UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:21-cv-00512-SVW-GJS	Date	January 9, 2024
Title	*Rayco v. David Bernhardt*	JS-6	

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE
Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: ORDER AND JUDGMENT GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [49] AND GRANTING IN PART AND DENYING IN PART DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT [54]

I. Introduction

Before the Court are cross-motions for summary judgment submitted by Plaintiff Rayco, LLC ("Plaintiff") and Defendant Debra Haaland, in her official capacity as Secretary of the United States Department of the Interior ("Defendant" or "DOI"). ECF Nos. 49, 54. The present action arises from DOI's denial of mineral patent applications submitted by Plaintiff regarding lands within the Mojave National Preserve (the "Preserve").

The Preserve is "a 1.6 million-acre unit of the National Park Service, established by Congress on October 31, 1994, by the California Desert Protection Act." U.S. Dep't of the Interior, National Parks Service, *Mojave National Preserve General Management Plan* 2 (2002), https://www.nps.gov/moja/learn/management/upload/MOJA_GMPIII.pdf (https://perma.cc/DSZ3-TVMK).[1] "Located in southern California, the desert area is a land of mountain ranges, sand dunes, great mesas and extinct volcanoes." *Id.* The Preserve's "vast expanse of desert lands . . . represents a

[1] The Court takes judicial notice of this document *sua sponte*, which it is permitted to do by Fed. R. Evid. 201(c)(1). The authenticity of public websites maintained by government agencies cannot be reasonably questioned. *Guilfoyle v. Beutner*, 2:21-cv-05009-VAP (MRWx), 2021 U.S. Dist. LEXIS 195396, 2021 WL 4594780, at *24 (C.D. Cal. Sept. 14, 2021).

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combination of Great Basin, Sonoran, and Mojave desert ecosystems." *Id.* "Mojave is bounded to the north and south by major interstate highways, I-15 and I-40. The Nevada–California stateline makes up most of the eastern boundary. Located about half way between Las Vegas and Joshua Tree National Park, it is an area that many people have seen through their windshields, but few have taken time to explore." *Id.*

Since 1948, Plaintiff and their predecessors in interest have used certain lands in what is now the Preserve for the purpose of mining volcanic cinders. In 1991, Plaintiff applied to patent 675 acres of land in the Preserve—lands which Plaintiff purportedly used for mining. After nearly thirty years, DOI issued the following decisions: 1) DOI declared null and void all but 10 acres of land which made up the mines which Plaintiff used; and 2) DOI denied patents to mill sites associated with the 10 acres of land that were not invalidated. Seeking to challenge DOI's decisions, Plaintiff brings this present action under the Administrative Procedures Act.

For the foregoing reasons, Plaintiff's motion for summary judgment is granted in part and denied in part; Defendant's cross-motion for summary judgment is likewise granted in part and denied in part.

II. Background

A. Mining Law Historical Context

"It is hard to understand this dispute about a relatively arcane area of law without reference to history." *United States v. Shumway*, 199 F.3d 1093, 1097 (9th Cir. 1999). There is a detailed, helpful, and informative description of this history in *Shumway*, 199 F.3d at 1097–1102. This Court will not restate the Ninth Circuit's diligent work in explaining that history, but it will provide some of the most salient points.

For much of the nineteenth century, mining in the United States operated without federal oversight. *See Shumway*, 199 F.3d at 1098. "When it came, in skeletal form in 1866, and in substantially its current

form in the Mining Law of 1872, the federal statutory law of mining 'received' customary law in much the same way that the states had received the common law." *Id.* Accordingly, the Mining Law states that "[e]xcept as otherwise provided, all valuable mineral deposits in lands belonging to the United States . . . shall be free and open to exploration and purchase . . . under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States." 30 U.S.C. § 22 (2023). Subject to some additional limitations, "150 years after its enactment, the Mining Law remains in effect for much federal land and for many minerals . . . . Within the scope of its operation, the Mining Law continues to be a source of wealth—sometimes great wealth—for those who discover valuable minerals on federal land." *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 33 F.4th 1202, 1209 (9th Cir. 2022)

B. Claims, the Act of Location, and the Patent Process

"A miner who finds valuable minerals may 'locate' (or 'stake') a claim and thereby obtain an 'unpatented mining claim.'" *Ctr. for Biological Diversity*, 33 F.4th at 1209 (quoting 30 U.S.C. § 22). "A valid unpatented claim gives the miner the right to 'occupy' the claim and to mine the minerals free of charge." *Id.* A prospector's use of a mining claim is limited to activities related to mining. *See* 30 U.S.C. § 612(a) ("Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto."); *see also United States v. Rizzinelli*, 182 F. 675, 684 (D. Idaho 1910) ("[T]he right of a locator of a mining claim to the 'enjoyment' of the surface thereof is limited to uses incident to mining operations.").

Before proceeding, it is important to clarify some vocabulary. The terms 'location' and 'mining claim' "often mean very different things." *Smelting Co. v. Kemp*, 104 U.S. 636, 648–49 (1881). "A mining claim is a parcel of land containing precious metal in its soil or rock. A location is ***the act*** of appropriating such parcel, according to certain established rules. It usually consists in placing on the ground, in a conspicuous position, a notice setting forth the name of the locator, the fact that it is thus taken or located, with the requisite description of the extent and boundaries of the parcel, according to the local customs,

or, since the statute of 1872, according to the provisions of that act." *Id.* (emphasis added). "[A] mining 'claim' is not a claim in the ordinary sense of the word – a mere assertion of a right – but rather is a property interest, which is itself real property in every sense, and not merely an assertion of a right to property." *Shumway*, 199 F.3d at 1099–1100. On the other hand, to locate refers to the act of appropriating a claim. When the term "location" is used in this context, it is being used to describe the act of locating, i.e., it is not being used to describe a place.

Historically, once a miner had located a claim and performed improvements or assessment work, they could apply for a patent. *Shumway*, 199 F.3d at 1099; *see also Ctr. for Biological Diversity*, 33 F.4th at 1209 ("Until 1994, a miner could 'patent' a claim, thereby obtaining ownership of the surface area as well as the mineral rights.") (citing *R.T. Vanderbilt Co. v. Babbitt*, 113 F.3d 1061, 1064 (9th Cir. 1997)). A patent "is the conveyance by which the federal government passes its title to portions of the public domain." *Shumway*, 199 F.3d at 1096; *see also St. Louis Smelting & Refining Co. v. Kemp*, 104 U.S. 636, 640 (1881) (same). The advantage of patenting a mining claim is that the patentee can use the land for a much wider range of purposes than can the holder of a mining claim; "a patent generally conveyed fee-simple title to both the surface estate and the mineral deposits." *McMaster v. United States*, 731 F.3d 881, 885 (9th Cir. 2013) (citing *Independence Mining Co. v. Babbitt*, 105 F.3d 502, 506 (9th Cir. 1997)).

"The U.S. Bureau of Land Management . . . has a duty to verify that a patent application is complete and complies with all the statutory requirements." Def.'s Mem. in Supp. of Cross-Mot. for Summ. J. 6, ECF No. 54; *see also Cameron v. United States*, 252 U.S. 450, 459–60 (1920) ("By general statutory provisions the execution of the laws regulating the acquisition of rights in the public lands and the general care of these lands is confided to the Land Department, as a special tribunal; and the Secretary of the Interior, as the head of the department, is charged with seeing that this authority is rightly exercised to the end that valid claims may be recognized, invalid ones eliminated, and the rights of the public preserved."). "Before a determination of validity can be made, a mineral examiner must do a field examination; collect and analyze samples; estimate the value of the mineral deposit and the cost of extracting, processing and marketing the minerals, including the costs of complying with any environmental and reclamation laws." *Independence Mining Co.*, 105 F.3d at 506-507. "Upon completion of the mineral report, all patent

applications undergo legal and secretarial review, and if approved, the patents will issue." *Id.* at 507.

i. Mill Sites

"The Mining Law allows the owner of a valid mining claim on land containing valuable minerals to obtain possessory rights to other land for use as a 'mill site.'" *Ctr. for Biological Diversity v. United States Fish & Wildlife Serv.*, 33 F.4th 1202, 1210 (9th Cir. 2022). In the context of placer claims, mill sites are defined as "nonmineral land . . . needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim." 30 USCS § 42(b). "[S]uch land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers." *Id.*

C. Plaintiff's Claims

Plaintiff is a limited liability company formed under the laws of the State of Nevada. Statement of Uncontroverted Facts and Conclusions of Law in Supp. of Rayco's Mot. for Summ. J. ("SUF") 1, ECF No. 51. Plaintiff was formed in 1997 and is a wholly owned asset of the Emerson A. Ray and Fay R. Ray 1990 Trust. *Id.*

i. Initial Location of Placer Mining Claims

On September 23, 1991, Emerson A. Ray and Fay R. Ray filed two applications to patent three placer mining claims and 51 mill sites with the Bureau of Land Management ("BLM") California State Office. AR_02630. Those three placer mining claims are named Iwo Jima, Cinder No. 2, and Cinder No. 3. AR_02640. "[C]ommon variety volcanic cinders" were mined on these claims. Pl.'s Mem. in Supp. of Mot. for Summ. J. 2, ECF No. 49.

