

MARILYN DUTTON HANSEN

IBLA 83-955

Decided February 28, 1984

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring mining claims null and void ab initio in part. U MC 254714 and U MC 254715.

Reversed.

1. Withdrawals and Reservations: Generally -- Withdrawals and Reservations: Effect of

Notation of a withdrawal application filed before Oct. 21, 1976, temporarily segregates the land from mineral location to the extent that the withdrawal, if effected, would do so. Under current regulations, the lands described in the withdrawal application, filed before Oct. 21, 1976, and still outstanding, remain segregated from settlement, sale, location or entry under the public land laws to the extent specified in the Federal Register notice until Oct. 20, 1991.

2. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim whose discovery is located on land segregated and closed to mineral entry by notation of receipt of an application for withdrawal is properly declared null and void ab initio.

3. Mining Claims: Lands Subject to -- Mining Claims: Location -- Mining Claims: Lode Claims

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundaries may be laid within or across the surface of withdrawn land for the purposes of claiming that portion of the ground within the end lines and side lines of the claim which has not been withdrawn and securing extralateral rights to the lode deposit to the extent that such extralateral rights are to ores within the ground which has not been withdrawn.

APPEARANCES: Marilyn Dutton Hansen, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Marilyn Dutton Hansen appeals from a decision of July 26, 1983, of the Utah State Office, Bureau of Land Management (BLM), declaring parts of her Ponds Nos. 1 and 2 lode mining claims null and void ab initio. 1/ The claims were located in 1982. The decision recites:

The subject claims are located in part in the SE 1/4 SE 1/4 SE 1/4 of sec. 24, and the NE 1/4 NE 1/4 NE 1/4 of sec. 25, T. 33 S., R. 10 E., SLM, Utah. The said lands are segregated from mining location by Recreation Site Application, U-18809. These lands are not open to mining location; thus, the subject claims are declared null and void ab initio in part, as to the described 20 acres.

In the statement of reasons appellant expresses disappointment at not having been advised that the land was subject to a recreation site withdrawal. Appellant says that she expended labor and means on the claims.

[1] Withdrawal application U-18809 was noted on BLM's records in 1972 and is reflected on the mineral title plat. The noting of the application on the mineral title plat temporarily segregated the land from location under the mining laws to the extent that the withdrawal, if effected, would do so. Under the current regulations, land described in a withdrawal application filed before October 21, 1976, the date of passage of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1976), and still outstanding, "shall remain segregated through October 20, 1991, from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the Federal Register notice or notices that pertain to the application." 43 CFR 2310.2(b). The regulation was promulgated in accordance with section 204(g) of FLPMA, *supra*. 2/ The lands named

1/ BLM's decision was dated July 26, 1983. Appellant's notice of appeal was mistakenly filed with the Board of Land Appeals on Sept. 1, 1983, and forwarded to the Utah State Office, BLM, with instruction to consider it filed in the Utah Office on receipt. It was received there on Sept. 6, 1983. A notice of appeal is to be filed with the State Office within 30 days of a person's receipt of the decision. 43 CFR 4.411. Although there is reason to believe that appellant's notice of appeal was not timely filed, there is nothing in the record to indicate when the July 26, 1983, BLM decision was served. We will, therefore, entertain the appeal on the assumption that the notice was filed in a timely manner.

2/ Section 204(g) of FLPMA, *supra*, 43 U.S.C. 1714(g) (1976), provides: "All applications for withdrawal pending on October 21, 1976, shall be processed and adjudicated to conclusion within fifteen years of October 21, 1976, in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date."

in the BLM decision were specified in the May 19, 1972, Federal Register notice of the proposed withdrawal.

[2, 3] A locator may not locate a lode mining claim based on a discovery on patented or withdrawn land because such land is not open to the operation of the mining laws. In such cases the claim is void ab initio. However, a locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across patented or withdrawn land to define the extralateral rights to lodes or veins which apex within that portion of the claim open to location. Santa Fe Mining, Inc., 79 IBLA 48 (1984); Zula C. Brinkerhoff, 75 IBLA 179 (1983). This principle permits development of unappropriated minerals in irregular parcels of land in compliance with the statutory requirement for parallel end lines (30 U.S.C. § 23 (1976)). The Hidee Gold Mining Co., 30 L.D. 420 (1901). See Del Monte Mining Co. v. Last Chance Mining Co., 171 U.S. 55 (1898).

Each of appellant's claims measures 1,500 feet by 600 feet. According to her claim sketch the great part of her claims lies outside the 20 acres affected by the withdrawal in secs. 24 and 25. The information in the record does not disclose the location of the discovery points for these claims. Had the discovery been found to be within the withdrawn lands the claims would be null and void ab initio in their entirety. See Swanson v. Sears, 224 U.S. 180 (1912). However, without evidence we will not make this determination.

In Brinkerhoff, supra, the question before this Board was the validity of the junior unpatented lode mining claim with respect to that portion of the junior claim within the exterior boundaries of a senior patented lode mining claim. That decision correctly stated that the owner of the junior claim had no rights to the surface within the boundaries of the senior claim. In addition, the Brinkerhoff case recognized that the junior locator may have mineral rights within the boundaries of the senior claim. However, those rights exist only to the extent that the minerals were not appropriated by the senior locator. The Board did not determine the mineral rights of the respective parties, as the question of the rights of conflicting claimants is properly decided by the courts and not this Board.

In the case now before us, a determination of the mineral rights within the withdrawn land is appropriate. The withdrawal from mineral location prior to location of the claims precluded the exercise of rights to either the mineral or the surface within the withdrawn lands. The only right within the withdrawn land conferred upon appellant by reason of ownership of the claim is the right to use the exterior boundaries of the claim for the purpose of determining extralateral rights to ores and minerals outside the withdrawn lands. See Santa Fe Mining, Inc., supra.

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 reversed.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

