CONTACT INFORMATION
Mining Records Curator
Arizona Geological Survey
1520 West Adams St.
Phoenix, AZ 85007
602-771-1601
http://www.azgs.az.gov
inquiries@azgs.az.gov

The following file is part of the

Arizona Department of Mines and Mineral Resources Mining Collection

ACCESS STATEMENT

These digitized collections are accessible for purposes of education and research. We have indicated what we know about copyright and rights of privacy, publicity, or trademark. Due to the nature of archival collections, we are not always able to identify this information. We are eager to hear from any rights owners, so that we may obtain accurate information. Upon request, we will remove material from public view while we address a rights issue.

CONSTRAINTS STATEMENT

The Arizona Geological Survey does not claim to control all rights for all materials in its collection. These rights include, but are not limited to: copyright, privacy rights, and cultural protection rights. The User hereby assumes all responsibility for obtaining any rights to use the material in excess of "fair use."

The Survey makes no intellectual property claims to the products created by individual authors in the manuscript collections, except when the author deeded those rights to the Survey or when those authors were employed by the State of Arizona and created intellectual products as a function of their official duties. The Survey does maintain property rights to the physical and digital representations of the works.

QUALITY STATEMENT

The Arizona Geological Survey is not responsible for the accuracy of the records, information, or opinions that may be contained in the files. The Survey collects, catalogs, and archives data on mineral properties regardless of its views of the veracity or accuracy of those data.

PRINTED: 01/17/2003

ARIZONA DEPARTMENT OF MINES AND MINERAL RESOURCES AZMILS DATA

PRIMARY NAME: COPPER GLANCE 1-4

ALTERNATE NAMES:

MOHAVE COUNTY MILS NUMBER: 723

LOCATION: TOWNSHIP 29 N RANGE 17 W SECTION 4 QUARTER S2
LATITUDE: N 35DEG 55MIN 13SEC LONGITUDE: W 114DEG 06MIN 14SEC
TOPO MAP NAME: GARNET MTN - 15 MIN

CURRENT STATUS: UNKNOWN

COMMODITY:
COPPER

BIBLIOGRAPHY:
ADMMR COPPER GLANCE 1-4 FILE
ADDITIONAL WORKINGS SEC. 9
USGS PP 1361, P. 167, LOCALITY 1357

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

Copper Glance
1-4

MARVIN F. JOHNSTON

IBLA 83-812 Decided June 12, 1984

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio in whole or in part. A MC 183666 through A MC 183669.

Reversed.

1. Act of October 8, 1964--Mining Claims: Lands Subject to--National Park Service Areas: Land: Mining

   BLM may properly declare lode mining claims located wholly on land within the Lake Mead National Recreation Area, established pursuant to the Act of Oct. 8, 1964, 16 U.S.C. § 460n (1982), null and void ab initio because such land is implicitly withdrawn from mineral entry.

2. Mining Claims: Generally--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

   Where a lode mining claim is located partially on withdrawn lands, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the withdrawn lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

APPEARANCES: Marvin F. Johnston, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Marvin F. Johnston has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated June 13, 1983, declaring the Copper Glance Nos. 1 through 4 lode mining claims, A MC 183666 through A MC 183669, null and void ab initio in whole or in part.

Appellant's mining claims were located July 24, 1982, and filed for recordation with BLM on August 25, 1982, pursuant to section 314(b) of the

INDEX CODE:
43 CFR Group 3500
43 CFR 3833.1-2(b) (1982)

Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982), and 43 CFR 3833.1-2(b) (1982). The map which accompanied appellant's notices of location indicates that the claims are situated in secs. 4, 5, 8, and 9, T. 29 N., R. 17 W., Gila and Salt River meridian, Mohave County, Arizona.

In its June 1983 decision, BLM declared appellant's mining claims null and void ab initio to the extent they included land within the Lake Mead National Recreation Area, i.e., portions of the Copper Glance Nos. 2 and 3 mining claims and all of the Copper Glance Nos. 1 and 4 mining claims. BLM noted that secs. 5 and 8, T. 29 N., R. 17 W., Gila and Salt River meridian, Arizona, were included in the Lake Mead National Recreation Area established by Congress pursuant to the Act of October 8, 1964, 16 U.S.C. § 460n (1982). BLM further stated that within the Lake Mead National Recreation Area minerals which are generally subject to location under the general mining laws will only be subject to mineral leasing, citing Rilite Aggregate Co., 26 IBLA 197 (1976).[a] BLM pointed out that secs. 5 and 8 are "presently under Lake Mead Mineral Leases A 10896-7, dated effective February 1, 1980, to Resources International Partners, Englewood, Colorado." BLM concluded that appellant's mining claims, to the extent they were located on land not available for mineral entry, must be declared null and void ab initio.

