

PALEN PASS RESOURCES, INC.

IBLA 94-446

Decided March 5, 1996

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims null and void ab initio and rejecting mineral patent application in part. CAMC 33714.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Withdrawals—Withdrawals and Reservations: Effect
Of—Withdrawals and Reservations: Revocation and Restoration

Mining claims located in 1990 within an area segregated from mineral entry by a 1931 reclamation withdrawal were properly found to be null and void ab initio although the 1931 withdrawal was revoked in 1947, because no opening order pursuant to 43 CFR 2091.6 was ever issued for the land at issue.

APPEARANCES: Ronald Kaye, President, Palen Pass Resources, Inc., Palm Desert, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Palen Pass Resources, Inc., has appealed from an April 1, 1994, decision of the California State Office, Bureau of Land Management (BLM), finding null and void ab initio 22 of 37 placer mining claims contained in mineral patent application CACA 33714. The 22 claims found by BLM to be null and void include CAMC 240579 through CAMC 240582, CAMC 240588 through CAMC 240594, CAMC 240599 through CAMC 240602, CAMC 240607, CAMC 240611 through CAMC 240614, CAMC 240624, and CAMC 261749. The claims were located on November 23 and 27, 1990, in secs. 13 and 14, T. 3 S., R. 18 E., San Bernardino Meridian (SBM), Riverside County, California.

Appellant applied for patent to a group of claims in secs. 12, 13, 14, and 15, in T. 3 S., R. 18 E., SBM. Twenty-two of the claims were determined to be null and void when BLM found that secs. 13 and 14 were not open to mineral location in 1990; the BLM decision explained that all

T. 3 S., R. 18 E., SBM, among other lands, was segregated from mineral location and entry by a First Form Reclamation withdrawal for the Colorado River Reclamation Project effective March 26, 1931. A Secretarial Order, effective August 28, 1931, partially revoked the aforementioned withdrawal which included sections 12 and 15, T. 3 S., R. 18 E., SBM. These lands were reopened to mineral location by General Land Office Order dated September 17, 1931. A Departmental Order, effective June 26, 1947, revoked all of sections 13 and 14, T. 3 S., R. 18 E., SBM, among other lands; however, the opening order of November 26, 1947, providing for the opening of public lands restored from the Colorado River Storage Project did not include sections 13 and 14. Consequently, sections 13 and 14 are not open to location.

A note included in the case file (but apparently not issued as part of the decision), explains further that "[o]ur conclusions are that secs. 12 and 15 are open to mineral entry. Sections 13 and 14 are not because the lands were restored but never opened with an opening order."

In a statement of reasons (SOR) filed with this Board, appellant acknowledges that "the opening order of November 26, 1947 did not include sections 13 and 14, T. 3 S., R. 18 E., SBM" (SOR at 1). Arguing, however, that this circumstance does not provide a foundation for the decision to void the claims in secs. 13 and 14, appellant urges that the order of June 26, 1947 "indicates an intent that these lands should be reopened to mineral location," the SOR explains that:

Sections 13 and 14 are essentially surrounded entirely by lands open to mineral entry. There is no possibility that the public interest will be served by maintaining this "island" of closed land in the middle of open ground. And certainly there is no possible future need of this tiny area for the Colorado River Reclamation Project, as it has been revoked from the withdrawal.

Id.

The SOR reasons that, while secs. 13 and 14 are no longer needed for the power project, they form an essential part of the corporate claim holdings because the decision voiding the claims at issue "would split our development into widely separated holdings * * * cau[sing] a great disruption in our anticipated mining plan, and impose severe and unnecessary financial hardship" (SOR at 2). Accepting these arguments at face value, they must, nonetheless, be rejected.

[1] Mining claims located on public lands withdrawn under a first-form reclamation withdrawal pursuant to the Act of June 17, 1902, 32 Stat. 388, are null and void ab initio. J. P. Hinds, 25 IBLA 67, 83 I.D. 275 (1976). Once lands are withdrawn from mineral entry for reclamation purposes, no mining claims may be located thereon until formal revocation of

the withdrawal or restoration of the land to mineral entry occurs. Paul J. Desfosses, 102 IBLA 169, 173 (1988). Under Departmental regulation 43 CFR 2091.6, lands "included in a withdrawal that is revoked * * * do not automatically become open, but are opened through publication in the Federal Register of a Public Land Order." In this case, although there was a formal revocation on June 26, 1947, of the withdrawal order issued in 1931 that segregated secs. 13 and 14 from mineral entry, no order opening those sections to mineral entry was issued.

Secs. 13 and 14, unlike secs. 12 and 15, were unsurveyed; the November 26, 1947, opening order made that distinction a critical difference; the opening order was limited to "the surveyed lands" affected by the withdrawal (Order dated Nov. 26, 1947, at 2). It does not appear, therefore, that the lands in secs. 13 and 14 were inadvertently omitted; their exclusion from the opening order was intentional. A decision issued by BLM in the course of consideration of appellant's mineral patent application confirmed that the lands remained unsurveyed as late as March 1994. See BLM Suspension Decision dated Mar. 18, 1994. Neither the fact that the lands at issue were unsurveyed, nor the fact that there was no opening order for such lands in secs. 13 and 14, is contested by appellant. Because the lands in secs. 13 and 14 claimed by appellant were not opened to mineral entry following revocation of the 1931 withdrawal, they remained segregated from mineral entry notwithstanding the June 26, 1947, revocation order. See 43 CFR 2091.6.

Accordingly, 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.

Franklin D. Amess
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

