

JOHN C. FARRELL

IBLA 80-728

Decided May 28, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring placer mining claim null and void ab initio. CA MC 32965.

Affirmed.

1. Mining Claims: Powersite Lands -- Mining Claims: Withdrawn Land -- Mining Claims Rights Restoration Act -- Powersite Lands -- Withdrawals and Reservations: Powersites

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

APPEARANCES: John C. Farrell, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

John C. Farrell has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated May 21, 1980, declaring the Slim Jim placer mining claim, CA MC 32965, null and void ab initio because the claim was located on withdrawn land.

The BLM decision states that its official records show that the claim, situated in the SE 1/4 SE 1/4 sec. 33 and the SW 1/4 SW 1/4 sec. 34, T. 14 N., R. 11 E., Mount Diablo meridian, Placer County, California, was located on August 8, 1956, while the land was subject to a first-form reclamation withdrawal for the American River Division, Central Valley Project. Pursuant to the withdrawal order, effective February 26, 1952, the land was withdrawn "from public entry \* \* \* as provided by section 3 of the Act of June 17, 1902 (32 Stat. 388) [43 U.S.C. § 416 (1976)]."

It is well established that a mining claim located on a date when the land is subject to a first-form reclamation withdrawal is null and void ab initio. Susan E. Mitchell, 53 IBLA 42 (1981); Sam McCormack, 52 IBLA 56 (1981), and cases cited therein.

In his statement of reasons for appeal, appellant contends that the Slim Jim placer mining claim was originally located on February 24, 1947, well before the first-form reclamation withdrawal. He states:

At the time of withdrawal it was owned by Canyon Mines who acquired it from Sam Scott who located it 2-24-47. William Wetzlar acquired it from Canyon Mines and rerecorded it. He subsequently sold it to me in 1960.

All taxes [and] proof of labor are recorded from June 11, 1946 to the present time in the Placer County records.

Appellant submits a copy of the records of Placer County indicating the filing of a notice of location by Sam Scott for the "Slim Jim Placer Mining Claim" on February 24, 1947. Appellant also submits a handwritten statement indicating that Canyon Mines filed proofs of labor on the claim for the years 1949 through 1957. The record contains a copy of a notice of location, dated August 8, 1956, filed August 13, 1956, with the Placer County recorder by William H. and Wilma Ann Wetzlar for the "Slim Jim Claim" and a quitclaim deed, dated July 6, 1960, from the Wetzlars to appellant. Both notices of location and the quitclaim deed describe the same mining claim.

Even assuming that appellant is the record owner of the Slim Jim placer mining claim, located on February 24, 1947, the status plat covering the subject land indicates that the land was subject to powersite classification No. 168, dated February 9, 1927. The status plat is a public record of the Department of the Interior, and as such the Board may take official notice of it. See 43 CFR 4.24(b).

Pursuant to the classification order, the subject land was withdrawn from mineral entry, under the provisions of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. § 791a (1976).

[1] As this Board has noted, under the provisions of the Federal Power Act, supra, lands embraced within a powersite classification are not open to mineral entry, unless the land has been restored to such entry in accordance with section 24 of the Federal Power Act, or the location of the claim has been made in accordance with the Mining Claims Rights Restoration Act of August 11, 1955, 30 U.S.C. § 621 (1976). United States v. Gassaway, 43 IBLA 382, 387 (1979).

In the instant case, the Slim Jim placer mining claim was allegedly located on February 24, 1947, at which time the land was withdrawn from mineral location. Thus, the claim was null and void ab initio and

the location could not have been validated by the Mining Claims Rights Restoration Act. See United States v. Gassaway, supra. While the Mining Claims Rights Restoration Act opened certain lands within powersite withdrawals to mineral entry, it did not give life to void claims which had been located on withdrawn lands prior to the date of the Act. David Loring Gamble, 26 IBLA 249, 251 (1976); Mickey G. Shaulis, 11 IBLA 116, 118 (1973); Day Mines, Inc., 65 I.D. 145, 147 (1958).

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.

Bruce R. Harris  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

C. Randall Grant, Jr.  
Acting Administrative Judge

