



WILLIAM M. BASS II

181 IBLA 277

Decided August 18, 2011



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

WILLIAM M. BASS II

IBLA 2011-160

Decided August 18, 2011

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring an unpatented mining claim null and void *ab initio*, in part, because a portion of the claim was located on withdrawn lands. ORMC 167130.

Affirmed.

1. Public Lands: Generally

There is no practical distinction between the public domain and the public lands, which generally include Federal lands open to sale or disposal under general laws, and which do not include lands to which other claims or rights attach.

2. Mining Claims: Withdrawn Land

Rights under the Mining Law of 1872 that are protected against impairment under 43 U.S.C. § 1732(b) (2006), depend upon the perfection of a valid mining claim, and since a mining claim located on withdrawn land closed to entry under the mining laws confers no rights to the locator and is null and void *ab initio*, such location confers no rights capable of being impaired.

APPEARANCES: William M. Bass II, Albany, Oregon, *pro se*.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

William M. Bass II has appealed a decision of the Oregon State Office, Bureau of Land Management (BLM), dated April 19, 2011, declaring the Last Chance Association placer mining claim (ORMC 167130) null and void *ab initio*, in part,

because a portion of the claim was located on lands withdrawn from entry under the mining laws. For the reasons stated below, we affirm BLM's decision.

BLM records indicate that appellant and others located the claim on March 11, 2011, in Lot 3 sec. 35, T. 11 S., R. 3 E., Willamette Meridian, in Linn County, Oregon. Lot 3, which is essentially the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 35, contains 40.24 acres. In its decision, BLM stated that the claim was located in part on land which "was withdrawn from location and entry under the mining laws by Public Land Order 7685 to protect the unique natural, scenic and recreational values of the Quartzville Creek within a Wild and Scenic River Corridor."¹ BLM then declared the claim null and void *ab initio*, in part.

In his Notice of Appeal (NOA), appellant identifies no specific error committed by BLM in determining that his claim was located in part on withdrawn lands, and the record confirms BLM's determination. *See* 73 Fed. Reg. 205 (Jan. 2, 2008). Instead, appellant argues that the Secretary of the Interior had no authority to withdraw the lands on which his claim was located. In support of this argument, appellant makes a number of bald assertions, which we now address.

[1] Appellant first acknowledges that section 204 of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1714 (2006), authorizes the Secretary to make withdrawals such as the one at issue in this case. He then states, however, that "you must be reminded that the Locatable Mineral Estate of the United States is located upon the Public Domain and not upon the Public Lands of the United States." NOA at 2. Appellant himself, however, must be reminded that the United States Supreme Court many years ago has already explained that:

"Public domain" is equivalent to "public lands," and these words have acquired a settled meaning in the legislation of this country. "The words 'public lands' are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws." *Newhall v. Sanger*, 92 U. S. 761, 763, 23 L. Ed. 769 [1875].

Barker v. Harvey, 181 U.S. 481, 490 (1901) (emphasis added).²

¹ Specifically, Public Land Order No. 7685 included, among other lands within sec. 35, the W $\frac{1}{2}$ of Lot 3, and a portion of the W $\frac{1}{2}$ of the E $\frac{1}{2}$ of Lot 3. 73 Fed. Reg. at 205.

² In 1966, the U.S. Supreme Court suggested that acquired lands are not part of the public domain, stating that "public domain lands were usually never in state or private ownership." *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63, 65 n.2

(continued...)

In applying this concept to the “Locatable Mineral Estate” under the Mining Law, Supreme Court Justice Van Devanter³ pointed out the limitations of the Mining Law:

This section [30 U.S.C. § 22] is not as comprehensive as its words separately considered suggest. It is part of a chapter relating to mineral lands which in turn is part of a title dealing with the survey and disposal of ‘The Public Lands.’ To be rightly understood it must be read with due regard for the entire statute of which it is but a part, and when this is done it is apparent that, while embracing only lands owned by the United States, it does not embrace all that are so owned. Of course, it has no application to the grounds about the Capitol in Washington or to the lands in the National Cemetery at Arlington, no matter what their mineral value; and yet both belong to the United States. And so of the lands in the Yosemite National Park, the Yellowstone National Park, and the military reservations throughout the Western States. Only where the United States has indicated that the lands are held for disposal under the land laws does the section apply; and it never applies where the United States directs that the disposal be only under other laws.

State of Oklahoma v. State of Texas, 258 U.S. 574, 599-600 (1922), *modification denied*, 260 U.S. 711 (1923).

