

J. R. NESMITH

IBLA 78-636 Decided December 22, 1978

Appeal from decision of California State Office, Bureau of Land Management, which declared six placer mining claims null and void ab initio. CA MC 3934-MC 3937, MC 10938, and MC 10939.

Affirmed.

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 Mining Claims: Lands Subject to—Mining Claims: Withdrawn Land—Withdrawals and Reservations: Effect of

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

APPEARANCES: J. R. Nesmith, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

J. R. Nesmith has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated August 24, 1978, which declared the Big Maria Nos. 1, 2, 3, 4, 9, and 10 placer mining claims null and void ab initio. 1/

These claims are situated in sec. 26 and the E 1/2 sec. 27, T. 5 S., R. 23 E., San Bernardino meridian. The Big Maria Nos. 1-4 were located May 3, 1977, and the Big Maria Nos. 9 and 10 were located April 20, 1978.

1/ The record shows that J. R. Nesmith was joined in these claims before the BLM by June M. Nesmith, J. H. Nesmith, Jr., David F. Young, Nicholas Ellis, Keith Ellis, Laura F. Sorenson. These parties have not filed an appeal on their own behalf nor does appellant indicate that he files this appeal as a representative of the group.

According to the Public Land Records of the BLM certain areas covered by these claims include lands that have been patented without mineral reservation and therefore, are no longer available for the location of mining claims. Appellant acknowledges this fact and does not take issue with that part of the decision. The remainder of these claims include public lands that have been withdrawn from public entry since February 19, 1929, under a first form reclamation withdrawal for use by the Bureau of Reclamation for the Colorado River Storage Project.

Appellant states that the property is rough with hills and gullies, and not suitable for water storage. He states he has paid county taxes on the lands and asks that his mining project be allowed to go forward.

[1] It is well settled that mining claims located on land closed to mineral entry are null and void ab initio. W. R. Strickler, 27 IBLA 267 (1976), and cases cited, including Leo J. Hottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970). Although appellant may have expended money in an effort to develop the claims, there is no known remedy under existing law to validate the claims. W. R. Strickler, supra. Furthermore, the Government has no authority to reimburse mining claimants for expenses incurred in attempting to develop mining claims which are null and void ab initio. Such actions actually constitute trespass on the public lands. W. A. Todd, A. B. Johnson, 28 IBLA 180 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Edward W. Stuebing
Administrative Judge

We concur.

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

