

WILLIAM B. RAWLINGS

IBLA 84-652

Decided March 4, 1985

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring five lode mining claims null and void ab initio. UMC 277074-78.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Repealers -- Mining Claims: Lands Subject to -- Withdrawals and Reservations: Reclamation Withdrawals

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

APPEARANCES: William B. Rawlings, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

William B. Rawlings has appealed from a May 18, 1984, decision of the Utah State Office, Bureau of Land Management (BLM), declaring null and void ab initio the Two in a Million #5-9 lode mining claims.

BLM found that the claims located on May 7, 1984, in E 1/2 E 1/2 sec. 8, T. 2 N., R. 1 E., Salt Lake Meridian, embraced lands segregated from mineral entry by a reclamation withdrawal for the Weber Basin Project and by Public Land Order No. (PLO) 1084, 20 FR 1560 (Mar. 15, 1955), for an administrative site.

The record contains a copy of a first-form reclamation withdrawal dated August 22, 1952, encompassing the subject lands. It is noted on such copy that the withdrawal was posted to the records on June 1, 1954. First-form reclamation withdrawals for lands required for any irrigation works were made pursuant to section 3 of the Act of June 17, 1902, 43 U.S.C. § 416 (1970), repealed in part effective October 21, 1976, section 704(a), Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2792. The repeal did not affect outstanding reclamation withdrawals. Those were expressly continued, subject to review by the Secretary under section 204(l) of FLPMA, 43 U.S.C. § 1714(l) (1982).

[1] It is well established that a mining claim located on a date when the lands are subject to a first-form reclamation withdrawal is null and void ab initio. Ronald W. Ramm, 67 IBLA 32 (1982); Susan E. Mitchell, 53 IBLA 42 (1981); Sam McCormack, 52 IBLA 56 (1981). The lands in question were subject to a first-form reclamation withdrawal at the time Rawlings located his claims. In addition, the subject lands were also withdrawn in 1955 by PLO 1084 which provided that certain described lands were withdrawn from all forms of appropriation under the public land laws, including the mining laws, and reserved for use by the Forest Service as part of the Davis County Experimental Watershed in connection with research projects. For those reasons, the lands were not open to mineral location in 1984.

The arguments raised on appeal by Rawlings do not address the clear wording of the withdrawals and the legal consequences thereof. Thus, they are of no merit. Appellant does contend, however, that there are no irrigation works nor any kind of development on the lands in question. This fact does not benefit appellant. Lands which have been withdrawn from location under the mining laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal. ^{1/} It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn. William C. Reiman, 54 IBLA 103 (1981); United States v. Wichner, 35 IBLA 240 (1978).

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.

Bruce R. Harris
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Edward W. Stuebing
Administrative Judge

^{1/} Appellant may seek to have the lands opened to mineral entry pursuant to 43 U.S.C. § 154 (1982) by filing an application to open the land to location in the manner provided for in 43 CFR Subpart 3816.

