

BILL AND JUDY BASS ET AL.

IBLA 84-775

Decided December 31, 1984

Consolidated appeals from decisions of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims null and void ab initio. A-211988 through A-212008, and A-212386 and A-212387.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

Mining claims located on land unavailable for location and entry under the mining laws are null and void ab initio.

2. Mining Claims: Assessment Work -- Mining Claims: Lands Subject to -- Bureau of Land Management

Although 6 months passed before the Bureau of Land Management notified claimants that their claims were null and void ab initio, the claimants were not entitled to a refund of the expenses incurred developing the claims. The Bureau of Land Management has no affirmative obligation to mineral locators to promptly check the status of their mining claims.

APPEARANCES: Bill Bass, pro se, and for Judy Bass, Dick and Mary Flood, and Jeff Beaudine.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Bill and Judy Bass, Dick and Mary Flood, and Jeff Beaudine (appellants) appeal the July 16, 1984, decision of the Bureau of Land Management (BLM), Arizona State Office, declaring their mining claims null and void ab initio. The mining claims embrace land in sec. 1 and N 1/2 N 1/2 of sec. 12, T. 6 S., R. 28 E., Gila and Salt River Meridian, Arizona. The claims, A-211989 through A-212008, known as Morning Star #1 through Morning Star #20, respectively, were located by appellants on December 22, 1983. Pursuant to 43 U.S.C. § 1744 (1982), and 43 CFR Subpart 3833, notices of location for these claims were filed with BLM on December 28, 1983.

In addition, appellants appeal the July 6, 1984, decision of BLM declaring mining claims A-212386 and A-212387, known as Redfield #20 and Redfield #21, respectively, null and void ab initio. These claims embrace land in NE 1/4 sec. 27, T. 6 N., R. 4 W., Gila and Salt River Meridian, Arizona. Bill Bass located the claims on December 27, 1983, and filed a notice of location with BLM on December 30, 1983.

The record is unclear as to the basis of the interest, if any, of Judy Bass, Dick and Mary Flood, and Jeff Beaudine in the mining claims located by Bill Bass, the Redfield #20 and #21. If these appellants have no interest in Redfield #20 and #21, then their appeals of BLM's determination that these two claims are null and void would be subject to dismissal on the ground that they have not been "adversely affected by a decision of an officer of the Bureau of Land Management." 43 CFR 4.410. However, in light of our findings, *infra*, we need not inquire into this aspect of the matter.

Inasmuch as the statements of reasons for appeal submitted by appellants for both appeals are identical, thus raising the same issues on appeal, the Board, sua sponte, consolidated the appeals for review.

We affirm BLM's holding that the mining claims are null and void ab initio because each claim was located on land closed to mineral entry at the time of location. With regard to the Redfield #20 and #21, the record shows that on May 12, 1933, the E 1/2 E 1/2 sec. 27 was patented to Leroy Junior Benton pursuant to the Homestead Act of May 20, 1862, without a mineral reservation to the United States. Mining claims located on land patented without mineral reservation to the United States are properly declared null and void ab initio. Ronald R. Graham, 77 IBLA 174 (1983). In addition, on January 20, 1958, the State of Arizona selected the W 1/2 and W 1/2 E 1/2 sec. 27 as part of its indemnity lands under the Act of June 20, 1910, 36 Stat. 557, as amended. This selection was approved January 19, 1972. Again, the United States did not reserve the minerals to the land. Mining claims located on land conveyed to the State, where the United States has not reserved the minerals, are properly declared null and void ab initio. Elsie May Staude, 82 IBLA 226 (1984).

Morning Star #1 through #20 are null and void ab initio because, as BLM states: "[T]he land has been withdrawn from location and entry under the general mining laws by an application for withdrawal for the Camelsback Dam and Reservoir." The September 7, 1962, publication in the Federal Register, 27 FR 8927, of the withdrawal application segregated the land from subsequent appropriation under the public land laws. The lands in the withdrawal application will remain segregated through October 20, 1991, unless the application is terminated prior to that time. 43 U.S.C. § 1714 (1982); 43 CFR 2310.2(b). 1/

1/ The Board notes that appellants have located another lode claim in T. 6 S., R. 28 E., Sec. 12; same being the Judy's Aniversary (sic) No. 1, A MC 211988, in addition to the 20 Morning Star claims located there. However, as the BLM decisions before us made no reference to that claim, the Board is without jurisdiction to consider it. The Board, being an appellate tribunal, does not make initial decisions in such cases.

Appellants state that they searched the records very thoroughly with the help of BLM personnel and "all agreed that the land appeared to be open * * *." In addition, appellants state that they are entitled to a refund of money spent on "assessments, location notices, testing and road work," because 6 months passed before BLM notified them that their claims were null and void.

BLM has no affirmative obligation to mineral locators to promptly check the legal status of their claims and apprise claimants of its conclusion. 43 CFR 3833.5(f); Mac A. Stevens, 84 IBLA 124 (1984). The failure of BLM to notify mining claimants that their claims are located on land not subject to location shall not prevent BLM from later declaring the claims void. Donly Gray, 82 IBLA 46, 47 n.3 (1984). Even so, appellants were apprised of the status of their land by BLM 6 months after they located their claims. This was not an unreasonable delay in BLM's action. Finally, BLM has no duty at common law nor statutory authority to reimburse claimants for expenses incurred in developing claims which are subsequently declared null and void ab initio.

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.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge

