

ROBERT FARCHI

IBLA 84-185

Decided September 5, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a placer mining claim null and void ab initio. CA MC 126292.

Affirmed.

1. Mining Claims Rights Restoration Act -- Mining Claims: Powersite Lands -- Withdrawals and Reservations: Powersites

Lands covered by a preliminary permit issued to a prospective licensee by the Federal Energy Regulatory Commission are not open to mineral location, and mining claims made on such lands are properly declared null and void ab initio.

2. Mining Claims Rights Restoration Act -- Mining Claims: Powersite Lands -- Withdrawals and Reservations: Powersites

The fact that a permittee may not ultimately use all of the land encompassed in his preliminary permit does not alter the fact that land embraced by the permit is not open to location.

APPEARANCES: Robert Farchi, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Robert Farchi, a co-locator of the Hidden Canyon placer mining claim, CA MC 126292, has appealed from the November 7, 1983, letter decision of the California State Office, Bureau of Land Management (BLM), declaring the Hidden Canyon claim to be null and void ab initio because it was located on land which had been withdrawn as the result of a preliminary permit issued by the Federal Energy Regulatory Commission. The Hidden Canyon claim was located on May 8, 1983, locally recorded May 10, 1983, and filed with BLM the next day.

Since its enactment on June 10, 1920, the Federal Power Act has provided that: "Any lands of the United States included in any proposed project \* \* \* shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until

otherwise directed by the commission or by Congress." 16 U.S.C. § 818 (1982). Section 24 of the Act also contains procedures by which a powersite withdrawal may be removed and the land opened to mineral location or other types of entry. Id. In 1955, Congress enacted the Mining Claims Rights Restoration Act, 69 Stat. 681 (codified as amended at 30 U.S.C. §§ 621-625 (1982)). With some exceptions, the latter Act opened to mineral location "[a]ll public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites \* \* \*." 30 U.S.C. § 621 (1982). Among the exceptions are lands

which are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

Id.

[1] In the present case, a preliminary permit had been issued July 23, 1982, to the Yuba County Water Agency for the Wambo Bar Water Power Project, project No. 6125. The record shows that the Hidden Canyon claim lies within the boundaries of this project. Thus, at the time the Hidden Canyon claim was located, the land had been withdrawn and was not available under the Mining Claims Rights Restoration Act. The BLM correctly determined that the claim was null and void ab initio. Harold M. Voris, 48 IBLA 206 (1980); Sam Rosetti, 15 IBLA 288, 81 I.D. 251 (1974); Foster Mining & Engineering Co., 7 IBLA 299, 79 I.D. 599 (1972).

[2] Appellant, however, argues that his claim should not be held null and void because it is located on the northern boundary of the project on land which would not be submerged by the proposed reservoir. Whether this contention is true or not does not need to be determined by this Board. The fact that a permittee may not ultimately use all of the land encompassed in his preliminary permit does not alter the fact that land embraced by a permit is not open to location. Nor can it validate an otherwise invalid location. See James H. Cosgrove, 61 IBLA 376, 379 (1982); John Henry Jones, A-28525 (Nov. 25, 1960).

We note that it has been 3 years since the preliminary permit was issued, and because it may have expired without renewal or a license being issued, applicant may wish to consult with BLM about the possibility of relocating his claim. 1/

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1/ That the preliminary permit has expired does not necessarily mean that the land in question is now open to mineral location. As noted by BLM, the master title plat for the township shows three other powersite withdrawals affecting portions of the land covered by the Hidden Canyon claim. However, our research indicates that apparently at least two of them should be removed from BLM records. See United States v. Steward, 54 IBLA 67, 69 n.1 (1981).

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.

James L. Burski  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Franklin D. Arness  
Administrative Judge

