

FLOYD E. BENTON

IBLA 82-434

Decided March 15, 1982

Appeal from the decision of the Utah State Office, Bureau of Land Management, rejecting documents submitted to record a mining claim and declaring the claim abandoned and void. U MC 248069.

Affirmed as modified.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

2. Mining Claims: Lands Subject to

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

3. Administrative Authority: Generally -- Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous or incomplete information provided by Federal employees does not create any rights not authorized by law.

APPEARANCES: Floyd E. Benton, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Floyd E. Benton has appealed the decision of the Utah State Office, Bureau of Land Management (BLM), dated December 24, 1981, declaring the Gold Field (Lime Stone Quarry #8) mining claim abandoned and void. The BLM decision states that "[p]ursuant to sec. 204 of the Federal Land Policy and

Management Act of 1976, the land conclusive to the * * * mining claim, was withdrawn for reservation of the Salt Lake City Municipal Water Supply and is not open to mineral location."

Appellant located the Gold Field claim on September 1, 1981, and on November 18, 1981, timely filed with BLM a copy of his notice of location, a map, and the \$5 service charge for recordation of the claim. The claim was located partly in the W 1/2, sec. 18 and W 1/2, sec. 19, T. 1 S., R. 2 E., and partly in the E 1/2, sec. 13 and E 1/2, sec. 24, T. 1 S., R. 1 E., Salt Lake meridian.

In his statement of reasons to this Board, appellant argues:

(1) He carefully checked with BLM concerning the availability of this land before locating his claim.

(2) He complied with all the requirements of the law.

(3) In reliance, he has expended approximately \$20,000 for expenses and \$20,000 of time for such things as surveying and mapping the land and constructing roads.

(4) BLM has not complied with section 204 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1714 (1976), and the land is not withdrawn.

(5) BLM should be estopped from asserting that the land is not available or BLM has waived its right to contest the claim for the above reasons. He notes as well that other limestone claims are being mined in the vicinity of the claim.

The Act of September 19, 1914, 38 Stat. 714, states:

[T]he public lands within the several townships and subdivisions thereof hereinafter enumerated, situate in the county of Salt Lake, State of Utah, are hereby reserved from all forms of location, entry, or appropriation, whether under the mineral or non-mineral land laws of the United States, and set aside as a municipal water supply reserve for the use and benefit of the city of Salt Lake City, a municipal corporation of the State of Utah, as follows, to wit: * * * section thirteen; section twenty-four in township one south, range one east, * * * section eighteen; section nineteen; * * * in township one south, range two east, of Salt Lake base and meridian.

Section 4 of the Act, 38 Stat. 716, made the reservation subject to legal rights previously acquired under any law of the United States. The BLM status plats for T. 1 S., R. 1 and 2 E., Salt Lake meridian, reflect that the lands at issue are either withdrawn for purposes of the Salt Lake City Municipal Water Supply or included in previously patented mining claims. Section 204 of FLPMA which deals generally with withdrawals of the public lands does not alter the effect of this reservation. 1/

1/ Section 204 of FLPMA defines the authority of the Secretary of the Interior to make future withdrawals, outlines procedures for doing so, and provides for the review of existing withdrawals.

[1, 2] Mining claims may only be located on lands open to the operation of the United States mining law, 30 U.S.C. § 22 (1976). Thus, mining claims located on land previously withdrawn from mineral entry are null and void ab initio. Clayton S. Hale, 62 IBLA 35 (1982); Sherman Smith, 58 IBLA 188 (1981); Steve Foster, 56 IBLA 282 (1981). Similarly, claims located on lands which have been patented without a reservation of minerals to the United States, as would be the case with patented mining claims, are also null and void ab initio. Ariel C. MacDonald, 52 IBLA 384 (1981); Samuel A. Chesebrough, 49 IBLA 249 (1980). BLM should have rejected appellant's recordation filings and declared appellant's claim null and void ab initio for these reasons. See Samuel A. Chesebrough, supra.

[3] Whether appellant was misdirected or misinformed by a BLM employee, as he alleges, or whether he misunderstood what he may have been told, makes no difference. Reliance upon information or opinion of any employee of BLM cannot operate to vest any right not sanctioned by law. Wayne Cook, 58 IBLA 350 (1981); 43 CFR 1810.3(c).

Therefore, 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 Utah State Office is affirmed as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

