

LONG BEACH SALT COMPANY

IBLA 72-43

Decided May 17, 1972

Appeal from Riverside land office decision, Riverside 4367, declaring mining claims null and void.

Vacated and remanded.

Mining Claims: Generally: Contests

Where mining claims were located in 1933 upon lands which were reported to be valuable for Mineral Leasing Act minerals, and the classification is disputed by the mining claimant, the mining claims may not be declared void ab initio, but the validity of a mining claim will be determined by a contest proceeding.

APPEARANCES: H. Byron Mock, attorney, (for appellant).

OPINION BY MR. FRISHBERG

The manager of the Riverside office, Bureau of Land Management, declared the Long Beach Nos. 1-36 mining claims null and void for having been located in 1933 upon lands then reported to be valuable for Mineral Leasing Act minerals 1/ ; therefore, such claims were upon lands not then open to location.

The Department has consistently held that no hearing is required to declare mining claims void ab initio where the land was not open to location. David W. Harper, et al., 74 I.D. 141 (1967). However, where there are disputed questions of fact, the invalidity of a mining claim may only be determined after proper notice and an opportunity for a hearing. United States v. O'Leary, et al., 63 I.D. 341 (1956).

The appellant disputes the classification of the land as valuable for Leasing Act minerals at the time of location and indicates that it has substantial evidence to substantiate its position. Furthermore, these and other mining claims, held and

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1/ See 30 U.S.C. sec. 181 et seq. (1970).

worked by the appellant in the same area, may be subject to challenge for reasons not appearing of record. Therefore, in order to afford the appellant proper notice and an opportunity for a hearing, it is incumbent upon BLM to initiate contest proceedings. At the hearing evidence relating to all disputed facts, including the value of the land for Leasing Act minerals, should be introduced and the matter resolved by a decision of a hearing examiner.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is vacated and the case is remanded for further appropriate action consistent with this decision.

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Newton Frishberg, Chairman

We concur:

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Douglas E. Henriques, Member

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Martin Ritvo, Member

