

GUADALUPE RESOURCES CORP.

IBLA 82-1176

Decided January 16, 1985

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. NM MC 77617 through NM MC 77711.

Affirmed.

1. Mining Claims: Lands Subject to -- Withdrawals and Reservations:
Effect of

BLM properly determined that unpatented mining claims were null and void ab initio when they were located at a time when the land was withdrawn from mineral entry by Executive order for a military reservation and the withdrawal has not been revoked, even if the land is no longer being used for military purposes.

APPEARANCES: George R. Glass, Esq., Santa Fe, New Mexico, for appellant; Gayle E. Manges, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Guadalupe Resources Corporation has appealed from decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 21, 1982, which stated BLM's determination that 95 lode mining claims, NM MC 77617 through NM MC 77711, were null and void ab initio. 1/

Appellant's mining claims were located between July 9 and August 28, 1969, and recorded with BLM on October 19, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). The claims are situated within the Fort Bayard Military Reservation, as that reservation is depicted on master title plats of the area. In its June 1982 decision, BLM declared appellant's mining claims null and void ab initio because they had been located at a time when the land was withdrawn

1/ Appellant's mining claims are the Hope Nos. 1 through 53, 55 through 58, 60 through 64, 70, 150 through 153, 155 through 162, and 463 lode mining claims, and the Mangus Colorado West Nos. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35, and 202 lode mining claims. The claims are situated in secs. 18, 19, 30, 31, T. 17 S., R. 12 W., and secs. 10, 13, 15, 22, 24 through 27, 34 through 36, T. 17 S., R. 13 W., New Mexico Principal Meridian, Grant County, New Mexico.

from all forms of appropriation under the public land laws, pursuant to Exec. Order No. 477, dated April 19, 1869, which established the Fort Bayard Military Reservation. Appellant appealed from that decision.

In its statement of reasons for appeal, appellant contends that the land was not withdrawn from mineral entry at the time the claims were located. Appellant states that Exec. Order No. 477 did not specifically withdraw the land from mineral entry and that, in any case, the military reservation had either been reduced or abandoned at the time of location of appellant's claims and the land was therefore open to mineral entry pursuant to section 5 of the Act of July 5, 1884, 43 U.S.C. § 1074 (1970). ^{2/} Appellant states that the military reservation was reduced in size when the land involved herein was transferred to the Secretary of Agriculture on January 2, 1941. In the alternative, appellant contends that, even if the land is deemed to be withdrawn, it is open for mineral entry unless the Secretary of Defense determines that such entry is inconsistent with military use of the land, pursuant to section 6 of the Act of February 28, 1958, 43 U.S.C. § 158 (1982), and that no such determination has been made.

The status of mining claims located by appellant's predecessors in 1967 was considered by the Board in Oliver Reese, 4 IBLA 261 (1972), appeal dismissed, Nuco Uranium & Minerals Corp. v. Watt, Civ. No. 83-0010 HB (D. N.M. Aug. 19, 1983), aff'd Nuco Uranium & Minerals Corp. v. Clark, Civ. No. 83-2177 (10th Cir. Nov. 9, 1984). ^{3/} Both the Board and the district court considered the history of the Fort Bayard Military Reservation and the withdrawal of the land from mineral entry. The arguments advanced by appellant in this case are the same as those considered in Reese and Nuco. The court agreed with the Board's conclusions that the land had been withdrawn from the public domain by Exec. Order No. 477, that there has never been any express or implied revocation of that withdrawal, and that the land was not open for mineral entry at the time appellant's claims were located. In particular, the district court agreed that section 5 of the Act of July 5, 1884, supra, was not self-executing and Presidential action is required to open land formerly within a military reservation to mineral entry. Without such action the lands remain closed to mineral entry, even though the military reservation has been abandoned or reduced in size. No such action had been taken with respect to the Fort Bayard Military Reservation.

Accordingly, we conclude that appellant's claims located in 1967 and 1969 which were considered in Nuco Uranium and the mining claims which were located by appellant in 1969 were located at a time when the land was withdrawn from mineral entry. ^{4/} These claims are null and void ab initio.

^{2/} 43 U.S.C. § 1074 (1970) was repealed by section 703(a) of the Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2789 (1976), effective Oct. 21, 1976.

^{3/} Reese, supra, involved, in part, the Hope Nos. 1 through 58, 60 through 64, and 70 lode mining claims. Action in this case was suspended pending the Nuco determination.

^{4/} Appellant also appealed from that portion of the June 1982 BLM decision holding that there was an abandonment of the claims for failure to file notices pursuant to 43 U.S.C. § 1744(b) (1982). This issue need not be addressed because the claims were null and void ab initio.

Russell Hoffman, 83 IBLA 295 (1984). There is no additional evidence that the withdrawal effected by Exec. Order No. 477 has been revoked and the title plats continue to reflect that withdrawal. All of the issues raised by appellant have previously been exhaustively addressed in Oliver Reese, *supra*, and/or the appeals from that decision.

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.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

