

Appeal from decision of California State Office, Bureau of Land Management (BLM), declaring placer mining claim (CA-3813) null and void in part.

Dismissed.

1. Mining Claims: Lands Subject To—Withdrawals and Reservations: Effect of

A mining claim is properly declared null and void ab initio to the extent it has been located, prior to the enactment of the Mining Rights Restoration Act of August 11, 1955, 30 U.S.C. §§ 621-5 (1970), on lands withdrawn from mineral location by a power project classification.

2. Rules of Practice: Appeals: Statement of Reasons

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

APPEARANCES: Earl D. Roberts, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Earl D. Roberts has appealed from a decision of the California State Office, BLM, dated August 12, 1976, which declared the Vagabond placer mining claim null and void as to that part of the claim located within a power site reserve.

The claim which was located August 26, 1931, and amended June 13, 1933, lies within the S 1/2 SW 1/4 NE 1/4, SE 1/4 NE 1/4 SW 1/4 and NW 1/4 SE 1/4 Sec. 5, T. 46 N., R. 6 W. M.D.M. California. The State

Office rejected appellant's claim for the NW 1/4 SE 1/4 because that portion of the claim was withdrawn from mineral location when it was included in a power site reserve. Almost all of the mining claim lies within the site reserve.

The State Office described the land status of the land in the claim as follows:

The official records of this office disclose that in accordance with an Executive Order of April 13, 1912, Power Site Reserve No. 258 was created under the provisions of the Act of Congress approved June 25, 1910 (36 Stat. 847) which withdrew the NW 1/4 SE 1/4 of said Sec. 5 (together with other lands) from settlement, location, sale, and entry, and reserved the lands for power sites in Power Site Reserve No. 258. The E 1/2 NW 1/4 NW 1/4 SE 1/4 was not restored to entry subject to Sec. 24 of the Act of June 25, 1910, supra, until the Bureau of Land Management's Order of August 25, 1954. Further, the W 1/2 SW 1/4 SW 1/4 NE 1/4 has been patented under the Small Tract Act of June 1, 1938 (52 Stat. 609) with all minerals reserved to the United States. Until such time as rules and regulations are prescribed by the Secretary the minerals in said patented lands are not subject to location. Railroad Grant patents issued in 1901 including the SE 1/4 SW 1/4 and NE 1/4 and in 1927 including the NE 1/4 SW 1/4 with no minerals reserved to the United States. The E 1/2 SW 1/4 SW 1/4 NE 1/4 was classified October 9, 1968 by the Bureau of Land Management for multiple use but segregated the land from operation under the mining laws.

It then held that the portion of the claim within the NW 1/4 SE 1/4 (the power site reserve) was null and void ab initio.

Appellant has appealed to this Board contending (1) that the October 9, 1968, classification is ineffective as to the subject claim and (2) questioning the government's authority to issue a patent under the Small Tract Act on a portion of an existing claim. Neither of these areas is within the power site reserve.

[1] Appellant's arguments do not address the substance of the decision below. Irrespective of the subsequent land classification actions affecting the status of lands adjacent to the central site of appellant's claim, the creation of Power Site Reserve No. 258 in 1912 effectively withdrew all the land in the NW 1/4 SE 1/4 Sec. 5 from mining location. The State Office decision rejected only that portion of the claim and its decision is clearly substantiated by the record. Appellant's mining claim primarily covering the NW 1/4 SE 1/4 of section 5 was located long after the

lands were withdrawn for a power site reserve. Therefore, this particular portion of the claim was null and void ab initio and no rights could have been gained under the claim so long as the land was withdrawn. Estate of Thomas S. Williams, 10 IBLA 138, 139 (1973); Gardner C. McFarland, 8 IBLA 56, 58 (1972).

While the Mining Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1970), opened certain lands within power sites to mineral entry, it did not resuscitate claims which had been located on withdrawn land prior to the date of the Act, August 11, 1955. Beverly Trull, 25 IBLA 157 (1976).

[2] Appellant does not question the Power Site Reserve or its effect on his claim. Since he has not properly objected to the basis for the decision below, the appeal is subject to dismissal. It is the longstanding rule of the Department that a purported statement of reasons which does not point out affirmatively in what respect the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons was filed, and may be dismissed. Duncan Miller, 20 IBLA 19 (1975); United States v. Maus, 6 IBLA 164 (1972); United States v. Heyser, 75 I.D. 14 (1968); 43 CFR 4.412.

Appellant's objections are addressed to the small portion of the claim outside the NW 1/4 SE 1/4. However, as to these peripheral areas, while the State Office did point out their status, it made no ruling that these portions claimed were invalid.

As the State Office indicated, absent any intervening rights, appellant is free to locate a new claim upon such lands of his original claim that now may be available to location. Such relocation must still satisfy all requirements of the mining laws to be valid and the provisions of the Act of August 11, 1955, supra. We are informed that appellant has already filed a relocation of the boundaries of the claim to take advantage of the areas open to location.

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 dismissed.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

