



CARL W. BAILEY, *ET AL.*

187 IBLA 252

Decided March 31, 2016



United States Department of the Interior
Office of Hearings and Appeals

Interior Board of Land Appeals
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CARL W. BAILEY, *ET AL.*

IBLA 2015-237 & 238

Decided March 31, 2016

Appeal from two decisions of the California State Office, Bureau of Land Management, declaring mining claims null and void *ab initio*. CAMC 294250, 294251, 294252, and 297094.

Affirmed; petitions for stay denied as moot.

1. Mining Claims: Lands Subject To--Mining Claims: Rental or Maintenance Fees: Generally--Mining Claims: Rental or Maintenance Fees: Small Miner Exemption--Mining Claims: Withdrawn Land

Generally, one may not locate a mining claim on segregated or withdrawn lands. However, mining claims pre-existing a segregation or withdrawal of public land continue to be valid after the segregation or withdrawal.

2. Mining Claims: Recordation of Certificate or Notice of Location--Mining Claims: Rental or Maintenance Fees: Generally

Among other requirements, a mining claimant must record its mining claim location within 90 days after location of its claim. 43 C.F.R. § 3833.11(a). Failure to comply with the requirement to record the claim within 90 days after the claimant locates the claim results in forfeiture of the claim. 43 C.F.R. § 3830.91(a)(1).

3. Mining Claims: Recordation of Certificate or Notice of Location--Mining Claims: Rental or Maintenance Fees: Generally--Mining Claims: Rental or Maintenance Fees: Small Miner Exemption

When a claim is located prior to September 1 during one assessment year, and is recorded after September 1 during the succeeding assessment year, it “bridges” multiple assessment years.

4. Mining Claims: Recordation of Certificate or Notice of Location--Mining Claims: Rental or Maintenance Fees: Generally--Mining Claims: Rental or Maintenance Fees: Small Miner Exemption

When a location and notice of location “bridge” over two assessment years, and the claimant files a mining fee Waiver Certification for the second assessment year *prior* to filing the notice of location, BLM does not err in rejecting the small miner waiver because there was no recorded claim in its files. When the claimant subsequently submits the notice of location along with fees for the first assessment year (the year of location), but insufficient fees for the second assessment year, and does not file a mining fee Waiver Certification at that time, BLM does not err in determining the fees to be insufficient.

5. Mining Claims: Recordation of Certificate or Notice of Location--Mining Claims: Relocation

A claimant may not amend a notice or certificate of location to relocate or re-establish mining claims previously forfeited or declared void.

6. Administrative Authority: Laches--Laches--Mining Claims: Lands Subject To--Mining Claims: Withdrawn Land

“The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.” 43 C.F.R. § 1810.3(a). BLM’s delay in issuing a decision declaring mining claims null and void *ab initio* for being located on segregated/withdrawn lands is an insufficient basis to reverse BLM’s decision.

APPEARANCES: Carl W. Bailey, Michael P. Bailey, and Nina Gates, *pro se*, Las Vegas, Nevada; Janet Fealk, Assistant Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

Carl W. Bailey, Michael P. Bailey, and Nina Gates (Appellants) appeal and petition to stay the effect of two decisions dated July 15, 2015, and July 21, 2015, of the California State Office, Bureau of Land Management (BLM). In those decisions, BLM declared the following placer mining claims “null and void *ab initio*--without legal effect from the beginning:” Bailey Placer 5, Bailey Placer 7, Bailey Placer 8, and Bailey Placer 11.¹ Since the appeals of the decisions involve similar facts and legal issues, the Board consolidates the appeals.² See 43 C.F.R. § 4.404.

