

INTERIOR BOARD OF LAND APPEALS

James Aubert

164 IBLA 297 (January 24, 2005)

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JAMES AUBERT

IBLA 2002-306

Decided January 24, 2005

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring placer mining claim null and void ab initio. ORMC 156406.

Affirmed.

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Withdrawn Land

Under 43 CFR 2310.2(a), the filing by the Forest Service of an application for withdrawal of Federally-owned lands segregates the lands described in the application from settlement, sale, location or entry under the public land laws, including the mining laws for 2 years from the date of publication in the Federal Register of notice of the filing of the application. Under 43 CFR 2310.2-1(c), where the Forest Service subsequently cancels its application for withdrawal, the effective date of the termination of such segregation is the date specified in the notice of cancellation published in the Federal Register. Where a mining claim is located on lands covered by an application for withdrawal filed by the Forest Service at a time following publication of notice of the application in the Federal Register, BLM properly declares the claim null and void ab initio, as the lands are segregated from mineral entry at that time. It is irrelevant that the Forest Service subsequently cancels its application for withdrawal, where notice of such cancellation is not published in the Federal Register until long after the date of location of the claim, as revocation

of the withdrawal subsequent to the date of the location does not restore or validate the claim.

APPEARANCES: James Aubert, Portland, Oregon, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

James Aubert (appellant) has appealed from the April 16, 2002, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Eureka placer mining claim (ORMC 156406) null and void ab initio. We affirm.

[1] The claim at issue covers lands within Section 33, T. 40 S., R. 6 W., Willamette Meridian, Joseph County, Oregon, located on February 21, 2002.^{1/} BLM's record shows that the lands on which the Eureka placer mining claim was located were, on the date of location, covered by an application for a withdrawal filed by the United States Department of Agriculture, Forest Service, on or around January 12, 2001. 66 FR 6664 (Jan. 22, 2001). Further, under 43 CFR 2310.2(a), the publication of notice of that application in the Federal Register on January 22, 2001, had segregated the lands described in the application from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the notice, for 2 years from the date of the publication of the notice. Mount Royal Joint Venture, 144 IBLA 277, 280-81 (1998). The lands in question were thus segregated from mineral entry when the claim was located on February 21, 2001. Where the published notice of a proposed withdrawal specifies that the identified Federal lands are segregated from mineral location and entry, those lands are not open to mineral entry during the segregation period. Mount Royal Joint Venture, 144 IBLA at 280-81. This is in keeping with the well-established principle that a mining claim located on land closed to entry under the mining laws confers no rights to the locator and is properly declared null and void ab initio. See, e.g., Richard L. Goergen, 144 IBLA 293 (1998); William Douglas Wells, 141 IBLA 144 (1997); Lucian B. Vandergrift, 137 IBLA 308 (1997); Dean Staton, 136 IBLA 161, 164 (1996); Merrill G. Memmott, 100 IBLA 44 (1987).

^{1/} Appellant states on appeal that the legal description on the notice of location was incorrect, in that it described lands in Sec. 33, T. 40 S., R. 6 W., when the proper description should have referred to lands in Sec. 33, T. 40 S., R. 5 W. BLM's decision addresses only a claim located as described in original notice of location of the Eureka placer claim on Feb. 21, 2002 (that is, covering lands in Sec. 33, T. 40 S., R. 6 W.), and its case record contains only information relating to lands covered by that claim. The validity of any mining claim located in Sec. 33, T. 40 S., R. 5 W., Willamette Meridian, Joseph County, Oregon, is not before us.

Appellant presents documentation indicating that the Chief of the Forest Service filed a request with the Department of the Interior on October 15, 2001, that the application for withdrawal be canceled and replaced with an application for lesser acreage, apparently not including the lands on which the Eureka claim was located. However, notice of that cancellation was not published in the Federal Register until May 21, 2002, 67 FR 35830. Under 43 CFR 2310.2-1(c), the segregation worked by the previous notice of the filing of the withdrawal application did not expire until May 21, 2002, the date specified in the notice published in the Federal Register, long after the date of location of the Eureka claim. The conclusion that the Eureka claim was located on land not open to mineral entry is not changed by the fact that the segregation of the lands may have been terminated subsequent to the date of the location. As we have observed in the past, even where “revocation of the withdrawal subsequent to the date of the location of appellants’ placer mining claims was accomplished, the revocation would not restore or validate appellants’ claims.” Kathryn J. Story, 104 IBLA 313, 315 (1988); Ronald W. Ramm, 67 IBLA 32 (1982); Tenneco Oil Co., 8 IBLA 282 (1972).

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.

David L. Hughes
Administrative Judge

I concur:

Christina S. Kalavritinos
Administrative Judge