

INTERIOR BOARD OF LAND APPEALS

Bob and Kayla Alejandre

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BOB AND KAYLA ALEJANDRE

IBLA 92-365 Decided January 8, 1993

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio in part. CA MC 251094 and CA MC 251096.

Affirmed.

1. Mining Claims: Lands Subject To--Mining Claims: Placer Claims--Mining Claims: Withdrawn Land--Mining Claims Rights Restoration Act--Powersite Lands--Withdrawals and Reservations: Powersites

BLM properly declared placer mining claims partially null and void ab initio that included land which, at the time of location, was subject to a license for a power project under a powersite withdrawal and was therefore closed to mineral entry under sec. 2(a) of the Mining Claims Rights Restoration Act of 1955, as amended, 30 U.S.C. § 621(a) (1988).

APPEARANCES: Bob and Kayla Alejandre, North Fork, California, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Bob and Kayla Alejandre have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated March 25, 1992, declaring the One From The Road and The Junction placer mining claims, CA MC 251094 and CA MC 251096, null and void ab initio in part. The subject mining claims were located February 22, 1992, in the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 16, T. 9 S., R. 23 E., Mount Diablo Meridian, Madera and Fresno Counties, California, in the Sierra National Forest. Copies of location notices were filed for recordation with BLM on February 26, 1992, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1988). The notices state that the claims were filed under the Mining Claims Rights Restoration Act of 1955 (MCRRA), as amended, 30 U.S.C. §§ 621-625 (1988).

Power Project No. 2017 was licensed effective March 1, 1949, to the Southern California Edison Company. An application for amended license filed on December 29, 1952, was supplemented January 5, 1953. The record contains a copy of a May 24, 1955, "Notice," in which the Federal Power Commission (FPC) (now the Federal Energy Regulatory Commission (FERC)) described lands included in Power Project No. 2017 (known as the Big Creek No. 4 Project), pursuant to an application for an amended license filed January 5, 1953. Included among the identified lands are the E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$

and NE¼ SE¼ sec. 16, T. 9 S., R. 23 E., Mount Diablo Meridian, Madera and Fresno Counties, California. FPC stated that such lands were, under section 24 of the Federal Power Act, as amended, 16 U.S.C. § 818 (1988), "reserved from entry, location or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress." The record establishes that the amended license application was approved by the FPC effective January 5, 1953.

On March 16, 1992, the Director, Division of Project Compliance and Administration, FERC, notified BLM that the "third proviso of Section 2 of the [MCRRA, as amended, 30 U.S.C. § 621 (1988)]" does apply to lands within Power Project No. 2017. Section 2 of MCRRA provides generally that all public lands reserved for power development or power sites "shall be open to entry for location * * * of mining claims." The "third proviso," however, states "nothing [in section 2] shall be construed to open for the purposes described * * * any lands * * * which are included in any project operating or being constructed under a license * * * issued under the Federal Power Act."

The Director stated in his March 1992 notice that the location of affected lands was depicted on an attached "Exhibit K [, Sheet No. 4037-3,]" entitled "Detail Map of Big Creek No. 4 Project" (FPC No. 2017-98). The record includes a copy of a portion of an FPC order approving amendment of the license for Power Project No. 2017, effective January 5, 1953, that refers to "Exhibit K, Sheet[] [No.] * * * 4037-3" and confirms that portions of the subject mining claims are included in the power project licensed by FPC.

The March 1992 BLM decision declared the subject mining claims null and void ab initio to the extent that they encompass lands within "active licensed Project 2017" containing power facilities including a tunnel, transmission line, and a gauging station. BLM stated that under the third proviso of section 2 of MCRRA the land was not open to location of mining claims in February 1992. The Alejandres appealed from that decision. They contend that the BLM decision is directly contrary to the "general intent" of MCRRA, which is, given the recognized compatibility of mining and power operations, "to keep power compan[ies] from acquiring and closing to the public vast amount[s] of valuable public resource[s] and mineral lands." They state that BLM should have inquired if the licensee had any objections to location of their mining claims.

[1] It is true that public lands reserved for power development or powersites were generally opened to mineral entry by section 2(a) of MCRRA. See Seth M. Reilly, 112 IBLA 273, 277-78 (1990), and cases cited therein. Consequently, it would appear that to declare all mining claims located on such lands null and void ab initio would be contrary to congressional intent. There is, however, an important exception to the rule where lands are included "in any project operating or being constructed under a license * * * issued under the Federal Power Act." 30 U.S.C. § 621(a) (1988). Such lands are not opened to mineral entry by section 2(a) of MCRRA. See Seth M. Reilly, supra at 278.

In the present case, the mining claims at issue were located on land that before passage of MCRRA on August 11, 1955, was included in a project "operating or being constructed under a license * * * issued under the Federal Power Act." 30 U.S.C. § 621(a) (1988). BLM was notified of this fact by FERC. Appellants have provided no evidence to the contrary. As a consequence, the land was not opened to mineral entry by section 2(a) of MCRRA, but remained closed to such entry, and such closure continues regardless whether the licensee would object to location of mining claims.

Appellants also argue that the land involved here should be considered open to mineral entry where a portion of the land now regarded by BLM as closed to such entry was subject to a "valid" mining claim in 1988. They refer to the Easy Money placer mining claim, CA MC 205429, located April 23, 1988, by Carl E. Jensen in sec. 16, T. 9 S., R. 23 E., Mount Diablo Meridian, Madera County, California. That claim was filed for recordation with BLM on May 2, 1988.

BLM places Jensen's claim in the NE¼ NW¼ of sec. 16, outside Power Project No. 2017. It is not, therefore, comparable to the claims here under review. There has been no determination by BLM that Jensen's claim is "valid." Nor does the fact that a mining claim was located in an area reserved from mineral entry and filed for recordation with BLM establish that the area is open to the location of mining claims, for location and recordation could occur despite the reservation. That is evident in the case of the mining claims here under review. Such a circumstance does not change the fact that the land was reserved and that the subject claims are therefore null and void ab initio to the extent that they include reserved land, without any action on the part of BLM. See Walter MacEwen, 87 IBLA 210, 212 (1985), and cases cited therein. All that remains to be done in such a case is for BLM to formally notify the claimant of the status of the claims. That event occurred with issuance of the March 1992 BLM decision.

The two placer mining claims were located in part on land reserved from mineral entry that was not opened for location of mining claims by section 2(a) of MCRRA since it was included in a licensed power project when location occurred. We therefore conclude that BLM properly declared appellants' mining claims null and void ab initio to the extent that they cover such land. See John Wright, 112 IBLA 233, 238 (1989).

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.

Franklin D. Arness
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge