

ROD KNIGHT

IBLA 77-101

Decided May 26, 1977

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring mining claim null and void ab initio (F-22990).

Affirmed.

1. Mining Claims: Withdrawn Lands

A mining claim which at the time of its location is situated on withdrawn land confers no rights on the locator and is void ab initio.

2. Withdrawals and Reservations: Generally

A withdrawal order is considered to be valid notice of its contents and becomes effective by its filing with the Federal Register, despite any asserted failure to properly note it on the land records.

3. Federal Employees and Officers: Authority To Bind Government

Even if the Bureau of Land Management incorrectly noted a withdrawal order on a status plat and appellant purportedly relied on this status plat when locating his mining claim, the mining claim, located on withdrawn land, is null and void because reliance upon records maintained by land offices cannot operate to vest any right not authorized by law.

APPEARANCES: Rod Knight, pro se.

## OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Appellant appeals from the November 22, 1976, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring South Farce Mining Claim F-22990 null and void ab initio.

On June 21, 1976, Rod Knight located the South Farce placer mining claim situated near the South Fork Tributary of the Fortymile River, in Protracted Survey sec. 6, T. 27 N., R. 19 E., CRM, Alaska.

On September 14, 1972, the land in issue was withdrawn from all forms of appropriation including location and entry under the mining laws by Public Land Order No. 5250 in aid of legislation for possible addition or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers and for classification. P.L.O. No. 5250 withdraws certain described lands, and also the protracted survey sections to the extent set forth below: "[A]ll lands within the protracted survey sections which are wholly or in part within 1 mile of the mean high water mark of the river's banks \* \* \*." This includes the land on which appellant's mining claim is located.

In his Statement of Reasons, appellant contends the withdrawal order was noted incorrectly on the status plat. As a result, he expended time "to no avail" because "of an error of the land office [BLM]."

[1] It is well settled that a mining claim which at the time of its location is situated on withdrawn land confers no rights on the locator and is void ab initio. United States v. Mike Guzman, Sr., 18 IBLA 109, 81 I.D. 685 (1974); David W. Harper, 74 I.D. 141 (1967); Beverly Trull, 25 IBLA 157 (1976); John Boyd Parsons, 22 IBLA 328 (1975); R. C. Jim Townsend, 18 IBLA 100 (1974); Russ Journigan, 16 IBLA 79 (1974).

[2] Appellant contends he is entitled to relief because of the error of the BLM in noting the withdrawal on the status plat. Even if his assertion as to error in the records is correct, a withdrawal order is considered to be valid notice of its contents, and becomes effective on its filing with the Federal Register. Victor A. Anahonak, 21 IBLA 347 (1975); Emil I. Stadler, 15 IBLA 180 (1974), citing Solicitor's Opinion, M-36382 (October 24, 1956); Edwards v. Brockbank, A-25960 (April 3, 1951). See 44 U.S.C. § 1507 (1970). This result follows despite the asserted failure of BLM to note its status records correctly.

[3] In addition, appellant would not be entitled to reversal of the decision below because reliance upon records maintained by land offices cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c). Immigration & Naturalization Service v. Hibi, 414 U.S. 5, 8 (1973); Utah Power and Light Co. v. United States, 243 U.S. 389, 409, (1917). But cf. United States v. Georgia Pacific Co., 421 F.2d 92 (9th Cir. 1970); United States v. Lazy FC Ranch, 481 F.2d 985 (9th Cir. 1973); United States v. Wharton, 514 F.2d 406 (9th Cir. 1975). Here, the mining claim was not authorized by law, as the land had already been withdrawn at the time of its location.

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.

Frederick Fishman  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Joseph W. Goss  
Administrative Judge

