

EDWARD L. MACAULEY  
MARTHA D. MACAULEY

IBLA 78-5

Decided May 24, 1978

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring appellant's unnamed placer mining claim null and void. OR 16025.

Affirmed.

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 Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land  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

A mining claim, located at a time when the land is withdrawn from mineral entry, may be properly declared null and void ab initio without a hearing.

APPEARANCES: William B. Murray, Esq., Portland, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This appeal is brought from a decision of the Oregon State Office, Bureau of Land Management, declaring null and void, appellants' unnamed placer mining claim situated in lot 9 of sec. 5 T. 35 S., R. 7 W., Willamette meridian, Josephine County, Oregon.

The decision below states that subject lot 9, sec. 5, "had not been opened to mineral location since April 28, 1917, when it was withdrawn by executive order for power site reserve 621." The record also shows that lot 5 was included in power project 905, May 31, 1928. The record further discloses that the mining

claim was first located on July 15, 1932, by the appellants' predecessors in interest, Palmer Lybarger and Luvilla Scott. At that time the land was within a powersite withdrawal and power project. The decision below also notes that "the land embraced in this mining claim was also withdrawn from mineral entry by Public Land Order 1726, September 3, 1950, and by the Wild and Scenic Rivers Act of October 2, 1968 (82 Stat. 906)."

Appellants argue:

First: \* \* \* [T]he Bureau of Land Management is bound by its own regulations and procedure for determining government contests as to legality and validity of mining claims, 43 CFR 4.451.

Second: \* \* \* [T]he ex parte decision of the Acting Chief, Branch of Lands and Minerals Operations, which declared the claimants' mining claim null and void, without notice and hearing, is void for non-compliance with the Administrative Procedure Act [5 USC §§ 544, 556].

Third: \* \* \* [T]he Bureau of Land Management decision is void where the Bureau based its decision in part on ex parte communication, in violation of the Administrative Procedure Act [5 USC § 554(d)].

Appellants do not deny that the subject land was withdrawn from operation of the mining laws as set forth in the decision below.

[1] The subject placer mining claim is within the boundaries of land withdrawn from mineral entry at the time of its location, and continuously withdrawn since then. It is a fundamental rule of the United States mining law that a mining claim, located at a time when the land is withdrawn from mineral entry, is null and void ab initio and may be so declared without a hearing. E.g., United States v. Consolidated Mines Smelting Co., 455 F.2d 432 (9th Cir. 1971). Where the public land record shows that the land was withdrawn at the time the claim was located, there is no question of fact requiring a hearing. Id.; W. A. Todd and A. B. Johnson, 28 IBLA 180 (1976); David Loring Gamble and Darrel Houglum, 26 IBLA 249 (1976); Foster Mining and Engineering Company, 7 IBLA 299 (1972).

Appellants' argument that failure to give notice and an opportunity for a hearing in this case is a violation of the Administrative Procedure Act is vague, and reflects a fundamental misunderstanding of that law. There is no requirement in the APA that notice and an opportunity for an evidentiary hearing be given where there is no disputed question of fact. United States v. Consolidated Mines, *supra* at 453.

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.

---

Douglas E. Henriques  
Administrative Judge

We concur:

---

Martin Ritvo  
Administrative Judge

---

Joan B. Thompson  
Administrative Judge