The Iwo Jima placer mining claim was located on June 1, 1948.[2] AR_02640. The Cinder No. 2 and Cinder No. 3 placer mining claims were located on June 2, 1948. *Id.* These acts of location were

[2] See Section II-B, *supra*, for an explanation of what it means to locate a claim under the Mining Law.

memorialized through the filing and recording of Notices of Location with the San Bernardino Country Recorders Office on June 29, 1948. AR_02641. These Notices of Location contained legal descriptions (i.e., descriptions made pursuant to the cadastral survey of the United States' Public Land Survey System)[3] of the sites of the three placer mining claims.[4] They also contained additional identifying information meant to identify the claims "by [their] proximity to the following natural object or permanent monument."[5] AR_02994, AR_02967, AR_02895. These locations were performed by an association of individuals who subsequently quitclaimed all resulting interests to Emerson A. Ray on May 6, 1953. AR_02640–41. Collectively, these three placer mining claims are referred to as "the Cima Cinder Mine."

[3] "The 'rectangular survey system' was first proposed by Thomas Jefferson and enacted into law by the Land Ordinance of 1785. The Land Ordinance provided the basis for the Public Land Survey System (PLSS), which is a way of subdividing and describing land, mainly in the Western United States. To handle the rapidly increasing surveys, public land sales, patents, and land entries, Congress created the General Land Office in 1812." U.S. Dep't of the Interior, Bureau of Land Mgmt., Management of Land Boundaries 2, https://www.blm.gov/sites/default/files/Management%20of%20Land%20Boundaries.pdf (https://perma.cc/FW6D-3YDV). "The BLM assumed responsibility for the cadastral efforts of the early United States in 1946, when the merger of the General Land Office and Grazing Service formed the BLM. Today, the BLM maintains the official records of more than 200 years' worth of title and cadastral survey records." *Id.* "The primary mission of the BLM cadastral survey program is the establishment and preservation of the PLSS and boundary determination of federal interest lands. An official survey by the BLM is binding on all governmental officials and cannot be changed except by the BLM or a higher jurisdiction. Cadastral surveys are the foundation for land title records and provide federal, tribal, and Alaska Native Corporation land managers with information necessary for the management of their lands." *Id.* at 3. The Court takes judicial notice of this document *sua sponte*, which it is permitted to do by Fed. R. Evid. 201(c)(1). Moreover, the authenticity of public websites maintained by government agencies cannot be reasonably questioned. *Guilfoyle v. Beutner*, 2:21-cv-05009-VAP (MRWx), 2021 U.S. Dist. LEXIS 195396, 2021 WL 4594780, at *24 (C.D. Cal. Sept. 14, 2021).

[4] Specifically, the legal descriptions read as follows:

- Iwo Jima: "The SE ¼ of the NW ¼ and the SW ¼ of the NE ¼ and the NW ¼ of the SE ¼ and the NE¼ of the SW ¼ of Section 15 T14N, R12E SBBM." AR_02994.
- Cinder No. 2: "The SW ¼ of Sec. 20 T14N R12E SBBM." AR_02895.
- Cinder No. 3: "E ½ of the NW ¼ and the W ½ of the NE ¼ of Sec. 29 T14N R12E SBBM." AR_02967.

[5] Specifically, the additional descriptions read as follows:

- Iwo Jima: "Ten Miles South and One Mile West of Valley Wells, Calif. (approximately)." AR_02994.
- Cinder No. 2: "11 Miles South and 2 Miles West of Valley Wells, Calif. (approximately)." AR_02895.
- Cinder No. 3: "11 ½ Miles South and 2 Miles West of Valley Wells, Calif. (approximately)." AR_02967.

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Production at the Cima Cinder Mine began no later than 1953. SUF 6.[6] Several individuals leased and operated the mine between 1953 and 1990. SUF 10.

In 1955, Congress passed the Surface Resources Act ("SRA"), Pub. L. No. 84-167, 69 Stat. 367. *Inter alia*, the act removed certain minerals, including cinders, from the list of minerals subject to location under the Mining Law of 1872. 30 U.S.C. § 601; *see also Baker v. United States*, 613 F.2d 224, 226 ("[C]ommon varieties of cinder . . . were removed from location under the mining laws on July 23, 1955 . . . ."). The Surface Resources Act grandfathered in mining claims which had already been located prior to its enactment. 30 U.S.C. § 615. Claims made before prior to the enactment of the SRA could, therefore, continue to be based upon cinders.

In 1979, Emerson A. Ray attempted to amend the legal description of the Iwo Jima claim by submitting new paperwork.[7] SUF 12; AR_02996. Plaintiff's claim is that the legal description recorded in 1948 was incorrect because it did not match the actual site of the claim located on the ground. Plaintiff has not explained why it took over thirty years to recognize and attempt to correct this error. Defendants argue that this attempted amendment was in fact the location of a new claim. Fed. Def.'s Response to Pl.'s Statement of Uncontroverted Facts ("FDRSUF") 12.

In 1991, J. Lorene Caffee, acting as trustee for the Emerson A. Ray and Fay R. Ray 1990 Trust, attempted to amend the legal descriptions of the three placer mining claims that made up the Cima Cinder Mine.[8] These attempted amendments were purportedly made to correct previous mistakes, including the

[6] Plaintiff claims that there was some evidence of marketable production dating back to 1949, which Defendant disputes.
[7] The updated legal description of the land described in this document was "N ½ SE ¼ and the S ½ S ½ NE 1.4 Sec. 17 T14N, R12E SBBM." SUF 12.
[8] The updated legal locations read as follows:

- Iwo Jima: "N ½ SE ¼ and the S ½ S ½ NE ¼ Sec. 17 T14N R12E SBBM." AR_02997.
- Cinder No. 2: "S ½ SE ¼ SE ¼, Sec. 19 and the SW ¼ SW ¼ SW ¼ Sec. 20 and the W ½ NW ¼ NW ¼ Sec. 29 and the W ½ SW ¼ NW ¼ Sec. 29 and the NE ¼ NE ¼ Sec. 30 and the SE ¼ NE ¼ Sec. 30 and the NE ¼ NE ¼ SE ¼ Sec. 30 T 14N R12E SBBM." AR_02897.
- Cinder No. 3: "SW ¼ Sec. 29 T14N R12E SBBM." AR_026969.

attempted 1979 amendment of the Iwo Jima claim. *See* AR_02997 (Iwo Jima attempted amendment made "to show the correct on-the ground-location and the acreage associated with the amended claim); AR_02897 (Cinder No. 2 attempted amendment made "to show correct on the ground location, as the previous ¼ section and section were incorrect, and to exclude excess acreage"); AR_02696 (Cinder No. 3 attempted amendment made "to show correct on ground location as the previous ¼ sections were incorrect"). Plaintiff has not explained why it took over forty years to recognize and attempt to correct these errors in the Cinder No. 2 and Cinder No. 3 claims. Plaintiff has not explained why the 1979 attempted correction of the Iwo Jima claim was done incorrectly, nor why Plaintiff took over a decade to recognize and attempt to correct this error.

Plaintiff argues that these changed legal descriptions reflect the correction of mistakes, and not an attempt to alter the land that it originally claimed. In other words, Plaintiff claims that there has only ever been one "actual location of the claims on the ground." Pl.'s Mem. in Supp. of Mot. for Summ. J. 8, ECF No. 49. Plaintiff's argument, therefore, is that it correctly located its claims on the ground in 1948; when it filed its location notices to memorialize that location, Plaintiff accidentally recorded incorrect legal descriptions that conflicted with the land it had claimed via stakes and monumentation in 1948. *See* Pl.'s Mem. in Supp. of Mot. for Summ. J. 16, ECF No. 49 ("[T]he original legal descriptions were made in error and . . . the claims have always actually been located where the amended legal descriptions describe."); *see also id.* at 22 ("All evidence outside the mistaken legal descriptions themselves indicates that the Rayco's mining claims have existed in their current location since the late 1940s, and that Rayco has neither attempted to move nor enlarge its claims at any time since."). In support for this position, Plaintiff cited a map prepared by BLM which indicates that original discovery monuments were found on the land that matches the 1991 legal description of Plaintiff's alleged claims. Pl.'s Mem. in Supp. of Mot. for Summ. J. 21, ECF No. 49; AR_02521. Plaintiff has also cited a map that shows that there have never been volcanic cinders to mine at the legal locations described in the 1948 location notices. Pl.'s Mem. in Supp. of Mot. for Summ. J. 18–20, ECF No. 49; AR_02309. Faced with minimal citations to an administrative record that spans thousands of pages and the passage of approximately seventy-five years, the Court can make no determinations at this time about what exactly happened in 1948.

