

HATHERN LEWIS STACY

IBLA 75-173

Decided December 24, 1975

Appeal from two decisions of the California State Office, Bureau of Land Management, declaring mining claims null and void ab initio (CA 2095, CA 2096).

Appeal from CA 2095 dismissed; CA 2096 set aside and remanded.

1. Rules of Practice: Appeals: Statement of Reasons

An appeal to the Board of Land Appeals is subject to summary dismissal when appellant fails to file a statement of reasons in support of his appeal.

2. Administrative Procedure: Hearings--Mining Claims: Determination of Validity--Mining Claims: Withdrawn Land

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without opportunity for hearing.

APPEARANCES: Roger C. Donahue, Esq., Bakersfield, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

On September 4, 1974, the California State Office, Bureau of Land Management, issued two decisions, CA 2095 and CA 2096, declaring certain mining claims held by appellants to be null

and void ab initio because such claims were located on lands withdrawn from all forms of appropriation under the public land laws except for location of metalliferous minerals under the mining law. BLM stated that the only mineral found on the subject claims was non-metalliferous and, therefore, no rights could have arisen under the mining law as a result of the locations. 1/

[1] On September 30, 1974, Stacy filed a notice of appeal for each decision. The regulations which govern proceedings before the Board require that:

If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed with the Board \* \* \* within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal \* \* \*.

43 CFR 4.412.

A statement of reasons for the appeal of CA 2096 was timely filed with the Board on October 30, 1974. However, no statement of reasons has been filed for the appeal of CA 2095. It is clear that the statement of reasons filed for CA 2096 was not intended to encompass CA 2095, because the statement makes no reference to the claims involved in CA 2095.

1/ The parties and claims involved in the two decisions are as follows:

CA 2095 Hathern Lewis Stacy also  
 known as Jack Stacy  
 Sadie Lee Smith  
 Unknown Heirs and devisees  
 of Tommy B. Smith, deceased.  
 Only Stacy appealed.  
 Ranger #1 Lode Mining Claim  
 Ranger #2 Lode Mining Claim also known as  
 Ranger #1 Placer Mining Claim  
 Ranger #2 Placer Mining Claim  
 CA 2096 Hathern Lewis Stacy also  
 known as Jack Stacy.  
 Yellow Jacket 1 also known as  
 Yellow Jacket No. 1  
 Yellow Jacket 2 also known as  
 Yellow Jacket No. 2  
 Yellow Jacket 3 also known as  
 Yellow Jacket No. 3  
 Yellow Jacket 4 also known as  
 Yellow Jacket No. 4  
 All placer mining claims.

The appeal in decision CA 2095 should be dismissed since no cause has been shown for noncompliance with the Rules of Practice.

Decision CA 2096 stated that all the Yellow Jacket claims were located on July 16, 1957. The BLM official records show that the lands embraced by the claims were withdrawn from location, subject to any valid existing rights, for classification and in aid of legislation by Executive Order No. 5843 of April 28, 1932, under authority contained in the Act of June 25, 1910, 43 U.S.C. § 141 (1970), as amended by the Act of August 24, 1912, 43 U.S.C. § 142 (1970). <sup>2/</sup> Despite the withdrawal, the lands remain open to exploration, discovery, occupation, and purchase under the mining laws of the United States, as they apply to metalliferous minerals. The BLM found that the only mineral present on the subject claims and the only mineral for which appellant professed an interest was pumice. <sup>3/</sup> On that basis, BLM concluded that a non-metalliferous mineral such as pumice was not locatable on the subject lands because of the withdrawal, and that the claims were, therefore, null and void ab initio.

In appellant's statement of reasons the history of the location of the Yellow Jacket claims is set forth. Appellant contends that the claims herein were originally located under different names in 1926 and 1928 by appellant's predecessors in interest and others; that the location notices were amended in 1941 because the records had deteriorated and because of the need to correct any errors or omissions in the originals; that persons by the name of Huckaby located the same claims as the Yellow Jacket claims, on July 16, 1957, for reasons unknown to appellant; that appellant's predecessors in interest received quitclaim deeds from the Huckabys conveying the Huckabys' interest in such claims; and that for those reasons appellant's claims predate the withdrawal. These allegations were accompanied by various copies of location notices and deeds.

[2] It is well established that a mining location made on land that has been totally withdrawn from mineral location may be declared null and void ab initio without a hearing. Mickey G. Shaulis, 11 IBLA 116 (1973); David W. Harper, 74 I.D. 141, 145 (1967). The same result follows as to land withdrawn except for metalliferous mining, where after such withdrawal the only discovery is of a non-metalliferous mineral. On the other hand, if a mining claimant alleges certain facts which, if proven, would

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<sup>2/</sup> The record shows that the lands in issue were withdrawn under the same authority by an Executive Order of May 26, 1931, for municipal water supply purposes.

<sup>3/</sup> Appellant makes no assertion in his statement of reasons relating to any mineral other than pumice.

establish an interest in a claim located prior to the withdrawal, the claim may not be declared null and void ab initio without affording the claimant an opportunity for a hearing on any controverted factual issues. Thomas Stoelting, 17 IBLA 222 (1974); Brace C. Curtiss, 11 IBLA 30 (1973).

We feel that appellant's statement of reasons raises certain factual issues. Therefore, appellant should be given an opportunity to establish that the location of any non-metalliferous discovery does, in fact, predate the withdrawal.

In order to establish the validity of any claims, it will be necessary for him to prove the discovery therein of either a valuable non-metalliferous mineral deposit prior to the date of the withdrawal or a discovery of a metalliferous mineral at any time while the lands were open. On remand the BLM may initiate appropriate proceedings to determine the validity of the claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal from decision CA 2095 is dismissed and the decision CA 2096 is set aside and remanded.

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Joseph W. Goss  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Frederick Fishman  
Administrative Judge

