

LEE SANISLO AND ROBERT J. CARROLL

IBLA 96-346

Decided June 12, 1996

Appeal from a decision by the Oregon State Office, Bureau of Land Management, declaring the Dirty Neck Jane #2 placer mining claim (ORMC 150141) null and void ab initio because it had been located on land reconveyed to the United States with mineral rights retained by the grantor.

Petition for stay denied; decision affirmed.

1. Mining Claims: Lands Subject To

Minerals which are reserved when land is conveyed to the United States cannot be located under the mining laws.

APPEARANCES: Lee Sanislo, Renton, Washington, and Robert J. Carroll, Kent, Washington, pro sese.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Lee Sanislo and Robert J. Carroll have appealed an April 3, 1996, decision by the Oregon State Office, Bureau of Land Management (BLM), declaring the Dirty Neck Jane #2 placer mining claim (ORMC 150141) null and void ab initio because it had been located on land reconveyed to the United States with the mineral rights retained by the grantor. Appellants request a stay of the decision pending review of their appeal.

The location notice for the Dirty Neck Jane #2 states that it occupies the SE $\frac{1}{4}$ SW $\frac{1}{4}$, sec. 3, T. 21 N., R. 17 E., Willamette Meridian, Kittitas County, Washington. The copy of the master title plat for the township contained in the case file bears the notation "SP 018891 Recon US No Min" in section 3. The file also includes copies of what appear to be serial register pages for application number 018891. The initial entry lists lands offered to the United States pursuant to the Forest Exchange Act, 16 U.S.C. §§ 485, 486 (1994), including sec. 3, T. 21 N., R. 17 E., Willamette Meridian. This offer was subject to a reservation of the right "to mine and remove metalliferous minerals" and to mineral rights held by the Northern Pacific Railway Company. The final entries indicate that the exchange was completed in 1943.

BLM correctly determined that the Dirty Neck Jane #2 was null and void ab initio. Metalliferous minerals were reserved when the land was reconveyed to the United States. Appellants cannot obtain rights to minerals which are not property of the Federal Government by locating a claim under the mining laws. August F. Plachta, 88 IBLA 304, 306 (1985); Moise & Leon Berger, 82 IBLA 253, 255 (1984).

The arguments appellants raise do not dictate a different conclusion. The land was not available for mineral location, and appellants did not obtain any rights by their attempt to locate a mining claim. Because they did not hold any rights to the land, BLM's decision was not a "taking" of their rights. See John & Maureen Watson, 113 IBLA 235, 238 (1990). Nor does filing a location certificate with BLM establish that the land is available for mineral location. Boyad Tanner, 113 IBLA 387, 391 (1990). BLM was required to accept the document appellants filed (43 U.S.C. § 1744(b) (1994)), without reviewing whether the land was open to location or the validity of the claim, and was not precluded from declaring the claim to be null and void at some later date. Id.

Having determined that BLM's decision was correct, appellants' petition for a stay is denied as moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the April 3, 1996, decision of the Oregon State Office is affirmed.

R. W. Mullen
Administrative Judge

I concur.

C. Randall Grant, Jr.
Administrative Judge

