

Appeal from a decision of the California State Office, Bureau of Land Management, declaring portions of placer mining claim CAMC 95003 null and void ab initio and other portions abandoned and void.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Placer Claims

A placer mining claim partially located on land patented without a reservation of minerals to the United States is properly declared null and void to the extent it includes such land.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Failure to file affidavits of assessment work, or notice of intent to hold, prior to Dec. 31 as required by 43 U.S.C. | 1744(a) (1982), constitutes abandonment of the claims and they may be declared void by BLM.

3. Federal Employees and Officers: Authority to Bind Government

Reliance on incomplete or inaccurate information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Donald E. Stewart, pro se.

OPINION BY ADMINISTRATIVE JUDGE LYNN

Donald E. Stewart (appellant) has appealed from a decision dated March 11, 1986, issued by the California State Office, Bureau of Land Management (BLM), which declared the Virginia Creeper placer mining claim, CAMC 95003, void in its entirety. The decision states:

Portions of the Virginia Creeper claim embrace land patented under patent number 4244 issued September 28, 1880 with no reservation

of minerals to the United States. Therefore, those portions of the claim embraced within patent 4244 are null and void ab initio -- without legal effect from the beginning. The remaining portions of the claim are deemed abandoned and void for failure to file an affidavit of labor or notice of intent to hold for the 1982-1983 assessment year under the provisions of Sec. 314 of FLPMA [Federal Land Policy and Management Act of 1976]. Accordingly, the claim is void in its entirety.

The case file discloses that appellant filed the placer mining claim location notice for the Virginia Creeper claim on August 25, 1981. A diagram and description of the claim show it to be situated in the NW¹ NE¹ NE¹, N¹ NW¹ NE¹, sec. 31, T. 20 N., R. 12 E., Mount Diablo Meridian, Sierra County, California. The case file also contains a copy of a master title plat which shows the location of land covered by patent No. 4244 to be within the area described by the Virginia Creeper mining claim location notice.

Appellant does not dispute that the Virginia Creeper mining claim is on patented land. Instead, he apparently alleges that he, either individually or with other parties, is the present owner of the land originally patented under patent 4244. Appellant relates that he owned other patented land in sec. 30, T. 20 N., R. 12 E., on which two mining claim location notices were filed by other persons. He states BLM recognized these claims even though they were on his patented land and despite his protest. The claims were eventually sold to an innocent third party, from whom appellant states he purchased the claims in order to clear title to his own property. Appellant appears to argue that he filed a location notice with BLM for the Virginia Creeper claim in order to prevent the same thing from happening again because of the value of the claim. He also states that he did not file an affidavit of assessment work for 1982-1983 because of advice from BLM employees that he was not required to file such an affidavit on patented land. At one point appellant asked BLM whether it was the intention of Congress to make individuals file mining claim location notices and affidavits of work on their own patented lands.

Nowhere, however, does appellant unequivocally state that he is the owner of the lands originally patented under patent 4244, or that all of the Virginia Creeper mining claim is on that patented land. Appellant does not include any documentation showing he is the present owner of this land, although he alludes to tax assessments and payments for the property, a fire in the Sierra County Clerk's office somewhere between 1967 and 1970 that destroyed pertinent records, the expungement and destruction of other relevant documents in that office, and the unwillingness of the present owners of the land to entrust certain documents to the county clerk.

[1] It is well settled that placer mining claims located on land patented without a reservation of minerals to the United States are properly declared null and void ab initio to the extent they include such patented land. Merrill G. Memmott, 100 IBLA 44 (1987); Florian L. Glineski, 87 IBLA 266 (1985). This result must be reached because there is no Federal interest in such lands. Accordingly, that part of the Virginia Creeper placer mining claim which is located on land patented without a reservation of minerals to the United States was properly declared null and void.

[2, 3] Furthermore, section 314 of FLPMA, 43 U.S.C. | 1744 (1982), and 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed, or a notice of intention to hold the mining claim, with the proper BLM office prior to December 31 of each year. See Enfield Resources, 101 IBLA 120 (1988), and cases cited therein. Appellant's alleged reliance upon what may be erroneous advice from a BLM employee cannot create rights not authorized by law, or relieve him of the consequences imposed by the statute for failure to comply with its requirements. See Raymond T. Duncan, 96 IBLA 352 (1987), and cases cited therein. Neither is BLM estopped from declaring an unpatented mining claim abandoned and void for failure properly to file an affidavit of assessment work or a notice of intention to hold the claim merely because BLM has delayed issuing such a declaration for a number of years. John Robert Maytag, 95 IBLA 128 (1987). Therefore, to the extent the Virginia Creeper placer claim is located on land available for mineral entry, BLM properly declared the claim void for failure to file the required 1982-1983 affidavit or notice.

BLM's decision was, therefore, correct and must be affirmed.

If, however, appellant is the owner of this property, as he apparently alleges, he is not required to comply with statutes and regulations concerning the use of public lands, including those cited above. Appellant would be well advised to ensure that his title documents are in order so that he can prove ownership should any question regarding the property arise in the future.

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.

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Kathryn A. Lynn
Administrative Judge
Alternate Member

I concur:

John H. Kelly
Administrative Judge