With the passage of FLPMA, Congress formalized the basic equivalency between the public domain and public lands for management purposes, by broadly defining “public lands.” “The term ‘public lands’ means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management.”⁴ 43 U.S.C.

² (...continued)

(1966). In this case, however, that possible distinction between public domain and public lands is not relevant, because there is no allegation that the Federal lands at issue are acquired lands.

³ Willis Van Devanter was well known for his opinions addressing public lands issues, having served as Assistant Attorney General for Public Lands within the U.S. Department of the Interior prior to his appointment to the U.S. Supreme Court. He also is the only citizen of Wyoming ever appointed to that Court.

⁴ But FLPMA excludes from this definition lands on the Outer Continental Shelf and
(continued...)

§ 1702(e). FLPMA also vested in the Secretary broad powers to withdraw Federal lands for specific purposes, 43 U.S.C. § 1714 (2006), and the lands subject to such withdrawals “shall be segregated from the operation of the public land laws to the extent specified in the notice [of the withdrawal].” *Id.* § 1714(b)(1). On this basis, the Department, and the courts, have confirmed many times that withdrawn and reserved lands are not considered or managed as “public lands” or as part of the “public domain.” As stated in 1982, by the Solicitor of the Department of the Interior,

Federal lands, which may have been dedicated to a particular use deemed the most important use, are excluded from “public lands” or “public domain.” Some obvious examples are National Parks and Monuments, military reservations, Wildlife Refuges, Wilderness Areas, Wild and Scenic Rivers and National Forest System lands. These reserved and withdrawn federal lands are not subject to sale, exchange, appropriation under the mining laws, or other disposition.

Sol. Op. M-36944, 89 Interior Dec. 403, 405 (1982); *see Columbia Basin*, 643 F.2d at 602 (Stating that, under FLPMA, public lands are Federal lands subject to sale or entry under general laws and do not include those to which other claims or rights attach).

There is no practical distinction between the public domain and public lands, and appellant’s attempt to assert any such distinction in the context of the Mining Law is misguided.

[2] Appellant then states that notwithstanding FLPMA’s grant of authority to the Secretary for withdrawals, FLPMA also mandates that no section of that Act “shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress.” 43 U.S.C. § 1732(b) (2006).⁵ However, such rights, “are premised upon the perfection of a valid mining claim, which . . . requires the making of a ‘discovery,’ as

⁴ (...continued)

lands held in trust for Native Americans. 43 U.S.C. § 1702(e)(1) and (2) (2006). And, courts have held that private lands overlying Federal mineral rights are not public lands. *See, e.g., Columbia Basin Land Protection Ass’n v. Schlesinger*, 643 F.2d 585, 602 (9th Cir. 1981).

⁵ Appellant’s statement omits a series of exceptions to this proposition, which appear in FLPMA immediately prior to the language quoted by appellant, and he mistakenly references § 1733(b) of FLPMA, when the language he quotes appears in § 1732(b).

well as posting, recordation, payment of annual fees, and compliance with other applicable statutory and regulatory requirements.” *Mineral Policy Center v. Norton*, 292 F. Supp.2d 30, 47 (D.D.C. 2003). And, “no right arises from an invalid claim of any kind.” *Cameron v. United States*, 252 U.S. 450, 460 (1920). It is well established that a mining claim located on land closed to entry under the mining laws is invalid, confers no rights to the locator, and is null and void *ab initio*. See, e.g., *Douglas and Jane Weldy*, 164 IBLA 166, 168 (2004); *William Dunn*, 157 IBLA 347, 357 (2002). Since appellant did not locate his claim prior to the withdrawal, his attempt to locate a portion of a mining claim on withdrawn land resulted in his acquiring no rights to that portion of the claim, so he has no specific rights that are being impaired.

Appellant also raises the specter of rights arising under the 1866 mining law. However, we have already put that ghost to rest in *Hal Anthony*, 178 IBLA 238, 241-42 (2009), and we need not bury it further.

In this case, the Secretary had the authority to issue Public Land Order No. 7685, effective January 2, 2008, which withdrew for twenty years lands within a Wild and Scenic River corridor in Linn County, Oregon. Those withdrawn lands included lands within Lot 3 of sec. 35, T. 11 S., R. 3 E. Appellant attempted to locate his claim, at least in part, on those withdrawn lands, and BLM correctly declared that portion of the claim null and void *ab initio*.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

_____/s/
H. Barry Holt
Chief Administrative Judge

I concur:

_____/s/
Bruce R. Harris
Deputy Chief Administrative Judge