must be described by aliquot part and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions. However, the general rule has several exceptions, two of which are relevant to the matter before us: A placer mining claim may be described alternatively by metes and bounds if the claim (1) qualifies as a gulch placer claim, or (2) is bounded by other mining claims or nonmineral lands.<sup>1</sup> *See id.* At issue is whether Appellant has shown it meets the requirements for describing its placer mining claims because it followed the general rule or because its claims fit within one of the exceptions to the rule, that is, the claims qualify as gulch placer claims or are bounded by other mining claims or nonmineral land.

### *Legal and Regulatory Background*

The General Mining Law of 1872 provides that placer claims “shall conform as near as practicable with the United States system of public-land surveys, and the rectangular sub-divisions of such surveys . . . .” 30 U.S.C. § 35 (2012). A claimant must describe placer mining claims by aliquot part and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions unless an exception applies. 43 C.F.R. § 3832.12(c). Exceptions relevant to the matter before us are placer claims that are (1) gulch placer claims, or (2) bounded by other claims or nonmineral lands. 43 C.F.R. § 3832.12(c)(1)(ii)-(iii); *see, e.g., Melvin Helit*, 157 IBLA 111, 119-22 (2002) (AJ Hemmer, concurring); *United States v. Haskins*, 59 IBLA 1, 95-98, 88 I.D. 925, 972-74 (1981), *aff’d*, Civ. No. 82-2112 (C.D. Cal. 1984); *Snow Flake Fraction Placer*, 37 L.D. 250, 257-58 (1908).

A “gulch placer claim” is “a placer claim located on the bed of a river contained within steep, nonmineral canyon walls. The form of the river valley and nonmineral character of the valley walls preclude the location of the claim by aliquot parts and a metes and bounds description is necessary.” 43 C.F.R. § 3830.5 (definitions); *see also* 43 C.F.R. § 3832.12(c)(2). Gulch placer mining claims may be described by protracted survey, or if that is not available or the land is not amenable to protraction, by metes and bounds. *See* 43 C.F.R. § 3832.12(c)(2).

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<sup>1</sup> Other exceptions are whether the placer claims are on unsurveyed lands or are bench placer claims. 43 C.F.R. § 3832.12(c). Appellant does not invoke these other exceptions, and therefore we do not discuss them herein.

The Board has explained the significance of gulch placer claims: “Situations occasionally occur wherein a placer claim is located along a ravine, canyon, or gulch, surrounded by precipitous, and, in many cases, impassable canyon walls and cliffs, which themselves contain no mineral values, and that in these situations, unusual modes of location may be necessary.” *Haskins*, 59 IBLA at 97, 88 I.D. at 973. “The critical factor in validating such locations is the inaccessibility of and lack of mineral values in the confining banks, which, as a practical matter, prevent the claimant from embracing these areas within the location.”<sup>2</sup> *Id.*, 59 IBLA at 97-98, 88 I.D. at 974 (rejecting a claim as a gulch claim where it included stream banks, including canyon walls).

If BLM notifies a mining claimant that its filing of documentation (for example, a Notice of Location) is defective, then the mining claims are forfeited if the claimant fails to correct the deficiency within the time allowed by BLM in its notice. 43 C.F.R. §§ 3830.91(a)(8); 3830.94(b); *see Tim Dunn*, 181 IBLA 91, 92 (2011).

#### *Factual Background*

On March 31, 2014, Appellant filed two Notices of Location for Placer Mining Claim. Administrative Record (AR) 7. On August 12, 2015, BLM advised Appellant its Notices of Location were inadequate because Appellant indicated the claims were located diagonally, but a placer claim cannot be positioned diagonally.<sup>3</sup> BLM advised Appellant that amendments to the Notices of Location were required in order for BLM to accept the claims. AR 5. BLM also explained that Appellant’s placer claims must be described by aliquot parts and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions. BLM stated amendments to Appellant’s Notices of Location must provide either: a description of the mining claim using the U.S. Public Land Survey System and its rectangular subdivisions using aliquot parts and complete lots, or; identification of what exception exists that permits Appellant’s placer mining claim to be located by metes and bounds (and provide a metes and bounds description). *Id.*

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<sup>2</sup> As for the precipitousness (i.e., steepness) of the slopes needed to justify a gulch placer claim, the Department’s long-standing view is that it is not impracticable to locate lands ascending at slopes of only 20 to 30 degrees (approximately 35% to 60% slopes). *George Kendall*, 184 IBLA 71, 83 n.18 (2013) (dicta) (citing *Hogan and Idaho Placer Mining Claims*, 34 L.D. 42, 44 (1905)).

