

From: Bennett, John F (DOT)
To: [Eagan, Pete \(DOT\)](#); [Smith, Kevin L \(DOT\)](#); [Shurr, Martin D \(DOT\)](#); [Brooks, Steven Michael \(DOT\)](#)
Subject: FW: Jack Wade claims
Date: Monday, May 06, 2013 1:57:00 PM

FYI I spoke with Julie Capps, BLM Mineral Law Examiner and her supervisor Carol Taylor today and they agreed that our assessment is correct. They will be revising the notes on the federal mining claim abstracts to show a location date of January 1, 1952 with a note that it could change if any title documents were found in the future that would indicate an unbroken chain of title into George Robinson. JohnB

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From: Bennett, John F (DOT)
Sent: Monday, May 06, 2013 9:33 AM
To: 'Capps, Julie'
Subject: RE: Jack Wade claims

Julie, I will be at my desk at 1:30 waiting for your call. JohnB

From: Capps, Julie [<mailto:jcapps@blm.gov>]
Sent: Monday, May 06, 2013 9:32 AM
To: Bennett, John F (DOT)
Subject: Re: Jack Wade claims

John, are you available for a call with me and Carol Taylor to discuss Jack Wade claims this afternoon? Carol suggested 1:30 if you can make it.

Julie

On Thu, May 2, 2013 at 2:44 PM, Bennett, John F (DOT) <johnf.bennett@alaska.gov> wrote:

Julie, I spend quite a while searching the Recorder's office website and found no deed transferring title into Robinson. I think that we actually have access to a part of the Recorder's office website that you may not be able to get to. This is what they call the "historic books search" This is kind of an unfriendly area that allows us to access the old microfiche rolls and potentially find all of the old location notices. The difficulty comes when you cross the time boundary back to when the index and documents were all hand written. Also some of the scans are not so great. My assumption that there is no deed comes from my inability of myself and our in-house title examiner to find one and Robinson's affidavit when he was appealing the decision to invalidate his claims. All he said was that he purchased the claims from the previous owner. He never stated that he had a deed nor did he name who he thought the prior owner was. I thought this was a significant void in his statement.

As I hunted through the historical books I reached the conclusion that the reason that Robinson did not have a deed to the claims is because the prior operator also did not have title to the claims. See the attached 1951 Affidavit (one year prior to Robinsons first affidavit) that includes

the claims in question. The affiant is the Wade Creek Dredging Company. Note the way the claims are grouped: "Charlie Johnson Claims" – "Martin-Sykes-Weiland Claims" and so on. Other older historical documents led me to believe that the Wade Creek Dredging company may have had leases, agreements and other arrangements other than conveyance of title that gave them the right to mine these claims. As such, Robinson, who I believe worked for the Wade Creek Dredging Company for a while, could never get a deed for claims that Wade Creek Co never actually had title to. It may not be impossible to track down who had the last title ownership but it would take reviewing endless books page by page to find the appropriate documents.

A little historical trivia: I don't consider myself terribly old but the Notary listed on the attached document, Glenn Franklin was a good friend of mine and we attended each other's weddings. If he was still alive I would bet money that he could bring clarity to this type of confusion.

So in my summary of case laws and IBLA decisions what we are saying is that:

- A mining claim is a real property interest
- A mining claim is subject to the statute of frauds and a written instrument is necessary to convey title
- A mining claim may still be valid where there is a break in title, but the current claimant's rights do not relate back to the initial location without a written conveyance.

I will be in all next week but due to other commitments, afternoons would be best to get together and talk. JohnB

From: Capps, Julie [mailto:jcapps@blm.gov]

Sent: Thursday, May 02, 2013 2:10 PM

To: Bennett, John F (DOT)

Subject: Re: Jack Wade claims

John,

Are you aware of any document or statement by Robinson asserting he did not have a deed or formal title to the claims? Is there an assumption that there is no deed? I am planning to search the state web site to see if any additional documents have been recorded.

Carol is out of the office this afternoon. We will be available next week to discuss all of this with you.

Julie

On Thu, May 2, 2013 at 12:38 PM, Capps, Julie <jcapps@blm.gov> wrote:
Great! I got these and I'm looking at them with Carol.