In his statement of reasons for appeal, appellant contends that only a "small portion" of each of the Copper Glance Nos. 1 and 4 mining claims was located within secs. 5 and 8 and that "no part" of the Copper Glance Nos. 2 and 3 mining claims was so located. In addition, appellant argues that he located mining claims on the subject land prior to establishment of the Lake Mead National Recreation Area:

> I staked these claims the 7th day of March 1960 and have diligently kept the assessment work done and recorded the work with the State of Arizona for 23 years.
>
> I filed with the Bureau of Land Management on April 4, 1979, and was given the Serial Nos. AMC 37688 through AMC 37691 for Copper Glance Nos. 1 through 4. I filed with the State of Arizona August 28, 1979, and sent copies to the Bureau of Land Management.
>
> I received filing reminders from the BLM for 1980, 1981, and 1982 and sent copies to the BLM of the assessment work filed with the state. On May 4, 1982, I received a letter from the BLM stating that they had not received my state copy of the annual assessment work for 1979. I did not have a receipt or proof of mailing the assessment work paper, so I re-filed the claims and was given new serial numbers for Copper Glance Nos. 1 through 4 -- AMC 183666 through AMC 183669. [1/]

1/ The Board has reviewed the case files for A MC 37688 through A MC 37691 and found that BLM issued a decision on May 4, 1982, declaring the claims abandoned and void for failure to file either evidence of annual assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, pursuant to section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982). That decision became final when no appeal was filed within the prescribed time period.

a) GFS(MIN) 52(1976)

[1] The first question to be addressed is whether land within Lake Mead National Recreation Area is subject to the location of mining claims. The Lake Mead National Recreation Area is clearly part of the "national park system" as defined in section 2(a) of the Act of August 8, 1953, as amended, 16 U.S.C. § 1c(a) (1982), i.e., an area "administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes." See 16 U.S.C. § 460n-3; Edward Seggerson, Jr., 67 IBLA 189 (1982).[b] The statute creating the recreation area does not specifically prohibit the location of mining claims. However, in Brown v. United States, 679 F.2d 747, 750 (8th Cir. 1982), the court agreed with the Board's conclusion in Tom Brown, 37 IBLA 381 (1978),[c] that "areas of the National Park System are not open to mining claims unless the statute creating the area specifically makes the lands subject to the mining laws." See also "The Wilderness Act," Solicitor's Opinion, 74 I.D. 97, 101-02 (1967).[d] The court in Brown held that the conclusion is supported by the legislative history of the Act of September 28, 1976, 16 U.S.C. § 1901, which governs mining activity within national park system areas. Accordingly, unless the statute establishing the recreation area specifically provides for mineral entry, the location of mining claims is deemed to be prohibited.

Section 4 of the Act of October 8, 1964, 16 U.S.C. § 460n-3 (1982), provides that "in addition to other related activities that may be permitted hereunder," the Secretary may permit certain enumerated activities, including mineral leasing. However, the statute does not provide for the location of mining claims. Thus, creation of the Lake Mead National Recreation Area must be deemed to have resulted in an implicit withdrawal of the affected land from entry under the mining laws. 2/

---

fn. 1 (continued)

The fact that appellant's earlier mining claims are void precludes a finding that the present claims constitute amended locations. As we said in R. Gail Tibbets, 43 IBLA 210, 218, 86 I.D. 538, 542 (1979):[e]

"No amended location is possible, however, if the original location was void. See Brown v. Gurney, 201 U.S. 184, 191 (1906). A void claim would be one in which a locator has failed to comply with a material statutory requirement. Flynn v. Vevelstad, 119 F. Supp. 93 (D. Alaska 1954), aff'd, 230 F.2d 695 (9th Cir. 1956)."

See also Frank Melluzzo, 71 IBLA 178 (1983).[f] Accordingly, appellant's mining claims, A MC 183666 through A MC 183669, are not considered amended locations of claims located prior to establishment of the Lake Mead National Recreation Area.

2/ In Rilite Aggregate Co., supra at 199, we stated that "as a general proposition, minerals which are subject to location under the 1872 mining law on public lands outside the Lake Mead [National] Recreation Area are subject to the leasing provisions of the Act of October 8, 1964, [supra,] within the Recreation Area." This general proposition has been codified. Effective Jan. 20, 1982, the Department amended its regulations governing the leasing of minerals other than oil and gas, in part to permit the leasing of minerals subject to location under the mining laws in the Lake Mead National Recreation Area. See 46 FR 62038 (Dec. 21, 1981). The Department concluded that this action merely conformed to congressional intent in establishing the recreation area to permit the leasing of locatable minerals under the broad discretionary authority granted to the Secretary with respect to mineral leasing under

b) GFS(MIN) 282(1982)
c) GFS(MIN) 116(1978)
d) GFS(MIN) SO-12(1967), GFS(O&G) SO-27(1967)
e) GFS(MIN) 92(1979)
f) GFS(MIN) 74(1983)