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ii. Plaintiff's Patent Applications

In a letter dated September 20, 1991, the Emerson A. Ray and Fay R. Ray 1990 Trust applied to patent their claims which make up the Cima Cinder Mine. AR_00008. On May 7, 1992, BLM issued a First Half—Mineral Entry Final Certificate to the Emerson A. Ray and Fay R. Ray 1990 Trust for the patent in question; BLM also accepted purchase money for the patents. AR_00335. A First Half of Mineral Entry Final Certificate (FHFC) "is the DOI's administrative recording of an applicant's compliance with the initial paperwork requirement of the Mining Law. But, a patent is not issued until there has been a determination that the claim is valid." *Independence Mining*, 105 F.3d at 506 (footnote omitted). These patent applications also covered various mill sites associated with the Cima Cinder Mine. AR_0008–11.

In 1994, Congress passed the California Desert Protection Act ("CDPA"), Pub. L. No. 103-433, 108 Stat. 4471. *Inter alia*, CDPA created the Mojave National Preserve. *Id.* §§ 501–519. The Cima Cinder Mine is located on land within the preserve. Pl.'s Mot. for Summ. J. 5–6, ECF No. 49. Subject to valid existing rights, the land of the Mojave National Preserve was withdrawn from mineral entry. 16 U.S.C. § 410aaa-47.

BLM conducted a validity examination related to Plaintiff's patent applications. The results of that examination were submitted by the examiner in a report dated March 4, 1999. SUF 16. The 1999 Mineral Report was approved by the California Desert Department and was transferred to the California State Office on July 7, 1999. SUF 17. The report was then transferred again to the Washington, D.C. BLM office on August 2, 1999, for review by the BLM Directorate. SUF 18. After receiving comments from the BLM Directorate, that same examiner prepared an additional mineral report which was completed in September 2003. SUF 19. This report received technical approval from BLM on December 14, 2007, and was routed to DOI's Office of the Solicitor for review. AR_02478.

In November 2014, DOI's Office of the Solicitor transmitted the patent applications back to BLM to address what the Office deemed to be three significant issues with the report. Those issues were as follows: (1) "[w]hether amendments to the PMCs made in 1979 and 1991 constituted proper amendments

to location or were in effect relocations on common-variety mineral materials," (2) "[w]hether the lands under consideration for patent were accurately classified as chiefly valuable for building stone, as required by the Building Stone Placer Act (30 USC 161, Aug. 4, 1892), and (3) "[w]hether specific restrictions on mineral patents required under the Federal Land Policy Management Act (43 U.S.C. § 1781, 1976) and the California Desert Protection Act (16 U.S.C. § 410aaa-48, 1994) had been properly applied to the recommendations in the 2003 report." *Id.*

In 2017, the California State Office of BLM began reviewing these issues identified by the Office of the Solicitor. "Over the course of a site inspection on May 29-31, 2018, it was determined that the 2003 report had assumed the wrong locations of certain un-monumented Public Land Survey System (PLSS) section corners." *Id.* BLM conducted a partial resurvey of the land in 2019. *Id.* It then prepared an addendum report "to address and correct the issues with the 2003 report identified in the 2014 Solicitor's Office review and by the 2019 partial resurvey." *Id.*

On April 10, 2019, Plaintiff sued Defendant in the United States District Court for the District of Columbia, seeking a writ of mandamus compelling DOI to render a final determination on Plaintiff's patent applications. *See* Unopposed Mot. to Extend Timeline for Rendering a Final Determination on Patent Applications at 1, *Rayco v. Bernhardt*, No. 1:19-cv-01004-CJN (D.D.C. June 11, 2020), ECF No. 13. That case settled pursuant to an agreement which established a timeline for Defendant to reach a decision on Plaintiff's patent applications. *Id.*

On July 16, 2020, DOI issued its final determination regarding Plaintiff's patent applications. SUF 25. That decision held that all attempted patents, except for ten acres of the Cinder 2 claim, were invalid as post-1955 relocations of the claims staked in 1948. SUF 25; *see also* AR_03599–03601. Specifically, DOI found that "[a]ll three 'amended' locations took in new ground, except for 10 acres of the Cinder No. 2 mining claim, and all three 'amendments' were made after the date common varieties of cinder were withdrawn from the operation of the Mining Law." AR_03599–03601. According to DOI, this determination was based on its repeated holding that "where the lands or minerals are subsequently withdrawn from the operation of the Mining Law, a location notice cannot be considered an amended

location relating back to a location predating such withdrawal, to the extent such an amendment describes new land not included in the original location. Rather, such a location notice must be considered a new location or relocation as to those added lands, and the locator's rights as to the added lands, if any, date from the date of the 'amended' location." *Id.* DOI also invalidated nearly all attempted mill site patents because they were based on what it found to be invalid mineral locations. SUF 26; *see also* AR_03599–03601. DOI also denied patent to the remaining mill site acreage associated with the ten acres of the Cinder 2 claim because it found that acreage to be unpatentable non-mineral land under CDPA. SUF 26; *see also* Compl. ¶ 43, ECF No. 1. DOI indicated that its decision was final and not eligible for appeal to the Interior Board of Land Appeals. AR_03601.

Plaintiff filed suit on January 19, 2021, alleging that DOI had violated the Administrative Procedures Act ("APA") in reaching its determinations.

iii. Summary Timeline

For the assistance of the reader, the Court offers the following timeline summarizing the key events related to this case which occurred during the last seventy-five years.

- 1948: Plaintiff's predecessors in interest locate three claims (Iwo Jima, Cinder No. 2, and Cinder No. 3). The valuable material allegedly found at the site of these three claims is volcanic cinders. Location notices filed with the San Bernardino Country Recorders Office contain two forms of description: (1) legal description referring to the U.S. cadastral survey and (2) a rough geographic description. Allegedly, Plaintiff also located its claims via staking. Plaintiff claims that the legal descriptions contained in the filed location notices erroneously indicate areas which do not match the actual location staked on-the-ground by Plaintiff's predecessors in interest.
- 1955: The SRA removes volcanic cinders from the list of materials which can support location of a mining claim.
- 1979: Plaintiff attempts to amend the legal description of the Iwo Jima claim to match that

claim's alleged location on-the-ground. The attempted amendment still contains, according to Plaintiff, an erroneous legal description.

- 1991: Plaintiff updates the legal description of all three claims to match the on-the-ground location allegedly staked in 1948. Plaintiff alleges that the legal descriptions become correct for the first time. Subsequently, Plaintiff attempts to patent its claims.
- 1994: Congress creates the Mojave National Preserve through CDPA. Plaintiff's claims are contained within the newly designated Preserve.
- 2007: BLM grants technical approval to a report regarding Plaintiff's patent applications.
- 2014: DOI's Office of the Solicitor sends BLM's report back to BLM with questions for BLM to address.
- 2019: BLM prepares an addendum report addressing the Office of the Solicitor's questions. Plaintiff sues BLM for a writ of mandamus to force it to reach a decision on Plaintiff's patent applications; that case settles.
- 2020: BLM issues its final decision rejecting all but ten acres of Plaintiff's patent applications; BLM also rejects all mill site patents.
- 2021: Plaintiff sues BLM for violation of the APA.

III. Legal Standards

A. Motion for Summary Judgment

Summary judgment should be granted where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of . . . [the factual record that] demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party satisfies its initial burden, the non-moving party must demonstrate with admissible evidence that genuine issues of material fact exist. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585–86 (1986)

("When the moving party has carried its burden under Rule 56 . . . its opponent must do more than simply show that there is some metaphysical doubt as to the material facts."). "On an issue as to which the nonmoving party will have the burden of proof . . . the movant can prevail merely by pointing out that there is an absence of evidence to support the nonmoving party's case." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).

A material fact for purposes of summary judgment is one that "might affect the outcome of the suit" under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue of material fact exists where "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* Although a court must draw all inferences from the facts in the non-movant's favor, *id.* at 255, when the non-moving party's version of the facts is "blatantly contradicted by the record, so that no reasonable jury could believe it, [the] court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007). "Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment." *Soremukun*, 509 F.3d at 984.

