

HALDON MINING

IBLA 85-579

Decided October 1, 1986

Appeal from decisions of the Utah State Office, Bureau of Land Management, declaring the Haldon #1 through Haldon #17 mining claims null and void ab initio. U MC 279491 through U MC 279498 and U MC 279753 through U MC 279761.

Affirmed.

1. Indian Lands: Generally--Mining Claims: Lands Subject To

Lands set apart as an Indian reservation cease to be a part of the public domain, and a mining claim located on Indian lands not opened to mineral entry is null and void ab initio.

APPEARANCES: Harold Dalton, Patricia Dalton, Don Buck, Patsy Buck, Rolland Rogers, Marion Rogers, Bernell Gates, Virginia Gates, John Hatcher, Annabell Wright, Richard Henderson, and Audra Hammer, for Haldon Mining.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Haldon Mining has appealed from decisions of the Utah State Office, Bureau of Land Management (BLM), dated April 15, 1985, declaring the Haldon #1 through Haldon #17 mining claims (U MC 279491 through U MC 279498 and U MC 279753 through U MC 279761) null and void ab initio because the claims were located on lands not open to mineral entry. 1/

Appellant's mining claims were located on September 9, 1984, and filed for recordation with BLM on September 12, 1984, (U MC 279491 through U MC 279498) and on September 19, 1984, (U MC 279753 through U MC 279761) pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). The claims are situated in sec. 4, T. 2 S., R. 10 W., Uintah Special Meridian, Utah, within the Uintah and Ouray Indian Reservation. In its April 15, 1985, decisions, BLM provided the following explanation for declaring the mining claims null and void ab initio:

1/ Each of the Haldon claims was located by at least one or more of the persons listed under "Appearances." There is no reference in any of the location notices, however, to "Haldon Mining," which apparently is some type of association of the various claimants.

The subject claims are situated on lands where title to the mineral estate transferred from federal ownership to the Ute Indian Tribe, by Public Law 717, dated July 14, 1956.

Mining claims discovered on lands not open to location confer no rights upon the locator and are properly deemed null and void. Accordingly, the subject claims are hereby declared null and void ab initio in their entirety.

Prior to locating a mining claim, federal and county records should be examined to determine ownership of surface and mineral estates.

Appellant bases its appeal on Ute Indian Tribe v. Utah, 521 F. Supp. 1072 (D. Utah 1981) (Ute Indian Tribe I), and on Ute Indian Tribe v. Utah, 716 F.2d 1298 (10th Cir. 1983) (Ute Indian Tribe II), as those decisions are vaguely described in the Salt Lake Tribune, January 24, 1985, at page 2B, column 1, a copy of which is attached to appellant's statement of reasons. That news report states that the United States District Court for Utah ruled in Ute Indian Tribe I that "[the Ute Indian Tribe's] claim to jurisdiction over the Uintah Reservation was valid," 2/ but that the Tenth Circuit Court of Appeals had "reversed the lower court opinion about the Uintah Reservation and the Tribe's claim to jurisdiction there."

Apparently, appellant construes this summary to mean that the Ute Indians were divested of any claim whatever to the land and minerals affected by Ute Indian Tribe II, and, accordingly, that BLM improperly declared its mining claims null and void ab initio on the basis that they were located within the Uintah Reservation. However, the purpose of the news article was to report that the Tenth Circuit had, on motion for rehearing, agreed to consider the matter en banc. Thereafter, on September 17, 1985, the Tenth Circuit decided Ute Indian Tribe v. Utah, 773 F.2d 1087 (10th Cir. 1985) (Ute Indian Tribe III), in which it ruled that the Uintah Reservation had not been diminished or disestablished by subsequent congressional action, and that the Ute Indians retained jurisdiction over all of the lands included in that Reservation as originally established by President Lincoln in 1861.

In its statement of reasons, dated April 25, 1985, before the Tenth Circuit decided Ute Indian Tribe III, appellant made the following arguments why BLM erred in declaring its mining claims null and void ab initio:

It is the contention of all Haldon claimants [sic] that the court ruling of U.S. District Judge Bruce Jenkins and the U.S. Circuit court of Appeals do, in all reality, disavow/disallow

2/ While the Ute Indian Tribe's claim to jurisdiction over the Uintah Reservation was found to be valid, the District Court also ruled that the boundaries of that Reservation had been diminished by the addition of 1,010,000 acres to the Uintah Forest Reserve by Proclamation of July 14, 1905, 34 Stat. 3113.

all claims of the Ute Indian Tribes of any lands, mineral rights, and/or law enforcement on any of the lands they claim in their law suit against the Peoples of the State of Utah.

With these court decisions now on public record, we can see no valid reason why the Bureau of Land Management still insists that the Indians own the land in question; or, that they have the right of ownership of mineral rights in any part of the area of their claims. And, why are all the Departments of the Interior NOT brought up-to-date when court decision [sic] have been made? After all, these new decisions of August 1983, October 1983, and January 1985 should certainly superceed [sic] the Law 717 dated July 1956.