<sup>3</sup> BLM also noted that some of the claims may have been on patented land, and the map provided by Appellant was not well-defined. AR 5.

On August 19, 2015, David Knight (Knight), trustee of Appellant, discussed the Notices of Location with BLM via telephone. AR 4. In that discussion, Mr. Knight stated the claims were properly located because they are gulch placer claims. *Id.* He also stated they had to be located in this fashion because there were other claims and private land in the area. *Id.* BLM responded by stating that if that is the case, Appellant would need to file amended notices of location stating the claims are gulch placer claims, and providing a topographical map showing the claims are gulch placer claims. *Id.*

After the August 19, 2015, telephone conversation, on its own initiative, BLM reviewed a topographical map and a Google Earth photograph showing the area of the claims. AR 4. After reviewing the documents, BLM concluded neither of Appellant's two claims was a gulch placer claim. *Id.* BLM observed that one side of the AMC427882 claim does have a slope, but the other side does not, and thus concluded there is no gulch. *Id.* As for AMC427883, BLM observed that it is on flat land. *Id.*

On September 8, 2015, Appellant filed Amended Notices of Location. In the Amended Notices of Location, Appellant identified a diagonal location by length and width by feet and by total acreage, which did not conform to the rectangular subdivisions of the U.S. Public Land Survey System. AR 2 and 3. For each claim Appellant stated: "The placer claim is situated in this way because it follows the bed of a meandering stream." AR 3.

In the Decision dated October 7, 2015, BLM determined the Amended Notices of Location did not provide an acceptable reason to file diagonal claims. Decision at 1. BLM reasoned that under 43 C.F.R. § 3832.12(c), Appellant's statement that the claims followed the bed of a meandering stream, did not establish the claims were gulch placer mining claims. Since Appellant had not properly described the claims as gulch claims, or bordering other mining claims or nonmineral lands, BLM declared the claims forfeited. *Id.* On October 23, 2015, Appellant timely appealed the Decision. AR 1.

### *Analysis*

BLM declared Appellant's placer claims forfeited because Appellant's Amended Notices of Location did not follow the rule that requires placer mining claims be described by aliquot parts and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions. At issue is whether Appellant has shown it meets the requirements for describing its placer mining claims because it followed the general rule above or because its claims fit within an exception to that rule because its placer

claims (1) qualify as gulch placer claims, or (2) are bounded by other mining claims or nonmineral lands.<sup>4</sup> See 43 C.F.R. § 3832.12(c).

[1] A party appealing a BLM decision has the burden of showing the decision is not supported by a rational basis or does not comply with the governing statute or regulations. See *American Colloid Co.*, 128 IBLA 257, 262 (1994); *George Kendall*, 184 IBLA at 83 & n.17 (there was no evidence the claims were gulch placers, and so there was no topographic justification for the claimant's failure to conform to the U.S. Public Land Survey System); see also *Helit*, 157 IBLA at 122 (AJ Hemmer, concurring) (lack of evidence that the placer claim's shape or extent relates in any way to a geologic or physical impediment); cf. *id.* at 116-17 (AJ Frazer, citing cases, "the claimant has the burden of showing that the claim is positioned as asserted"); but see *Jim Collins*, 175 IBLA 389, 393 (2008) (where BLM did not consider the exceptions to the general rule to comply with the U.S. Public Land Survey System, the Board remanded for consideration). Conclusory allegations of error, standing alone, do not discharge appellant's burden. *American Colloid Co.*, 128 IBLA at 262 (citing *Shama Minerals*, 119 IBLA 152, 155 (1991)).

[2] Under applicable regulations, after BLM notifies a mining claimant that its filing of documentation is defective, the mining claims are forfeited if the claimant fails to correct the deficiency within the time allowed by BLM in its notice. 43 C.F.R. § 3830.91(a)(8). Generally, placer claims must comply with the U.S. Public Land Survey System and its rectangular subdivisions, and be described by aliquot part (among other requirements). 43 C.F.R. § 3832.12(c). As an exception, some claims may be described other ways. The exceptions include: (1) gulch placer claims; and (2) claims bounded by other claims or by nonmineral lands. *Id.*

A "[g]ulch placer claim" is: "a placer claim located on the bed of a river contained within steep, nonmineral canyon walls. The form of the river valley and nonmineral character of the valley walls preclude the location of the claim by aliquot parts and a metes and bounds description is necessary." 43 C.F.R. § 3830.5 (definitions). As the Board has previously explained, "situations occasionally occur wherein a placer claim is located along a ravine, canyon, or gulch, surrounded by precipitous, and, in many cases, impassable canyon walls and cliffs, which themselves contain no mineral values, and that in these situations, unusual modes of location may be necessary." *Haskins*, 59 IBLA at 97, 88 I.D. at 973. Thus, gulch mining claims may

