

PAT RAY McCLANE

IBLA 85-54

Decided March 4, 1985

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring placer mining claims C MC 204255 and C MC 204256 null and void ab initio.

Affirmed.

1. Mining Claims: Lands Subject to

Mining claims located upon lands withdrawn from mineral entry are properly declared null and void ab initio.

2. 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 patented are properly declared null and void ab initio.

APPEARANCES: Pat Ray McClane, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Pat Ray McClane has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated September 14, 1984, declaring the G & S Nos. 1 and 2 placer mining claims null and void ab initio. The BLM decision states that the claims were located on lands withdrawn for a first-form reclamation project and that land under such withdrawal is not open to mining claim location, citing Ronald B. McLean, 77 IBLA 380 (1983).

On June 21, 1984, appellant filed notices of location with the BLM office as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), and the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1982). The claims are situated in sec. 15, T. 15 S., R. 97 W., sixth principal meridian, Delta County, Colorado. The G & S claim No. 1, C MC 204255, appears, from the map supplied with the location notice, to be in part on lot 9 and in part on lot 10. The G & C claim No. 2, C MC 204256, appears to be on lots 6 and 10. The land status plat indicates that lots 6 and 10 are subject to powersite classification No. 404, Geological Survey order of April 4, 1950, and a first-form reclamation withdrawal for the Colorado River Storage Project, BLM order of January 4, 1957. Lot 9 is land patented without mineral reservation.

Appellant does not challenge BLM's finding that the land is withdrawn or patented without mineral reservation, but indicates that "gravel, rock and dirt" have been removed from the area of his claims by the Rio Grande Railroad. He contends that BLM's denial of his claims is discriminatory.

[1] A first-form withdrawal by the Bureau of Reclamation effectively protects the land from all forms of appropriation under the public land laws, including the mining laws. Elmer G. Thomas, 66 IBLA 92 (1982). A mining claim located on land withdrawn from mineral entry by a first-form reclamation withdrawal order is properly declared null and void ab initio unless the land has been restored to mineral entry pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1982), Elmer G. Thomas, supra at 93. 1/

[2] It is well established that the Department has no jurisdiction over mining claims located on lands patented without reservation of minerals to the United States. Donly Gray, 82 IBLA 46 (1984); Nels Swanberg, 74 IBLA 249 (1983). Therefore, mining claims located under the general mining laws on land patented without mineral reservation are null and void ab initio. Floyd E. Benton, 62 IBLA 243 (1982). The Department has no authority to recognize location attempts, under the general mining laws, for land outside its control or jurisdiction. See Donly Gray, supra.

As for appellant's concern that the railroad is being unfairly favored, an April 30, 1982, letter from the Acting State Director of the Colorado State Office, BLM, to Senator William Armstrong states: "The right-of-way issued to the Denver and Rio Grande Railway for track realignment was issued subject to existing valid rights and is a routine and frequent occurrence. The withdrawal orders do not prohibit BLM granting rights-of-way."

Since the record does not indicate that the lands are included in any project operating or being constructed under a license or permit issued under 16 U.S.C. § 791a (1982) or other Act of Congress, or that the lands are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission (where such a licensee holds an uncancelled preliminary permit issued under section 791a that has not been renewed more than once), we do not assume that the lands are not open to entry by virtue of powersite classification No. 404. See 30 U.S.C. § 621(a) (1982).

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.

Will A. Irwin
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ If appellant should desire to request that the lands be open to mineral location, an application to open the land pursuant to 43 U.S.C. § 154 (1982) should be filed with BLM in the manner set forth in 43 CFR Subpart 3816.

