

JAMES F. PEPCORN
WAYNE A. REDDEKOPP

IBLA 80-643, 80-649

Decided October 24, 1980

Consolidated appeals from decisions of the Idaho State Office, Bureau of Land Management, declaring the NevIda Nos. 41 and 42 placer mining claims (IMC 48511 and 48512) null and void ab initio.

Affirmed.

1. Act of August 27, 1958--Mining Claims: Lands Subject To--Rights-of-Way: Federal Highway Act

Mining claims located on lands subject to valid, ongoing, and pre-existing rights-of-way granted to the State of Idaho pursuant to The Federal Aid Highway Act, 23 U.S.C. § 317 (1976), to use the lands for materials for highway construction, are null and void ab initio.

APPEARANCES: James J. Pepcorn and Wayne A. Reddekopp, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On March 20, 1980, James T. Pepcorn and Wayne A. Reddekopp filed copies of notices of location, respectively, for the NevIda Nos. 41 and 42 placer mining claims, both of which had been located on March 13, 1980, with the Idaho State Office, Bureau of Land Management (BLM), in compliance with the requirements set out at 43 CFR 3833.1-2(b). BLM designated the NevIda No. 41 claim as IMC 48512 and the NevIda No. 42 claim as IMC 48511.

On April 17, 1980, BLM issued decisions declaring these claims null and void because on the date of their location the lands on which they are situated were under Highway Material Site Rights-of-Way I-011353 (July 1, 1960) and I-012880 (November 24, 1961) held by the State of Idaho, and were therefore not open to mineral entry or location. Pepcorn and Reddekopp (appellants), appealed the decisions, and, as they present identical issues, we have consolidated them.

[1] At the time these claims were located, the lands in question were subject in toto to grants of rights-of-way to the State of Idaho for the removal of materials for the construction and maintenance of highways under the Federal Aid Highway Act of August 27, 1958, 23 U.S.C. § 317 (1976), and 43 CFR 244.54 (1954). ^{1/} It is well established that material site rights-of-way created under this provision of law effectively withdraw the lands affected from entry and location under the mining law. Carl M. Shearer, A-30838 (Dec. 21, 1967); J. M. Keeney, A-28865 (August 6, 1962); see Schaub v. United States, 103 F. Supp. 873 (D. Alaska 1952), aff'd, 207 F.2d 325 (9th Cir. 1953); Treva L. Berger, 31 IBLA 389 (1977); A. W. Schunk, 16 IBLA 191, 81 I.D. 401 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

^{1/} The authority to grant materials rights-of-way under the Federal Aid Highway Act is now set out at 43 CFR 2821.0-3 and 2821.1 (1979), along with provisions concerning the interstate highway system.