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<sup>4</sup> Other exceptions are whether the placer claims are on unsurveyed lands or are bench placer claims. 43 C.F.R. § 3832.12(c). Appellant does not invoke these other exceptions, and therefore we do not discuss them herein.

be described by protracted survey, or if that is not available or the land is not amenable to protraction, by metes and bounds. *See* 43 C.F.R. § 3832.12(c)(2).

In its Amended Notices of Location, Appellant states its claims are located diagonally because they “follow[] the bed of a meandering stream.” *See* AR 3. The existence of a stream alone does not show a gulch exists. The gulch exists, in pertinent part, because of “steep, nonmineral canyon walls.” Furthermore, the administrative record before the Board supports BLM’s conclusion that the claims do not qualify as gulch placer claims. BLM reviewed photographic evidence and a topographic map for the claims, and concluded there were no gulches. AR 2; AR 4. BLM found that one claim was on flat land. As for the other claim, it did have a slope on one side, but the other side did not have a slope. Appellant has not presented evidence to show that BLM’s analysis was not rational or not supported by the evidence.

On appeal, Appellant articulates two central arguments: one, that its claims really are gulch mining claims, and two, that its claims are bounded by other mining claims or nonmineral lands. In either case, if true, those circumstances present an exception to the general rule that mining claims must be described by aliquot parts and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions.

With respect to the first argument, Appellant explains the language it used in the Amended Notices of Location was found on BLM internet sites.<sup>5</sup> AR 1. BLM internet sites reproduced in Appellant’s appeal closely track the language of the BLM regulation, which requires that gulch placer claims must be “contained within steep, nonmineral canyon walls.” *Id.* There is no mention of claims that follow the bed of a meandering stream, but rather that gulch claims are those “located on the bed of a river contained within steep, nonmineral canyon walls.” *Id.*

Appellant also argues the language it used in the Amended Notices of Location is found in the Nevada Bureau of Mines and Geology’s Mining Claim Procedures for Nevada Prospectors and Miners, Fifth Edition (Nevada Guide). AR 1. The portions of the Nevada Guide included in Appellant’s appeal indicate that conformity with the U.S. Public Land Surveys System “*may not be possible . . . if the claim follows the bed of a meandering stream.*” It makes no mention of BLM’s regulatory requirement that gulch claims have steep, nonmineral canyon walls. In any event, the Nevada Guide is not dispositive in this matter; rather, as stated, the Federal regulations are, and under

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<sup>5</sup> <http://www.blm.gov/or/programs/minerals/files/locating-claims.pdf>;  
<http://www.blm.gov/or/programs/minerals/files/locating-claims.php>.

those regulations a description of a claim following a meandering stream does not describe a gulch claim.

With respect to the second argument, Appellant asserts that its claims are bounded by other claims and private land that is not open for mineral entry. AR 1. On appeal, however, Appellant does not explain how other claims and private land not open to entry compelled it to locate the claims along a diagonal. Instead, it suggests it was BLM's duty to investigate this issue: "BLM personnel did not take several minutes to use the BLM's sophisticated [Geographic Information System] programs and view the area and see that the creek (gulch) runs diagonally and there is private ground and other claims. If the BLM personnel would have taken some time and viewed the area before sending the initial Notice or looked at the area during our initial conversation there would have been no need for any of us to spend so much time and expense on this matter when a brief review would have shown the claims are located properly." See AR 2. While under no duty to do so, BLM nevertheless reviewed a topographical map and a Google Earth photograph and noted that the claims either only had one steep side or were flat, that is, no gulch was present for either claim. BLM also analyzed the issue of other claims interfering with Appellant's ability to conform to the U.S. Public Lands Survey System. AR 4. BLM saw that Appellant's claims overlap patented land and are staked over the top of an already existing mining claim; however, other claims were not in the vicinity of Appellant's claims. *Id.* In other words, Appellant did not demonstrate its claims are bounded by other mining claims or nonmineral lands. Appellant has not shown error in BLM's conclusion on this issue, and consequently we see insufficient ground to reverse BLM.

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. Appellant's petition for stay is denied as moot.

\_\_\_\_\_/s/\_\_\_\_\_  
 Eileen Jones  
 Chief Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
 James F. Roberts  
 Administrative Judge