In the case of cross-motions for summary judgment, each motion must be considered on its own merits. *Fair Hous. Council v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001). "It is well-settled in this circuit and others that the filing of crossmotions for summary judgment, both parties asserting that there are no uncontested issues of material fact, does not vitiate the court's responsibility to determine whether disputed issues of material fact are present." *United States v. Fred A. Arnold*, 573 F.2d 605, 606 (9th Cir. 1978).

B. Administrative Procedure Act

Pursuant to the APA, an agency decision will be set aside only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). "An agency's action is arbitrary and capricious if the agency fails to consider an important aspect of a problem, if the agency offers an explanation for the decision that is contrary to the evidence, if the agency's decision is so

implausible that it could not be ascribed to a difference in view or be the product of agency expertise, . . . or if the agency's decision is contrary to the governing law." *Lands Council v. Forester of Region One of the United States Forest Serv.*, 395 F.3d 1019, 1026 (9th Cir. 2005) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); 5 U.S.C. § 706(2)). "To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." 5 U.S.C. § 706.

"'[A] simple but fundamental rule of administrative law . . . is . . . that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action . . . .'" *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962) (quoting *Secs. & Exch. Comm'n v. Chenery Corp.*, 332 U.S. 194, 196 (1947). Put another way, "the courts may not accept . . . *post hoc* rationalizations for agency action." *State Farm*, 463 U.S. at 50. "It is well established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself." *Id.* (citing *Burlington Truck Lines*, 371 U.S. at 168). A court "may not supply a reasoned basis for the agency's action that the agency itself has not given, . . . [but] will uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285-286 (1974) (citing *Colorado Interstate Gas Co. v. Federal Power Comm'n*, 324 U.S. 581, 595).

C. Forms of Deference to Administrative Expertise

There are several forms of deference which a reviewing court may extend to an agency's interpretation of a statute.

i. *Chevron* Deference

Courts review agency interpretations of statutes which they are charged with administering pursuant to the *Chevron* doctrine. "First, always, is the question whether Congress has directly spoken to

the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-843 (footnotes omitted). "If a statute is ambiguous, and if the implementing agency's construction is reasonable, Chevron requires a federal court to accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (1984).

Prior to performing a *Chevron* analysis, courts must consider whether the situation in question is one to which *Chevron* would apply. Some courts refer to this as *Chevron* step zero, in a riff on *Chevron*'s famous two-step analysis. *See, e.g.*, *Walker Macy LLC v. U.S. Citizenship & Immigration Servs.*, 243 F. Supp. 3d 1156, 1166–67 (D. Or. 2017); *see also Oregon Rest. & Lodging Ass'n v. Perez*, 816 F.3d 1080, 1086 n.3 (9th Cir. 2016). Interpretations which are not "arrived at after, for example, a formal adjudication or notice-and-comment rulemaking" are not entitled to *Chevron* deference. *Christensen v. Harris Cnty.*, 529 U.S. 576, 587. More specifically, "[i]nterpretations such as those in opinion letters -- like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law -- do not warrant *Chevron*-style deference." *Id.*

ii. *Skidmore* Deference

"[W]hether or not they enjoy any express delegation of authority on a particular question [and are thus entitled to *Chevron* deference], agencies charged with applying a statute necessarily make all sorts of interpretive choices, and while not all of those choices bind judges to follow them, they certainly may influence courts facing questions the agencies have already answered." *United States v. Mead Corp.*, 533 U.S. 218, 227 (2001). "[A]n agency's interpretation may merit some deference whatever its form, given

the 'specialized experience and broader investigations and information' available to the agency . . . and given the value of uniformity in its administrative and judicial understandings of what a national law requires . . . ." *Id.* at 234 (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 139, 140 (1944)). "The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore*, 323 U.S. at 140. *Skidmore* deference is less complete than *Chevron* deference; *Skidmore* deference has been characterized as "'at least some added persuasive force.'" *Price v. Stevedoring Servs. of Am.*, 697 F.3d 820, 832 (9th Cir. 2012) (quoting *Metro. Stevedore Co. v. Rambo*, 521 U.S. 121, 136 (1997)).

IV. Discussion

A. Defendant's Denial of Plaintiff's Patent Applications Was Arbitrary and Capricious

i. Defendant's Decision and Rationale

Defendant's decision to deny Plaintiff's patent applications was articulated in a concise letter to Plaintiff dated July 16, 2020. AR_03599–03601. Defendant's articulated rationale for its rejection was that Plaintiff's 1979 and 1991 attempted amendments to its claims' legal descriptions were, in fact, relocations. AR_03600. Because the SRA withdrew cinders from location under the Mining Law in 1955, Plaintiff's relocations after that law's passage were void *ab initio*. *Id.* Defendant's decision focused exclusively on Plaintiff's attempts to amend its notices of location; it did not address the question of what land Plaintiff had actually located in 1948. *See* Def.'s Mem. in Supp. of Cross-Mot. for Summ. J. 19–20, ECF No. 56 ("It is thus of no consequence whether the BLM mineral examiners ever examined the lands described in the 1948 Notices to determine whether such markings could be found there . . . none were necessary to secure the locators' rights to the lands described as a matter of law.").

The Court must review Defendant's decision pursuant to the rationale it articulated in its decision letter.

ii. Defendant Failed to Consider an Important Aspect of the Problem

Plaintiff argues that in focusing solely on the question of amendment versus relocation, Defendant failed to consider what land it actually located in 1948. The Court agrees.

a. Defendant Ignored That There Were Multiple Ways for Plaintiff to Locate its Claims in 1948

The parties agree that the legal descriptions of Plaintiff's claims contained in the 1948 notices of location do not match the legal descriptions of the claims that Plaintiff attempted to patent in 1991. Pl.'s Reply in Supp. of Summ. J. 12–13, ECF No. 55 ("Yes, Emerson Ray was off in his original assessment of the claims' location *vis a vis* the official public surveys . . . ."). But Plaintiff argues that these legal descriptions are not the definitive record of what land it located back in 1948. Instead, Plaintiff believes that these legal descriptions are merely one erroneous part of an otherwise valid location established via staking and monumentation. Plaintiff contends that "the Government should have defaulted to the physical evidence, rather than ignoring it entirely. At the very least, the Government acted arbitrarily in refusing to examine ***any*** evidence of location outside the original and amended legal descriptions." Pl.'s Reply in Supp. of Mot. for Summ. J. 5, ECF No. 55.

Plaintiff frames its APA argument as a failure by Defendant to consider relevant laws, as dictated by local custom and written rules. But its argument is better articulated as a claim that Defendant failed to consider the aspect of the problem posed by a discrepancy between a location containing two contradictory elements: a written legal description and a location staked on-the-ground. This aspect of the problem is completely unaddressed in Defendant's rationale for denying Plaintiff's patent applications. In its briefs, Defendant addresses this question by arguing that Plaintiff's reference to the U.S. cadastral survey is the definitive measure of what it located in 1948. *See* Def.'s Reply in Supp. of Cross-Mot. for Summ. J. 1, ECF No. 56 ("[W]here the placer claims were on surveyed lands and explicitly delimited by legal subdivision—no other evidence is necessary or even relevant to the question of what land was actually located in 1948 (and relocated in 1979 and 1991))."

These arguments boil down to a narrow question: if a location notice refers to the legal subdivisions established by the U.S. survey, is that reference the definitive site of the location? If the answer is yes, then DOI had no need to consider other aspects of the problem. If the answer is no, then DOI failed to consider an important aspect of the problem: the role of Plaintiff's original 1948 location of its claims. For the following reasons, the answer is no and Defendant erred.

b. Effect of Reference to U.S. Survey in Location of a Mining Claim

The Mining Law states that state or federal law supersede local custom when present. 30 U.S.C. § 28 (2023) ("The miners of each mining-district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining-claim, subject to the following requirements . . . ."); *see also* 2 *American Law of Mining* § 33.01[4] (2d ed. 2023, ed. Cheryl Outerbridge & Margo MacDonnell) (noting that "federal law gives preference to state legislation over local custom").

In 1948, California had relevant legislation describing how one should locate a claim; that legislation takes priority over local custom and therefore provides the Court's analytical starting point. Cal. Pub. Res. Code §§ 2301–24 (1939). One possible option by which prospectors could locate a claim was to post "upon a tree, rock in place, stone, post, or monument, a notice of location, containing [1] the name of the claim, [2] name of the locator or locators, [3] date of location, [4] number of feet or acreage claimed, and [5] such a description of the claim by reference to some natural object or permanent monument as will identify the claim located." Cal. Pub. Res. Code § 2303(a) (1939).[9] Additionally, prospectors needed to "mark[] the boundaries so that they may be readily traced." *Id.* However, the statute also provided for an alternate mechanism for locating a placer claim. "Where the United States survey has been extended over the land embraced in the location, however, the claim may be taken by legal subdivisions and no other reference than those of such survey shall be required, and the boundaries of a

[9] The law was not amended between 1939 and 1948 (the relevant year here).

claim so located and described need not be staked or monumented. The description by legal subdivisions shall be deemed the equivalent of marking." Cal. Pub. Res. Code § 2303(b) (1939).

