United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Nevada State Office
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DECISION

Northern Comstock, LLC 1200 American Flat Rd. Virginia City, NV 89440	: : :	Color-of-Title

Color-of-Title Application
Determination to Allow the Claim

On June 8, 2012, Northern Comstock, LLC, filed an application under the Color-of-Title Act (CTA), 43 USC 1068 and 1068a, for a Class I CTA claim to certain public land in Storey County, Nevada. On August 23, 2012, this office requested additional information and administrative actions required under regulation. On August 29, 2012, some of the information was received, and some actions were met. On November 21, 27 and 28, 2012, information and administrative actions required under regulation were requested. On December 12, 2012, the applicant filed all of the information necessary and met all the administrative actions required under regulation to support their Class I CTA claim.

Administrative Actions

The regulations at 43 CFR 2541.1 state that applicants must be authorized to hold title to land in the State in which they believe they have a valid claim. The applicant has shown authorization to hold title to land in the State of Nevada both through their Operating Agreement in Article 2.4 (a), and through Nevada Revised Statute § 86.281 (2) and their Certificate of Good Standing with the Secretary of State, State of Nevada.

The regulations at 43 CFR 2541.2 (a) (2) state that every application must be accompanied by a filing fee of $10, which will be nonreturnable. BLM received the filing fee on August 29, 2012.

The regulations at 43 CFR 2541.2 (a) (4) state that every applicant must furnish information required in the application form concerning improvements, cultivation, conveyances of title, taxes, and related matters. As of December 12, 2012, these documents have been furnished to the BLM, and after review of the documents, they have been determined to be mostly in support of the Class I CTA claim.

The regulations at 43 CFR 2541.2 (b) state that an application under the act may be made for surveyed or unsurveyed lands. If unsurveyed land is claimed, final action will be suspended until the plat of survey has been officially filed. Therefore, although the parcel applied for is within surveyed sections, the parcel itself is irregular and thus unsurveyed. Moreover, the Official Plat of Storey County does not match other

County and private survey documents provided for the parcel. Thus, final action on the parcel will be suspended until the plat of survey has been officially filed by Chief Cadastral for the State of Nevada. The BLM will continue to manage the land encumbered by your claim as public land until patent issues to the applicant.

The regulations at 43 CFR 2541.2 (c) state that the statements of record conveyances must be certified by the proper county official or by an abstractor. The BLM has received certification by the proper county official as to the statements of record conveyances, through both a signed Form 2540-2 and through signed statement by Jen Chapman, Storey County Recorder.

Improvements

The regulations at 43 CFR 2540.0-5 (a) state that a claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. The application of June 6, 2012, states that three improved mining haul roads had been constructed across the parcel. Due to the mineral character of the landscape in the area, access roads for mining purposes would indeed increase the value of this parcel, and BLM recognizes such access roads as valuable improvements. Given the uncertain location of the parcel applied for, however, actual valuation of the improvements will be suspended until the plat of survey has been officially filed. Furthermore, the document used to make claim to this parcel states conveyance of all surface rights within the parcel "excepting any portion of herein described lands lying within the public right-of-way for roads and appurtenances thereto." This would seem to exclude one of the three access road improvements to the property from the Class I CTA claim, for a number of non-exclusive public rights-of-way are held for use of American Flat road, including a right-of-way to use public land for access road purposes held by Comstock Mining, LLC, formerly Plum Mining, LLC. However, none of the other conveyance documents in the chain of title use the excepting language for public rights-of-way. Therefore, applicant equity to the valuable improvements, to be deducted from the appraised value of the parcel through an approved Department of the Interior appraiser, shall be determined at a later date. Moreover, public easement may need to be secured for a portion of American Flat road if indeed the parcel applied for is encumbered by the road. The application also claims an existing power line under a right-of-way for power distribution purposes between the BLM and Sierra Pacific Power Company, doing business as NV Energy, as a valuable improvement. As this is not an improvement constructed by any grantor, claimant, or predecessor-in-interest, and is held under a current right-of-way between BLM and a third party, it does not appear to be an appropriate claim for a valuable improvement across the parcel.

Good Faith

The regulations at 43 CFR 2540.0-5 (b) state that a claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant. As stated above, Comstock Mining, LLC, holds a right-of-way with the BLM for use of public land for access road purposes. This access road is one of the valuable improvements claimed by the applicant, Northern Comstock, LLC. Northern Comstock, LLC, Comstock Mining, LLC, and Comstock Mining, Inc., all share a manager – Corrado de Gasperis – who is also the applicant for the Class I CTA claim through Northern Comstock, LLC. A Class I CTA claim is not held in good faith where held with knowledge that the land is owned by the United States. Plum Mining, LLC, now Comstock Mining, LLC, has been paying annual rental on the right-of-way crossing the parcel applied for since January 1, 2001. This does not constitute good faith possession on the part of Northern Comstock, LLC. However, a predecessor-in-interest, D.W.C. Resources, has acted in a manner that demonstrates the honest belief that they were vested with title. This is presented in the General Agreements of August 30, 1999, and October 22, 2004, for use of certain access roads crossing the parcel.

