

WILLIAM M. STOKES
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JEFFERY B. HULEN

IBLA 88-94

Decided June 5, 1990

Appeal from a decision of the Utah State Office, Bureau Land Management, declaring mining claims null and void ab initio. U MC 292903 through U MC 292914.

Reversed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Revocation and Restoration

Where a Secretarial order withdrawing land from the location of mining claims is amended by a subsequent public land order deleting certain land from the withdrawal and BLM has administered the land as unwithdrawn, a decision declaring mining claims located thereafter on land deleted from the withdrawal to be null and void ab initio will be reversed.

APPEARANCES: William M. Stokes, Salt Lake City, Utah, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BYRNES

On behalf of himself and the other locators of the Cleiome Nos. 33-44 mining claims, U MC 292903 through U MC 292914, William M. Stokes has appealed from the October 21, 1987, decision of the Utah State Office, Bureau of Land Management (BLM), declaring the mining claims null and void ab initio. The decision states:

The subject mining claims are located entirely on land closed to mineral entry. Pursuant to a Secretarial Order, dated April 29, 1942, land in T. 5 S., R. 10 W., SLM, were withdrawn from location for the War Department. Although the withdrawal as to these lands was revoked by PLO 678, dated October 31, 1950, these lands have not been restored to entry.

Appellants have provided a number of documents showing the history of withdrawals affecting this particular township. The historical index shows that the entire township was withdrawn by Secretarial Order No. 1900444 K for the War Department. Several nearby townships were withdrawn by Exec.

Order No. 9053 for use as a chemical warfare range. 7 FR 840 (Feb. 10, 1942). Public Land Order No. (PLO) 678 of October 24, 1950, 15 FR 7299 (Oct. 31, 1950), revoked Exec. Order No. 9053 but again withdrew all of the land previously withdrawn by that order. PLO 678 also withdrew surrounding land, including some of the land withdrawn under Secretarial Order No. 1900444 K. However, in Tps. 5 and 6 S., R. 10 W., PLO 678 only withdrew "those portions lying west and southwest of the summit of Cedar Mountain Range." When this description was amended in 1955 to include a series of courses and distances, the correction not only noted PLO 678 but also Secretarial Order No. 1900444 K. 20 FR 9161 (Dec. 9, 1955).

Appellant contends that Secretarial Order No. 1900444 K was corrected to define the withdrawn area as not including land to the east of Cedar Mountain. Indeed, to the extent that PLO 678 was a repromulgation of Secretarial Order No. 1900444 K as well as Exec. Order No. 9053, the land east of Cedar Mountain was deleted. Citing the historical index, appellant notes that BLM has issued oil and gas leases and school land patents in the area east of Cedar Mountain, indicating that BLM does not regard the area as withdrawn.

BLM issued school land patent 43-65-0067 for secs. 2, 16, and 36 located in T. 5 S., R. 10 W., on September 23, 1964. Section 6 of the Utah Enabling Act, ch. 138, 28 Stat. 109 (1894), granted the State secs. 2, 16, 32, and 36 of each township to support the schools. Under the school land grants, title passed immediately as to surveyed land, but for sections surveyed after enactment, title did not fix until approval of a survey. See United States v. Wyoming, 331 U.S. 440, 443-44 (1947), and cases cited therein. Section 6 of Utah's Enabling Act expressly provided that school sections

embraced in permanent reservations for national purposes shall not * * * be subject to the grants * * * nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants * * * until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

Because PLO 678 indicates that the township was not surveyed at the time that order was issued or at the time of the prior withdrawal under Secretarial Order No. 1900444 K, no title to any sections in the township could pass to the state until the withdrawal had been revoked. A copy of a worksheet provided by appellant shows that in 1963, BLM regarded Secretarial Order No. 1900444 K as precluding conveyance of sec. 32 to the State, but that secs. 2, 16, and 36 which are east of Cedar Mountain could be patented. This action compels the conclusion that BLM viewed this portion of T. 5 S., R. 10 W., east of Cedar Mountain range as no longer withdrawn.

[1] In Harry J. Ayala, 99 IBLA 19 (1987), we held that when a withdrawal of land from location of mining claims is amended by a subsequent public land order deleting certain land from the withdrawal, a decision declaring mining claims located thereafter to be null and void ab initio will be reversed. Our application of this principle to the instant case draws added force from the fact that BLM has treated the land as open. See Dolores Olsen, 45 IBLA 232 (1980).

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

James L. Byrnes
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

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