

Editor's note: Reconsideration denied by order dated Aug. 8, 1979

GERALD BYRON BANNON

IBLA 78-188

Decided March 30, 1979

Appeal from the decision of the Oregon State Office, Bureau of Land Management, declaring the Squaw Hut lode mining claim null and void ab initio. OR MC 1663 (Wash.).

Affirmed.

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 Mining Claims: Determination of Validity—Mining Claims: Lands Subject to—Mining Claims: Withdrawn Land—Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

APPEARANCES: Gerald Byron Bannon, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Gerald Byron Bannon has appealed from the December 21, 1977, decision of the Oregon State Office, Bureau of Land Management (BLM), which declared his Squaw Hut lode mining claim null and void ab initio. The decision recited that the claim was located August 11, 1976. In a letter dated October 16, 1977, the appellant corrected the location notice to read that the claim was located in the SE 1/4 NW 1/4, sec. 27 unsurveyed T. 35 N., R. 17 E., Willamette meridian, Washington.

[1] The land described by appellant was withdrawn from appropriation under the mining laws by PLO 3794, 30 FR 10894, 10895 (August 21, 1965). Thus, the mining claim was properly declared null and void ab initio. United States v. Consolidated Mining and Smelting Co., 455 F.2d 432 (9th Cir. 1971); Harry R. Wilson, 35 IBLA 349 (1978).

Appellant's statement of reasons contains additional discussion, but any legal points which appellant desires to set forth are completely unclear. Appellant states that he does not wish to "appropriate" this property. Since a location is an appropriation under the

mining laws, there is no merit to this argument. Any rights stemming from the mining laws, 30 U.S.C. § 4 et seq. (1976), are barred by the withdrawal.

The fact that Forest Service or BLM officials had not told appellant about the withdrawal cannot change the result of this appeal. The withdrawal was published in the Federal Register and was noted on the land office records. The Government cannot be held responsible for appellant's failure to check the status of the land on which he wished to locate his mining claim.

Appellant alleges that the Squaw Hut lode is within an established tunnel site, but he fails to indicate why this should affect our determination that the claim is invalid. He has not shown that he is the successor-in-interest to any valid existing right which predated the withdrawal under PLO 3794. See Harry H. Wilson, supra; Lyman B. Crunk, 68 I.D. 190, 194 (1961).

Appellant raises several other matters he wishes us to consider in this decision. He wants to continue a road near the claim but because this land is within a national forest, this question falls within the jurisdiction of the Forest Service, not the Department of the Interior. He also states that he wishes to renew a sister claim already filed but refused by the Bureau. However, the Board does not have jurisdiction in the absence of a specific decision from which a timely appeal is filed. No such decision is referred to in the record. See Duncan Miller, 34 IBLA 283 (1978).

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.

Joseph W. Goss
Administrative Judge

We concur.

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

