

KELLY R. HEALY

IBLA 82-14

Decided November 20, 1981

Appeal from decision of Utah State Office, Bureau of Land Management, declaring an unpatented mining claim null and void ab initio to the extent it invades an area withdrawn from operation of the mining laws prior to the date of location of the claim. U MC 126441.

Affirmed.

1. Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

Mining claims partially located on land withdrawn from such entry are null and void ab initio to the extent of the encroachment, and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry.

APPEARANCES: Kelly R. Healy, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Kelly R. Healy appeals the Utah State Office, Bureau of Land Management (BLM), decision dated September 9, 1981, which declared the Heidi No. 1 lode mining claim, U MC 126441, null and void ab initio to the extent the claim invades the area withdrawn from all forms of appropriation under the public land laws, including the mining laws, by Public Land Order (PLO) No. 2300, March 14, 1961, 26 FR 2281, and reserved for use of the Forest Service, U.S. Department of Agriculture, as roadside zones. ^{1/} The North Fork-American Fork Canyon Highway Roadside Zone embraces a strip of land 200 feet wide on each side of the

^{1/} BLM's decision erroneously cites the date of the withdrawal order as Mar. 4, 1981, but correctly refers to PLO 2300 as the operative document.

center line of the North Fork-American Fork Canyon Highway in the SE 1/4 NE 1/4, SE 1/4 sec. 32, T. 3 S., R. 3 E., Salt Lake meridian, Utah, inter alia.

The location notice for the Heidi No. 1 lode mining claim describes an area 1,500 feet east and west by 600 feet north and south, approximately 1/4-mile due south from the north corner of secs. 32 and 33, T. 3 S., R. 3 E., Salt Lake meridian, in what would be the southern 1/3 of the NE 1/4 sec. 32, if the land were surveyed. The area thus described in the location notice falls partly within the Roadside Zone established by PLO 2300.

On appeal it is contended that the Heidi No. 1 claim is more than 800 feet from the North Fork -- American Fork Canyon Highway. Appellant states he had relocated an earlier claim that had been located more than 50 years before and subsequently abandoned.

[1] Mining claims located on land withdrawn from operation of the mining laws are null and void ab initio and will not be validated by modification or revocation of the order of withdrawal thereafter. David W. Harper, 74 I.D. 141 (1967).

To the extent the Heidi No. 1 lode mining claim encroaches upon the withdrawn Roadside Zone, the claim is legally void ab initio. The BLM decision is therefore correct and will be affirmed. 2/ To the extent the Heidi No. 1 claim occupies land not withdrawn for the Roadside Zone, the BLM decision does not apply.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

2/ A memorandum in the file indicates that the map accompanying appellant's notice of appeal shows the claim in a different location from the map originally provided to BLM. We do not find it necessary to address this issue in the context of this appeal.

