

Appeal from a July 5, 1983, decision by the Utah State Office, Bureau of Land Management, declaring the Thistle Nos. 1 through 7 placer mining claims (UMC 110122 through UMC 110128) null and void ab initio.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Recordation -- Patents of Public Lands: Effect

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims. Mining claims located on such lands are null and void ab initio. Attempts to record such mining claims or file affidavits of assessment work or notices of intent to hold such mining claims are properly rejected.

2. Mining Claims: Lands Subject to -- State Lands -- State Selections

Lands conveyed to a state as a result of an in-lieu selection are not available for the location of mining claims under the Federal law. Mining claims located on such lands pursuant to the 1872 Mining Law, 30 U.S.C. §§ 21 through 54 (1982), are null and void ab initio.

APPEARANCES: Ralph C. Memmott, Fillmore, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Ralph C. Memmott has appealed from a decision by the Idaho State Office, Bureau of Land Management (BLM), dated July 15, 1983, declaring the Thistle Nos. 1 through 7 placer mining claims (UMC 110122 through UMC 110128) to be null and void ab initio because they had been located on land which had previously been patented without reservation of minerals.

The record discloses that the mining claims in question were located as association placer claims by appellant and four others on March 6, 1962.

The record also contains photocopies of five patents 1/ and one clearlist of state in lieu selected lands. The five patents have been issued pursuant to the Act of April 24, 1820, ch. 51, 3 Stat. 566, formerly codified at 43 U.S.C. §§ 676, 678 (1976) (three patents), and the Act of May 20, 1862, 43 U.S.C. §§ 161-164, 173, 175, 183, 184, 201, 211, and 255 (1976) (two patents). 2/

[1] Mining claims may be located only on lands open to the operation of the United States mining laws. Lands which have been patented without a reservation of minerals to the United States are not available for the location of mining claims. 3/ Mining claims located on such lands are null and void ab initio. E.g., Paul S. Coupey, 33 IBLA 178 (1977); Floyd W. McCarthy, 28 IBLA 246 (1976); Montana Copper King Mining Co., 20 IBLA 30 (1975). Attempts to record such mining claims under 43 U.S.C. § 1744 (1982) are properly rejected. Paul S. Coupey, supra. The fact that a mining claim cannot be located on lands which have been patented without mineral reservation should come as no surprise to appellant. See Ralph Memmott, 61 IBLA 116 (1982). In his statement of reasons appellant cites a number of cases dealing with the retained mineral interest under the Stock-Raising Homestead Act of 1916, 43 U.S.C. §§ 291-301 (1982), repealed in part, section 702 of FLPMA, 90 Stat. 2789. This Act specifically reserved minerals to the United States. See 43 U.S.C. § 291 (1976). It is obvious that none of the patents issued in this case were issued pursuant to that Act as all were issued prior to 1916.

Thistle Nos. 1 through 6 placer mining claims and that portion of Thistle No. 7 placer mining claim lying in the SW 1/4 NW 1/4, sec. 28, T. 9 S., R. 4 E., Salt Lake Meridian, have been located on land subject to one or more of the patents described in note 1 above. This being the case BLM properly declared the claims to be null and void ab initio.

[2] That portion of the Thistle No. 7 placer mining claim not within one of the patents discussed above lies within the Utah State in-lieu selection IL 30, which was approved on November 13, 1909. In 1909, conveyances to

<u>1/</u>	<u>Conflicts with</u>			
	<u>Pat. No.</u>	<u>Act of</u>	<u>Pat. date</u>	<u>Thistle No.</u>
	3313	5/20/1862	12/16/1891	2, 3 & 4
	3638	4/24/1820	4/1/1892	1, 2 & 3
	4198	4/24/1820	11/17/1894	4 & 5
	8090	5/20/1862	8/15/1908	6
	362107	4/24/1820	10/25/1913	1

2/ Both acts were repealed by §§ 702, 703(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2787, 2789 (1976).

3/ It was not until 1909 that Congress provided for separation of the mineral estate and mandatory reservation thereof in public land patents. See generally United States v. Union Oil Company of California, 549 F.2d 1271, 1275 (9th Cir. 1977), cert. denied, 434 U.S. 930 (1978) (discussion of history and rationale for separation of the estates in patents).

a state were not made by issuance of a patent. Instead, such transfers of land were effected by the Secretarial approval of a finding that the selected lands were not mineral in character and free from adverse claims of record. This transfer, commonly referred to as a "clearlisting," had the same force and effect as the issuance of patent. As previously noted, the November 12, 1909 "clearlisting" was approved by the First Assistant Secretary of the Interior on November 13, 1909, at which time the land was no longer available for mineral entry. See Harry J. Pike, 67 IBLA 100 (1982); Silver Spot Metals, Inc., 51 IBLA 212 (1980); Germania Iron Co. v. United States, 165 U.S. 379, 383 (1879). The Thistle No. 7 placer mining claim was properly declared to be 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.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