Background

On July 19, 2008, Appellants located the Bailey Placer 5, 7, and 8 mining claims as indicated on their Placer Mining Claim Location Notices dated July 19, 2008. Statement of Reasons (SOR), IBLA 2015-237, at 3 and Exhibit (Ex.) 7. On August 25, 2008, Appellants filed a Maintenance Fee Waiver Certification (Waiver Certification) for these claims with BLM, for the 2009 assessment year (beginning September 1, 2008, and ending at noon on September 1, 2009). *Id.*, Ex. 2. Again, Appellants indicated a location date of July 19, 2008. On September 15, 2008, BLM notified Appellants in writing that it was unable to locate claim names and serial numbers associated with the Waiver Certification. *Id.*, Ex. 4. Therefore, it returned the Waiver Certification to Appellants with no action taken. *Id.*

Also on September 15, 2008, BLM published a Notice in the Federal Register that it would process a proposed legislative withdrawal and reservation of certain public lands. BLM was responding to a request by the U.S. Department of the Navy acting on behalf of the U.S. Marine Corps (USMC). The land at issue was adjacent to the exterior boundary of the USMC’s Air Ground Combat Center, located in

¹ BLM’s July 15, 2015, decision addresses the Bailey Placer 11 claim (CAMC 297094), and its July 21, 2015, decision addresses the Bailey Placer 5 (CAMC 294250), Bailey Placer 7 (CAMC 294251), and Bailey Placer 8 claims (CAMC 294252).

² The appeal docketed as IBLA 2015-237 concerns the Bailey Placer 5, Bailey Placer 7, and Bailey Placer 8 claims, and the appeal docketed as IBLA 2015-238 concerns the Bailey Placer 11 claim.

Twentynine Palms, California.³ 73 Fed. Reg. at 53269-73; Decisions at unp. 1. By that Notice, BLM “temporarily segregate[d] for two years [September 15, 2008-September 15, 2010] the public lands and mineral estate . . . from . . . location . . . under the public land laws, including the mining laws.” 73 Fed. Reg. at 53269; *see also* Decisions at 1. The lands covered by the Notice include lands where Appellants located their mining claims. Decisions at unp. 1-2.

On October 16, 2008, Appellants filed a notice of location only for the Bailey Placer 7 mining claim. Appellants identified the location date as July 19, 2008. SOR for Bailey Placer 5, 7, and 8, Ex. 8. BLM did not accept the filing. By correspondence dated October 16, 2008, BLM advised Appellants it was rejecting the notice of location for filing because Appellants owed the agency \$295.00 in filing fees. The \$295.00 was calculated as follows: The cost to file a new mining claim, \$170.00 (\$15.00 processing fee, \$30.00 new claim location fee, and \$125.00 new mining claim maintenance fee) plus \$125.00 as maintenance fee for the following year since the claim crossed over two mining years. *Id.* BLM notified Appellants of the deadline to submit sufficient filing fees: “You must submit the completed form with payment within 90 days from the date of location.” *Id.* Appellants did not submit fees or a notice of location within 90 days of the date of location, July 19, 2008.

On February 12, 2009, Appellants filed with BLM notices of location for the Bailey Placer 5, 7, and 8 claims. SOR, IBLA 2015-273, Ex. 5. Handwritten under the title of the notices of location is the word “RELOCATION.” In contrast to their Placer Mining Claim Location Notices dated July 19, 2008, and attempted Waiver Certification filing on August 25, 2008, on their February 12, 2009, notices of location, Appellants identified November 22, 2008, as the location date for the claims.

On June 12, 2010, Appellants located the Bailey Placer 11 mining claim. SOR, IBLA 2015-238, at 4 and Ex. 2. This claim was located on the Twentynine Palms lands segregated from September 15, 2008, to September 15, 2010. Decision, IBLA 2015-238, at 1-2. On August 4, 2010, Appellants filed their notice of location with BLM for the Bailey Placer 11 claim. On the notice Appellants identify June 12,

³ The Navy requested that BLM submit the lands for legislative withdrawal, pursuant to the Engel Act, 43 U.S.C. §§ 155-158 (2012). As described in BLM’s Federal Register Notice, the Engel Act places on the Secretary of the Interior the responsibility to process Department of Defense applications for national defense withdrawals, reservations or restrictions aggregating 5,000 acres or more for any one project or facility. *Notice of Proposed Legislative Withdrawal and Opportunity for Public Meeting; California*, 73 Fed. Reg. 53269, 53269 (Sept. 15, 2008).

2010, as the location date. Administrative Record (AR), 2015-237, unp. Location Notice date stamped Aug. 4, 2010.

On December 26, 2013, Congress enacted the National Defense Authorization Act for Fiscal Year 2014 (FY14 Act), Public Law 113-66, 127 Stat. 672 (Dec. 26, 2013). Decisions at 2. By Section 2941 of the FY14 Act, Congress withdrew certain lands, including those covered by Appellants' mining claims. Decisions at 1-2.

