

RAYMOND C. GARDNER ET AL.

IBLA 78-111
34 IBLA 178

Decided March 14, 1978

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring placer mining claim null and void. OR MC 478.

Affirmed.

1. Mining Claims: Lands Subject to--Withdrawals and Reservations--Reclamation
Withdrawals--Withdrawals and Reservations: Revocation and Restoration

Where a reclamation withdrawal is revoked as to certain land but that land is not restored to entry, the land remains closed to mineral entry and a mining claim located on it is null and void.

2. Mining Claims: Lands Subject to--Mining Claims: Power Site Lands--Mining
Claims Rights Restoration Act--Withdrawals and Reservations: Power Sites

Lands which are covered by a license for a power project issued by the Federal Power Commission are not open to mineral location.

APPEARANCES: Raymond N. Gardner, Marybelle Gardner, Huntingdon, Oregon, pro sese.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Raymond C. and Marybelle Gardner have appealed from a decision of the Oregon State Office, Bureau of Land Management, dated November 18, 1977, declaring the Molly Sue placer mining claim null and void ab initio on the ground that the land embraced within the claim was not open to mineral entry at the time of its location.

The claim, which covers the SE 1/4 SE 1/4, sec. 11, T. 12 S., R. 45 E., Willamette meridian, Oregon, was located on November 22, 1976.

Since the claim (and other land) is located within an area withdrawn for power purposes, the Bureau of Land Management began proceedings required by the Act of August 11, 1955, 30 U.S.C. § 621 *et seq.*, to determine if, or under which of the alternatives provided by that Act, placer mining would be allowed.

After examining the status of the land, the State Office concluded:

The land within the SE 1/4 SE 1/4 Sec. 11, T. 12 S., R. 45 E., Will. Mer., Oregon was included within a first form reclamation withdrawal dated Feb. 12, 1952, for the benefit of the Hells Canyon Reclamation Project. The withdrawal was revoked as to the SE 1/4 SE 1/4 of the said Section (and other lands). However, this parcel was not included in Public Land Order 2734 of July 19, 1962, which opened to entry some of the lands in the withdrawal, nor has any other restoration order been issued for it. Therefore, the land was not open to entry under the public land laws, including the mining laws, at the time of the location of the claim.

In addition, the SE 1/4 SE 1/4 SE 1/4 of Sec. 11 is withdrawn from mineral entry by Federal Power Commission Order of Nov. 4, 1959 (Power Project 1971). The Federal Entry Regulatory Commission has advised that a license has been issued for that project, with the result that the lands are not open to mineral entry for that reason, as well. The commission has also advised that a license has been issued to Idaho Power Company for Power Project 406, which traverses the area.
[Footnotes omitted.]

On appeal, the Gardners have not pointed out any error in the factors relied upon by the State Office, but have only said "The land status record does not show the location of our claim is not open to mining."

[1, 2] Contrary to appellants' unsupported assertion a review of the records involving the claim demonstrates that the State Office's conclusions are correct for the reasons set out in its decision. 1/

1/ For a further discussion of mineral locations on lands within power withdrawals see Ralph Page, 8 IBLA 435 (1972); Gardner C. McFarland, 8 IBLA 56 (1972).

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.

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

