

JAMES MESSANO

IBLA 77-536

Decided June 23, 1978

Appeal from decision of the Colorado State Office, Bureau of Land Management, declaring mining claims void ab initio. C-21905, C-21906, C-21908, C-21915, C-21919.

Affirmed.

1. Administrative Procedure: Hearings -- Mining Claims: Hearings -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Rules of Practice: Hearings

A mining claim located on land withdrawn from location under the mining laws is null and void ab initio -- without legal effect from the beginning. Such a mining claim may properly be declared null and void without a hearing where the records of the Department of the Interior show that the land was withdrawn from the operation of the United States mining laws at the time the claim was located.

2. Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

Mining claims located on land withdrawn from such entry are null and void ab initio and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry.

APPEARANCES: James Messano, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

James Messano has appealed from a decision by the Colorado State Office, Bureau of Land Management, declaring the following lode mining claims void ab initio: 1/

Broken 13 No. 14, Yellhoot Nos. 6 to 11, Sundown Nos. 1 to 3, Gillie Mine Nos. 26 to 29, Blue Rock Nos. 1 to 3, Clara Pearl Nos. 1, 2 and 3, Leona Bell Nos. 1 and 2, White Hot Nos. 1 to 3, and Jack Rabbit Nos. 1 and 2 lode mining claims, located in Sections 26, 27 and 34, T. 51 N., R. 9 W., New Mexico Principal Meridian, Montrose County, Colorado.

All of these claims were located between May 1, 1954, and March 23, 1974. Specifically, 1 claim was located in 1954, 19 were located in 1955, 4 were located in 1956, and 3 were located in 1974. The decision states that on August 2, 1949, a First Form Reclamation Withdrawal was issued by the Bureau of Reclamation covering the above lands, and that the withdrawal became effective when filed with the Federal Register on January 22, 1951. By PLO 2780 conditional location of mining claims was again permitted on the lands as of November 9, 1962. A further PLO, No. 5261, again withdrew the lands from mining locations effective September 22, 1972. The decision held that the claims were void ab initio because they were located when the lands were withdrawn from mineral location and subsequent revocation of the withdrawal could not validate claims so located.

Appellants have not controverted the facts of record but have made a request for a hearing.

[1, 2] A mining claim located on land at a time when the records of the Department of Interior show that land is withdrawn from location under the mining laws may properly be declared null and void without a hearing. Mark W. Boone, 33 IBLA 32 (1977); Charles R. Nielsen, 30 IBLA 235 (1977); Jack D. Canon, 30 IBLA 112 (1977); W. E. Wicks, 14 IBLA 356, 359 (1974). The underlying reason for this holding is that the claimant cannot possibly produce evidence to prove the validity of a claim upon land that was not open to mineral entry at the time of the attempted location. Charles R. Nielsen, supra at 236. The request for a hearing is therefore denied. Moreover, the

1/ Appellant requested that the term "void ab initio" be explained "in simple words." It means "without legal effect from the beginning," i.e., a nullity. In other words, the claims have never had any legal effect as against the United States. They have never existed under the United States mining laws.

subsequent modification or revocation of the withdrawal could not revive mining claims which were void because they were located at a time when the land was withdrawn from mineral entry. J. P. Hinds, 25 IBLA 67 (1976); David W. Harper, 74 I.D. 141 (1967).

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.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

