

GEORGE C. CASTLE
CARLYLE CASTLE

IBLA 84-691

Decided December 5, 1985

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring placer mining claim I MC-83540 null and void ab initio.

Affirmed.

1. Mining Claims: Withdrawn Land -- Withdrawals and Reservations:
Reclamation Withdrawals

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first-form reclamation withdrawal is null and void ab initio.

2. Administrative Procedure: Hearings -- Constitutional Law: Due Process -- Mining Claims: Generally -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required prior to a decision holding that such claims are invalid.

APPEARANCES: George C. Castle and Carlyle Castle, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

George C. Castle and Carlyle Castle have appealed a decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the Western Gold No. 1 placer mining claim to be null and void ab initio because "Secretarial Order dated October 7, 1904, withdrew lots 2 and 5, sec. 13, T. 4 N., R. 6 E., B.M., from location and entry under the mining laws of the United States." The decision further held: "As the Western Gold No. 1 placer mining claim was located after the land was closed to mineral entry, the claim is invalid and declared null and void ab initio in its entirety."

Appellants do not dispute that the placer mining claim is located in lots 2 and 5, sec. 13, T. 4 N., R. 6 E., Boise Meridian, Idaho. In their statement of reasons appellants contend BLM informed them that mining claims

could be located on lands in a powersite withdrawal although no mining could be done for 60 days to allow the filing of an objection to mining the land within the powersite withdrawal. 1/ Appellants further contend they were not told the land was also within a reclamation withdrawal. Appellants assert they waited 60 days and then spent large amounts of money testing and developing the property and that testing showed sufficient amounts of gold and other minerals to make a profitable mine.

It appears from the record that the land upon which the Western Gold No. 1 placer mining claim was located had also been withdrawn for powersite purposes by Secretarial Order dated June 11, 1930. The facts contained in appellants' statement of reasons address circumstances which might be relevant had the lands in question only been withdrawn for powersite purposes. 2/ The statement of reasons does not address, however, the reasoning of BLM's decision which declared the mining claim to be null and void because of the Secretarial Order dated October 7, 1904. That two withdrawals cover the same land is irrelevant. In determining appellants' rights the legal effect to be

1/ There is some indication in the record that, prior to the decision under appeal, BLM had viewed the powersite withdrawal which also effects the land as controlling. On Sept. 8, 1983, BLM wrote the United States Forest Service in regard to the Western Gold No. 1 placer mining claim. The letter states that under the provisions of the Act of Aug. 11, 1955, (30 U.S.C. § 621 (1982)), no mining operations may be conducted for a period of 60 days after the filing of the notice of location with BLM and that if there are objections to mining, notification must be given the locator, within the 60-day period, that a hearing is required. The letter cites the regulation at 43 CFR 3736.1.

On Nov. 3, 1983, the Director, Division of Hydropower Licensing, Federal Energy Regulatory Commission, advised BLM that the lands encompassed by I MC-83540 are not presently included in any power project under permit or license issued under the Federal Power Act.

2/ Section 2 of the Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. § 621 (1982), authorizes location of mining claims on lands withdrawn for power development or powersites. The Act requires any person who locates a mining claim on such lands after Aug. 11, 1955, to file a copy of the notice of location in the appropriate BLM land office within 60 days of location. 30 U.S.C. § 623 (1982). A person who locates a placer mining claim on such lands may not conduct mining operations on the claim within 60 days after filing with BLM in order to allow the Secretary to determine if a hearing should be held on the question of "whether placer mining operations would substantially interfere with other uses of the land included within the placer mining claim." 30 U.S.C. § 621(b) (1982). If the Secretary decides to hold a hearing, mining operations on the claim must be suspended until the hearing has been held and an appropriate order issued which

"shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to these operations; or (3) a general permission to engage in placer mining." 30 U.S.C. § 621(b) (1982). See Arthur A. Gotschall, 78 IBLA 81 (1983); see also 43 CFR Part 3730.

given to the withdrawals, vis-a-vis the date of location, determines the question of availability of land for entry and location. Joseph E. Vogler, 72 IBLA 48 (1983).

[1] The lands encompassed by the Western Gold No. 1 placer mining claim were withdrawn from location and entry under the mining laws of the United States under a first-form reclamation withdrawal by Secretarial Order dated October 7, 1904, which established the Payette Boise Reclamation Project. The withdrawal was made pursuant to section 3 of the Act of June 17, 1902, ch. 1093, 32 Stat. 388. ^{3/} The reclamation project is posted on the land status records. The Western Gold No. 1 claim was located in 1983. It is thus evident that the Western Gold No. 1 claim was located at a time the land was not open to operation of the mining laws of the United States and there is no evidence that the land has been restored to mineral entry. Elmer G. Thomas, 66 IBLA 92 (1982).

[2] As no property rights are created by the location of mining claims on lands which are not open to mineral entry and location, and such claims are void as a matter of law, no contest proceeding or hearing is required. United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966). The Western Gold No. 1 claim was properly declared null and void ab initio.

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.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge

^{3/} Section 3 of the Act of June 17, 1902 was repealed in part, effective Oct. 21, 1976, by section 704(a) of the Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2792.