A plain reading of this statute suggests that these are two options (staking/monumenting versus description by legal subdivision) from which a prospector may select. There is no language in this statute supporting a preference for legal subdivision. Defendant argues that "describing the claimed lands by legal subdivision in the 1948 Notices gave Plaintiff rights to the identified lands even without marking the claim corners on the ground or otherwise posting the notice on the ground." Def.'s Mem. in Supp. of Cross-Mot. for Summ. J. 19, ECF No. 54. Therefore, Defendant reasons, because Plaintiff received a benefit by referring to the legal subdivision, the government should receive a corresponding benefit: the ability to rely on that reference to the subdivision rather than consider on-the-ground evidence. There is no support in the statute for this reasoning. Defendant cites to another California statute, § 2323, to support this argument: "Copies of the records of all instruments required to be recorded by this chapter, duly certified by the recorder in whose custody such records are, may be read into evidence under the same circumstances and rules as are provided by law for using existing copies of instruments relating to real estate, duly executed or acknowledged or proved and recorded." 1939 Cal. Stat. 1085. That statement plainly does not support the notion that reference to the U.S. survey renders other pieces of evidence irrelevant to the identification of land claimed by location.

Defendants also cite a provision of the Mining Law itself to support the notion that preference is given to the U.S. survey:

> Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; **but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.** Where placer-claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as

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> near as practicable with the United States system of public-land surveys, and the rectangular sub-divisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead [or pre-emption] purposes.

30 U.S.C. § 35 (emphasis added). Here, Congress expressed that placer claims should conform their description to the legal subdivisions outlined in the U.S. survey. Unfortunately, that preference is not directly on point with regards to the question on which the parties disagree. The phrasing is ambiguous and does not speak to allegedly mistaken citations to the U.S. survey.

Neither party has provided the Court with a definitive citation that resolves the primary question here. Accordingly, the Court has reviewed the cases cited by the parties and performed its own additional research. The findings of that analysis are presented below.

As a starting point, both parties extensively discussed *Kern Oil Co. v. Crawford*, 76 P. 1111 (Cal. 1903), in their briefs. *Kern Oil* involved a dispute between two prospectors as to whom had been the first to properly locate a mining claim on a certain parcel of land. *Id.* at 1111. The land in question had been surveyed and marked by the United States. *Id.* at 1112. The plaintiff in *Kern Oil* had properly complied with the various requirements for locating a claim on the disputed land but had erred when erecting monuments to demarcate that claim. According to the notice placed on the plaintiff's stakes, they had claimed the northeast quarter what the U.S. survey designated as section 32, township 28 south, range 28 east, M.D.M. However, the stakes were placed short of the bounds of section 32—specifically, the stake marking the northeast corner of the located claim was seventy-three feet west of where it should be and the stake marking the southeast corner of the located claim was twenty-four feet west of where it should be. In other words, the plaintiff had accidentally placed their stakes in the wrong place; instead of claiming the entirety of the northeast quarter of section 32, their on-the-ground markings had shaved off a sliver of

that parcel while claiming to encapsulate the full parcel. The defendant in *Kern Oil* had surveyed the land and discovered this error. Hoping to take advantage of the plaintiff's mistake, the defendant had attempted to locate that sliver of land. The plaintiff then sued for an injunction. Sitting *en banc*, the California Supreme Court ruled that the defendant had notice of the extent of plaintiff's claims by virtue of the on-the-ground stakes (which declared they were claiming the northeast quarter of section 32) and that the defendant should not be allowed to profit from the innocent mistake of the plaintiff. *Id.* at 1112–13 ("In this case the defendant had ample notice of the location of the quarter-section by plaintiff's grantors, -- she knew what they intended to take. If they made a mistake as to the location as to the west line, it did not in any way injure defendant. She will not be allowed to take advantage of a mistake which in no way injured her. She knew she was attempting to locate land claimed by the original locator."). Reasoning that 30 U.S.C. § 39 anticipated "that a sale of placer claims will ordinarily be made by legal subdivisions," the California Supreme Court found it important to preserve placer claims as defined by the U.S. survey. *Id.* at 1113. They also extolled the U.S. survey's value as a fixed and unchanging measurement of the nation's land. *Id.* at 1114.

With regards to the present case, *Kern Oil* can stand for three takeaways, some of which conflict when applied to this case. The first takeaway is that miners attempting to properly locate claims in good faith should not be punished for small mistakes. *See id.* at 1112 ("The object of the statute as to marking the location, so that its boundaries can be readily traced, is to notify the public that the claim has been located and is claimed under the mining laws of the United States. Whatever is sufficient to give this notice does give it. Technical accuracy, either in the location of the stakes or in the wording of the notice, is not required."). Second, the U.S. survey controls when in conflict with the location of stakes on the ground. And lastly, multiple sources of evidence should be evaluated when determining precisely what land is properly included in a given location. The first takeaway favors Plaintiff, while the second takeaway favors Defendant. But it is the final takeaway that is the most important—that multiple sources of evidence are to be considered when resolving questions about the boundaries of land claimed in a location.

The Court also found *Duryea v. Boucher*, 7 P. 421 (Cal. 1885) to be persuasive. In that case, a

location notice described a claim by reference to other nearby claims and by legal measurements as outlined by the U.S. survey. The California Supreme Court wrote as follows: "It makes no difference that the wrong legal subdivisions are inserted in the notice. These may be rejected as false where the remaining description sufficiently identifies the land, in accordance with the maxim *falsa descriptio non nocet cum de corpore constat*."[10] *Id.* at 422. Again, *Duryea* stands for a rejection of simplistic inquiries determined solely by legal description.

The parties also cited a number of cases interpreting laws from beyond California. To the extent that these cases may shine light on general principles in the law of mining, the Court considers them.

In *Skaw v. United States*, 13 Cl. Ct. 7 (1987), claimants filed location notices that inaccurately described the land they were attempting to claim. "The descriptions on the faces of the notices, as well as the markings in the field, reflect an intent to claim the placer gravels in the lands that straddle the river in the St. Joe River canyon. The descriptions in the notices, however, do not accurately identify the actual boundaries of the lands claimed and when plotted, do not reflect the intent to straddle the river and include the placer gravels. *Id.* at 92–93. Plaintiff quotes the following language from *Skaw*: "The intent of the locators, when apparent from the notices and the markings on the ground, controls the description of the claims." *Id.* at 93 (citing *Sturtevant v. Vogel*, 167 F. 448, 452 (9th Cir. 1909). Defendant attempts to distinguish this case by pointing out that it involved an "irregularly-shaped placer claim following [a] river." Def.'s Reply in Supp. of Mot. for Summ. J. 2, ECF No. 56. Having reviewed the case, the Court is not convinced that the irregularity of the placer claim's shape was an important factor for the deciding court. Accordingly, the case supports Plaintiff's argument that a conflict between the recorded location notice and the area marked on the ground is traditionally resolved with a holistic inquiry that evaluates the facts on the ground.

The parties also cite *Patsy A. Brings*, 119 IBLA 319 (1991). In that case, an original location notice referred to U.S. survey markers but identified a parcel of land different from the land that was mined.

[10] Roughly, a false description does no harm when its meaning is clear.

These facts closely parallel the facts at issue here, although the degree of error was significantly smaller (only 900 feet). IBLA noted that "[a]s a general rule, if the recorded description of a mining claim differs from its actual situs on the ground, the physical markings on the ground control, so long as they have been maintained." *Id.* at 327. IBLA gave the appellant in *Brings* the opportunity to provide evidence that her mine had always occupied the location she claimed it had, but she did not provide any such evidence. The court therefore ruled against her. Defendant attempts to differentiate *Brings* by pointing out that the claim in that case was not bounded by the public land survey. The Court is not persuaded by this differentiation, particularly because the claim at issue in *Brings* did refer to sections of the U.S. survey. *See id.* at 326. *Brings*, therefore, reinforces the principle mentioned in *Skaw* that a holistic evidentiary inquiry is the best way to resolve disputes about the land included in a location.

The parties extensively cite *R. Gail Tibbetts*, 43 IBLA 210 (1979). The prevalence of such citations is understandable; the case is important for articulating the distinction between an amended location and a relocation.[11] And while that question lurks in this case, *Tibbetts* does not shed significant light on our present inquiry (which description, if any, controls when there are contradictory descriptions in a location notice). The main thrust of *Tibbetts*, as the case relates to the present question, is that IBLA held that hearings were required to resolve questions of fact relating to the validity of a location claim. *Id.* at 229–230. Such a holding bolsters Plaintiff's challenge to Defendant's decision to decide this matter based purely on the location notices and without a hearing.

