

INTERIOR BOARD OF LAND APPEALS

J&J Building Supply

145 IBLA 196 (August 19, 1998)

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J&J BUILDING SUPPLY

IBLA 96-321

Decided August 19, 1998

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring the unpatented Cinder Pit placer claim null and void ab initio. UMC 357657.

Affirmed.

1. Mining Claims: Lands Subject to—Mining Claims: Withdrawn Land

Lands subject to a permitted or licensed power project are not open to mineral entry, and a placer claim located on lands subject to a permitted or licensed power project are null and void ab initio if the claimant does not show an unbroken chain of title to a valid claim located prior to the withdrawal of the land.

APPEARANCES: Michael A. Day, Esq., St. George, Utah, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

J&J Building Supply (J&J) has appealed a March 20, 1996, Decision issued by the Utah State Office, Bureau of Land Management (BLM), declaring the Cinder Pit placer claim, UMC 357657, null and void ab initio because it had been located entirely on land closed to mineral entry by a July 11, 1930, withdrawal for Federal Energy Regulatory Commission (formerly Federal Power Commission) Power Project, EP-914. The Cinder Pit placer was located by J&J on lots 4 and 5 in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 19, T. 39 S., R. 12 W., Salt Lake Basin & Meridian, Washington County, Utah, on August 14, 1995, and recorded with BLM on September 5, 1995.

[1] The Decision cites section 24 of the Federal Power Act of 1920, as amended, 16 U.S.C. § 818 (1994), as the basis for finding the claim null and void ab initio. That section provides that: "Any lands of the United States included in any proposed project * * * shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress." Section 24 also contains procedures by which land subject to a powersite withdrawal may be reopened to mineral entry. Id.

In 1955, Congress enacted the Mining Claims Rights Restoration Act, 30 U.S.C. §§ 621-625 (1994), which, with some exceptions, opened to mineral location "[a]ll public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites." 30 U.S.C. § 621 (1994). The exceptions include lands

(1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act [16 U.S.C.A. § 791a et seq.] or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

Id.; see also Cleatus Sypult, 143 IBLA 254, 255 (1998); Raymond A. Naylor, 136 IBLA 153, 154-55 (1996); Robert Farchi, 88 IBLA 273, 273-74 (1985). Under this statute, lands described in a preliminary permit or license for a power project remain closed to mineral entry, and claims located on those lands are null and void ab initio. See Ernest Smart, 131 IBLA 44, 46 (1994); John Wright, 112 IBLA 233, 238 (1989); Robert Farchi, 88 IBLA at 274.

In its statement of reasons, J&J admits that the Cinder Pit placer claim lies within the boundaries of the power project withdrawal, but asserts that the power project withdrawal is not applicable because the Cinder Pit placer claim replicates the site of a J&J owned mining claim which BLM improperly declared null and void on April 6, 1995, for failure to timely pay the claim maintenance fee for the 1995 assessment year required by 30 U.S.C. § 28f (1994) and 43 C.F.R. § 3833.1-5. The arguments raised in its appeal of BLM's April 6, 1995, Decision, styled J&J Masonry Supply Co. (IBLA 95-439), are incorporated by reference and form the basis for this appeal. The Board rejected those arguments in a May 18, 1998, Order in J&J Masonry Supply Co., IBLA 95-439, and affirmed BLM's April 6, 1995, Decision, declaring mining claims UMC 116130 through UMC 116140 null and void for failure to timely file the required claim maintenance fees.

J&J's attempt to avoid the preclusive effect of the withdrawal must be rejected. To establish that the Cinder Pit placer claim essentially constitutes an amendment of a prior valid location and relates back to the date of the original location, J&J must show that the earlier location included the land within the claim, that J&J had an unbroken chain of title flowing from the original locators, and that the original location was perfected before the withdrawal. See Ernest Smart, *supra*; see also Lucian B. Vandegrift, 137 IBLA 308, 310 (1997).

In this case, J&J has not shown an unbroken chain of title to a valid mining claim preceding the Cinder Pit placer claim. When a claim is declared null and void, the chain of title to that claim is broken

and the claimant loses the rights gained by the location of that claim. The only way the claimant can reacquire those rights is by locating a new claim. However, any rights obtained under a relocation of a lapsed or voided claim, whether by a former claimant or another, do not relate back to the date of the original location. See Ernest Smart, supra. The Cinder Pit placer claim was a relocation, and for that reason J&J cannot rely on any rights attendant to the voided claims. It was proper for BLM to conclude that the Cinder Pit placer, located by J&J on August 14, 1995, was null and void because the lands were not open to mineral entry at the time of location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

R.W. Mullen
Administrative Judge

I concur:

James L. Bymes
Chief Administrative Judge