

DUANE L. AND WYOMA I. PEARSON ET AL.

IBLA 88-476, 88-477

Decided March 28, 1990

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. W MC 230140, W MC 235678-81, W MC 230139, W MC 235774, and W MC 235775.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Repealers--Federal Land Policy and Management Act of 1976: Withdrawals--Mining Claims: Lands Subject to--Withdrawals and Reservations: Generally--Withdrawals and Reservations: Reclamation Withdrawals

A mining claim located on lands withdrawn for reclamation purposes under the first form is null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding repeal of the statute authorizing the initiation of such withdrawals.

APPEARANCES: Duane L. and Wyoma Pearson, Thomas L. and Patti J. O'Mara, pro sese.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Duane L. and Wyoma Pearson and Thomas L. and Patti J. O'Mara have appealed from separate decisions of the Wyoming State Office, Bureau of Land Management (BLM). The Pearsons appeal BLM's May 10, 1988, decision declaring the Golden Butterfly Nos. 1-5 placer mining claims (W MC 230140, W MC 235678- W MC 235681), null and void ab initio. The O'Maras appealed BLM's May 19, 1988, decision declaring the Golden Pegasus Nos. 1-3 placer mining claims (W MC 230139, W MC 235774, and W MC 235775), null and void ab initio. These claims were declared null and void ab initio because they were located on lands which had been withdrawn from all forms of appropriation under the public land laws, including the mining laws by a first-form reclamation withdrawal. Because of the similarity of issues involved, the appeal of the Pearsons (IBLA 88-476) and that of the O'Maras (IBLA 88-477) have been consolidated.

The subject mining claims were located on May 12 and May 16, 1986, and February 4 and February 8, 1988. The location notices indicate the claims are all situated in T. 56 N., R. 106. W., secs. 3, 4, 9, and 10, sixth principal meridian, Park County, Wyoming.

BLM declared these claims null and void ab initio stating in the May 10 and May 19, 1988, decisions:

Pursuant to Departmental Order 2515 of April 7, 1949 (14 FR 1937), the lands were withdrawn, under the first form Bureau of Reclamation withdrawal, as provided for by Section 3 of the Act of June 17, 1902, (32 Stat. 388) which segregates the lands from mineral location on the date of the withdrawal which was July 9, 1951.

Where it may be observed that the lands were not open to entry at the time the claims were located, there is no necessity for the Government to initiate formal contest proceedings. Rudolph Chase, 8 IBLA 351, 353 (1972).

In their statement of reasons for appeal, appellants assert that they have fulfilled their obligation to check and see if these lands were open to mining, but that BLM and other agencies did not inform them that they had located these claims in a possible withdrawal area. They assert they had continual contact with BLM while they did work on the claims and made the annual filing of assessment work, but were never informed that there was any question as to the validity of the claims. Appellants request that the claims be reinstated.

[1] The record confirms that the lands encompassing appellants' mining claims were withdrawn from public land entry for the Missouri River Basin Project, Wyoming, by a Departmental Order dated April 19, 1951, and noted on the land records July 9, 1951. The order withdrew certain lands for reclamation purposes pursuant to section 3 of the Act of June 17, 1902, 43 U.S.C. § 416 (1970), repealed in part effective October 21, 1976, section 704(a), Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2792. The repeal did not affect outstanding reclamation withdrawals. Those were expressly continued, subject to review by the Secretary under section 204(l) of FLPMA, 43 U.S.C. § 1714(l) (1982).

It is well established that a mining claim located on a date when the lands are subject to a first-form reclamation withdrawal is null and void ab initio. William B. Rawlings, 85 IBLA 243 (1985); Ronald W. Ramm, 67 IBLA 32 (1982). The lands in question were subject to a first-form reclamation withdrawal at the time the appellants located their claims. For this reason, the lands were not open to mineral location in 1986 and 1988. Lands which have been withdrawn from location under the mining laws remain so withdrawn until there is a formal revocation or notification of the order of withdrawal.

We note there is no documentation in the record to suggest that a formal revocation has occurred. Although the Bureau of Reclamation has indicated that it is no longer interested in maintaining the lands in a withdrawal status and has notified BLM of its intent to relinquish these lands, there has been no formal application to revoke the withdrawal.

Nor has there been any action taken to remove the withdrawal notation from BLM's land records. Thus, BLM properly declared appellants' mining claims null and void ab initio.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

John H. Kelly
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge