

SANTA FE RESOURCES, INC.

IBLA 87-420

Decided January 19, 1989

Appeal from decisions of the Arizona State Office, Bureau of Land Management, declaring mining claims null and void ab initio. A MC 266984 through A MC 266993.

Affirmed.

1. Mining Claims: Lands Subject to

Mining claims located on land patented by the United States without a mineral reservation or on land segregated from entry under the mining laws are null and void ab initio.

APPEARANCES: Rhyne Simpson, Jr., President, Santa Fe Resources, Inc., Santa Fe, New Mexico.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Santa Fe Resources, Inc. (Santa Fe), has appealed two March 30, 1987, decisions of the Arizona State Office, Bureau of Land Management (BLM), declaring null and void ab initio a total of 10 mining claims located by Rhyne Simpson, Jr., and others on March 7, 1987, for certain lands in secs. 21, 23, 24, and 28, T. 6 S., R. 16 E., Gila and Salt River Meridian. BLM based its decision for six of the claims, (A MC 266984 through A MC 266989), on the existence of a patent without reservation of minerals to the United States. For the remaining claims (A MC 266990 through A MC 266993), BLM determined that the land was segregated by a Notice of Realty Action (NORA), published at 50 FR 38215 (Sept. 20, 1985), proposing the exchange of certain public lands with the State of Arizona pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1716 (1982).

In its statement of reasons, appellant explains that it holds a lease with an option to purchase certain lands which lie between the two sets of claims which are the subject of its appeal and that it proposes to conduct a gypsum wallboard business utilizing the reserves on the claims in question. Appellant asserts that BLM's decisions threaten the financing of the project. 1/

1/ In addition, appellant states its belief that the land encompassed by four of its claims should be excluded from the proposed land exchange. The

[1] It is well established that Federal mining claims may only be located on lands open to the operation of the United States mining laws. Land which has been patented without a reservation of minerals to the United States, Ariel C. MacDonald, 52 IBLA 384 (1981); Jonathan Carr, 49 IBLA 17 (1980), as well as land which has been segregated from entry under the mining laws, Harold E. De Roux, *supra*, is not available for location of mining claims. Mining claims located on such land are null and void ab initio. Merrill G. Memmott, 100 IBLA 44 (1987); John A. Ross & Maxine Lidke, 73 IBLA 16 (1983).

Examination of the case record and the NORA support BLM's determination that the lands are not subject to location for the reasons stated. Four of appellant's claims, those in secs. 23 and 24, south of the San Carlos Indian Reservation boundary, are located on lands described in the NORA. The NORA specifically stated that such lands were, by publication of the notice, segregated from entry under the mining laws. The other six claims embrace land in secs. 21 and 28 which was transferred without reservation of mineral rights by patent number 02-86-0040. The economic considerations raised by appellant provide no legal basis for deviating from the controlling precedents.

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.

Bruce R. Harris
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

fn. 1 (continued)

NORA allowed public comments to be submitted to the Safford District Manager, BLM, for a period of 45 days following publication. The record in this case does not indicate whether appellant commented on the land exchange proposal; nor do we know the outcome of the exchange proposal. It is clear, however, that even if BLM were to exclude the lands described by appellant from any exchange, such action would not operate retroactively to validate the locations made while the lands were segregated from mineral entry. See Harold E. De Roux, 94 IBLA 350 (1986).