GFS(MIN) 103(1984)

A-3

[2] Recently, the Board held that it was improper for BLM to declare null and void ab initio that portion of a lode mining claim located on withdrawn lands when the claim is located in part on withdrawn lands and in part on lands subject to mineral entry. In Santa Fe Mining, Inc., 79 IBLA 48 (1984),[g] we said at page 51:

> [2] Notwithstanding everything that has been said heretofore concerning the partial location of lode claims on patented or withdrawn land, or upon land in states not subject to the mining law, we must repeat that, as Brinkerhoff holds, such claims are not null and void ab initio to the extent of their inclusion of such lands. While those claims may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of a claim of that kind might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry. See, e.g., Woods v. Holden, [26 L.D. 198 (1898)]. Therefore, Brinkerhoff's holding that the portions of lode claims embracing patented lands are not void is correct. [Emphasis in original.]

Where mining claims are located entirely on withdrawn lands, however, it is proper for BLM to declare them null and void ab initio.

Accordingly, we must consider whether appellant's mining claims are included in whole or in part within the Lake Mead National Recreation Area. BLM stated in its decision that the recreation area includes secs. 5 and 8, T. 29 N., R. 17 W., Gila and Salt River meridian, Arizona. Appellant maintains that only a small portion of the Copper Glance Nos. 1 and 4 claims, and no part of the Copper Glance Nos. 2 and 3 claims are located in secs. 5 and 8.

It is impossible to tell the exact location of appellant's mining claims in relation to the public land surveys from his notices of location. An examination of the map filed with BLM at the time of filing the location notice raises substantial doubt that any part of the Copper Glance Nos. 2 and 3 claims or that the easterly portions of the Copper Glance Nos. 1 and 4 claims are located within sec. 5 or sec. 8. The photocopy of the topographic map submitted for recordation depicting the location of appellant's claims shows only part of secs. 5 and 8. It appears that much of the east half of secs. 5 and 8, and all of adjoining secs. 4 and 9 are not depicted on the map. Apparently, appellant plotted his claims on the map under the impression that the right edge of the map showed the common boundary lines between secs. 4, 5, 8, and 9. If these section lines were as appellant apparently understood them to be, only a small portion of the Copper Glance Nos. 1 and 4 claims

---

fn. 2 (continued)
16 U.S.C. § 460n-3 (1982). See 45 FR 84390, 84393-94 (Dec. 22, 1980). Thus, the Department has restricted the exploration and development of locatable minerals to leasing pursuant to the regulations in 43 CFR Group 3500.

g) GFS(MIN) 48(1984)

and none of the Copper Glance Nos. 2 and 3 claims are located in secs. 5 and 8. 3/ When BLM reviewed the map it apparently realized the defect in the map submitted and drew in the missing section lines in red ink. When the common section boundary lines between secs. 4, 5, 8, and 9 were properly placed, the location of all the claims shifted westerly and all of the Copper Glance Nos. 1 and 4 claims and part of the Copper Glance Nos. 2 and 3 claims appear to be located in secs. 5 and 8.

Based upon the map of the earlier locations a more proper conclusion is that the topographic map as amended and relied on by BLM does not accurately depict the location of the mining claims in relation to the public land surveys. Accordingly, we conclude that no part of the Copper Glance Nos. 2 and 3 lode mining claims and only the westerly portions of the Copper Glance Nos. 1 and 4 mining claims lie within the Lake Mead National Recreation Area, and that BLM improperly declared all or portions of said claims null and void ab initio. See Marilyn Dutton Hansen, 79 IBLA 214 (1984),[h] Santa Fe Mining, Inc., supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge

3/ This is consistent with the location of the claims as shown in the files for A MC 37688 through A MC 37691. The map used to plot the location of the claims therein clearly depicted the boundary common to secs. 5 and 8 and to secs. 4 and 9. The map showed only a portion of the Copper Glance Nos. 1 and 4 claims as being located on withdrawn land.

h) GFS(MIN) 54(1984)

Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982), and 43 CFR 3833.1-2(b) (1982). The map which accompanied appellant's notices of location indicates that the claims are situated in secs. 4, 5, 8, and 9, T. 29 N., R. 17 W., Gila and Salt River meridian, Mohave County, Arizona.