Julie

On Thu, May 2, 2013 at 12:27 PM, Bennett, John F (DOT) <johnf.bennett@alaska.gov> wrote:

Ok, I think I figured it out. I tested in on my personal email address and it got through. Apparently our security system interpreted the "return receipt requested" tracking number as a credit card number and then went into secure mode. I have removed that number from the first page of the Kuzmin letter and you should get it all now. Which is good because our fax machine is broken.

JohnB

From: Bennett, John F (DOT)

Sent: Thursday, May 02, 2013 9:18 AM

To: 'Capps, Julie'

Subject: RE: Jack Wade claims

Julie, I will be in our other offices for most of the morning so I'm hoping we can talk this afternoon. Before I left I was wondering if the letter I had copied to Mike Gibson had made it down to you as it and my background chronology might fill in some of the blanks for you. In my chronology, please note the reference to IBLA 77-187 which I have also attached. This case notes that a valid claim location can be shown by secondary evidence and occupation, but that the possession by a claimant based on occupation cannot be tacked on to the period of a preceding claimant if there is not a conveyance of title between them. Other IBLA cases such as IBLA 84-111 support that a conveyance of title cannot take place by the mere statement of Robinson that he purchased the claims in 1952 and that the statute of frauds which requires that a conveyance be in writing is applicable to the transfer of title for these claims.

I am fairly certain that the current owner of the claims, Fedor Kuzmin cannot assert a relation back to the original pre-1900 location notice. My only question is since there is a clear chain of title conveyances from Robinson to Kuzmin, whether BLM would assert that his location date commences as of the first year of Robinsons documented occupation by his affidavit of labor in 1952 or if BLM would assert that the location commenced when he met the FLPMA filing requirement by providing secondary evidence showing he had occupied the claim for at least 10 years. DOT does not disagree that Kuzmin has a valid federal mining claim. What we assert is that his rights did not vest at least until 1952 upon Robinson's first Affidavit of Labor and maybe later after BLM accepted his FLPMA filings. In either of those scenarios we assert that the highway ROW is a valid existing right that the claims are subject to. We will not prevent the extraction of the gold, we will just require that the mining operation be performed under a DOT permit with terms and conditions that will ensure protection of public safety and continuous access through the claims. I think that is it in a nutshell but if you have other questions, please let me know. Thanks, JohnB

From: Capps, Julie [<mailto:jcapps@blm.gov>]

Sent: Wednesday, May 01, 2013 4:04 PM

To: Bennett, John F (DOT)

Subject: Re: Jack Wade claims

Hi John,

If the IBLA order is 86-1570, then I won't need a copy.

Talk to you tomorrow. Julie

On Wed, May 1, 2013 at 3:00 PM, Bennett, John F (DOT) <johnf.bennett@alaska.gov> wrote:

Julie, thanks for the email. I should have asked for your email first and I erroneously assumed you were with Eastern Interior Field Office. I wanted to get the IBLA attachment (which should be the same as you say you found) to you first and then I will follow-up with some additional information and answer your question below. I have another issue to deal with right now so I hope to get another email to you tomorrow. Thanks, JohnB

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From: Capps, Julie [<mailto:jcapps@blm.gov>]

Sent: Wednesday, May 01, 2013 2:49 PM

To: Bennett, John F (DOT); Carol Taylor

Subject: Jack Wade claims

Hi John,

I'm going to continue to look into your ROW/claim question. I'm sorry I was not more prepared for our conversation. I have not worked with ROW issues in the past and didn't understand what research I should have completed.

Of course the IBLA order was in the casefile, but that only addressed that Robinson didn't have the original location notices when he made his original FLPMA filings. As you and I discussed, the Organic Act specifies that secondary evidence is accepted in lieu of original location notices so IBLA remanded the Abandon/Void decision. The original location notices were located and added to the casefiles at some later date, and as you know the claims are in good standing.

In the email chain I received from you earlier, you stated that it appears the chain of title is broken by Robinson. Do I understand correctly that you need to know if BLM accepts the original location date to be 1.) as on the original location notices (around 1900) 2.) if Robinson is considered the locator in 1952, or 3.) if BLM considers the location date as the passage of FLPMA when the filings were made?

In order to answer your question, we need to know what you consider to be the break in title.

If I can't answer your question, I will ask my supervisor, Carol Taylor to assist me.

--

Julie Capps

Mineral Law Specialist

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