On July 15 and 21, 2015, BLM issued the decisions on appeal. Because Appellants' mining claims were on at first segregated, and then withdrawn lands, BLM declared the claims "null and void *ab initio*--without legal effect from the beginning." Decisions at 2.

Analysis

As context for this analysis, we initially note that Appellants do not dispute their mining claims lie within withdrawn land. Rather, Appellants argue that because they located and recorded the Bailey Placer 5, 7, and 8 claims prior to the date segregation started, they retain rights to either mine the claims or be compensated for not being able to mine. For the Bailey Placer 11 claim, they argue they retain rights to it because BLM did not notify them it was on segregated or withdrawn land until 5 years after they filed their notice of location.

To determine whether Appellants' claims are valid we will consider whether BLM erred in declaring Appellants' mining claims "null and void *ab initio*--without legal effect from the beginning" because Appellants located their claims on land that was segregated or withdrawn. To analyze the validity of BLM's decisions, the overarching question is on what date, if ever, did Appellants file notices of location for their mining claims. In the most simplest terms, if Appellants did not file their notices of location for their claims before segregation or withdrawal of the land at issue, then they have no rights to mining claims located on that land. Thus, we consider a series of questions to determine the date, if any, of the filing of the notices of location. First, did Appellants' failed attempt at filing a Waiver Certification for the Bailey Placer 5, 7, and 8 claims on August 25, 2008, establish their right to the claims? Second, did Appellants fail to timely file notices of location for the Bailey Placer 5 and 8 claims, because Appellants did not file the notices of location by October 17, 2008, *i.e.*, within 90 days after Appellants located Bailey Placer 5 and 8 claims on July 19, 2008? Third, did BLM properly reject Appellants' notice of location for Bailey Placer 7 submitted on October 16, 2008, because Appellants did not submit sufficient fees to cover the filing? Fourth, may Appellants' untimely filing be excused because, as Appellants argue, by filing notices of location for Bailey Placer 5, 7, and 8 claims with BLM on February 12, 2009, with the word "relocation" printed by hand on the notice, they amended their

notices of location? Fifth, as Appellants argue, does the doctrine of laches render BLM's decision concerning the Bailey Placer 11 claim void?

[1] In order to analyze the issues, we are guided by applicable law, including BLM's regulations and the Board's case law. It is well established that mining claims located on Federal lands segregated or withdrawn from entry under the mining laws on the date of location confer no rights on the claimant, and are properly declared "null and void *ab initio*." *Douglas and Jane Weldy*, 164 IBLA 166, 168 (2004); *Devon Britton*, 158 IBLA 279, 282 (2003); *Cotter Corp.*, 127 IBLA 18, 19 (1993); *see also* 43 C.F.R. § 3833.91(c) (locating a mining claim on lands withdrawn from mineral entry at the time the claimant locates it is not a curable defect).⁴

Both the BLM segregation and the Congressional withdrawal have the general effect of barring location of mining claims. 73 Fed. Reg. at 53269 (BLM "temporarily segregate[d] for two years the public lands and mineral estate . . . from . . . location . . . under the public land laws, including the mining laws"); FY14 Act, 127 Stat. 672, § 2941 ("the public land (including interests in land) . . . is withdrawn from all forms of appropriation under the public land laws, including the mining laws.") However, as an exception, "[l]and uses currently authorized or permitted may continue during the segregation period," and the Congressional withdrawal of the lands is "[s]ubject to valid existing rights." 73 Fed. Reg. at 53269, 53271, 53273; FY14 Act, 127 Stat. 672, § 2941(a).

[2] Under BLM regulations, among other requirements, a mining claimant must record its mining claim location within 90 days after location of its claim. 43 C.F.R. § 3833.11(a). Failure to comply with the requirement to record the claim within 90 days after the claimant locates the claim results in forfeiture of the claim. 43 C.F.R. § 3830.91(a)(1).

