

W. A. TODD

A. B. JOHNSON

IBLA 76-788

Decided December 1, 1976

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring mining claims null and void ab initio. F-22939.

Affirmed.

1. Mining Claims: Lands Subject to—Mining Claims: Withdrawn land—Withdrawals and Reservations: Effect Of

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

2. Administrative Procedure: Hearings—Mining Claims: Hearings—Rules of Practice: Hearings

In a proceeding before the Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

APPEARANCES: W. A. Todd and A. B. Johnson, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

W. A. Todd and A. B. Johnson have appealed from a decision of the Alaska State Office, Bureau of Land Management, dated

August 11, 1976, declaring their T and J Discovery and T and J Nos. 2 through 15 placer mining claims null and void. The claims were posted and recorded in the Fairbanks Recording District on August 24, 1973. All of the claims are located entirely within protracted section 19, T. 27 N., R. 16 E., and sections 13, 14, 23, and 24, T. 27 N., R. 15 E., C.R.M. These lands are included among those withdrawn from appropriation, including location and entry under the mining laws, by Public Land Order No. 5250 of September 14, 1972, in aid of legislation concerning addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, and for classification.

Appellants express the feeling that the action is unconstitutional and state they will request payment of improvement and equipment money losses. They also request a hearing in accordance with 43 CFR 4.400, and a BLM joint inspection to determine the true location of the withdrawn lands. They do not offer any evidence or allege that the claims are outside the withdrawal areas.

[1] It is well settled that mining claims located on land closed to mineral entry are null and void ab initio. W. R. and G. R. Strickler, 27 IBLA 267 (1976), and cases cited, including Leo J. Hottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970). Although appellants may have expended money in an effort to develop the claims, there is no known remedy under existing law to validate the claims. W. R. and G. R. Strickler, supra. Furthermore, the Government has no authority to reimburse mining claimants for expenses incurred in attempting to develop mining claims which are null and void ab initio. Such actions actually constitute trespass on the public lands.

[2] The Fairbanks District Office, Bureau of Land Management, determined that all of the subject claims lie within the said five sections of land described above, and said sections are affected in their entireties by the terms of the withdrawal order. Therefore, there is no reason for a joint inspection of the lands and there is no justification for requiring a hearing. Actually, there is no disputed question of fact involved here. In a proceeding before this Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only if there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record which show the status of the land when the claim was located, no hearing is required. David Loring Gamble, 26 IBLA 249 (1976), and cases cited; Beverly Trull, 25 IBLA 157 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Martin Ritvo
Administrative Judge

We concur.

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

