

SAM McCORMACK

IBLA 80-830

Decided January 6, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring four placer mining claims, M MC 52517-52520, null and void ab initio.

Affirmed.

1. Federal Land Policy and Management Act of 1976:  
Repealers--Federal Land Policy and Management Act of 1976:  
Withdrawals--Mining Claims: Lands Subject to-- Withdrawals and  
Reservations: Generally--Withdrawals and Reservations: Reclamation  
Withdrawals

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

APPEARANCES: Sam McCormack, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On November 6, 1979, Sam McCormack filed copies of certificates of location for the Blue Sky, Carl-Os, Notch, and Sammie-O placer mining claims with the Montana State Office, Bureau of Land Management (BLM), which assigned serial numbers M MC 052517-052520 to these claims. The date of location for each of these claims was November 1, 1979.

On June 23, 1980, BLM issued a decision declaring these claims null and void ab initio, as the lands on which they are situated were withdrawn from public entry on July 2, 1948, under the first form of reclamation withdrawal, pursuant to section 3 of the Act of June 17, 1902 (32 Stat. 388), 43 U.S.C. § 416 (1970) (repealed in part effective October 21, 1976). McCormack (appellant) has appealed this decision.

[1] It is well established that a mining claim located on a date when the lands are subject to a first-form reclamation withdrawal is null and void ab initio. Everett E. Willmarth, 32 IBLA 145 (1977); J. P. Hinds, 25 IBLA 67, 83 I.D. 275 (1976); Russ Journigan, 16 IBLA 79 (1974); A. L. Snyder, 75 I.D. 33 (1968); Robert K. Foster, A-29857 (June 15, 1964), aff'd, Foster v. Jensen, Civ. No. 64-1110-WM (S.D. Cal. Sept. 13, 1966); cf., M. G. Johnson, 2 IBLA 106, 78 I.D. 107 (1971). The lands in question were withdrawn on July 2, 1948, under the first form of withdrawal as provided by section 3 of the Act of June 17, 1902, supra, and so were not open to mineral location. Accordingly, BLM properly declared the claims null and void ab initio.

The portion of this statute authorizing the Secretary to withdraw lands "under the first form" for lands required for any irrigation works was repealed effective October 21, 1976, by section 704(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1976). However, this repeal did not affect reclamation withdrawals extant on this date, which are instead expressly continued, subject to review by the Secretary under section 204(1) of FLPMA, 43 U.S.C. § 1714(1) (1976).

Appellant argues that the lands are open to entry under section 2 of the Act of August 11, 1955, 69 Stat. 682, 30 U.S.C. § 621 (1976). This section concerns lands withdrawn for power development or power sites, not, as here, lands withdrawn for irrigation works in a reclamation project. Hence, it does not apply here.

This Board is of the opinion that oral argument would contribute nothing to the resolution of the appeal, and appellant's request for same is denied.

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.

Edward W. Stuebing

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Douglas E. Henriques  
Administrative Judge

