

Editor's note: Appealed – reversed, Civ.No. C80-180 (D.Utah June 11, 1981)

RITER EKKER, KERRY EKKER

IBLA 78-595 Decided December 13, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring the TESI Nos. 1-5 lode mining claims null and void ab initio.

Affirmed.

1. Mining Claims: Determination of Validity–Mining Claims: Lands Subject to–Mining Claims: Withdrawn Land – Withdrawals and Reservations

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio in the absence of a showing that the claimants had a valid existing right to the claims which predates the withdrawal. Where claimants assert that they have simply filed amended notices of location of claims which were first located prior to the withdrawal, but the record indicates that the claims are in fact not the same as those located prior to the withdrawal, there is no valid existing right to the new claims, and they are properly declared null and void ab initio.

APPEARANCES: D. A. Frandsen, Esq., Price, Utah, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On September 21, 1977, Riter Ekker and Kerry Ekker recorded notices of location of five lode mining claims, TESI Nos. 1-5, in Garfield County, Utah, which stated that these claims had been located on September 8, 1977, in sec. 11, T. 33 S., R. 14 E., Salt Lake meridian, Utah.

On July 21, 1978, the Utah State Office, Bureau of Land Management (BLM), issued a decision declaring these claims null and void ab initio, because they are located in lands lying within the Glen Canyon National Recreation Area, and because, on October 27, 1972, these lands were withdrawn from location, entry, and patent under the mining laws, subject to valid existing rights, per section 3(a) of P.L. 92-593. BLM noted in this decision that Riter Ekker had alleged that the claims were amended locations to Goblin Nos. 2-6 lode mining claims, located on September 10, 1953, prior to the withdrawal of the lands. It held, however, that the record did not substantiate this allegation, and that the claimants had not come forth with any facts in support thereof. BLM accordingly declared the claims null and void ab initio, from which decision Riter and Kerry Ekker (appellants) filed a timely notice of appeal.

[1] There is no question that the TESI Nos. 1-5 lode mining claims are located within the Glen Canyon National Recreation Area, or that the lands on which they are located were withdrawn from location on October 27, 1972. However, appellants assert that the claims are merely amended locations of the Goblin Nos. 2-6 lode claims which were located on September 10, 1953, before the withdrawal. If this were true, appellants might have had a valid existing right on October 27, 1972, which would preserve the present claims.

However, it is clear from the record that the TESI Nos. 1-5 lode mining claims are not the same as the earlier Goblin Nos. 2-6. While the notices of location of the Goblin claims do not specify in which section these claims are located, they state where the claims are situated in relation to an air strip on the Dirty Devil River. Goblin Nos. 2, 3, and 6 are located "southwesterly" of the airstrip on the Dirty Devil River; Goblin Nos. 4 and 5 are located "south" of this airstrip. TESI Nos. 1-5 are all located in sec. 11, T. 33 S., R. 14 E., Salt Lake meridian, Utah. In order for the Goblin Nos. 2-6 claims to be the same as the TESI Nos. 1-5, they would obviously also have to be located in section 11.

However, section 11 is located substantially east of the Dirty Devil River. As the Goblin claims are all located to the south and southwest of the airstrip, a point near the Dirty Devil River, they cannot be located in section 11. Even if the airstrip were located at the easternmost point of the Dirty Devil River, Goblin Nos. 2-6 would be in section 9 or section 10, according to the descriptions in the 1953 notices of location. The fact that the Goblin claims are not in section 11 is apparent from reference to the descriptions in the location notices as compared with the township plat and map in the record. It is simply impossible to proceed "southwesterly" or "south" from any point on the Dirty Devil River (as described in the location notices for the Goblin claims) and arrive in section 11, where the TESI group is situated.

Mining claims located on lands previously withdrawn from entry under the mining laws are null and void ab initio. Harry H. Wilson, 35 IBLA 349 (1978), and cases cited. As the lands on which the TESI Nos. 1-5 lode mining claims were located by appellants were withdrawn from location under the mining laws prior to the date of location, and as appellants have not shown that they had a valid existing right to these claims which predated this withdrawal, we conclude that BLM properly declared these claims null and void ab initio.

On appeal, appellants state they they had applied for and received permission from the National Park Service (NPS) to enter these claims and commence exploratory drilling. Apparently, shortly after June 1, 1978, they did enter the claims and do some drilling, but, according to appellants, after a "couple of days" they were stopped, and NPS revoked their license because the "TESI claims were not the same claims and did not cover the same area as the Goblin claims." Appellants state further that they subsequently met with NPS representatives who "were apparently convinced they were the same claims after talking to the Ekkers and gave approval for Ekkers to occupy the claims and check them out."

Appellants submit that BLM erred by not taking into account the facts that NPS had allegedly concluded that the claims were valid when it gave them permission to drill, and that appellants were allegedly able to convince NPS representatives that the claims were the same as the Goblin claims during the discussion following the stoppage of exploration. Appellants argue that BLM erred by not supplementing the record with details of why NPS originally allowed their application for permission to drill and why NPS representatives concluded that these claims were the same as the Goblin claims.

The acceptance by NPS of appellants' application for permission to drill on these claims was not an official pronouncement that the claims were valid, or that they were located on land subject to mining location at a time when the lands were subject thereto. Nor is it material that appellants may subsequently have convinced some NPS representatives that the claims were the same as the Goblin claims. While NPS may investigate to see whether claims are invalid and may petition to have their validity adjudicated, it is BLM which has the authority to make the official determination of validity based on the status of the land. NPS recognized this fact by requesting BLM to issue a decision on the validity of these claims on June 12, 1978.

Moreover, the truth of appellants' allegations is far from certain. It is not clear that NPS representatives ever did conclude that these claims were the same as the earlier Goblin claims. Appellants allege only that they "were apparently convinced" of this fact after a meeting following the revocation of their permission to drill. They may simply be assuming so on the strength of the fact that the rangers apparently allowed them to reoccupy their claims temporarily

after revoking permission to drill there. It is likely that appellants did not convince the NPS representatives that these claims were the same as the Goblin claims, either at this meeting or at any other time, as NPS revoked permission to drill on the claims for the very reason that the claims were not the Goblin claims, and as, on June 12, 1978, NPS requested that BLM issue a decision on the validity of the claims.

In any event, the Goblin location notices, prepared and filed by Riter Ekker, establish conclusively that those claims could not have been in section 11.

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.

Edward W. Stuebing
Administrative Judge

We concur: Newton Frishberg
Chief Administrative Judge

Frederick Fishman
Administrative Judge

