

JACK C. FRANKS

IBLA 79-554

Decided July 30, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management, declaring the Jack O'Lantern lode mining claim null and void ab initio. C-28398 MUC.

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 Mining Claims: Determination of Validity – Mining Claims: Lands Subject to – Mining Claims: Withdrawn Land – Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

2. Mining Claims: Determination of Validity – Mining Claims: Lands Subject to – Mining Claims: Location – Mining Claims: Relocation – Withdrawals and Reservations: Effect of

Where a mining claim located on land withdrawn at the time of location is declared void ab initio, such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior location, reestablish or protect rights to the prior claim.

APPEARANCES: James M. Piccone, Esq., Denver, Colorado, for Idaho Power Company; Aldine J. Coffman, Jr., Esq., for Jack C. Franks, successor in interest to Dale W. Dillon, Idaho Power Co., and Terra

Marine Mining Company; Lowell Madsen, Esq., Assistant Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for Government.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Jack C. Franks, stated to be successor in interest to Dale W. Dillon, Terra Marine Mining Company, and the Idaho Power Company, has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated July 5, 1979, which declared their location of the Jack O'Lantern lode mining claim null and void ab initio because it was located on land withdrawn from mineral location.

The records of the San Miguel County Clerk and Recorder show that the mining claim location certificate and the amended certificate for the Jack O'Lantern lode claim were filed December 8, 1970. The claim was relocated on that same date. The claim is located in sec. 32, T. 44 N., R. 18 W., New Mexico principal meridian, San Miguel County, Colorado. The official land status records of the BLM show that all the lands in sec. 32, T. 44 N., R. 18 W., were withdrawn July 7, 1948, for an Atomic Energy Commission withdrawal by PLO 494 which withdrew these lands from all forms of mining location. The lands were also withdrawn from mining location by section 5 of the Wild and Scenic Rivers Act, as amended, Oct. 2, 1968, 82 Stat. 906, 910 (Jan. 3, 1975, 88 Stat. 2094), 16 U.S.C. § 1276 (1976).

[1] Therefore, as of December 8, 1970, the date appellant's predecessor relocated the claim and filed the location certificate and amended certificate, the lands were not available for mining claims. Where a mining claim is located on land previously withdrawn from appropriation under the mining laws, an attempt to locate a mining claim on such land is a nullity and the claim is properly declared null and void ab initio. Tilden Holloway, 43 IBLA 134 (1979); Gerald Byron Bannon, 40 IBLA 162 (1979); Harry R. Wilson, 35 IBLA 349 (1978). We find that the State Office decision properly held appellant's 1970 location null and void.

Appellant argues on appeal that the 1970 location filing was not a new location of the claim but merely a continuation of the original Jack O'Lantern lode claim, first located February 1, 1943. Appellant contends that he holds title to the original claim, located in 1943, which predates the withdrawals in question and that the location of December 8, 1970, was merely a transfer in the orderly liquidation of a corporate entity.

[2] It is noted that appellant's interest in the Jack O'Lantern lode mining claim which he attributes to his acquired interest in the original location of that claim beginning in 1943 is currently being considered in another proceeding, Mining Contest No. 680. On October 5, 1979, appellant's predecessors filed a motion requesting

that these cases be consolidated. By order of this Board dated November 29, 1979, that motion for remand and consolidation was denied. The disposition of this appeal does not affect the status of the original 1943 location for the same land which preceded the Atomic Energy withdrawal by PLO 494.

This Board has previously considered similar circumstances involving the effect of an attempted relocation subsequent to a withdrawal stating: "[W]hile the amended locations, having been made while the land was withdrawn, gained the appellants nothing, neither did they affect the validity of the prior mining claims upon which they rely and their rights to the land covered by these prior claims remain to be determined." R. C. Jim Townsend, 18 IBLA 100, 101 (1974) and cases cited therein. Accordingly we do not pass on the validity of the claim located in 1943. Appellant's rights thereunder will be determined in mining contest No. 680.

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

I concur.

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Frederick Fishman  
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur in the majority opinion. Besides the fact that appellant's position is not in accordance with the law of mining, the position is apparently premised on appellant's being successor in interest to the Lucky D. Uranium Mining Co. In appellant's statement of reasons, however, it is set forth that there was no conveyance from the Company to appellant's predecessor Dale W. Dillon:

The claim passed by title instrument to the Lucky D. Uranium Mining Co., of which Dale W. Dillon was president and liquidating director. In 1970, upon the corporation's dissolution, Dale W. Dillon filed a relocation of the claim to continue title in lieu of a corporate receiver's deed, which would have given the same effect. It is this relocation in December of 1970 which is declared to be null and void by the act of the Colorado State Office, Bureau of Land Management, to which this appeal is directed.

Appellant's interest is based upon the claim first located by Dillon in 1970, and he has no privity of title with the earlier locators.

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Joseph W. Goss  
Administrative Judge

