KARRY KEITH KLUMP

IBLA 95-671 Decided November 6, 1997

Appeal from a Decision of the Arizona State Office, Bureau of Land Management, declaring an unpatented mining claim null and void ab initio. A MC 334494.

Affirmed.

1. Act of December 29, 1916--Mineral Lands: Mineral Reservation--Mining Claims: Lands Subject To--Stock-Raising Homesteads

   A claimant of a mineral interest in lands patented under the Stock Raising Homestead Act, as amended in 1993, is required to give notice to the Department and the surface owner before locating a placer mining claim on the lands in 1995.

APPEARANCES: Karry Keith Klump, Willcox, Arizona, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Karry Keith Klump has appealed from a July 27, 1995, Decision of the Arizona State Office, Bureau of Land Management (BLM), finding that unpatented placer mining claim A MC 334494 (Black Reef Placer #11) was null and void because the claim covered land included in patent No. 869043 issued under the Stock Raising Homestead Act (Act), as amended, 43 U.S.C. §§ 291-299 (1994). The 20-acre claim was located by Klump on June 11, 1995, in the NW¼ of sec. 25, T. 13 S., R. 26 E., Gila and Salt River Meridian, Arizona.

Finding that Klump had not complied with notice requirements imposed by a 1993 amendment to the Act that became effective on October 13, 1993, BLM determined that to the extent A MC 334494 invades lands patented under the Act it was null and void ab initio, because Klump failed to give notice to the Department and the affected landowner before making his location, as he was required to do by 43 U.S.C. § 299(b) (1994).

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Pertinently, the Act provides that

> no person other than the surface owner may enter lands subject [to the Act] to explore for, or to locate, a mining claim on such lands without —
>
> (i) filing a notice of intention to locate a mining claim pursuant to [§ 299(b)(2)]; and
>
> (ii) providing notice to the surface owner pursuant to [§ 299(b)(3)].

43 U.S.C. § 299(b)(1)(A) (1994). The notice given to the Department must be "in such form as the Secretary shall prescribe" and "shall contain the name and mailing address of the person filing the notice and a legal description of the lands * * * sufficient to permit the Secretary to record the notice on the land status records." 43 U.S.C. § 299(b)(2) (1994). The notice to the surface owner shall be in writing and sent by registered or certified mail to the owner of record not less than 30 days before entry, and must include:

> (A) A brief description of the proposed mineral activities.
>
> (B) A map and legal description of the lands to be subject to mineral exploration.
>
> (C) The name, address and phone number of the person managing such activities.
>
> (D) A statement of the dates on which such activities will take place.

43 U.S.C. § 299(b)(3) (1994).

On November 4, 1993, instructions for administration of the amended Act were issued to all BLM State Directors, who were directed that "those intending to file a new claim on or after October 13, 1993, must submit a NOI [notice of intent to locate a mining claim] to the BLM." (Instruction Memorandum (IM) No. 94-42 at 2.) While IM 94-42 included a sample form of notice suggested (but not required) for use by claimants, regulations implementing the 1993 amendment to the Act have yet to issue. Nonetheless, the 1993 amendment to the Act provides that failure to timely promulgate rules to implement the amendment will not delay the effective date of the Act; the Act took effect 180 days after April 16, 1993, or on October 13, 1993, and BLM so found. See 43 U.S.C. § 299 note (1994).

Responding to the BLM Decision here under review, Klump states: "This is my appeal and rejection of your decision on my Black Reef Placer Claim #11 (AMC 324394)." He then, however, goes on to explain that "I had verbal

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permission from the surface owner before I ever located these claims and still have his permission even though your new rules weren't invented until many years later. If it is necessary that I get his written permission let me know." (Letter from Keith Klump dated Aug. 25, 1995, and filed with BLM Aug. 28, 1995.)

Although he characterizes his response to BLM as an appeal, Klump does not allege error in the procedure outlined for administration of the Act by the agency while regulations are developed to implement the statutory changes. Also, while he says he rejects the Decision from which he appeals, Klump does not challenge BLM's finding that he must provide both the Department and the landowner affected by his claim with written notice of his intended mining activities before making a mineral location on affected lands. Instead, by offering to obtain written permission if required to do so, he seems to agree that he will furnish the notices required by the amended Act. Whether he agrees or not, he has acknowledged that he has yet to comply with the Act's provisions requiring prior notice before locating a claim on lands patented under the Act.

[1] Before amendment in 1993, the Act permitted location of mining claims without notice on lands patented under the Act, subject to limited bonding requirements. 43 U.S.C. § 299 (1994); see, generally, Brock Livestock Co., 101 IBLA 91, 93 (1988). A comment by the Director of the Congressional Budget Office appearing in the legislative history of the 1993 amendment to the Act recounts that

> [o]ver the last 70 years, as a result of the Stock Raising Homestead Act of 1916, ownership of more th[an] 70 million acres of public land in the western United States has been transferred to private citizens for grazing livestock. The federal government kept the rights to all subsurface mineral rights on these lands. Under current law, prospectors holding [h]ardrock mining claims on these lands do not have to notify [BLM], obtain the consent of the surface owner, or post bonds to insure against damage, before prospecting, exploring, or mining. * * * [The proposed statutory amendment] would require a claimholder conducting activities under the Mining Law of 1872 to notify the surface owner and BLM of proposed prospecting activities.

H.R. Rep. No. 103-44, 103d Cong., 1st Sess. 16 (1993), reprinted in 1993 U.S.C.C.A.N. 103.

The section-by-section analysis of the amendment appearing in the legislative history reports, concerning the section that became section 299(b)(2) of the Act, that "[p]aragraph (2) sets forth the criteria for filing a Notice of Intention to Locate a Claim which persons seeking to * * * locate a mining claim on Stock Raising Homestead Act lands must follow." Id. at 97. The analysis observes, concerning written notice to be given to the surface owner, that such notice must be given by registered or certified mail "at least 30 days before entering the lands." Id. at 98.

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Procedures for claim location outlined by BLM in the Decision under review are consistent with the quoted provisions of the Act, as amended, as is the finding that until "the surface owner has been served with a Notice of Intent to Locate a Mining Claim and 30 days ha[ve] passed, no mining claim can be located." (Decision at 2.) Klump has shown no error in BLM's application of the Act; his appeal from the Decision here under review must therefore be denied.

Accordingly, 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.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

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