

JOHN A. ROSS
MAXINE LIDKE

IBLA 83-342

Decided May 5, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 743272 through A MC 74385.

Affirmed, as modified.

1. Administrative Procedure: Hearings -- Constitutional Law: Due Process -- Mining Claims: Generally -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

APPEARANCES: John A. Ross, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John A. Ross and Maxine Lidke appeal the Arizona State Office, Bureau of Land Management (BLM), decision of January 7, 1983, which declared the Iron Mountain Group Nos. 1 through 13 and No. 17 lode mining claims, A MC 74372 through A MC 74385, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM for 1979, 1980, or 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

The Iron Mountain Group of claims were located by John H. Lidke and John A. Ross in August and September 1956. Claims Nos. 1 through 11, and 17 are situated in sec. 25, T. 13 S., R. 11 E., and sec. 30, T. 13 S.,

R. 12 E., Gila and Salt River meridian, Pima County, Arizona. Claims Nos. 12 and 13 are situated in sec. 27, T. 13 S., R. 11 E. Copies of the location notices were filed with BLM October 12, 1979, in accordance with the recordation requirements of FLPMA. No proofs of labor or notices of intention to hold the claims were ever filed for the Iron Mountain Group. Therefore, even if the claims had been properly located in 1956, they would now be conclusively deemed abandoned and void as a matter of law. However, the claims were never viable, as will be explained.

The Secretary of the Interior, on April 29, 1929, under authority in the Act of June 14, 1926, 44 Stat. 741, issued Recreation Withdrawal No. 21. This order withdrew some 26,565 acres of public lands including, inter alia, secs. 25 and 27, T. 13 S., R. 11 E., and sec. 30, T. 13 S., R. 12 E., from all forms of appropriation under the public land laws, including the mining laws, and made the area available for the Tucson Mountain Park.

Presidential Proclamation No. 3439, of November 22, 1961 (26 FR 10899), transferred some 15,360 acres of public land within the Tucson Mountain Park into the existing Saguaro National Monument. Among the lands so transferred were secs. 25 and 27, T. 13 S., R. 11 E., and sec. 30, T. 13 S., R. 12 E. Lands in national monuments are not now open to the mining laws, except where valid mining claims were in existence at the time the Monument was created by Presidential proclamation.

It is thus evident that the Iron Mountain Group of mining claims was located at a time when the land was not open to operation of the mining laws of the United States. The claims have been null void ab initio.

Appellants have indicated their confusion about the status of the lands on which their claims were made. As above stated, the lands were not open to location when the claims were purportedly located, and they are not open to such location at this time. The area is within a national monument, created by Presidential proclamation under authority vested in him by section 2 of the Act of June 8, 1906, 34 Stat. 225, 16 U.S.C. § 431 (1976). National parks are created by act of Congress.

The BLM decision is modified to show that the Iron Mountain Group of lode mining claims, A MC 74372 through A MC 74385, are declared null and void ab initio, because the land was not open to mining location when the claims were staked, and is not open to such location at this time because of being within the Saguaro National Monument.

[1] No property rights are created by the location of mining claims on lands which are not open to mineral entry and location, and such claims are void as a matter of law, and thus no contest proceeding or hearing is required. United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966); see Lutzenhizer v. Udall, 432 F.2d 328 (9th Cir. 1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision, as modified, is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

R. W. Mullen
Administrative Judge