[3] If a claim is located prior to September 1 during one assessment year, and is recorded after September 1 during the succeeding assessment year (*i.e.*, it "bridges" multiple assessment years), a claimant may file a fee Waiver Certification for the second assessment year at the same time it files its notice of recordation, so long as both are filed within 90 days after location. *See* 43 C.F.R. § 3835.14(a)(2). In bridge

⁴ The term "Withdrawal" means "withholding an area of Federal land from . . . location . . . under some or all of the general land laws . . ." 43 C.F.R. § 2300.0-5(h). The term "Segregation" essentially equates to a temporary withdrawal; it means "the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws . . .," under the Department's regulatory authority. 43 C.F.R. § 2300.0-5(m).

cases in which the claimant filed the notice of location but subsequently filed either the Waiver Certification or fully paid all fees within 90 days after location, the Board has deemed the filings and payments to be acceptable. *Lisa Tucker*, 167 IBLA 82, 88-89 (2005); *Bear Creek Mining Co.*, 160 IBLA 308, 311-13 (2004); *see also Carl Riddle*, 155 IBLA 311, 312-13 (2001).

The Bailey Placer 5, 7, and 8 Claims

[4] We first consider whether Appellants' failed attempt at filing a Waiver Certification for the Bailey Placer 5, 7, and 8 claims on August 25, 2008, established their right to the claims. As explained below, in the absence of timely filed notices of location, a failed filing of a Waiver Certification did not establish Appellants' right to the claims.

To establish one's right to a mining claim, a claimant must timely file a notice of location, among other requirements. 43 C.F.R. §§ 3833.11(a), 3830.91(a)(1). The record shows that when Appellants filed a Waiver Certification for the Bailey Placer 5, 7, and 8 claims on August 25, 2008, there was no notice of location filed and recorded with BLM. BLM therefore would not have a placer claim to which it could associate the Waiver Certification. Therefore, we find BLM properly rejected the Waiver Certification, and promptly notified Appellants that it was returning the Waiver Certification without action taken. The attempted filing did not establish Appellants' rights to Bailey Placer 5, 7, and 8 claims. *See SOR*, IBLA 2015-257, Exs. 4 and 5.⁵

Second, we examine whether Appellants failed to timely file notices of location for the Bailey Placer 5 and 8 claims, because Appellants did not file the notices of location by October 17, 2008, *i.e.*, within 90 days after Appellants located the Bailey Placer 5 and 8 claims on July 19, 2008. *See SOR* for Bailey Placer 5, 7, and 8 at 3 and Ex. 7; *see* 43 C.F.R. § 3833.11(a). On October 16, 2008, BLM received Appellants' notice of location for the Bailey Placer 7, but not for the Bailey Placer 5 and 8 claims. Therefore, Appellants did not timely file a notice of location for the Bailey Placer 5 and 8 claims.

⁵ Distinguishable from this case are situations in which claimants filed the notice of location (and therefore BLM had the record of the claims), but the claimants *subsequently* filed either the waiver certification or all fees within 90 days of location. *See Tucker*, 167 IBLA at 88-89; *Bear Creek Mining Co.*, 160 IBLA at 311-13; *see also Riddle*, 155 IBLA at 312-13.

Third, we address whether BLM properly rejected Appellants' notice of location for Bailey Placer 7, submitted on October 16, 2008, because Appellant did not submit sufficient fees to cover the filing. Appellant submitted a check for \$175.00. That attempted payment was insufficient to pay the complete maintenance and filing fees in the amount of \$295.00 (*i.e.*, the sum of the following: the cost to file a new mining claim, \$170.00 (\$15.00 processing fee, \$30.00 new claim location fee, and \$125.00 new mining claim maintenance fee) plus \$125.00 as maintenance fee for the following year, since the claim crossed over two mining years). *See* SOR, IBLA 2015-237, Ex. 8. In rejecting partial payment and the associated attempted filing, BLM followed the applicable regulation: "BLM will return any . . . notices for which [it] cannot apply full payment of . . . fees." 43 C.F.R. § 3830.95(a)(3). BLM also properly gave Appellants 90 days from the date of location to remit the appropriate amount so that the notice of location could be filed. That action is also consistent with applicable regulations. The regulation at 43 C.F.R. § 3830.95(b) provides that if a claimant wants to resubmit a new notice of location that was returned by BLM then the claimant must do so with the complete fees within 90 days of the original date of location of the claim. In this matter, the Bailey Placer 7 claim was located on July 19, 2008; Appellants' deadline to file the notice of location, therefore, was October 17, 2008. The record does not have evidence to show Appellants met the October 17, 2008, deadline.

