

CAJEN MINERALS, INCORPORATED

IBLA 77-124

Decided July 5, 1977

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring various mining claims null and void ab initio. F 22973.

Affirmed in part, vacated in part.

1. Mining Claims: Withdrawn Land

Mining claims located upon land which has been previously withdrawn from all forms of entry are null and void ab initio, creating no rights in the locator.

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 Administrative Procedure: Hearings--Mining Claims: Determination of Validity--Mining Claims: Withdrawn Land

While a mining location on land totally withdrawn may be declared null and void ab initio without hearing, if a claimant alleges facts which would establish an interest in a claim located prior to the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 notice and an opportunity for hearing.

APPEARANCES: C. Allen Jensen, President, Cajen Minerals, and Doris Loennig, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision dated November 5, 1976, the Alaska State Office, Bureau of Land Management (BLM), declared the following mining claims null and void ab initio: Atwater Association Placer; Atwater Extension #1, through #4; Hell's Gate Association; Hell's

Gate Extension #1; King Midas #1, 2, 3; King Midas Extension #1; King Midas #4 through #126. All of these claims are located on lands which were withdrawn from all forms of entry by Public Land Order 5250, and the only issue which is raised by this appeal is the question of whether the claims were located prior to the September 14, 1972, withdrawal.

Cajen Minerals, Incorporated, by quitclaim deed dated June 29, 1973, acquired all of the claims here at issue. Location notices or amended location notices covering most of the claims were recorded in the Fairbanks Recording district during the period of May 10 to 23, 1973, and these location notices are part of the record on appeal. Also included in the record before us are five undated, amended location notices which appear to have been recorded sometime in early 1973 and which deal with the King Midas Association Placer Claims numbers 1, 2, and 3, the Atwater Association Placer Claim, and the Hell's Gate Association Placer Claim. These latter five notices all incorporate by reference location and recordation notices filed prior to September 14, 1972, the date of the withdrawal. The notices recorded in May 1973, however, all stipulate that discovery on the subject claims was made in 1973, after the withdrawal date here at issue. On appeal, Cajen alleges that all the claims were located and recorded in Fairbanks before 1971, but despite a request by the Board, no specific information was submitted except for that pertaining to the five claims discussed supra.

[1] The principles of law governing the attempted location of a mining claim on land closed to mineral entry are quite simply stated and have been frequently repeated. A mining claim located on land which is not open to such location confers no rights on the locator and is properly declared null and void ab initio, and where the records of the Bureau of Land Management show that land was not open to mining location at the time such a location was attempted, a hearing is not required to establish the invalidity of the claim. The Dredge Corporation, 64 I.D. 368 (1957), 65 I.D. 336 (1958); aff'd sub nom. in Dredge Corporation v. Penny, 362 F.2d 889 (9th Cir. 1966); Robert K. Foster, A-29857 (June 15, 1964), aff'd sub nom. Foster v. Jensen, 296 F. Supp. 1348 (D.C.C.D. Calif. 1966); David W. Harper, 74 I.D. 141 (1967); Robert L. Beery, 25 IBLA 287, 83 I.D. 249 (1976); John Boyd Parsons, 22 IBLA 328 (1975). As noted above, the locations recorded by appellant's grantors in May 1973 were made after the lands in question were withdrawn from operation of the general mining laws by Public Land Order 5250 and, therefore, such locations are properly declared null and void ab initio. We point out, however, that our determination respecting these 1973 location notices does not affect any rights which appellant may have acquired by virtue of any mineral location made on these same lands prior to the withdrawal of September 14, 1972.

[2] The undated, amended location notices of the King Midas Nos. 1, 2, 3, the Atwater Association Placer, and the Hells' Gate Association Placer all make reference to prior locations of these same claims, and the original location notices for the claims are included in the record before us. Since it appears that these five claims were all located and recorded prior to the withdrawal, it was improper for the Alaska State Office to declare them null and void without affording appellant opportunity for a hearing. Where, as in the case before us, an appellant alleges facts which would establish an interest in a claim located prior to a withdrawal, the claim may not be declared null and void ab initio without notice and an opportunity for a hearing. Hathern Lewis Stacey, 23 IBLA 166 (1975). Since no specific facts were alleged in connection with the remainder of the claims, the State Office decision will be upheld as to them.

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 affirmed insofar as it declares the following claims null and void ab initio: The Atwater Extension Placer Claims Nos. 1 through 4, the Hell's Gate Extension No. 1, the King Midas Extension No. 1, and the King Midas Placer Claims Nos. 4 through 126. The decision appealed from is vacated, however, insofar as it declares null and void the King Midas Placer Claims Nos. 1, 2, and 3, the Atwater Association Placer, and the Hell's Gate Association Placer.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge