

EVERETT E. WILLMARTH, ET AL.

IBLA 77-351

Decided September 12, 1977

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring a mining claim and millsite null and void ab initio.

Affirmed.

1. Mining Claims: Withdrawn Land

Mining claims and millsites located upon land which has been previously withdrawn from entry under the mining laws by a first form withdrawal are null and void ab initio.

APPEARANCES: Everett E. Willmarth, Dixie Willmarth, Ruth I. McGinness, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision, dated April 11, 1977, the Oregon State Office, Bureau of Land Management (BLM), declared the Jewell lode mining claim, situated in lot 3, S 1/2 NW 1/4, NW 1/4 SW 1/4, sec. 33, T. 6 S., R. 48 E., W.M., Baker County, Oregon, null and void ab initio. By separate decision of the same date, the Jewell Mining Claim millsite in lot 3, sec. 33, T. 6 S., R. 48 E., was similarly declared null and void. The claimants having interests in the Jewell lode mining location and millsite are as follows: Virgil I. Willmarth; Virgil I. Willmarth Jr., and Julia Willmarth, husband and wife; Everett E. Willmarth and Dixie Jean Willmarth, husband and wife; Jim McGinness and Ruth McGinness (formerly Ruth Willmarth), husband and wife. The claims at issue were located February 27, 1956; recorded on April 26, 1956; and acquired by the above-listed claimants by quitclaim deed, dated December 16, 1961, which deed conveyed both the Jewell lode claim and the adjacent Jewell millsite claim. As the decision below states, the Jewell lode and millsite claims are included in the lands withdrawn from mineral entry by a first form reclamation withdrawal, dated February 12, 1952. This withdrawal, made in connection with the

Hell's Canyon Reclamation Project, was lifted by Public Land Order 2734 of July 19, 1962, but the Jewell locations were made in 1956 at which time the withdrawal order was still in full effect.

[1] It is a well settled matter that mining claims located upon land which has previously been withdrawn from mineral entry by a first form reclamation withdrawal order are null and void ab initio. J. P. Hinds, 25 IBLA 67, 83 I.D. 275 (1976); Walter B. Freeman, 25 IBLA 150 (1976); Russ Journigan, 16 IBLA 79 (1976).

Appellants assert that they acquired the subject mining claim and millsite believing them to be valid. They allege that neither the locators in 1956 nor they at any time thereafter had been informed the lands were not open to entry under the mining laws. They also assert an investment in time and money in improvements and assessment work each year, plus additional expenses from 1972 to 1977 in investigating whether they could obtain a patent to the land, either under the mining laws or under the Mining Claim Occupancy Act [30 U.S.C. § 701 (1970)]. They conclude by stating:

We feel it would not be adverse to the public interest in any way if we were to own and occupy this mill site area. We do not block access to the water for recreational purposes, nor do we interfere with any other of the multiple use management concepts such as grazing, timber harvest or mining. We do not intend to speculate, only to occupy this area for a home-site.

Appellants have not asserted they satisfied the requirements of the mining laws necessary to validate their claims, assuming they could otherwise be validated. These requirements would include the discovery of a valuable mineral deposit within the limits of the mining claim, 30 U.S.C. §§ 21, 22 (1970), and use or occupancy of the millsite in connection with a valid mining claim or by ownership of a quartz mill or reduction works on the millsite, 30 U.S.C. § 42 (1970). Appellants' above-quoted statement seems to belie any notion that the land ever has been or is now being held by them for legitimate mining or milling purposes. It indicates, rather, that they are occupying the land only for residential purposes. Thus, even though they performed the annual assessment work on the mining claim and held the claims after the land was reopened to operation of the mining laws, this does not warrant any further investigation in this case. It would be appropriate to consider the case further under 30 U.S.C. § 38 (1970), if appellants asserted rights thereunder. Ralph Page, 19 IBLA 255 (1975); Gardner C. McFarland, 8 IBLA 56 (1972). However, in the absence of such allegations, we need only affirm the decisions below, which properly declared the Jewell lode claim and the Jewell Mining Claim millsite null and void ab initio. Indeed, appellants have not asserted any error in the BLM decisions.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