Failure to timely submit the complete fees within 90 days of location results in forfeiture of the affected mining claims. 43 C.F.R. § 3830.95(b); *see Tucker*, 167 IBLA at 91. Since BLM properly rejected the notice submitted by Appellants for lack of sufficient funds and Appellants did not submit sufficient funds by October 17, 2008, the notice of location Appellants submitted on October 16, 2008, was not filed and therefore not recorded, leaving Appellants without a valid claim to Bailey Placer 7. *See* 43 C.F.R. § 3832.11(c)(4) (a mining claim is not located until, among other requirements, a notice of location is filed with BLM).

Appellants also filed notices of location for the Bailey Placer 5, 7, and 8 claims on February 12, 2009, after the 90-day period for filing expired on October 19, 2008. Such notices were untimely under 43 C.F.R. § 3833.11(a), resulting in forfeiture of the claims. *See* 43 C.F.R. §§ 3832.11(c)(4), 3833.91.

[5] The fourth question we consider is whether Appellants' untimely filing may be excused because, as Appellants argue, by filing notices of location for Bailey Placer 5, 7, and 8 claims with BLM on February 12, 2009, with the word "relocation" printed by hand on the notice, they amended their notices of location. According to Appellants, the notices "relate back" to the date on which they located those claims on July 19, 2008, before the segregation took effect (on September 15, 2008). SOR for Bailey Placer 5, 7, and 8 at 6-7, 15-16.

As discussed above, at the time of the February 12, 2009, filing, Appellants' claims were void *ab initio*. There was no valid notice of location recorded for Bailey 5, 7, and 8; therefore there was nothing to amend. Accordingly, the notion of "relating back" does not apply.⁶ See *Weldy*, 164 IBLA at 168; *Britton*, 158 IBLA at 282; *Cotter Corp.*, 127 IBLA at 19 (mining claims located on Federal lands segregated or withdrawn from entry under the mining laws on the date of location confer no rights on the claimant, and are properly declared "null and void ab initio"); see also 43 C.F.R. § 3833.91(c) (locating a mining claim on lands withdrawn from mineral entry at the time the claimant locates it is not a curable defect).

The Bailey Placer 11 Claim

Lastly, we determine whether, as Appellants argue, the doctrine of laches renders BLM's decision concerning the Bailey Placer 11 claim void. Appellants suggest the Board should reverse BLM's decision declaring Bailey Placer 11 null and void because it was issued about 5 years after the fact. That is, the Bailey Placer 11 claim was located June 12, 2010, but BLM's decision was not issued until July 15, 2015. SOR for Bailey Placer 11 at 5-6. Appellants contend BLM's decision was not issued promptly or within a reasonable time, and state they have expended time, effort, labor and financial resources to develop the mining claim. *Id.*

[6] For the reasons that follow, Appellants' arguments do not provide a legal basis for the Board to reverse BLM's decision concerning the Bailey Placer 11 claim. Appellants located Bailey Placer 11 on June 12, 2010, and filed their notice of location for that claim with BLM on August 4, 2010. SOR for Bailey Placer 11, Ex. 2. Both of those dates fall within the period in which the lands were segregated (September 15, 2008-September 15, 2010) from location of mining claims; therefore, the attempted location was not legal. Further, no applicable law, BLM regulation, the segregation notice, or the FY14 Act, supports the proposition that because of a delay by BLM in declaring claims null and void, mining claims located during segregation are valid. To the contrary, applicable law affirmatively supports the opposite proposition: "[T]he authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties." 43 C.F.R. § 1810.3(a); see, e.g., *Cynthia Balseer*, 184 IBLA 123, 132 (2013) (BLM's obligation to protect the public lands is not diminished over time). Accordingly, we conclude BLM did not err in issuing the decision declaring Bailey Placer 11 null and void *ab initio*.

⁶ While logically, since there was no valid notice of location, there cannot be a notice to amend, we also note that the applicable regulations also prohibit amendments to notices of location if a claim is forfeited. See 43 C.F.R. § 3833.21(b)(2).

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 Board affirms the decisions and denies the petition for stay as moot.

_____/s/_____
Eileen Jones
Chief Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge