

MICKEY G. SHAULIS

IBLA 73-209

Decided June 6, 1973

Appeal from Oregon State Office decision OR-10065, declaring the Panther Bar group placer mining claims null and void ab initio.

Affirmed.

Mining Claims: Lands Subject to—Mining Claims: Withdrawn Lands

Mining claims located on lands withdrawn from mineral entry are null and void ab initio.

APPEARANCES: Mickey G. Shaulis, pro se.

OPINION BY MR. FRISHBERG

The Forest Service informed the Bureau of Land Management's Oregon State Director that a recently recorded mining quitclaim deed in the Mining Conveyance Record of Josephine County, Oregon, reflected that the Panther Bar group of four mining claims, within the Siskiyou National Forest, had been sold to Mickey G. Shaulis on August 28, 1972. The State Office declared the claims null and void ab initio because they had been located on January 29, 1938, after the lands were withdrawn from entry under the public land laws, including the general mining laws, by powersite classification No. 123 of January 27, 1926. Mr. Shaulis appealed from that decision.

Appellant asserts that the county maps and library fail to disclose any information relative to the powersite withdrawal. He is of the view that "these claims have been valid for 34 years," and that it is now error to declare them void after money, time, and labor have been expended on them.

The Bureau of Land Management (BLM) is the agency within the Department of the Interior charged with management of the public lands, including the survey and disposal of the public lands of the United States; it maintains the records relative thereto. 43 U.S.C. §§ 2, 12 (1970). Those records are official public land records. They are kept in the appropriate BLM office. Any

person going upon unpatented lands of the United States is charged with constructive notice of the matters reflected in the public records. Thus, a purchaser of an unpatented mining claim, knowing that legal title is in the United States, should search the records in order to protect himself from an ill-advised purchase. Appellant in this case apparently failed to do so. That appellant may have searched the county records, local libraries, etc., cannot change the status of the lands involved, as reflected in the land status records of the United States.

There is no dispute that the purported locations of the Panther Bar group were made at a time when the lands were withdrawn from mineral location. It is well established that mining locations made under such circumstances are null and void ab initio. Leo J. Kottas, 73 I.D. 123 (1966), aff'd, Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970); David W. Harper, 74 I.D. 143 (1967).

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.

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Newton Frishberg, Chairman

I concur.

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Douglas E. Henriques, Member

## Concurring Opinion of Mrs. Thompson

I agree that mining claims located while the land is withdrawn from the operation of the mining laws are null and void ab initio and while the land is withdrawn no rights to the land may be gained under the mining claims. I would like to clarify one matter. The Mining Claims Rights Restoration Act of August 11, 1955, 30 U.S.C. § 621 (1970), restored certain lands in power site withdrawals to location, but did not retroactively validate locations on claims prior to the effective date of the Act. If the lands were not subject to the exceptions in that Act, mining claims could thereafter be located on such withdrawn land under the conditions prescribed in the Act. The record does not contain sufficient status information to determine whether or not the lands fall within the exceptions to the Act. Our finding in this case is limited to rights stemming from the original mineral locations. No determination has been made of the validity of the mining claims under any new location or equivalent thereof occurring after the Act. See Gardner C. McFarland, 8 IBLA 56 (1972). Appellant has made no showing in this regard.

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Joan B. Thompson, Member

