

INTERIOR BOARD OF LAND APPEALS

Alan Bruce

133 IBLA 297 (August 9, 1995)

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## ALAN BRUCE

IBLA 92-250

Decided August 9, 1995

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims null and void in part. CA MC 248744 through CA MC 248746, and CA MC 248748.

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 Mining Claims: Lands Subject To--Mining Claims: Placer Claims--Mining Claims: Withdrawn Land--Mining Claims Rights Restoration Act--Powersite Lands--Withdrawals and Reservations: Powersites

Placer mining claims were invalid because they were located on land licensed for a power project that was closed to mineral entry under sec. 2(a) of the Mining Claims Rights Restoration Act of 1955.

APPEARANCES: Alan Bruce, Dutch Flat, California, pro se.

## OPINION BY ADMINISTRATIVE JUDGE ARNESS

Alan Bruce has appealed a January 28, 1992, decision of the California State Office, Bureau of Land Management (BLM), declaring null and void parts of Secret Bear Nos. 3 and 4 and Steephollow Silica Claim Nos. 1 and 3 (CA MC 248744 - CA MC 248746 and CA MC 248748), four placer mining claims located within active power projects.

The claims were located September 1, 1991, in sec. 6, T. 15 N., R. 10 E., Mount Diablo Meridian, California; copies of location notices were filed with BLM on November 29, 1991. When BLM notified the Federal Energy Regulatory Commission (FERC) that the claims were situated within power project withdrawals, FERC replied that they were affected by licensed FERC Project Nos. 2266 and 2310. A license for Project 2310 was issued to Pacific Gas and Electric Company on June 24, 1963. That license was amended by a FERC order dated August 14, 1980, which included exhibit K-22 (FERC No. 2310-122), "Transmission Lines, Canals and Roads, Drum-Spaulding Development," showing an 80-foot wide transmission line corridor (2-115

KV. Drum-Halsey Jct.), crossing the land in sec. 6 later sought by the Steepollow Silica claims and a transmission line corridor 75-feet wide (115 KV. Chicago Park-Halsey Jct.), traversing the Secret Bear claims area. Accordingly, BLM determined that section 2(a) of the Mining Claims Rights Restoration Act of 1955 (MCRRA), as amended, 30 U.S.C. § 621(a) (1988), applied to "the lands as shown on enclosed map (FERC No. 2310-122, Exhibit K-22) [which] are not open to location." BLM then found parts of the claims "lying within Project 2310" in transmission line corridors to be null and void ab initio.

On appeal to this Board, Bruce asserts that development of mineral deposits on the claims, lying as they do in canyon bottoms, will not interfere with power lines spanning "hundreds of feet in the air above the deposits." He argues that the decision needlessly separates deposits planned to be worked and will disrupt the continuity of his mining operation. He does not deny, however, that his claims are situated within the power project transmission line corridors.

[1] MCRRA reopened lands withdrawn or reserved for power development to entry for location and patent of mining claims, subject to a proviso in section 621(a) that excluded lands included in a power project operating or under construction under a license or permit issued under the Federal Power Act. For land so excluded from mineral entry, BLM properly declares any portion of a placer mining claim within a licensed power project to be null and void ab initio. See Bob & Kayla Alejandre, 125 IBLA 104, 105 (1993), and authorities cited therein. The BLM master title plat shows Secret Bear Nos. 3 and 4 and Steepollow Silica Claim Nos. 1 and 3 were located within withdrawals for Power Project 2266, effective May 1, 1963, and Power Project 2310, effective May 4, 1963. Consequently, when Bruce and his co-claimants attempted to locate the subject claims on September 1, 1991, they located them partially on lands that were not open to mineral entry. The 1991 locations were therefore properly declared null and void to the extent they encompassed power project lands covered by an active license.

Bruce suggests that his mining operations would not affect the transmission lines of the power project. Nonetheless, since Congress has excluded licensed lands from mineral entry, the Board may not consider special facts or provide relief to a claimant asserting mitigating circumstances; once there is a determination that lands are not available pursuant to section 2(a) of MCRRA, all that remains to be done is to notify the claimant of the status of the claims affected by the power permit. Robert Farchi, 88 IBLA 273, 275 (1985). The arguments advanced by Bruce do not alter the fact the lands in question were closed to entry; the subject claims are therefore null and void ab initio to the extent they include land covered by power licenses. See Charles Q. Cassella, 130 IBLA 338 (1994), and cases cited.

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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 affirmed.

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Franklin D. Amess  
Administrative Judge

I concur.

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James L. Bymes  
Chief Administrative Judge

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