

DAVID R. CLARK

IBLA 90-232

Decided June 21, 1991

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the Honey Bee Spring lode mining claim null and void ab initio. OR MC 124192.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

A mining claim located on lands previously statutorily withdrawn by the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §§ 544-544p (1988), is null and void ab initio.

APPEARANCES: David R. Clark, pro se, White Salmon, Washington.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

David R. Clark has appealed from a February 8, 1990, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Honey Bee Spring lode mining claim (OR MC 124192) null and void ab initio. The Honey Bee Spring lode claim was located on July 21, 1989, and the location notice was filed with BLM for recordation on the same date. The location notice describes the claim as situated in the NE¼ SE¼ of sec. 6, T. 5 N., R. 10 E., Willamette Meridian, Klickitat County, Washington. The claim is within the Gifford Pinchot National Forest.

The Honey Bee Spring claim was found null and void ab initio because the land located by that claim had been withdrawn from location, entry, and patent under the United States mining law to protect and provide for the enhancement of the resources of the Columbia River Gorge (P.L. 99-663, 100 Stat. 4289), effective November 17, 1986 (Decision at 1). BLM states also that the "lands are further segregated by Forest Exchange Application WAOR 43681." Id.

Section 9(d) of the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544g(d) (1988), authorizes and directs the Secretary of Agriculture "to acquire by exchange any parcel of unimproved forest land * * * within the boundaries of the special management areas * * * if, after November 17, 1986, * * * such private forest land owner offers to

the United States such parcel of forest land." Section 9(d)(5) of the Act, 16 U.S.C. § 544g(d)(5) (1988), identifies certain forest lands "as candidate lands for exchanges" pursuant to section 9, and includes sec. 6, T. 5 N., R. 10 E. For these candidate lands, the Act provides:

Subject to valid existing rights, such lands are hereby withdrawn from all forms of entry or appropriation or disposal under the public land laws, and from location, entry, and patent under the United States mining law, and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto until the Secretary determines such lands are no longer needed to complete exchanges authorized by this section: Provided, that such period shall not extend beyond five years. [Emphasis in original.]

16 U.S.C. § 544g(d)(5) (1988).

The record contains a master title plat depicting the lands in sec. 6 as temporarily withdrawn for a Forest Service exchange bearing serial No. OR 43681 and a land status computer printout confirming that sec. 6 had been temporarily withdrawn and is the subject of proposed Forest Service exchange OR 43681.

On appeal, Clark asserts that he has explored and tested his mining claim for platinum and gold, and that the land within his claim boundaries "has been raped by clear-cut logging approved by the US Forest Service since 1965" and is marked for further logging as of February 8, 1990 (Clark's Statement of Reasons at 1). He further states that he "wish[es] to preserve said land that said mining claim is on and not let it be indiscriminately logged and devastated as it has been in past years since 1957 when [he] first filed [his] mining rights claim." Id. at 2. He asserts that mining claims that were filed in 1957 hold prior rights to the subject withdrawal. Id. at 1.

[1] Clark's arguments are unavailing. The only location notice for the Honey Bee Spring claim in the record gives the date of location as July 21, 1989, ^{1/} which is subsequent to November 17, 1986, the effective date of the Columbia River Gorge National Scenic Area Act. That statutory withdrawal rendered the land embraced by Clark's mining claim unavailable for location. Andrew Van Atta, 106 IBLA 304, 306 (1989). The location of a mining claim on lands which are withdrawn at the time of the location confers no rights on the locator and the claim is properly declared null and void ab initio. Kathryn J. Story, 104 IBLA 313, 315 (1988).

Clark's desire to deter further clear-cutting does not create rights not otherwise authorized by law. If his claim were valid, it would provide no legal impediment to the Forest Service sale of the timber. The Surface

^{1/} If Clark had located his claim before Nov. 17, 1986, the subsequent withdrawal would not have defeated his claim.

Resources Act, 30 U.S.C. §§ 601-615 (1988), granted the Federal administrator of the lands the right to manage and dispose of vegetative surface resources on unpatented mining claims, so long as the Federal action does not endanger or materially interfere with prospecting, mining, processing operations, or uses reasonably incident thereto. 30 U.S.C. § 612 (1988); see also discussion in Robert E. Shoemaker, 110 IBLA 39, 53, 96 I.D. 315, 322-23 (1989); Bruce W. Crawford, 86 IBLA 350, 362-65, 92 I.D. 208, 215-16 (1985).
2/

The statutory withdrawal precludes subsequent location of the mining claims in this case, and we need not address the issue of whether the land was segregated by Forest Exchange Application WAOR 43681.

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 affirmed.

R. W. Mullen

Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

2/ Had appellant located and perfected his claim prior to the effective date of the Surface Resources Act, he would have had a valid existing right which could not have been abrogated.

IBLA 90-232