INTERIOR BOARD OF LAND APPEALS

Maurice E. Jones

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MAURICE E. JONES

IBLA 92-352 Decided July 6, 1995

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring unpatented mining claims null and void ab initio. UMC 348465 and UMC 348466.

Affirmed.

1. Mining Claims: Lands Subject to

Unpatented lode mining claims were properly declared null and void because they were located on land not subject to mineral entry.

APPEARANCES: Maurice E. Jones, Payson, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Maurice E. Jones has appealed from a March 16, 1992, decision of the Utah State Office, Bureau of Land Management (BLM), declaring his unpatented Esperanza #1 and #2 lode mining claims (UMC 348465 and UMC 348466) null and void ab initio because the land on which they were located was not open to mineral entry.

After Jones recorded his claims with BLM, he was asked to supply a land description that would permit BLM to identify where they were situated. He responded that the claims lay within the NE¼ NE¼ sec. 36, T. 10 S., R. 2. E., Salt Lake Meridian; he also, however, supplied a map on which he indicated with a yellow marker that the claims extended into a slightly larger area within the NE¼ of sec. 36 than the NE¼ NE¼.

BLM found that the NE¼ NE¼ of sec. 36 was conveyed to the State of Utah in 1894 and remained State land in 1991, a circumstance shown on the master title plat for T. 10 S. Nonetheless, since the narrative land description supplied by Jones was made ambiguous by the annotated map he had supplied, BLM also considered the status of immediately adjacent land in sec. 36. It was found that this area was reconveyed by the State to the United States subject to a reservation of all minerals therein to the State, as shown by State Patent No. 18227 issued on December 6, 1965. Consequently, BLM found that this land also was not available to mineral entry in 1991, inasmuch as the mineral estate was not then owned by the United States. Concluding that none of the land claimed by Jones was open

to mineral entry at the time of location, BLM found both Esperanza claims null and void. A timely appeal was taken.

On appeal, Jones contends that the BLM decision is incorrect and suggests that recent land surveys may have affected the claims, which are also said to be the subject of litigation. How the surveys might have a bearing on the location of his claims is not, however, explained by him, nor does he state the nature of the litigation he mentions or attempt to relate it to this appeal.

[1] Land patented without reservation of minerals to the United States or which has otherwise been removed from the operation of the
mining laws is unavailable for mineral location. Baron Mining Corp.,
39 IBLA 234, 235 (1979), and cases cited. Similarly, land acquired by
the United States does not become subject to mineral location unless there is a specific direction allowing mineral entry. Maurice Duval, 68 IBLA 1, 2 (1982). Since the United States did not acquire the mineral estate to the lands acquired from the State in sec. 36, there would be nothing upon which an opening order could operate, insofar as concerns the land adjacent to the NE¼ NE¼, and there is no indication that any such order has been made. The record, therefore, supports the BLM decision here under review, which found the land sought by Jones was not open to mineral location and that therefore his claims were null and void.

Jones has not shown or suggested that the case could be otherwise. His comments concerning possible consequences of land surveys or litigation do not directly address the grounds for the BLM decision; he has not, as a consequence, shown or alleged that it was in error, as he was required to do if he were to prevail on appeal. See Apache Oro Co., 16 IBLA 281, 283 (1974). Therefore, BLM properly concluded that the locations attempted by Jones on October 9, 1991, were null and void ab initio because the lands he claimed were not then open to mineral entry.

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:

David L. Hughes
Administrative Judge