The Court's review of the above caselaw does not reveal a neat answer.[12] But some trends are clear

[11] An issue over which the parties argued extensively in their briefs. *See* Section IV-B, *infra*.

[12] The Court also found numerous cases cited by the parties to be inapposite. One such case is *Cal. Dolomite Co. v. Standridge*, 275 P.2d 823, 825 (Cal. Dist. Ct. App. 1954). The court in *Cal. Dolomite* was reviewing a lower court's finding that two claimants had invalid claims because there was no proof that they had undertaken the necessary steps (e.g., work to improve the land, monumenting, etc.) to substantiate their claims. All those claimants had done was file paperwork. The court held that the filing of such paperwork was not sufficient to make out a valid location. Here, we are attempting to resolve a dispute between two methods of identifying where a location was made. As such, Cal. Dolomite is of minimal value.

Plaintiff also cites *Houck v. Jose*, 72 F. Supp. 6 (S.D. Cal. 1947). In that case, the court resolved a dispute between two

both within California law and beyond. First, credit is given to good faith efforts to properly locate a mining claim. Second, questions related to what land a mining claim truly encompasses are often decided by considering multiple sources of evidence. Third, disputes between the site of a location claimed on paper and the site of a location claimed on the ground are often, but not always, resolved in favor of the location claimed on the ground. And lastly, the U.S. survey created a valuable and fixed system of measurement for much of the nation's land; its permanence and reliability are not to be lightly discarded.

In summary, Defendant's final decision did not address the question of what land Plaintiff located on-the-ground in 1948. While Defendant was seemingly aware of evidence related to this question, its reasoning reveals that it did not adequately or thoroughly consider it. *See Alcarez-Rodriguez v. Garland*, No. 21-411, 2023 U.S. App. LEXIS 34433, at *14–15 (9th Cir. Dec. 28, 2023) ("Yet the BIA's decision is devoid of any evaluation of whether Rodriguez's evidence in support of her application for asylum and related relief was material and not reasonably available to her at the time of the September 6, 2018 filing deadline. The BIA's acknowledgement of Rodriguez's personal circumstances is hardly a substitute for its failure to evaluate her legal arguments relating to those circumstances."). Defendant argues now that it was under no obligation to consider this question because Plaintiff referred to legal subdivisions established by the U.S. cadastral survey in its notices of location. But the Court is persuaded that the law does not support Defendant's position. Because Defendant failed to weigh the significance of evidence

competing claimants by favoring the claimant more capable of showing substantial compliance with the various requirements for proper location. See *id.* at 8 ("[A]ssuming that this group performed the development work required, the Court, having to choose between two claimants who trace their claims to the same date, must, perforce, favor the group which shows more substantial compliance with the law and produces the strongest evidence of satisfying all the requirements as to locations."). This dispute is quite different from the dispute at issue in this case. Moreover, the Court finds little relevance in the Houck court's decision not to consider a later amended notice of location as evidence of a proper initial location (which is the key fact cited by Plaintiff).

Lastly, Plaintiff also cites *Jim Collins*, 175 IBLA 389, 392 (2008). In that case, the IBLA set aside a decision of the Nevada State Office, Bureau of Land Management which held a location claim void ab initio because it could not be described in aliquot parts pursuant to the U.S. survey. IBLA found that BLM had failed to consider whether the claim in question could be validly described by metes and bounds, thus avoiding that claim's inability to be described via reference to the U.S. survey. *Id.* at 393. Because no party has alleged that the Cima Cinder Mine cannot be described pursuant to the U.S. survey, this case is largely irrelevant to the present analysis.

related to Plaintiff's 1948 on-the-ground location, its final decision was arbitrary and capricious. To be clear, Defendant was (and is) free to weigh that evidence proportionally to its persuasive power. The point is simply that Defendant must weigh it.

iii. Defendant's Position that It Need Not Consider Evidence Beyond the Notices of Location is not Entitled to Deference

Defendant's argument that the question of what land was located by Plaintiff in 1948 is irrelevant is not present in Defendant's explanation of its denial of Plaintiff's patent applications; therefore, the Court may not consider it to have been a part of Defendant's decision. The Court's inquiry could end there.

Even if it could be argued that such a rationale was implicit in Defendant's denial of the patent applications (as the 'path taken' by the agency), that argument would not be entitled to deference. Defendant's claim that a reference to the U.S. cadastral survey trumps any other form of location is based on its interpretation of California state law (to which the Mining Law defers). A federal agency's interpretation of state law is not entitled to *Chevron* deference. *See Renee v. Duncan*, 623 F.3d 787, 798 (9th Cir. 2010) ("And while we defer to the Secretary's interpretation of federal law under *Chevron*, we owe no deference to his interpretation of state law."); *see also Cal. PUC v. FERC*, 29 F.4th 454, 464 (9th Cir. 2022) ("FERC is entitled to deference in interpreting federal laws within its expertise. . . . But FERC does not have expertise in interpreting California state law. As such, FERC's interpretation of California law is not entitled to deference.")

Additionally, Defendant's position does not appear to be based on regulations or other binding agency interpretations and therefore fails to satisfy *Chevron* step zero. As far as the briefs and the Court's research reveals, Defendant's argument is being advanced in this lawsuit for the first time; accordingly, it is best characterized as a litigating position. "Without a basis in agency regulations or other binding agency interpretations, there is usually no justification for attributing to an agency litigating position 'the force of law' . . . essential to *Chevron* deference." *Price*, 697 F.3d at 830 (quoting *Mead*, 533 U.S. at 227). "An agency can ordinarily change its litigating position from one case to another, without any party having

grounds to complain that doing so violates the 'law.'" *Id.* (citing *Beck v. U.S. Dep't of Com.*, 982 F.2d 1332 (9th Cir. 1992)). There is no evidence that Defendant has applied the rationale articulated in this litigating position to previous cases, and Defendant is under no obligation to apply it to cases going forward. Because this argument is merely a litigating position, it is not entitled to *Chevron* deference.

The last remaining form of deference to which Defendant could be entitled is *Skidmore* deference. "Under *Skidmore*, the weight to be accorded the Secretary's interpretation 'depends upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'" *Scalia v. Alaska*, 985 F.3d 742, 748 (9th Cir. 2021) (alterations omitted) (quoting *Skidmore*, 323 U.S. at 140). Because Defendant's position here is not the result of thorough reasoning, is not explained in its decision letter, and is not particularly persuasive considering the caselaw reviewed by the Court, *Skidmore* deference does not apply.

Finally, the Court notes that Defendant has not argued that it is entitled to deference by virtue of its administrative expertise. Nevertheless, the Court raises this argument *sua sponte* as potentially relevant. *See Sierra Club v. Trump*, 929 F.3d 670, 676 (9th Cir. 2019) ("Defendants do not argue that their contrary interpretation of section 8005 is entitled to any form of administrative deference, and we hold that no such deference would be appropriate in any event.").

B. The Court Need Not Decide the Amendment or Relocation Question at This Time

There is an extensive debate in the parties' briefs about whether the 'amendments' that Plaintiff attempted to file in 1979 and 1991 are truly amendments or, rather, relocations. Broadly speaking, Defendant's position is that Plaintiff's attempted amendments were substantive changes to its initial location notices, which "have been construed as adverse to the original notice and result in the staking of a new mining claim with a new location date." Def.'s Mem. in Supp. of Cross-Mot. for Summ. J. 22, ECF No. 54. Regardless of the validity of this argument, it presupposes that Plaintiff's location has changed its site over time. For the reasons discussed above, Defendant has not considered a sufficient evidentiary

record to come to that determination.

It is therefore inappropriate for the Court to weigh in on this question at this time. *See Ctr. for Biological Diversity v. United States Forest Serv.*, 925 F.3d 1041, 1047 ("The rule against advisory opinions is 'the oldest and most consistent thread in the federal law of justiciability,' reflecting the same core considerations that underlie the justiciability doctrine more generally.") (quoting *Flast v. Cohen*, 392 U.S. 83, 96 (1968)). BLM must first determine what land Plaintiff located back in 1948. Without an answer to that question, there is no way that the Court can resolve the question of whether subsequent updated location notices were amendments, relocations, or something else. The Court does note, however, that BLM's arguments regarding this question appear likelier to be entitled to some form of deference.

