

CRUZ G. VELASQUEZ
ARMANDO SANCHEZ

IBLA 83-716

Decided January 25, 1984

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring a mining claim null and void ab initio. A MC 101690.

Affirmed.

1. Mining Claims: Lands Subject to -- Recreation and Public Purposes Act

A mining claim lying entirely on lands previously patented under the Recreation and Public Purposes Act is null and void ab initio because such lands are not open to mineral entry.

APPEARANCES: Cruz G. Velasquez and Armando Sanchez, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Cruz G. Velasquez and Armando Sanchez have appealed from a May 26, 1983, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring their Coronado I mining claim null and void ab initio. The basis for the BLM decision was the fact that the official land records showed that the area in which the claim was located ^{1/} was patented on September 29, 1927, under Recreation and Public Purposes Patent No. 1008069 to the city of Phoenix for South Mountain Park. BLM stated that the land was not open to location when the Coronado I was located and concluded that the claim was null and void ab initio.

On appeal appellants do not appear to be challenging the existence of the patent; however, they apparently believe that the land is open to location, despite the patent. They have directed the Board's attention to section 2 of the Recreation and Public Purposes Act, as amended, 43 U.S.C. § 869-1 (1976), which reads in part: "Each patent or lease so issued shall contain a reservation to the United States of all mineral deposits in the lands conveyed or leased and of the right to mine and remove the same, under applicable laws and regulations to be established by the Secretary."

^{1/} The location notice describes the claim as located in secs. 11 and 12, T. 1 S., R. 3 E., Gila and Salt River meridian, Arizona. The notice gives the date of location as Apr. 28, 1980.

Even though the United States reserved the minerals in the patent issued pursuant to the Recreation and Public Purposes Act, the right to mine and remove any minerals was to be subject to rules and regulations to be developed by the Secretary of the Interior. Pursuant to the Act, the Secretary promulgated regulations; however, no provision for mineral entry or appropriation under the general mining laws was included in those regulations. Gloria Ann Sandvik, 73 IBLA 82 (1983). Thus, lands included in such a patent are not available for the location of mining claims, and a claim lying entirely within the boundaries of the patent is null and void ab initio. See Gloria Ann Sandvik, supra; Delmar McLean, 40 IBLA 34 (1979). 2/

In their statement of reasons appellants state:

Location was done in the year 1901-1905 by Alberto Manchia founder of said mining claim. Name of mine at that time was Las Hondulas. Which was then bought by Mr. Lucion in the year 1921-1926. Mr. John W. Lewis continue [sic] to mine it until -- 1940. The same mine was discovered in 1964 by Cruz G. Velasquez and Armando Sanchez and was recorded in the Maricopa County 1964-1980 April 28.

If, in fact, appellants could establish that they were successors in interest to a mining claim located prior to classification and patent of the land under the Recreation and Public Purposes Act, and not subsequently abandoned, their claim could not be declared null and void ab initio for the reason stated by BLM. See Fairfield Mining Co., 66 IBLA 115, 116 (1982). The above-quoted statement, however, would belie any attempt by appellants to make such an assertion. It appears that in 1964 appellants "discovered" an old mine on the land involved in this appeal and attempted to relocate this ground in 1980. Thus, they are not the legal successors in interest to a claim located prior to classification and patent, rather they began working abandoned ground that had been the subject of previous mining activity. 3/

Appellants state that their claim was recorded in Maricopa County "1964-1980 April 28." Appellants' location notice filed with BLM states that they located the claim on April 28, 1980. However, if the claim was actually located in 1964, it would be null and void for an additional reason.

Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), required owners of unpatented mining claims located

2/ Likewise, mere classification of land for disposition under the Recreation and Public Purposes Act segregates the land from mineral location. Delmar McLean, supra.

3/ A mining claimant who relocates ground once included in a lode location gains no rights by relation to the date and priority of the title which he has destroyed by his relocation. Henry J. Hudspeth, 78 IBLA 235, 236 (1984).

on public lands on or before October 21, 1976, to file with the proper BLM office on or before October 22, 1979, a copy of the official record of the notice of location and a copy of evidence of annual assessment work or notice of intention to hold. Assuming appellants located their claim on or before October 21, 1976, they were required to record that claim with BLM on or before October 22, 1979. There is no evidence in the record of any such filing. Where a mining claimant fails to timely record a claim, there is a conclusive presumption that the claim is abandoned and void. 43 CFR 1744(c) (1976); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Accordingly, 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:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge

