

RAMSHER MINING AND ENGINEERING CO., INC.

IBLA 72-126

Decided September 1, 1972

Appeal from a decision of the Riverside land and district office, Bureau of Land Management, R-4172, declaring mining claims invalid in whole or in part.

Affirmed.

Mining Claims: Determination of Validity

No hearing is necessary to declare mining claims void ab initio where the records of the Department show that at the time of location of the claims the land was not open to mining location.

APPEARANCES: Duane V. Romserger, President, and Sam Sherman, Secretary for appellant; Charles F. Lawrence, Esq., Office of the General Counsel, United States Department of Agriculture, for the Forest Service.

OPINION BY MR. FRISHBERG

Following a protest by the Forest Service, the Riverside office, Bureau of Land Management (BLM), initiated a contest complaint charging, inter alia, that the Summit Theta nos. 1107-1109 lode mining claims were void for lack of discovery. Notwithstanding the contest proceeding the BLM issued an ex parte decision declaring claims 1108 and 1109 null and void ab initio, in their entirety, and claim 1107 null and void in part, for having been located at a time when the lands were not open to mining location. The decision below recited that a special land use permit had been issued by the Forest Service to the City of San Bernardino in 1926 and is still outstanding. The permit covers all of Summit Theta 1108 and 1109 and part of 1107. A copy of that permit, issued for reservoir and park purposes, is in the file. Appellant does not dispute its existence. The BLM declared the mining claims void pursuant to the Act of February 14, 1931 (46 Stat. 1115), which provides:

That where a special-use permit to use, for other than pasture purposes, a tract of land not exceeding one hundred and sixty acres in area, in the San Bernardino and Cleveland National Forests, has been issued under the regulations of the Secretary of Agriculture, the land so rented shall not be subject to appropriation, entry, alienation, or adverse use or occupancy unless such permit is discontinued or revoked.

The gravamen of the appeal is that notwithstanding the 1931 Act the appellant will be deprived of its property without due process unless it is afforded a hearing, and that the BLM acted arbitrarily by issuing a decision without notice and an opportunity for such hearing.

It is well established that a mineral location made on land not open to acquisition under the mining laws is null and void ab initio. Leo J. Kottas et al., 73 I.D. 123 (1966), aff'd in Lutzenhiser v. Udall et al., 432 F.2d 328 (9th Cir. 1970); Carl F. Murray et al., 67 I.D. 132 (1960). No hearing is required to declare a mining claim void ab initio where the records of the Department show that at the time of location the land was not open to such location. David W. Harper et al., 74 I.D. 143 (1967). Since the San Bernardino permit was issued prior to 1931 and the Act of February 14, 1931, covers the lands in such permits, the land was not open to location in 1965; the mining claims were properly declared null and void without a hearing to the extent they cover land within the permit.

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 affirmed.

Newton Frishberg
Chairman

We concur:

Martin Ritvo
Member

Joseph W. Goss
Member

