

DON P. SMITH

IBLA 80-925

Decided October 31, 1980

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring mining claim null and void ab initio in part. A MC 12136.

Affirmed.

1. Mining Claims: Lands Subject to

Land which has been conveyed to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so patented is null and void ab initio.

APPEARANCES: Don P. Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Don P. Smith appeals from a decision dated August 22, 1980, of the Arizona State Office, Bureau of Land Management (BLM), declaring the Apex Extension mining claim, A MC 12136, null and void ab initio in part.

Appellant's notice of location states that the Apex Extension mining claim is located in sec. 29 S 1/2, sec. 32 1/2, T. 23 N., R. 17 W., Gila and Salt River meridian. The BLM decision stated:

The Bureau of Land Management public records show that section 32, T. 23 N., R. 17 W., (excluding mineral patents) is land which has been conveyed to the State of Arizona. The surface and mineral estate was transferred to the State of Arizona under the Enabling Act and was not open to mining location. Therefore, with the lands in section 32 (excluding mineral patents) not being subject to mining location under the Act of May 10, 1872 (General Mining Law) on the date of location of said mining claim, that portion of the Apex Extension mining claim located in section 32, T. 23 N., R. 17 W., is hereby declared null and void ab initio. Cole V. Mullen, 43 IBLA 102 (1979).

Appellant alleges facts indicating that the claim was worked by his family before Arizona became a State, although assessment work lapsed and the claim was relocated in 1951. A vein of ore on adjacent patented land runs into the Apex Extension claim.

[1] Mining claims may only be located on lands open to the operation of the United States mining laws. Notwithstanding appellant's assertion that the claim "has been in and out of my family for nearly 100 years," and the fact that Arizona was not admitted to statehood until 1912, the relocation of the claim in 1951 is the date of location which is controlling. Land which has been conveyed to a state without a reservation of minerals to the United States is not available for the location of mining claims. John F. Drobnick, 41 IBLA 164 (1979). Mining claims located on such land after it is so patented are null and void ab initio. E.g., Cole V. Mullen, supra; J. P. Hinds, 25 IBLA 67, 70, 83 I.D. 275, 276 (1976). The claim was properly declared void as to the patented portion of the lands.

Accordingly, 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.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

