

INTERIOR BOARD OF LAND APPEALS

Daniel O. Dismukes

133 IBLA 335 (September 6, 1995)

Title page added by:
ibiadecisions.com

DANIEL O. DISMUKES

IBLA 92-281

Decided September 6, 1995

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring mining claim A MC 319254 null and void ab initio.

Affirmed.

1. Evidence: Presumptions—School Lands: Mineral Lands—State Grants

A mining claimant who contends that land within a state school grant was encompassed by a mining claim and therefore unavailable for such conveyance ~~the state for school purposes was of the character contemplated by the grant and that title to the land consequently passed to the state. On a record that failed to establish the validity of the mining claim or the character of the land claimed, BLM properly declared the mining claim null and void ab initio.~~

APPEARANCES: Daniel O. Dismukes, Kingman, Arizona, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Daniel O. Dismukes has appealed from a February 19, 1992, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring unpatented mining claim A MC 319254, the Starizona No. 1, null and void ab initio. The claim was located in sec. 16., T. 19 N., R. 20 W., Gila and Salt River Meridian, a section conveyed to Arizona without reservation of minerals when the land was surveyed in 1917, pursuant to land grant provisions of the Arizona Enabling Act, ch. 310, 36 Stat. 557 (1910).

In his statement of reasons for this appeal, Dismukes asserts the subject mining claim was located on land encompassed by a valid mining claim when sec. 16 was conveyed to the State of Arizona and, as mining claims were excluded from such "school" grants, that the subject parcel remains public lands available to mineral entry. Dismukes provides no evidence in support of his argument.

[1] The land here at issue has a prior history that was summarized in George McDevitt, 113 IBLA 287 (1990); therein, it was determined that the land covered by the Starizona claim was not Federal land and therefore not

subject to mineral entry by McDevitt in 1968. *Id.* at 290. The McDevitt decision found that the record (which remains unchanged insofar as concerns whether the subject land is available for location under the mining law), did not establish the validity of the mining claim at any relevant date, nor was there any evidence concerning the mineral character of the land, a matter of crucial importance to the asserted claim. *Id.* Relying on the presumption that land granted to a state for school purposes was of the character contemplated by the grant, we held that the mining claimant bore the burden of proving otherwise; finding that "[t]here has been no attempt by appellant to rebut this presumption," we concluded that BLM had properly declared the Starizona claim null and void ab initio. 113 IBLA at 291.

Butte Lode Mining Co., 131 IBLA 284, 290 (1994), a case involving mining claims declared null and void ab initio because they were located on school lands in California, distinguished the McDevitt decision, finding that "unlike McDevitt, in which the claimant made no effort to rebut the presumption of passage of title, appellant herein has marshalled extensive evidence seeking to rebut the presumption that sec. 36 was known nonmineral in character on the date of approval of the survey." Consequently, the Board in Butte Lode ordered a hearing to review the facts of the State grant there at issue. Rather than offer evidence at hearing in support of the offer of proof earlier made, however, the appellant conceded the question at issue, leading us, on reconsideration, to vacate our holding on this point. See Butte Mining Co. (On Reconsideration), 131 IBLA 292a (1995). However, this appeal, which involves the identical land that was at issue in McDevitt, so closely parallels that case it cannot be distinguished therefrom. The location notice filed by Dismukes with BLM on February 14, 1992, states that his claim is a "relocation" of the "Starizona #1" mining claim previously recorded in "Docket 561, page 251, of the San Francisco Mining District, Mohave County, State of Arizona," apparently McDevitt's claim. Like McDevitt, Dismukes has made no showing regarding the validity of his claim or the character of the land in question. Since he has offered nothing to challenge the presumption of regularity associated with the grant of sec. 16 to the State of Arizona, we must conclude that BLM properly declared his mining claim null and void. See George McDevitt, supra, and authorities cited therein.

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.

Franklin D. Arness
Administrative Judge

I concur.

Gail M. Frazier
Administrative Judge

