

ALEXANDER & MARTHA ACKER

IBLA 84-869

Decided November 27, 1985

Appeal from a decision of the Arizona State Office, Bureau of Land Management, finding appellants' placer mining claim null and void ab initio. A MC 208447.

Dismissed.

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 Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

BLM may properly declare a mining claim located on lands withdrawn and closed to mineral entry null and void ab initio.

2. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Statement of Reasons

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and the appeal may be dismissed.

APPEARANCES: Martha T. Acker, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

On August 1, 1984, the Arizona State Office, Bureau of Land Management (BLM), issued a decision declaring the Alameged #1 placer mining claim, located on October 13, 1983, in the south 1/2, sec. 1, T. 21 N., R. 20 W., Gila and Salt River Meridian, to be null and void ab initio. As the basis for its decision BLM noted the land in the south 1/2 of sec. 1 had been included in exchange application A 327 which was filed on October 10, 1966. BLM concluded the exchange application had segregated the land from mineral entry pursuant to 43 CFR 2091.2-3 (36 FR 22238, Nov. 23, 1971).

On September 17, 1984, appellant filed a statement of reasons which reads, in total, as follows:

I appeal this decision on my mining claim AMC 208447. I find the reason stated as not fair to any U. S. citizen. Why after careful examination by 2 B.L.M. offices at different times, is the land now not usable for mining. You certainly must have at your command all records for the information needed. Property was sold which bordered our claim and is would be [sic] land locked for development. Could this be the reason? I will continue to exercise my right to the claim until all resources have been tried. Each avenue of appeal will be taken and hopeful we can agree. Why, with hundreds of square miles in the area is this particular area being singled out?

My copy of the appeal will be sent to many public offices.

Thank you.

/s/ Martha I. Acker

[1] There is no question that the Secretary of the Interior is (and was at the time of the withdrawal) empowered to withdraw lands from mineral location under the general mining laws. Anthony Juskewicz, 79 IBLA 267 (1984). Appellant has advanced no basis for a finding that the Secretary improperly withdrew the lands from mineral entry, or that the lands did not continue to be withdrawn at the time the placer mining claim was located. A mining claim located on lands which are not open to mineral entry confers no rights on the locator and the claim is properly declared null and void ab initio. McCarthy Mining and Development Co., 87 IBLA 172 (1985); Mineral Life Corp., 81 IBLA 103 (1984), and cases cited therein.

[2] It is well established that failure to point out affirmatively why the decision appealed from is in error may be treated in the same manner as an appeal in which no statement of reasons was filed and the appeal dismissed. United States v. Reavely, 53 IBLA 320 (1981); United States v. Mangum, 35 IBLA 131 (1978); United States v. Coppridge, 17 IBLA 323 (1974). Appellant's statement of reasons has no statement which we can consider to be a statement of how the decision appealed from is erroneous. Accordingly, the appeal must be dismissed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier Will A. Irwin
Administrative Judge

Administrative Judge

