

MERRILL M. MOORE  
J. J. ADAMS

IBLA 79-1, 79-55

Decided October 29, 1979

Appeal from decisions of the Oregon State Office, Bureau of Land Management, declaring mining claims null and void ab initio, in part. OR 18726 (Wash.) and OR 19438 (Wash.).

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Lands  
-- Withdrawals and Reservations: Generally

Mining claims are properly declared null and void ab initio where they are located on land which, on the date of location, was included in an application for withdrawal which previously had been noted on land office records.

APPEARANCES: Dr. Kenneth S. Holm, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Appeals have been filed from two decisions of the Oregon State Office, Bureau of Land Management (BLM), dated August 23, 1978, and October 4, 1978, declaring the Billygoat #9 and the Cindy Bill lode

mining claims null and void ab initio, in part. <sup>1/</sup> The claims are situated within unsurveyed secs. 14, 15, 22, and 23, T. 38 N., R. 20 E., Willamette meridian, Washington, within the Okanogan National Forest.

Portions of these claims were declared null and void because they were located on land not open to entry at the time of their location. Certain areas of the claims are located within the boundaries of the proposed withdrawal of the Billy Goat Recreation Area. An application, OR 1294 (Wash.), for withdrawal of all the land in the recreation area from all forms of appropriation under the mining laws was filed by the Forest Service, U.S. Department of Agriculture, and noted on the land records February 27, 1967.

[1] The pertinent regulation, 43 CFR 2091.2-5, provides, in part, that:

(a) Application. The noting of the receipt of the application under §§ 2351.1 to 2351.6 in the tract books or on the official plats maintained in the proper office shall temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal.

It is clear that the lands in question were segregated from entry on February 27, 1967, and that when appellants located their claims on November 2, 1967, and October 10, 1968, they did so on land closed to mining entry. It is well settled that mining claims located on land closed to mineral entry are null and void ab initio. John Parsons, 22 IBLA 328 (1975); Russ Journigan, 16 IBLA 79 (1974), United States v. Anderson, 15 IBLA 123 (1974).

Appellants essentially object to the purpose of the withdrawal and claim the action is illegal because no legal public notice was made. It suffices to point out that a notice of the proposed withdrawal was published in the Federal Register on March 10, 1967, inviting comments, suggestions, or objections. 32 FR 3949. This Board is

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<sup>1/</sup> Both Merrill M. Moore and J. J. Adams are part of a group of record owners of the Cindy Bill claim and were specifically named in the BLM's decision OR 19438. Although J. J. Adams was not named as a party in interest in the BLM's decision affecting the Billygoat #9, OR 18726, Mr. Adams has notified the BLM by letter of September 27, 1978, that he claims half interest in the claim. Therefore, this decision applies to his asserted interest in the Billygoat #9 claim as well as the interest of Merrill M. Moore.

not the proper forum to receive and decide complaints concerning the propriety and necessity of a proposed withdrawal. John Parsons, supra.

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.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Newton Frishberg  
Chief Administrative Judge

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Joseph W. Goss  
Administrative Judge

