

SAMUEL P. SPEERSTRA

IBLA 84-32

Decided January 24, 1984

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claim null and void ab initio. CA MC 24501.

Affirmed.

1. Act of May 29, 1928 -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of -- Withdrawals and Reservations: Revocation and Restoration

A mining claim located at a time the land is withdrawn from appropriation by the Act of May 29, 1928, is null and void ab initio. It is immaterial whether future revocation of the withdrawal is being considered.

APPEARANCES: Mr. Samuel P. Speerstra, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Samuel P. Speerstra has appealed from a September 2, 1983, decision of the California State Office, Bureau of Land Management (BLM), which declared his lode mining claim, CA MC 24501, null and void ab initio. Recordation documents for this claim were filed with BLM on May 2, 1979. The claim is located in the N 1/2 SW 1/4 SE 1/4 sec. 31, T. 2 N., R. 7 W., San Bernardino meridian. The BLM decision states that all of sec. 31, T. 2 N., R. 7 W., was withdrawn for restoration of Los Angeles County watershed by the Act of May 29, 1928, 45 Stat. 956 (known as the Watershed Withdrawal Act).

The case record indicates that this claim embraces land in the Angeles National Forest and was once subject to a special use permit issued by the United States Forest Service. This claim, known as the Bighorn Mine, is for the gemstone lapis lazuli. Appellant has filed proofs of labor annually since 1979.

This land was included in Section 1 of the Watershed Withdrawal Act. Section 2 provides that the withdrawn lands may be restored to location and entry under the mining laws by order of the President upon the recommendation of both the Secretary of the Interior and the Secretary of Agriculture and after notice by the Department of the Interior. 45 Stat. 958. The Department of the Interior did give such notice in the Federal Register, 46 FR 61927 (Dec. 21, 1981), where it announced that the Forest Service (Department of Agriculture) had filed application CA 5322 to open to

mineral entry 80 acres comprising the S 1/2 SE 1/4 sec. 31, T. 2 N., R. 7 W. San Bernardino meridian. However, no final recommendation has yet been made and the petition itself is still subject to negotiation between the Departments of Agriculture and Interior. 1/

On appeal to this Board, appellant points out that he has applied for restoration of this land to mineral entry. He encloses with his appeal copies of numerous documents in support of this petition, including the recommendation of the Forest Service mineral examiner and testimonials from gem retailers and gemologists.

[1] Appellant does not dispute that this claim was located on land withdrawn by the Act of May 29, 1928. It is well established that a mining claim located on lands that are withdrawn from location is null and void ab initio, *i.e.*, without legal effect from the beginning. Leo J. Kottas, 73 I.D. 123 (1966), *aff'd sub nom.*, Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970); R. C. Jim Townsend, 18 IBLA 100 (1974). Appellant's claim, CA MC 24501, was located well after the land was withdrawn; therefore, BLM properly found that it was null and void ab initio. John S. Fleming, 65 IBLA 357 (1982).

Appellant emphasizes that a petition to revoke the withdrawal as to this land has been filed. However, once land has been withdrawn from mineral entry, it remains withdrawn until the withdrawal is formally revoked. It is immaterial whether the lands are or have been used for the purpose for which they were withdrawn. Ronald W. Ramm, 67 IBLA 32 (1982); William C. Reiman, 54 IBLA 103 (1981); David W. Harper, 74 I.D. 141 (1967). Eventual action on the petition is irrelevant to this claim, since CA MC 24501 is null and void ab initio. A valid claim cannot be located until the withdrawal is revoked as to this land and the land is restored to mining entry. Raymond C. Gardner, 34 IBLA 179 (1978).

However, this decision does not preclude further operations pursuant to Forest Service special use permit in order to allow appellant to proceed with such work as is necessary to support the pending petition. 2/

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 California State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

1/ The area has also been considered for inclusion in a proposed legislative addition to the nearby Cucamonga Wilderness. However, Congress has not acted on this proposal and the potential boundaries are still in dispute.

2/ Nor would this decision preclude private legislative action.

