

FLOYD W. McCARTY

IBLA 76-653

Decided December 20, 1976

Appeal from decision of the Colorado State Office, Bureau of Land Management, declaring mining claims null and void ab initio (C-21633, 21636).

Affirmed.

1. Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

Mining claims located when the land has been withdrawn from all public entry by a first form reclamation withdrawal are properly declared null and void ab initio. Subsequent restoration of the land to mineral entry does not revive the invalid locations.

2. Mining Claims: Location -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Revocation and Restoration

Mining claims are properly declared null and void ab initio when the locations were not perfected by performance of the condition precedent to the opening of withdrawn land to location, entry and patent under the mining laws.

APPEARANCES: Floyd McCarty, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Floyd McCarty appeals from the decision dated April 13, 1976, of the Colorado State Office, Bureau of Land Management (BLM), declaring null and void ab initio his following lode mining claims: Uranium Salts Nos. 1 to 8, located on September 27, 1954 (C-21633);

and Hill Side Nos. 1 to 3, located on June 29, 1955 (C-21636). <sup>1/</sup> BLM declared the mining claims null and void because they were located in sections 18 and 19, T. 15 S., R. 93 W., 6th P.M., and section 24, T. 15 S., R. 94 W., 6th P.M., at a time when those lands were withdrawn from public entry under a first form reclamation withdrawal.

Appellant protests the decision on the ground that there was no record of the withdrawal in the county office where he recorded his claims and that BLM never notified him that the land was withdrawn. He also requests a refund of money expended on the claims.

The lands were ordered withdrawn "from public entry" on May 19, 1950, under the first form of reclamation withdrawal set forth in section 3 of the Act of June 17, 1902, 43 U.S.C. § 416 (1970). 16 F.R. 584 (January 13, 1951). Effective November 9, 1962, Public Land Order 2780 opened the lands to location, entry and patent under the mining laws; however, the order contained a particular stipulation that had to be executed by the locator and "recorded in the county records, and in the United States Land Office at Denver, Colorado, before any rights attach by virtue of this order." 27 F.R. 9946 (October 10, 1962). Subsequently, the land was again withdrawn from "all forms of appropriation under the public land laws, including the mining laws, 30 U.S.C. Ch. 2" by Public Land Order 5261, 37 F.R. 20030 (September 23, 1972).

[1] Any mining claim located on land which has previously been withdrawn from public entry under a first form reclamation withdrawal is properly declared null and void ab initio. J. P. Hinds, 25 IBLA 67, 71, 83 I.D. 275, 276 (1976). Such a mining claim is not revived by a subsequent restoration of the land to location under the mining laws. United States v. Guzman, 18 IBLA 109, 117, 81 I.D. 685, 688 (1974); Frank Zappia, 10 IBLA 178, 183 (1973); David W. Harper, 74 I.D. 141, 145 (1967). In order to take advantage of such a restoration, the mining claimant must relocate the claim.

The lands here were initially withdrawn in 1951. Appellant located his claims in 1954 and 1955. Appellant did not relocate the claims after 1962 when the lands were restored. BLM properly declared the claims null and void ab initio for this reason.

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<sup>1/</sup> In its decision, BLM also declared null and void ab initio certain mining claims located on the same lands jointly by Ruth Douglas, Lois True, Burlie L. Baker, Marjorie Baker, and Betsy Smith. These individuals have not appealed and therefore the BLM decision stands with regard to them.

[\*248] [2] Appellant also gains no rights under R.S. § 2332, 30 U.S.C. § 38 (1970), by compliance, if any, with the Colorado statute of limitations while the land was open to location after 1962. Public Land Order 2780 required, as a condition precedent for locating a mining claim on the restored lands, the execution and recordation of a stipulation. The Order clearly indicates that no rights can attach before this requirement is met. Therefore, mining claims located without compliance with this condition precedent are properly declared null and void ab initio. Frank Zappia, supra at 183-84.

Appellant's protest that he had no notice of the withdrawal is to no avail. BLM is the agency of the Department of the Interior charged with maintaining records concerning the public lands. These records are open to the public and are kept in the appropriate BLM offices. Any person desiring to locate a mining claim on public land is charged with constructive notice of those records. Mickey G. Shaulis, 11 IBLA 116 (1973). In other words, although appellant apparently made a thorough check of the county records, the information he needed was not recorded there. To properly investigate the location of his mining claims, appellant should also have examined the records in the BLM Colorado State Office. He cannot now claim that he had no notice of the withdrawal.

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.

Joan B. Thompson  
Administrative Judge

We concur:

Edward W. Stuebing,  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge.

