

ROBERT A. PETTIGREW

IBLA 81-364

Decided April 28, 1981

Appeal from a decision of the California State Office, Bureau of Land Management, declaring null and void the Baron Von Bedrock placer mining claim. CA MC 61809.

Affirmed.

1. Mining Claims: Lands Subject To--Mining Claims: Powersite Lands--Mining Claims Rights Restoration Act

A mining claim located after Aug. 11, 1955, is properly declared null and void ab initio when at the time of location the claim is located on lands withdrawn for power development or powersites and such lands are under examination and survey by a prospective licensee of the Federal Power Commission under an uncanceled preliminary permit. This preliminary permit, issued under the Federal Power Act and authorizing the prospective licensee to conduct its examination and survey, may not have been renewed in the case of such prospective licensee more than once.

APPEARANCES: Robert A. Pettigrew, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert A. Pettigrew appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated January 29, 1981, declaring null and void the Baron Von Bedrock placer mining claim. 1/

1/ The claim is located in the SW 1/4 sec. 22, T. 11 N., R. 10 E., Mount Diablo meridian, El Dorado County, California.

A location notice for this claim was filed with BLM on January 29, 1980, pursuant to the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the Act of August 11, 1955, 30 U.S.C. § 621 (1976).

This latter statute, also known as the Mining Claims Rights Restoration Act of 1955, authorizes entry for location and patent of mining claims on lands withdrawn or reserved for power development or powersites. A proviso to this authorization specifies, however, that nothing in the Act shall be construed to open for mineral location any lands:

(1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once. [Emphasis added.]

30 U.S.C. § 621(a) (1976).

BLM's decision of January 29, 1981, alluded to a report from the Federal Energy Regulatory Commission (FERC) indicating that the lands sought by appellant were withdrawn pursuant to the filings of the El Dorado County Water Agency on September 22, 1975, for Power Project 2761. Such lands within the project boundaries, BLM explained, were not open to mineral location. As the record reveals no project operating or being constructed on the subject lands, we understand BLM to have declared appellant's claim null and void because the lands are under examination and survey by a prospective licensee of the Federal Power Commission.

The file reveals that the lands occupied by appellant's claim were withdrawn on September 22, 1975, by order of the Federal Power Commission. This date coincides with the filing of an application by the El Dorado County Water Agency for a preliminary permit to investigate the feasibility of proposed project 2761. Thereafter, a joint preliminary permit was issued to the agency and to the El Dorado Irrigation District for a period of 36 months, effective March 1, 1978.

Appellant's statement of reasons on appeal includes a resolution of the El Dorado County Water Agency, adopted January 12, 1980, and a similar resolution of the El Dorado Irrigation District, adopted November 25, 1980. Each resolution sets forth the intention of the respective organization to file an application for a Federal power license for the SOFAR Upper Mountain Project and to allow its preliminary permit to expire on March 28, 1981, without pursuing a similar license for a Lower Mountain Project. Budgetary and time considerations are cited as the cause for the failure to pursue a Lower Mountain

Project license. Appellant contends that the organizations' intention to allow their joint preliminary permit to expire for a Lower Mountain Project contradicts BLM's finding that the subject lands are "under examination and survey by a prospective licensee of the Federal Power Commission."

Assuming that appellant's claim is not located in an area to be used for the Upper Mountain Project and further assuming that the resolutions correctly reflect the intentions of the adopting organizations, BLM's decision was correct as issued. When appellant located his claim on January 15, 1980, the subject lands were under examination and survey by the El Dorado Irrigation District, a prospective licensee and joint permittee for project 2761. It was not until some 10 months later, November 25, 1980, that the board of directors of the district adopted a resolution notifying FERC of its intention not to proceed further with the Lower Mountain Project. Hence on the date of its location, the lands occupied by appellant's claim were not open to mineral entry. ^{2/} BLM properly declared this claim null and void ab initio. Raymond C. Gardner, 34 IBLA 179 (1978); Ralph Page, 8 IBLA 435 (1972); A. L. Snyder, 75 I.D. 33 (1968).

The record does not allow us to speculate as to whether appellant's claim would be null and void ab initio if located today. What is clear, however, is that BLM's decision was correct when issued. If changed circumstances now exist, appellant may wish to relocate his claim.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge

^{2/} We need not speculate as to whether the Jan. 12, 1980, resolution of the El Dorado County Water Agency removed the subject lands from its examination and survey. The continued interest of the El Dorado Irrigation District on the date of location is enough to support BLM's decision.