Because of the above, it is our contention that the mining claims of Haldon Mining are now legal, binding, and in force.

[1] The historical background of the lands included in the Uintah and Ouray Reservation is set forth in great detail in Ute Indian Tribe I, 521 F. Supp. at 1092-1150. ^{3/} Relevant to our consideration of this appeal is that by Proclamation of July 14, 1905, 34 Stat. 3113, President Theodore Roosevelt withdrew 1,010,000 acres from the Uintah Reservation pursuant to the specific authority conferred by the Act of March 3, 1905, 33 Stat. 1048, 1070. That act provided that proceeds from the sale of timber located on the withdrawn 1,010,000 acres were to be paid to the Indians on the Uintah Reservation in accordance with the provisions of the Act of May 27, 1902, 32 Stat. 245, 263-64. As stated by the District Court in Ute Indian Tribe I:

Over the years, it became apparent that the Utes were not receiving the benefits of the proceeds from the activities (timber sales, (etc) in the national forest as provided for by the 1905 Act. When a bill, S. 615, 71st Congress, 2d Sess. in 1930, was introduced to consent to a suit for the proceeds by the * * * Utes in the United States Court of Claims, the Senate Committee on Indian Affairs reported out a substitute measure that provided for the direct payment of \$ 1,262,500 in satisfaction of the Utes' claims. S. Rep. No. 725, 71st Cong., 2d Sess. LD 165 (1930). * * *

* * * * *

The payment option was favored, and enacted into law. See Act of Feb. 13, 1931, ch. 124, 46 Stat. 1092, LD 167. * * * The 1931 Act had settled much of the Utes' claim arising from the taking of the national forest lands. A claim for more than 36,000 acres of coal lands included within the forest withdrawals remained uncompensated. This time it seemed more expedient to return the subsurface mineral

^{3/} Although originally designated the Uintah Reservation, the name of the reservation was apparently changed in 1956 to the Uintah and Ouray Reservation. See Ute Indian Tribe I at 1140.

estate to the Utes than to incur the burden of an "expensive and detailed appraisal of mineral and oil and gas resources" in measuring damages. H.R. Rep. No. 2171, 84th Cong., 2d Sess. LD 200 at 3 (1956). [Footnotes omitted].

521 F. Supp. at 1139-40.

The Act of July 14, 1956, P.L. 84-717, 70 Stat. 546, which BLM invoked in rejecting appellant's mining claims in the instant appeal, restored "all right, title, and interest in and to the mineral and oil and gas resources of the land described in section 6," and vested in the United States such title "in trust for the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah." Among the lands described in section 6 is sec. 4, T. 2 S., R. 10 W., Uintah Special Meridian, whereon appellant's Haldon #1 through Haldon #17 mining claims are located. The Act of July 14, 1956, provided that the restoration of subsurface rights to the Utes of the Uintah and Ouray Reservation was subject to valid leases, locations, or other claims outstanding as of the effective date of the Act. Otherwise, the mineral resources of the land described in section 6 are subject to disposition only as provided in section 2 of that Act. Section 2 allows the Ute Indians of the Uintah and Ouray Reservation to "prospect, mine, drill, remove, process or otherwise exploit any or all of the mineral and oil and gas resources" of the subject land, provided that such exploitation of the mineral resources complies with "the provisions of law and of the constitution, bylaws, and corporate charter of said tribe * * *." 70 Stat. 546.

Clearly, appellant's reliance upon the news report in the Salt Lake Tribune is misplaced. That report predated Ute Indian Tribe III, wherein the Tenth Circuit ruled that the Uintah and Ouray Reservation was not diminished to the extent of the 1,010,000-acre addition to the Uintah Forest Reserve. "Unless there is an express provision to the contrary effect lands contained in an Indian reservation are segregated for the benefit of the Indians, and withdrawn from the operation of the public land laws, including the mining laws." Montana Copper King Mining Co., 20 IBLA 30, 36 (1975). See F. Cohen, Handbook of Federal Indian Law 312-13 (1942). Such lands cease to be a part of the public domain. Id. Mining claims, such as those involved in this appeal, which have been located on Indian lands not opened to entry are null and void ab initio. Dora Trudell, 83 IBLA 196 (1984); Steve Foster, 56 IBLA 282 (1981); Montana Copper King Mining Co., supra.

Even if the Tenth Circuit had ruled that the Uintah and Ouray Reservation had been diminished by the 1,010,000-acre addition to the Uintah Forest Reserve, and were no longer Indian lands, the result would not be altered since the subsurface estate of the lands in question was restored to tribal ownership and vested in the United States in trust for the Utes under the Act of July 14, 1956, discussed supra. The mineral development of the lands, whereon appellant's claims are located, must take place in accordance with the rather specific provisions of that Act. BLM properly declared appellant's mining claims 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.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge

