

MARK W. BOONE AND JOHN L. DUTRA

IBLA 77-516

Decided November 25, 1977

Appeal from decision of the California State Office, Bureau of Land Management (BLM), declaring Donna Kathleen Lode Mining Claim null and void ab initio. CA 4390.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land
-- Withdrawals and Reservations: Generally

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal is properly declared null and void ab initio. Where the official records of the Department reflect such proposed withdrawal, a hearing is not required to establish the invalidity of the claim.

2. Administrative Authority: Generally -- Administrative Authority:
Estoppel -- Federal Employees and Officers: Authority to Bind
Government

Reliance upon erroneous and incomplete information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Mark W. Boone and John L. Dutra, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Mark W. Boone and John L. Dutra have appealed from a decision of the California State Office, BLM, which declared their Donna Kathleen Lode Mining Claim null and void ab initio. The decision stated that:

According to the official records of this office these lands, together with other lands, are in a proposed withdrawal of the lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, filed on March 21, 1968, by the Corps of Engineers, Department of the Army, for the New Melones Project. Our records were so noted on March 29, 1968.

Therefore, the land embraced in the Donna Kathleen lode mining claim was not subject to location on the date of attempted location of May 25, 1975.

Appellants object to the Bureau's decision contending that the Government personnel had seen them on the claim and failed to inform them of any location problem and they relied on the information received from the Government's representative in locating their mining claim where it is now situated.

[1] The filing of an application for withdrawal of public lands by a Federal agency segregates the lands from location, sale, selection, entry, lease or other forms of disposal under the public land laws, including mining to the extent that the withdrawal or reservation, if effected, would prevent such forms of disposal. Segregation of the lands becomes effective on the date the proposed withdrawal is noted in the tract books or on the official plate maintained in the proper office. 43 CFR 2091.2-5; 43 CFR 2351.1 to 2351.6.

Appellants do not deny that their claim is located within the lands included in the proposed withdrawal application filed by the Army Corps of Engineers (S-1491) March 21, 1968, for the New Melones Reservoir Project. That application effectively closed the land to subsequent mineral entry. It is well established that 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. Jack D. Canon, 30 IBLA 112 (1977); John Boyd Parsons, 22 IBLA 328 (1975). Where the records of this Department 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. W. E. Wicks, 14 IBLA 356 (1974); Ramsher Mining Engineering Co., Inc., 7 IBLA 172 (1972). It follows, therefore, that Appellants' mining location for the Donna Kathleen lode claim filed May 25, 1975, was properly declared to be null and void ab initio. 1/

1/ We observe that the Federal Land Policy and Management Act of 1976, PL 94-579, 90 Stat. 2743, 43 U.S.C. §§ 1701 et seq.,

[2] As for Appellants' contention that they have been misinformed about the land status by Government personnel, there is no valid basis for relief. Reliance upon erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law. The Department's regulations provide in pertinent part:

The United States is not bound or estopped by acts of its officers or agents when they * * * cause to be done what the law does not sanction or permit. 43 CFR 1810.3(b). Reliance upon information or opinion of any officer, agent or employee * * * cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c).

See, e.g., Margaret Hughey Hugus, 22 IBLA 146 (1975); Wilfred S. Wood, 20 IBLA 284 (1975).

In this instance it was Appellants' responsibility to check the BLM land status records for themselves to determine if the land in question was open to mineral entry and, as such, available for the filing of their mining claim.

fn. 1 (continued)

October 21, 1976, specifies a new procedure governing withdrawals. Section 204(b) of the Act, 90 Stat. 2751-2755, 43 U.S.C. § 1714, provides that on and after the date of the Act, the Secretary of the Interior may make, extend, modify or revoke withdrawals only in accordance with the provisions and limitations of this section. Notice of new applications for withdrawal and a statement as to the extent of segregation while the application is being considered must be published in the Federal Register. Upon publication, the land will become segregated from operation of the public land laws to the extent specified in the notice. The segregative effect of an application shall terminate upon rejection of the application, withdrawal of the land by the Secretary, or at the expiration of 2 years from the date of notice. Under subparagraph (g) all applications for withdrawal pending on the date of the Act shall be processed and adjudicated to conclusion within 15 years from the date of the Act. The segregative effect of any such pending applications not so processed shall terminate on that date.

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.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

