

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claim CAMC 113854 null and void ab initio and notifying claimants that no surface or mineral rights are acquired in portions of mining claims CAMC 11385 and CMAC 113885.

Affirmed.

1. Mining Claims: Lands Subject to--State Grants

Land which has been conveyed to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so conveyed is null and void ab initio. The locator of a lode mining claim partly located on school grant lands acquires no surface or mineral rights for that portion of the claims.

APPEARANCES: David A. Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

David A. Smith has appealed from the September 24, 1991, decision of the California State Office, Bureau of Land Management (BLM), declaring the Lord of Glory No. 2 mining claim (CAMC 113854) null and void ab initio and notifying him that no mineral or surface rights were acquired by him to certain portions of the Lord of Glory Nos. 1 and 3 lode mining claims (CAMC 113853 and CAMC 113855). BLM's decision was based on its findings that all of the Lord of Glory No. 2 lode mining claim and portions of the other two claims lie within W $\frac{1}{2}$, sec. 36, T. 2 N., R. 7 W., San Bernardino Meridian, title to which vested in the State of California as a school land grant under the Act of March 3, 1853, ch. 145, 10 Stat. 244.

On appeal, appellant questions the potential use of the land as school grant land, and states that his intended use of the land would "benefit all concerned parties and governmental departments."

A brief history of the school grant lands at issue is in order. In United States v. Wyoming, 331 U.S. 440, 443 (1947), the Court observed: "Consistent with the policy first given expression in the Ordinance of 1785, the Federal Government has included grants of designated sections of the public lands for school purposes in the Enabling Act of each of the States admitted into the Union since 1802." In the Act of March 3,

1853, supra, Congress granted the State of California secs. 16 and 36 in each township without regard to potential uses of the land, except that land found to be mineral in character was not included. ^{1/} For sections already surveyed at the time the legislation was enacted, title passed immediately. For sections surveyed after enactment, title did not pass until approval of a survey. See United States v. Wyoming, supra, and cases cited therein. BLM's decision identifies that date as June 20, 1884. Although the Historical Index indicates that California subsequently reconveyed portions of the E½ of sec. 36 to the United States and used other parts as base land for lieu selections, the master title plat shows that the State retains title to the W½. Moreover, the record confirms BLM's findings as to the location of appellant's claims within the W½ of section 36.

[1] Having determined that appellant's mining claims are located on lands owned by the State, we next address the status of such claims. Mining claims may be located only on lands open to the operation of the United States mining laws which is limited to "lands belonging to the United States." 30 U.S.C. § 22 (1988). Land which has been conveyed to a state without a reservation of minerals to the United States is not available for the location of mining claims and a mining claim located on such land after it is conveyed is null and void ab initio. George Antunovich, 76 IBLA 301, 90 I.D. 464 (1983); Don P. Smith, 51 IBLA 71 (1980); John F. Drobnick, 41 IBLA 164 (1979). Thus, BLM properly declared the Lord of Glory No. 2 lode mining claim null and void ab initio because it lies entirely within the area conveyed to the State of California.

The Lord of Glory Nos. 1 and 3 lode mining claims only partly lie within the land granted to California. A lode mining claim located partially on lands unavailable for location is null and void ab initio if the discovery is on patented land. Zula C. Brinkerhoff, 75 IBLA 179 (1983). However, if the discovery is on lands open to location, the locator "may extend the end lines and side [lines] of his claim across patented land to define the extralateral rights to lodes and veins which apex within the claim." Id. at 181. The Board has held that while a claimant may not acquire any rights in the patented land, "the configuration of a claim could, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry." Santa Fe Mining Inc., 79 IBLA 48, 51 (1984) (emphasis in original).

In the case at hand, the record does not show whether the points of discovery for these two claims are located on lands open to mineral entry. However, even if it is assumed they are, the appellant acquired no rights in the surface or mineral estate of the lands conveyed to the State. See Amoco

^{1/} If the land had been found to be mineral in character at the time of survey, title would not have passed until Jan. 25, 1927, when Congress extended school grants to mineral lands. 43 U.S.C. § 870 (1988); See State of Idaho, 101 IBLA 340, 95 I.D. 49 (1988).

Minerals Co., 83 IBLA 23, 28 (1984). Accordingly, we conclude that BLM correctly found that appellant acquired no surface or mineral rights to those portions of the claims lying within the school grant lands.

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.

John H. Kelly
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge