

ALL-KEE ASSOCIATES

IBLA 83-786

Decided June 12, 1984

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring null and void ab initio placer mining claims NMC 222611 and NMC 222612.

Affirmed.

1. 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 properly declared null and void ab initio.

APPEARANCES: Ralph E. Handelman, for All-Kee Associates.

OPINION BY ADMINISTRATIVE JUDGE GRANT

All-Kee Associates appeals from a June 23, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring All-Kee #1 placer mining claim, NMC 222611, and All-Kee #2 placer mining claim, NMC 222612, null and void ab initio because both claims were located on lands patented without a mineral reservation.

All-Kee #1 and #2 mining claims were located September 1, 1981, by appellant in the SW 1/4, sec. 7 and NW 1/4 NW 1/4, sec. 18, T. 15 N., R. 21 E., Mount Diablo meridian. The notices of location for each were filed with BLM on November 17, 1981. Subsequently, BLM conducted a review of its records and discovered the land had previously been patented without reservation of minerals.

Appellant does not rebut BLM's determination that the subject land was patented without mineral reservation. Rather, appellant asserts that it has expended considerable resources in locating the claims and preparing for mining operations and therefore "should be able to process this land for mining and eventually a home and livelihood."

[1] It is well established that the Department has no jurisdiction over mining claims located on land patented without reservations of minerals to the United States. Nels Swanberg, 74 IBLA 249 (1983); Harry J. Pike, 67 IBLA

100 (1982). Mining claims located under the general mining laws on land patented without mineral reservation are null and void ab initio. Floyd Benton, 62 IBLA 243 (1982).

The case file submitted for our review contains a copy of the official land status plat for T. 15 N., R. 21 E., Mount Diablo meridian. The SW 1/4 of sec. 7 and the NW 1/4 NW 1/4 of sec. 18 of that township are depicted as patented land. No reservation of minerals is indicated for these patents. Thus, the record supports the decision appealed from.

Appellant also contends that it should have been notified "when the area was checked and found available for Claim," but does not clarify this statement. We point out that BLM must regularly review many applications, leases, documents, etc., related to the management of public lands and, because of its responsibilities, delays will inevitably occur before BLM is able to devote adequate attention to a particular document filed with it. ^{1/} A BLM memorandum to the file indicates that BLM reviewed its records for conflicts with the claim on June 17, 1983. Its decision was issued shortly thereafter.

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 affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Bruce R. Harris
Administrative Judge

^{1/} It is expressly provided by regulation that acceptance of a mining claim location notice for recordation does not preclude a later finding that the claim is void because it is located on land not subject to location. 43 CFR 3833.5(f).