C. Defendant's Denial of Plaintiff's Mill Sites Patents Was Valid Under the Law

Unlike the amendment or relocation question, it is appropriate for the Court to resolve the parties' dispute about the application of CDPA at this time. Defendant applied its reading of CDPA in its denial of mill sites associated with the ten acres of land which it found Plaintiff was entitled to patent. The validity of those patent rights was based on the fact that those ten acres have been constant to Plaintiff's claims across time, i.e., they were a part of Plaintiff's alleged claims in 1948, 1979, and 1991. No anticipable change in circumstances could lead Defendant to reverse its decision to allow the patenting of those ten acres. Therefore, no matter the outcome of the Court's remand of Plaintiff's other patent claims to BLM, Defendant is near certain to apply CDPA to some piece of land which Plaintiff is entitled to patent.

i. The Law's Structure Supports Defendant's Reading

Plaintiff alleges that Defendant's denial of six mill sites associated with the ten acres of the Cinder No. 2 claim which Defendant determined to be valid was based on an erroneous interpretation of CDPA. Defendant argues that its interpretation of the law is correct and reasonable. The parties agree that the relevant statute is 16 U.S.C. § 410aaa-48, which reads as follows:

> **Subject to valid existing rights**, all mining claims located within the preserve shall be subject to all applicable laws and regulations applicable to mining within units of the National Park System, including section 1865(b) of Title 18 and subchapter III of chapter 1007 of Title 54, and **any patent issued after October 31, 1994, shall convey title only to the minerals together with the right to use the surface of lands for mining purposes**, subject to such laws and regulations.

16 U.S.C. § 410aaa-48 (emphasis added). The parties dispute how to interpret this statute. Defendant's position is that the second italicized provision above ("any patent issued after October 31, 1994 shall convey title only to the minerals") is intended to "ensure[] that the United States would always retain some ownership interest" in lands patented under the Mining Law after the enactment of the CDPA. Def.'s Mem. in Supp. of Cross-Mot. for Summ. J. 28, ECF No. 54. Accordingly, Defendant claims that this statute prohibits the issuance of patents for mill sites located within the CDPA's protected area, because such patents would be for more than just minerals. *Id.* at 26. Plaintiff's position, in contrast, is that the first emphasized clause ("[s]ubject to valid existing rights") acts as a grandfather clause that protects Plaintiff's ability to patent mill sites. Pl.'s Mem. in Supp. of Mot. for Summ. J. 27–28, ECF No. 49. A plain reading of the text does not provide a simple answer as to which position is correct. Instead, the Court must consider the parties' arguments regarding the structural interplay of multiple sections.

Defendant responds to Plaintiff's claim by arguing that the first italicized phrase is limited to the first half of the sentence that comprises the section. In other words, "[s]ubject to valid existing rights" is a grandfather clause that applies only to the portion of the statute which states that "all mining claims located within the preserve shall be subject to all applicable laws and regulations applicable to mining within units of the National Park System, including section 1865(b) of Title 18 and subchapter III of chapter 1007 of Title 54." To bolster this reading, Defendant argues that, prior to the enactment of CDPA, there was a class of lands in the preserve which could be mined without compliance with federal mining regulations. Defendant describes these lands as "private inholdings within the BLM-managed public lands being added to the Preserve." Def.'s Mem. in Supp. of Cross-Mot. for Summ. J. 28, ECF No. 54. It is Defendant's position that "[t]he first clause of section 508 [codified as 16 U.S.C. § 410aaa-48] necessarily recognizes that those non-regulated, pre-CDPA, private inholdings had 'valid existing rights' to continue

to conduct mining operations free of federal regulation after the inclusion of the surrounding lands in the Preserve, just as they had before the CDPA." *Id.* Defendant then reasons that the second half of the statute describes a separate category of lands: those that would be patented after CDPA's enactment. Because the federal government was to only award mineral rights going forward, the retention "of federal ownership in 'any' lands thereafter patented under the Mining Law in the Preserve ensured that any mining operations on those lands would have to comply with National Park Service regulations." *Id.* Defendant's parsing of this statute seems plausible on its face and Plaintiff does not specifically respond to the distinction Defendant attempts to draw.

Instead, Plaintiff contends that the "subject to existing rights" language extends to the entire statute. Pl. Mem. in Supp. of Mot. for Summ. J. 28, ECF No. 49.[13] Per this reading, the statute's restriction which only permits the issuance of mineral patents is subject to Plaintiff's existing rights; because Plaintiff already had a right to patent the land and minerals, the restriction does not apply. But, as Defendants point out, this reading strains the meaning of the immediately preceding section of the law:

> **Subject to valid existing rights, all Federal lands within the preserve are hereby withdrawn** from all forms of entry, appropriation, or disposal under the public land laws; **from location, entry, and patent under the United States mining laws**; and from disposition under all laws pertaining to mineral and geothermal leasing, and mineral materials, and all amendments thereto.

16 U.S.C. § 410aaa-47 (emphasis added). Defendant reads § 410aaa-47 as permitting "patents to continue to be issued within the Preserve provided that the right to a patent accrued before enactment of the CDPA,"

[13] As support, Plaintiff cites *Paroline v. United States*, 572 U.S. 434 (2014) for the proposition that "[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *Id.* (quoting *Paroline*, 572 U.S. at 447). The Court finds this citation unpersuasive; *Paroline* concerned the interpretation of a statute which contained an enumerated list. The final item in that list was a catchall provision which also contained a proximate cause requirement. The Supreme Court reasoned that the proximate cause requirement in that final catchall suggested that a proximate cause requirement was implied in the other components of the enumerated list. The Supreme Court also invoked numerous interpretive canons to arrive at this conclusion. For these reasons, *Paroline* does not control how this Court reads § 410aaa-48.

while § 410aaa-48 "requires that all patents thereafter issued pursuant to the savings clause in [§ 410aaa-47] convey only the minerals." Def.'s Reply in Supp. of Cross-Mot. for Summ. J. 6, ECF No. 56. If the phrase 'subject to existing rights' in § 410aaa-48 applied to the restriction to only issue mineral patents, then § 410aaa-48 would be redundant to § 410aaa-47; both sections would simply not apply to anyone with a patent right which had accrued before the enactment of CDPA. But reading the statutes together gives meaning to each and invokes the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989) (citing *United States v. Morton*, 467 U.S. 822, 828 (1984)). It also prevents creating redundancy within CDPA. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("We are thus 'reluctant to treat statutory terms as surplusage' in any setting.") (quoting *Babbitt v. Sweet Home Chapter, Communities for Great Ore.*, 515 U.S. 687, 698 (1995)).

The Court is persuaded by Defendant's conjunctive reading of § 410aaa-47 and § 410aaa-48. § 410aaa-47 withdraws the federal land of the Mojave preserve from location, entry, and patent under the U.S. mining laws, with a grandfather clause to permit the issuing of patents to those who had already accrued such rights prior to the enactment of CDPA. § 410aaa-48 limits any patents thereby issued to only convey mineral rights. That restriction is not subject to a grandfather clause despite the appearance of similar language at the start of the section, because that language only applies to the first half of the section.

ii. Legislative Intent Supports Defendant's Reading

Defendant supplements its plain reading of the statute with references to legislative purpose. *See U.S. Aviation Underwriters, Inc. v. Nabtesco Corp.*, 697 F.3d 1092, 1097 ("In the task of statutory interpretation, 'our purpose is always to discern the intent of Congress.'") (quoting *Amalgamated Transit Union Loc. 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.*, 435 F.3d 1140, 1146 (9th Cir. 2006)). Defendant cites the CDPA's findings that, prior to its enactment, the "Mojave Desert area [was] . . . afforded only impermanent administrative designation as a national scenic area," but that the area "possesses outstanding natural, cultural, historical, and recreational values meriting statutory designation and recognition as a unit of the National Park System." 16 U.S.C. § 410aaa-41(1), 41(2). Accordingly,

Congress found that "the Mojave Desert area should be afforded full recognition and statutory protection as a national preserve." 16 U.S.C. § 410aaa-41(3). Defendant argues that the legislative purpose of the CDPA "supports the conclusion that Congress intended to increase protections for the Preserve by applying the patenting restriction to 'any' patent issued thereafter, thus ensuring continuing Park Service regulatory jurisdiction over mining operations." Def.'s Mem. in Supp. of Mot. for Summ. J. 29, ECF No. 54.

