



YELLOW JACKET PLACER PROJECT PARTNERS

187 IBLA 383

Decided May 26, 2016



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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YELLOW JACKET PLACER PROJECT PARTNERS

IBLA 2016-66 & 2016-67

Decided May 26, 2016

Appeal from two decisions of the Nevada State Office, Bureau of Land Management, declaring a total of 19 unpatented mining claims abandoned and void. NMC 1005301, 1005303 through 1005310, 1006832 through 1006836, 1007199, and 1071153 through 1071156.

Appeals consolidated; decisions affirmed; petition for stay denied as moot.

1. Practice Before the Department: Persons Qualified to Practice

Representation of parties before the Board is governed by 43 C.F.R. §§ 1.3 and 4.3, which provide that an individual may be represented only by himself or herself, an attorney, or a family member. The burden to show eligibility to practice before the Board rests with the person who files a notice of appeal, and the Board will dismiss an appeal if that person is not authorized under the regulations to practice before the Board.

APPEARANCES: David Pierce, Las Vegas, Nevada, and John M. Rocco, Groveland, Florida, *pro se*; Janell M. Bogue, Esq., Assistant Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

Summary

David Pierce filed an appeal on behalf of Yellow Jacket Placer Project Partners. Mr. Pierce challenges two decisions of the Nevada State Office, Bureau of Land Management (BLM), in which BLM declared a total of nineteen unpatented mining claims abandoned and void. Because the decisions and appeals share common facts

and law, we consolidate the appeals.¹ Appellants have not established that Mr. Pierce is authorized to represent the mining claimants before this Board; therefore, we dismiss the consolidated appeals.

BLM's Decisions

In the first decision on appeal, dated December 16, 2015, BLM declared the Yellow Jacket 105, 26, 30, 28, 20 and 108 (NMC 1006832 through 1006836 and NMC 1007199) unpatented mining claims abandoned and void. In the second decision, dated December 18, 2015, BLM declared the Yellow Jacket 28 through 30, 70 through 78, and 101 (NMC 1005301, 1005303 through 1005310, and NMC 1071153 through 1071156) unpatented mining claims abandoned and void. The mining claims are not owned by Yellow Jacket Placer Project Partners, but by a number of individuals, all of whom are identified by name in BLM's decisions. David Pierce is not identified as a claimant of any claim.

Pleadings

BLM received a Notice of Appeal, Statement of Reasons and Petition for Stay (Appeal) on January 11, 2015, referencing both BLM decisions. The Appeal was not signed, but was captioned with the names Gladiator Corporation, Pierce Mining, and Yellow Jacket Placer Project Partners. In the Appeal, Mr. Pierce stated that he was the author of the document.² BLM filed two combined Motions to Dismiss and Answers – one for each decision being appealed – on February 8, 2016. In its Motions, BLM argued that Mr. Pierce is not authorized to practice before the Board. Appellants filed a Response on March 3, 2016. In the Response, Mr. Pierce argued he was authorized to practice before the Board because he was the mining claimants' representative. Mr. Pierce also states he is a part of an entity known as Yellow Jacket Placer Project Partners and Associates, of which the mining claimants are also a part.

Mr. Pierce is Not Authorized to Practice Before the Board in These Appeals

[1] A threshold issue in this appeal is whether Mr. Pierce can represent the mining claimants. Representation of parties before the Board is governed by 43 C.F.R. §§ 1.3 and 4.3, which provide that an individual may be represented only by himself or herself, an attorney, or a family member. The burden to show eligibility to practice before the Board rests with the person who files a notice of appeal.³ If a person who

¹ See 43 C.F.R. § 4.404.

² Appeal at 4.

³ *Native Ecosystems Council*, 185 IBLA 268, 272 (2015); *Umpqua Watersheds, Inc.*, 158 IBLA 62, 66 (2002).

files an appeal is not authorized by the applicable regulations to practice before the Board, the appeal will be dismissed.⁴

In this case, the mining claimants subject to the BLM decisions are individuals, and may therefore only be represented by themselves, an attorney, or a family member.⁵ Mr. Pierce has not submitted evidence to prove he is a claimant, an attorney, or a family member of any claimant. Therefore he is not eligible to practice before the Board and we dismiss the appeals.

In reaching our conclusion, we have carefully considered all of the paperwork submitted by or on behalf of Mr. Pierce. Mr. Pierce argues that he and the claimants are “all part of the Yellow Jacket Placer Project Partners and Associates” and that he and another individual have represented the claimants in the past by filing maintenance fee waivers for the mining claims.⁶ Even if true, however, this does not change the fact that the claimants, as individuals, can only be represented in an appeal to the Board by themselves, a family member, or attorney. Further, the entities listed on the letterhead of the Appeal – Yellow Jacket Placer Project Partners, Gladiator Corporation, and Pierce Mining – are not listed as claimants on any of the claims. And nothing in the record demonstrates that the claimants are associated with these entities. In sum, Appellants provide no evidence, and the record contains no evidence, that Mr. Pierce is authorized to file an appeal on claimants’ behalf as required by our regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,⁷ we consolidate the appeals, dismiss them, and deny the petition for stay as moot.

/s/
Eileen Jones
Chief Administrative Judge

I concur:

/s/
Amy B. Sosin
Administrative Judge

⁴ *Native Ecosystems Council*, 185 IBLA at 272; *Umpqua Watersheds, Inc.*, 158 IBLA at 66.

⁵ 43 C.F.R. § 1.3.

⁶ Reply at 2.

⁷ 43 C.F.R. § 4.1.