

Editor's note: Reconsideration denied; decision reaffirmed -- See R. C. Jim Townsend (On Reconsideration), 18 IBLA 407 (Feb. 10, 1975)

R. C. JIM TOWNSEND

IBLA 74-318

Decided November 27, 1974

Appeal from decision in OR 12649 (Wash.), of Oregon State Office, Bureau of Land Management, declaring the Silver Creek Mine lode mining claim null and void ab initio.

Affirmed.

1. Mining Claims: Determination of Validity-- Mining Claims:
Lands Subject to--Mining Claims: Location--Mining
Claims:
Relocation--Withdrawals and Reservations: Effect of

A mining claim located on land withdrawn at the time of location is void ab initio. Such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior location, reestablish or protect rights to the prior claim.

APPEARANCES: R. C. Jim Townsend, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On August 16, 1969, M. B. Hulsey located the Silver Creek Mine lode mining claim as described by metes and bounds in a notice recorded December 10, 1970, in section 8, T. 40 N., R. 13 E., Willamette Meridian, Whatcom County, Washington. By decision issued May 1, 1974, the Oregon State Office, Bureau of Land Management (BLM), declared the claim null and void ab initio, because it was located on land withdrawn from mineral location on October 2, 1968, by P.L. 90-544, 82 Stat. 926, 16 U.S.C. s 90 (1970), creating North Cascades National Park.

The decision was issued to both M. B. Hulsey, whose copy was returned unreceived, 1/ and R. C. Jim Townsend (appellant) who had filed proof of labor for the claim. Mr. Townsend, in his appeal, argues that the claim is not a new location, but a relocation of an old claim on the records since the 1890's, which he filed in order to prevent the claim from becoming delinquent and 'to recover the money, labor and time I had put into the property.'

[1] A mining claim located on land that is withdrawn from mineral location at the time of location is null and void ab initio. Jerry Bellezza, 15 IBLA 64 (1974); Mickey G. Shaulis, 11 IBLA 116 (1973); Dredge Corp., 65 I.D. 336 (1958), aff'd, Dredge Corp. v. Penny, 362 F.2d 889, 890 (9th Cir. 1966). P.L. 90-544 creating North Cascades National Park, 82 Stat. 926, 16 U.S.C. § 90 (1970), withdrew the land in the Silver Creek Mine location from disposal under the public land laws. 43 CFR 3811.2-2 specifically provides that '[l]ands in national parks and national monuments are not subject to mining location, except where specifically authorized by law.' This statute contains no such authorization. 2/ The State Office decision properly held appellant's 1969 location null and void ab initio.

The decision appealed from does not affect the validity or status of any mining claim located for the same land prior to the withdrawal for North Cascades National Park in 1968. As the Department held in James M. Wells, A-28549 (February 10, 1961):

[W]hile the amended locations, having been made while the land was withdrawn, gained the appellants nothing,

1/ The BLM decision, mailed to M. B. Hulsey as provided by Departmental regulation, 43 CFR 1810.2, became final as to M. B. Hulsey upon the expiration of the 30-day appeal period provided by 43 CFR 4.411(a).

2/ The Act provides that North Cascades National Park 'is hereby established, subject to valid existing rights * * *.' 16 U.S.C. § 90 (1970). At the same time the Act provides that the lands within the recreation areas established by the Act, 16 U.S.C. § 90a, 90a-1 (1970), 'are hereby withdrawn from location, entry, and patent under the United States mining laws.' 16 U.S.C. § 90c-1(b) (1970). However, the apparent discrepancy is not significant; lands included in a national park are deemed withdrawn from disposal, in the absence of an explicit withdrawal, unless continued application of the mining laws is expressly provided for by the legislation. Solicitor's Opinion, 78 I.D. 352 (1971). See also Solicitor's Opinion, 74 I.D. 97, 101-102 (1967).

neither did they affect the validity of the prior mining claims upon which they rely and their rights to the land covered by these prior claims remain to be determined.

Accord, Henry E. Covington, A-29495 (July 30, 1963); J. Everett Nelson, A-29174 (February 4, 1963); 3/ Harold Dale, A-28015 (November 19, 1959).

Appellant's failure to document the ownership, location and recordation of the prior mining claim in his appeal does not affect the resolution of this case. On this record, the BLM has not challenged appellant's rights to this land under any location but the 1969 Silver Creek Mine location, and appellant remains free to exercise any rights under a prior location. However, we note that because it was void ab initio, the 1969 location cannot serve, as appellant apparently intended it, to rejuvenate or reestablish rights to the prior claim. Appellant's right to the land involved under any prior location thus remains intact except insofar as he relies on the void 1969 relocation to prove its continued maintenance in conformity with the mining law.

3/ In Nelson the Department stated:

"However, although the claims located in 1934 are void, whether considered to be original locations or amended locations of earlier claims, the appellant would not lose his rights in any such earlier claims to which he succeeded in interest. But, for the appellant to be considered as having possessory rights against the United States with respect to such earlier claims, he will have to come forward with adequate evidence to establish that the claims were in fact located prior to the date of any withdrawal of the lands from mining locations, that he is the true successor in interest of the original claimants having an unbroken chain of title from them, and that the lands claimed by him are the same lands as those originally located. If he can establish those facts, then other questions will have to be considered such as whether the original claims were perfected by reason of a valid discovery before the withdrawal and whether any rights were lost by abandonment before there can be a final determination as to the appellant's rights with respect to such claims. "In summation, the appellant's mining claims based on locations made subsequent to the withdrawal of the land must be considered as null and void ab initio. However, this determination does not preclude the appellant from establishing that he has possessory rights to the land involved based on mining claims perfected prior to any withdrawal of the land."

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.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