In response, Plaintiff unconvincingly argues that Defendant "drastically overstates the environmental protection purposes of the CDPA." Pl.'s Reply in Supp. of Mot. for Summ. J. 16, ECF No. 55. Plaintiff offers no other legislative purpose that the CDPA may have been attempting to achieve. Instead, what Plaintiff truly argues is that these statements of Congressional intent are insufficiently direct enough to justify a retroactive application of the law. *See id.* at 17–18 ("The CDPA's lack of a clear statement of intent to apply the provision in question retroactively to pending patent applications like Rayco's dooms the Government's argument."). The Court will address the retroactivity argument separately; however, there can be no doubt that the environmental protection of the Mojave Desert was an important goal of Congress in passing the California Desert Protection Act. *See also Singh v. Gonzales*, 499 F.3d 969, 977 (9th Cir. 2007) ("Although statutory titles are not part of the legislation, they may be instructive in putting the statute in context.") (citing *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998)).

iii. Legislative History Supports Defendant's Reading

Defendant also invokes legislative history to support its reading. *See Barstow v. IRS (In re Markair, Inc.)*, 308 F.3d 1038, 1043 ("When a statute's text is ambiguous, we look to legislative history as an aid to discerning congressional intent.") (citing *Merkel v. Commissioner*, 192 F.3d 844, 848 (9th Cir. 1999)). Defendant references the Senate Report's description of the relevant section of CDPA, which reads as follows:

Section 508 [codified as 16 U.S.C. § 410aaa-48] states that subject to valid existing rights, all

> mining claims located within the park will be subject to all applicable laws and regulations applicable to mining within units of the National Park System, including the Mining in the Parks Act. Patents issued after the date of enactment of this title will convey title only to the minerals together with the right to use the surface of lands for mining purposes subject to such laws and regulations.

103 S. Rpt. 165. Defendants point out that this description parallels their proposed two-part reading of 16 U.S.C. § 410aaa-48. To the limited extent that legislative history is helpful, the Court agrees and finds this citation to have some persuasive value.

iv. Defendant Has Not Retroactively Applied CDPA

Plaintiff argues that Defendant's reading of the statute results in an improper retroactive application of CDPA.

First, Plaintiff argues that Defendant's delay in processing its patent application resulted in the intervening enactment of the CDPA. Pl.'s Mem. in Supp. of Mot. for Summ. J. 30, ECF No. 49. Defendant bizarrely responds to this argument by claiming that Plaintiff's own inadequate documentation resulted in delay. *See* Def.'s Mem. in Supp. of Cross-Mot. for Summ. J. 34, ECF No. 54 ("While the Trust submitted patent application CACA28826 in September 1991, the Trust did not submit sufficient documentation for BLM to issue the FHFC until May 7, 1992."). CDPA was passed in 1994. Even if Plaintiff delayed in submitting their documents until 1992, the completed patent application was still submitted before the law's enactment. Defendant's argument can be construed as pointing out that Plaintiff's inaction was a contributing factor to its delay in processing that patent application, but it remains true that Plaintiff's application was submitted prior to the enactment of CDPA.

The question therefore becomes the following: what is the significance of Plaintiff having submitted a completed patent application prior to CDPA's enactment?

Plaintiff argues that applying CDPA, a law enacted in 1994, to its completed application submitted in 1992 would be a retroactive application of the law. Pl.'s Mem. in Supp. of Mot. for Summ. J. 27–31, ECF No. 49. Defendant responds to this contention by arguing that it did not apply CDPA retroactively. Specifically, Defendant argues that it did not use the withdrawal provision of 16 U.S.C. § 410aaa-47 to invalidate Plaintiff's claims. Def. Reply in Supp. of Cross-Mot. for Summ. J. 7, ECF No. 56. Rather, Defendant continued to recognize those claims pursuant to the statute's "subject to any existing rights" language. And Defendant contends that its application of 16 U.S.C. § 410aaa-48's limitation of patents to mineral rights was not retroactive because it did not apply that restriction to a patent which had already been issued. *Id.* This argument is persuasive in light of how the Ninth Circuit has evaluated similar claims through a Fifth Amendment takings lens.

In *Independence Mining Co. v. Babbitt*, the Ninth Circuit held that rights do not attach to a pending patent application until the application has been determined to be valid by the Secretary of the Interior. 105 F.3d 502, 508 (9th Cir. 1997). That validity determination rests, in part, on BLM's performance of a mineral report and the Secretary's review of the resulting report—exactly the stage at which Plaintiff's patent applications ran into trouble, resulting in the Secretary sending BLM's report back to the agency in 2014. Pursuant to this reasoning, no taking has occurred here. Plaintiff had no property right to a patent when the CDPA was enacted because its application had not been validated. This reasoning also supports Defendant's argument that it did not apply 16 U.S.C. § 410aaa-48 retroactively; instead, Defendant applied that statute at the time that the patent was to be issued—which the Ninth Circuit has held to be the anchor point for the establishment of property rights in a patent.

V. Vacatur and Remand is the Appropriate Remedy

Having concluded that Defendant violated the APA when it failed to consider multiple sources of evidence to determine the site of Plaintiff's 1948 location, the Court must consider the appropriate remedy.

"Vacatur is the standard remedy for violation of the APA." *California v. United States BLM*, 277

F. Supp. 3d 1106, 1125 (citing *Se. Alaska Conservation Council v. U.S. Army Corps of Eng'rs*, 486 F.3d 638, 654 (9th Cir. 2007), *rev'd on other grounds sub nom. Coeur Alaska v. Se. Alaska Conservation Council*, 557 U.S. 261 (2009)); *see also* 5 U.S.C. § 706(2)(A) ("The reviewing court shall . . . set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]").

Plaintiff's complaint sought the vacatur and remand of Defendant's denial of patent. Compl. 21, ECF No. 1. But in a proposed order attached to Plaintiff's motion for summary judgment, Plaintiff's requested relief had morphed into an order for vacatur, remand, and the granting in full of Plaintiff's patent applications. ECF No. 49-3. While Plaintiff concedes that "courts adjudicating APA claims generally limit themselves to remanding to the agencies for further consideration of decisions lacking adequate explanation," Plaintiff argues that the Court has the flexibility to order more specific relief. Pl.'s Reply in Supp. of Mot. for Summ. J. 19–20, ECF No. 55. But Plaintiff has offered minimal justification for why the Court should depart from the Ninth Circuit's standard remedy. Plaintiff suggests that Defendant has "engaged in unreasonable delay or bad faith," but no evidence of bad faith has been provided. And while the Court notes that this matter has been ongoing in one form or another since Plaintiff filed its patent applications in 1991, Plaintiff is not free of blame for this delay. Its unexplained choice to wait over forty years to begin the patent process complicated questions of law and fact for both Defendant and the Court.

The Court also stresses that Defendant's consideration of additional evidence upon remand may validly lead Defendant to the same conclusion. The parties have argued this case on legal grounds, not factual ones. Accordingly, they have not presented sufficient factual briefing for the Court to confidently evaluate the on-the-ground situation of Plaintiff's location in 1948. Given the amount of time that has elapsed, Plaintiff may have difficulty convincing Defendant that it correctly located its claims all those decades ago. The outcome of this remand is left to Defendant's expertise once it has considered the appropriate evidentiary record.

However, Defendant is reminded that Plaintiff's patent applications were first filed in 1991 and a final decision was not reached until 2020. Moreover, that decision was only reached after Plaintiff sued

for a writ of mandamus to compel Defendant to decide; Defendant settled that case by agreeing to make a decision pursuant to a specified timeline.[14] On remand, Defendant is instructed to proceed with appropriate speed to ensure that this dispute can finally be resolved.

VI. Conclusion

The Court began its analysis by considering whether DOI's decision not to consider evidence regarding what land Plaintiff had located in 1948 was contrary to governing law and thus in conflict with the APA. After a review of the relevant caselaw, the Court found that trends in the caselaw required DOI to look at a fuller evidentiary record. The Court thus found that DOI violated the APA in its blanket denial of Plaintiff's patent applications. The Court VACATES and REMANDS Plaintiff's patent applications back to DOI for a fuller review. The Court expresses no view as to what outcome a fuller inquiry should result in.

Having found that the question of what land Plaintiff had located in 1948 to have been inadequately considered, the Court declined to weigh in on the question of whether subsequent updates to the legal description of Plaintiff's claims constituted amendments or relocations. Answering that question at this time would have been premature.

Lastly, the Court reviewed DOI's interpretation of the CDPA and found it to be correct. DOI therefore did not violate the APA in its decision to deny patent applications for mill sites associated with the ten acres of Plaintiff's Cinder No. 2 claim to which DOI found Plaintiff entitled to patent. The Court therefore GRANTS IN PART Defendant's motion for summary judgment.

For the aforementioned reasons, Plaintiff's motion for summary judgment is GRANTED IN PART

[14] The Court acknowledges that "plaintiff's previous mandamus lawsuit was resolved through settlement without any finding by this court of unreasonable delay or any admission by the Secretary of delay." Def.'s Mem. in Supp. of Cross-Mot. for Summ. J. 34 n.37, ECF No. 54.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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Title	*Rayco v. David Bernhardt*		

and DENIED IN PART. Defendant's cross-motion for summary judgment is also GRANTED IN PART and DENIED IN PART.

IT IS SO ORDERED.

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