These General Agreements are between the predecessor-in-interest, D.W.C. Resources, and Plum Mining Co., LLC, and include liability and rent arrangements between the two private parties.

Claim for More Than 20 Years

The regulations at 43 CFR 2540.0-5 (a) state that a Class 1 CTA claim is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years. Reviewing the chain of title presented, Northern Comstock, LLC, believed they were taking possession under a quitclaim deed of October 18, 2010. As explained above, possession by Northern Comstock, LLC, does not appear to meet the good faith claim requirements of the CTA and, thus, cannot be included in the chain of title claim. However, nothing indicates that the predecessors-in-interest did not hold title in good faith. D.W.C. Resources, Inc., held title to the parcel from July 10, 1998, to October 18, 2010. This is a period of approximately 12 years, 3 months. D.W.C. Lode Mines, Inc., held title to the parcel from April 25, 1995, to July 9, 1998. This is a period of approximately 3 years, 3 months. Storey County held title to the parcel through a Treasurer Deed from May 10, 1993, to April 24, 1995. Possession by a local political subdivision cannot be considered in the chain. Privity can be established, however, between the holder of title before and after possession by the County, for they are the same entity. D.W.C. Lode Mines, Inc., held title to the parcel from December 30, 1987, to May 9, 1993. This is a period of approximately 5 years, 4 months. Thus, the applicant has demonstrated claim or color of title for approximately 20 years, 11 months. This meets the requirement under CTA for possession under claim or color of title for more than 20 years.

Resolution

In order to move forward with processing your application for a Class I CTA claim, other steps will be necessary to reach resolution in the form of a patent purchased by the applicant for the claim. As previously mentioned, due to the irregular shape of the parcel applied for, a plat of survey from Chief Cadastral for the State of Nevada will be necessary to adjust the Public Land Survey System and Master Title Plats accordingly. An appraisal by an approved Department of the Interior appraiser, based on the results of the survey, will also be required. The appraisal will only include the fair market value of the land; the value of any acceptable improvements will be deducted from the appraised fair market value purchase price, as well as other applicant equity factors (however, in no case will the purchase price be less than $1.25 an acre). Once the plat of survey has been filed, the BLM Authorized Officer will issue a decision confirming allowance, calling for publication, and listing all reservations to be included in the patent. The applicant will be required to publish once a week for four consecutive weeks in accordance with 43 CFR 1824.10, at their expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file their objections to the issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service. The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time. In order to expedite your claim, all costs for the administrative costs, plat survey, and appraisal will need to be remitted by the applicant into a contributed funds account, to be established under separate cover and agreement. Finally, patent will not issue until the purchase price is remitted to the BLM.

Use of the Improvements

As stated above, the parcel applied for will continue to be managed as public land until the steps under Resolution are complete and patent issues. However, BLM recognizes that use of certain valuable improvements claimed, namely the existing access road segments, would greatly assist the applicant in conducting their business across public land. Use of the segment of American Flat road that purportedly crosses the parcel applied for is already authorized under right-of-way grant NVN 091237. This use is

currently restricted to a travel width not to exceed 30 feet from existing berm to existing berm, excluding the berms. The only surface authorized for disturbance is the existing travel surface. Only highway-rated vehicle travel, grading and watering activities are authorized. The use is a commercial mining non-exclusive right-of-way.

On the other existing road improvements across the parcel applied for under this Class I CTA claim, the same stipulations apply. Use is restricted to a travel width not to exceed 30 feet from berm to berm, excluding the berms. The only disturbance activities that will be acceptable are to the existing travel surface. Only highway-rated vehicle travel, grading and watering activities will be allowed. The commercial mining use of these existing road segments on the public land parcel applied for will be non-exclusive use. Until analysis and issuance of authorization for the amendment to NVN 091237 can be successfully completed, these are the only uses of the public land under claim that are permissible.

BLM is allowing these uses of existing facilities on public land under good faith with the applicant. Part of this good faith is that BLM has the expectation that amendment to NVN 091237 will proceed in a timely manner and will result in the analysis and authorization of Comstock's uses and proposed uses of public land in their project area. If at any time Northern Comstock, LLC, Comstock Mining, LLC, or Comstock Mining, Inc., or any partners, affiliates, or sub-contractors of said entities, were to act outside of any applicable laws or regulations, do not continue to act in a timely manner, or were to act in a manner BLM determines to be not in good faith, use of the existing facilities on public land under this Class I CTA claim will be terminated by the Authorized Officer. Northern Comstock, LLC, Comstock Mining, LLC, and Comstock Mining, Inc., will also comply with applicable MSHA regulations, State of Nevada regulations, permits and plans, and Storey County SUP regulations. If compliance with these nonfederal regulations will result in any ground disturbing activities outside of the existing access road travel surfaces on public land under claim, the Authorized Officer will be contacted immediately, and the activities will not proceed without prior authorization from the Authorized Officer.

/s/ RAUL MORALES

Raul Morales
Deputy State Director
Nevada State Office, BLM