In its June 1983 decision, BLM declared appellant's mining claims null and void ab initio to the extent they included land within the Lake Mead National Recreation Area, i.e., portions of the Copper Glance Nos. 2 and 3 mining claims and all of the Copper Glance Nos. 1 and 4 mining claims. BLM noted that secs. 5 and 8, T. 29 N., R. 17 W., Gila and Salt River meridian, Arizona, were included in the Lake Mead National Recreation Area established by Congress pursuant to the Act of October 8, 1964, 16 U.S.C. § 460n (1982). BLM further stated that within the Lake Mead National Recreation Area minerals which are generally subject to location under the general mining laws will only be subject to mineral leasing, citing Rilite Aggregate Co., 26 IBLA 197 (1976).[a] BLM pointed out that secs. 5 and 8 are "presently under Lake Mead Mineral Leases A 10896-7, dated effective February 1, 1980, to Resources International Partners, Englewood, Colorado." BLM concluded that appellant's mining claims, to the extent they were located on land not available for mineral entry, must be declared null and void ab initio.

In his statement of reasons for appeal, appellant contends that only a "small portion" of each of the Copper Glance Nos. 1 and 4 mining claims was located within secs. 5 and 8 and that "no part" of the Copper Glance Nos. 2 and 3 mining claims was so located. In addition, appellant argues that he located mining claims on the subject land prior to establishment of the Lake Mead National Recreation Area:

> I staked these claims the 7th day of March 1960 and have diligently kept the assessment work done and recorded the work with the State of Arizona for 23 years.
>
> I filed with the Bureau of Land Management on April 4, 1979, and was given the Serial Nos. AMC 37688 through AMC 37691 for Copper Glance Nos. 1 through 4. I filed with the State of Arizona August 28, 1979, and sent copies to the Bureau of Land Management.
>
> I received filing reminders from the BLM for 1980, 1981, and 1982 and sent copies to the BLM of the assessment work filed with the state. On May 4, 1982, I received a letter from the BLM stating that they had not received my state copy of the annual assessment work for 1979. I did not have a receipt or proof of mailing the assessment work paper, so I re-filed the claims and was given new serial numbers for Copper Glance Nos. 1 through 4 -- AMC 183666 through AMC 183669. [1/]

1/ The Board has reviewed the case files for A MC 37688 through A MC 37691 and found that BLM issued a decision on May 4, 1982, declaring the claims abandoned and void for failure to file either evidence of annual assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, pursuant to section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982). That decision became final when no appeal was filed within the prescribed time period.

a) GFS(MIN) 52(1976)

[2] Recently, the Board held that it was improper for BLM to declare null and void ab initio that portion of a lode mining claim located on withdrawn lands when the claim is located in part on withdrawn lands and in part on lands subject to mineral entry. In Santa Fe Mining, Inc., 79 IBLA 48 (1984),[g] we said at page 51:

> [2] Notwithstanding everything that has been said heretofore concerning the partial location of lode claims on patented or withdrawn land, or upon land in states not subject to the mining law, we must repeat that, as Brinkerhoff holds, such claims are not null and void ab initio to the extent of their inclusion of such lands. While those claims may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of a claim of that kind might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry. See, e.g., Woods v. Holden, [26 L.D. 198 (1898)]. Therefore, Brinkerhoff's holding that the portions of lode claims embracing patented lands are not void is correct. [Emphasis in original.]

Where mining claims are located entirely on withdrawn lands, however, it is proper for BLM to declare them null and void ab initio.

Accordingly, we must consider whether appellant's mining claims are included in whole or in part within the Lake Mead National Recreation Area. BLM stated in its decision that the recreation area includes secs. 5 and 8, T. 29 N., R. 17 W., Gila and Salt River meridian, Arizona. Appellant maintains that only a small portion of the Copper Glance Nos. 1 and 4 claims, and no part of the Copper Glance Nos. 2 and 3 claims are located in secs. 5 and 8.

It is impossible to tell the exact location of appellant's mining claims in relation to the public land surveys from his notices of location. An examination of the map filed with BLM at the time of filing the location notice raises substantial doubt that any part of the Copper Glance Nos. 2 and 3 claims or that the easterly portions of the Copper Glance Nos. 1 and 4 claims are located within sec. 5 or sec. 8. The photocopy of the topographic map submitted for recordation depicting the location of appellant's claims shows only part of secs. 5 and 8. It appears that much of the east half of secs. 5 and 8, and all of adjoining secs. 4 and 9 are not depicted on the map. Apparently, appellant plotted his claims on the map under the impression that the right edge of the map showed the common boundary lines between secs. 4, 5, 8, and 9. If these section lines were as appellant apparently understood them to be, only a small portion of the Copper Glance Nos. 1 and 4 claims

---

fn. 2 (continued)
16 U.S.C. § 460n-3 (1982). See 45 FR 84390, 84393-94 (Dec. 22, 1980). Thus, the Department has restricted the exploration and development of locatable minerals to leasing pursuant to the regulations in 43 CFR Group 3500.

g) GFS(MIN) 48(1984)