

INTERIOR BOARD OF LAND APPEALS

Barbara J. Cole

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BARBARA J. COLE

IBLA 90-279

Decided August 18, 1993

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, declaring mining claims null and void ab initio. WMC-226320 through WMC-226322.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Revocation and Restoration

Mining claims located on lands closed to mineral entry are null and void ab initio. Because such claims create no property rights, no rights were infringed when BLM found three claims located on lands closed to mineral entry to be null and void.

APPEARANCES: Barbara J. Cole, Lander, Wyoming, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Barbara J. Cole has appealed from a March 2, 1990, decision of the Wyoming State Office, Bureau of Land Management (BLM), declaring three mining claims numbered WMC-226320 through WMC-226322 null and void ab initio.

Location notices for the claims recorded with BLM on July 19, 1984, recite that they were located on May 27, 1984, and show they were recorded with Fremont County, Wyoming, at 10 a.m. on June 18, 1984. BLM found that because the claims were located in secs. 3 and 6, T. 29 N., R. 99 W., and sec. 12, T. 29 N., R. 100 W., sixth principal meridian, Fremont County, Wyoming, they were therefore null and void ab initio since they were located at a time when the land claimed was withdrawn from mineral entry for classification purposes. See 35 FR 18682 (Dec. 9, 1970) and 49 FR 19904 (May 10, 1984) (Notice of Classification of Public Lands). The March 1990 decision pointed out that the invalid claims could nonetheless be relocated.

Appellant contends that she has been damaged by BLM's delay in decisionmaking because the March 1990 decision was not issued until 5 years after the claim location notices were recorded with BLM. Contradicting statements appearing on the claim notices that she had earlier filed with

Fremont County, Wyoming, and BLM, she states that the claims were not actually located on the ground until after the notices of location were filed with the appropriate state official at the Fremont County courthouse, and explains that "[w]e are under the assumption that no claim can be legal till it is filed." She does not dispute the finding by BLM that the land on which the claims were located was withdrawn from mineral entry from November 22, 1967, until 10 a.m. on June 18, 1984, but instead claims that she did not locate the claims until some time after the June 18, 1984, opening of the lands to mining location.

[1] A claim located on land that has been withdrawn from mineral entry by a Departmental classification order is void ab initio. See Paul Vaillant, 90 IBLA 249, 250 (1986) (wilderness classification). If, therefore, the claims here at issue were located prior to the time they were filed with the County, as the notices of location state they were, then they were located while the lands on which they were situated were withdrawn from mineral entry and they are void ab initio. John & Maureen Watson, 113 IBLA 235, 236 (1990); Lynn H. Grooms, 99 IBLA 237, 240 (1987).

Contrary to the belief expressed by appellant concerning the notion that location notices must be filed before a claim may be located under Wyoming law, the relevant statutes of Wyoming require that before a claim is recorded with the county clerk the miner must first post a notice at the claim and designate its surface boundaries. See Wyo. Stat. §§ 30-1-103(a), 30-1-110(b) (1989); Lynn H. Grooms, supra at 239. If, therefore, it is assumed that the recitation in appellant's location notices concerning the time of location was made in error, and the claims were not located before the location notices were filed with the county clerk, then the claims were not properly located pursuant to applicable provisions of state law and they are therefore invalid for that reason. Zweifel v. State, 517 P.2d 493, 500 (Wyo. 1974). In that case also, since the appellant would then have failed to post notices and mark the claim boundaries as required by state law, her claims would properly be found to be invalid by BLM. Lynn H. Grooms, supra at 239.

In either case, therefore, whether we take the notice of location at face value, or whether we accept the explanation concerning the circumstance of location provided during this appeal, the result is the same: the claims were properly found to be invalid by the BLM decision here under review.

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

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Franklin D. Arness  
Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge