

INTERIOR BOARD OF LAND APPEALS

Donald R. Roe

129 IBLA 267 (May 16, 1994)

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Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring millsites null and void ab initio. AMC 329582 through AMC 329589.

Reversed; stay denied.

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 Mining Claims: Lands Subject to--Mining Claims: Millsites--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Revocation and Restoration

A BLM decision declaring millsites null and void ab initio because they were located on land not open to mineral entry will be reversed where the record shows that a 1982 BLM order opened the land to operation of the mining laws before the millsites were located.

APPEARANCES: Donald R. Roe, Lake Havasu City, Arizona, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Donald R. Roe has appealed from a February 25, 1994, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring null and void ab initio the Zion's Independent Mill Site Nos. 1 through 8 (AMC 329582 through AMC 329589), situated in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 23, T. 13 N., R. 20 W., Gila and Salt River Meridian, Mohave County, Arizona. Although Roe has requested a stay of BLM's decision, our resolution of his appeal moots any ruling on that request.

The land at issue in this appeal was withdrawn under first-form withdrawals pursuant to the Act of June 17, 1902, 32 Stat. 388, on January 31 and September 8, 1903. On November 14, 1921, the subject land was among lands transferred to the Santa Fe Pacific Railroad Company pursuant to Patent No. 832141. On June 4, 1930, an additional first-form reclamation withdrawal embracing the unpatented lands in sec. 23, T. 13 N., R. 20 W., Gila and Salt River Meridian, withdrew the lands from public entry. The January 31, 1903, September 8, 1903, and June 4, 1930, withdrawal orders were revoked on November 23, 1955, but that revocation order did not specifically reopen affected land to public entry. In an order providing for the opening of public lands, dated February 19, 1982, and

corrected on March 29, 1982 (AR 035766), after finding that various lands, including the lands at issue here, had been reconveyed to the United States pursuant to a land exchange, BLM opened those lands to operation of the public land laws, including the mining laws, subject to valid existing rights and the provisions of existing withdrawals. 47 FR 8864 (Mar. 2, 1982). BLM duly noted the opening of these lands on the public land records.

Roe and Jeff A. Bergstrom located their millsites on December 21, 1993, pursuant to 30 U.S.C. § 42 (1988), and filed location notices with BLM on February 18, 1994. On February 25, 1994, BLM declared the millsites null and void ab initio on the ground that, although the first-form withdrawals had been revoked, the lands had not been restored and opened to entry and, therefore, could not be entered or located in any manner. On appeal Roe correctly asserts that BLM's decision ignores the March 2, 1982, order opening the land at issue to mineral entry and must be reversed.

[1] Mining claims located on land withdrawn under a first-form withdrawal pursuant to the Act of June 17, 1902, 32 Stat. 388, are null and void ab initio. Glenn Freeman, 116 IBLA 105, 106 (1990). Similarly, millsite claims located on land withdrawn from mineral entry at the time of location are properly declared null and void ab initio. Fletcher De Fisher, 93 IBLA 68, 72 (1986). In this case, however, not only had the withdrawals embracing the land at issue been revoked in 1955, but BLM had also opened that land to operation of the mining laws in 1982, before Roe and Bergstrom located their millsites. See 47 FR 8864 (Mar. 2, 1982). Since no withdrawals existed in 1982 to prevent the order from attaching to land included in the millsite locations, we find that BLM erred in declaring those millsites null and void ab initio.

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 reversed.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge