

JOHN R. SHELBURNE

IBLA 72-3

Decided November 14, 1972

Appeal from a Utah State Office, Bureau of Land Management, decision (Utah 12854) rejecting a coal prospecting permit application.

Affirmed.

Coal Leases and Permits: Generally--Oil Shale: Withdrawals--Withdrawals and Reservations--Effect of

An application for a coal prospecting permit is properly rejected upon a determination that the lands applied for are withdrawn by Executive Order 5327 of April 15, 1930.

Geological Survey--Oil Shale: Withdrawals

A determination by the Geological Survey that lands contain deposits of oil shale, and are therefore withdrawn by Executive Order 5327 of April 15, 1930, will not be disturbed in the absence of a clear showing that the determination was improperly made.

Oil Shale: Withdrawals--Withdrawals and Reservations: Temporary Withdrawals

A temporary withdrawal of lands containing oil shale deposits will continue in effect until revoked by the President or by an act of Congress.

APPEARANCES: John R. Shelburne, pro se.

OPINION BY MR. RITVO

John R. Shelburne has appealed to the Secretary of the Interior from a Utah State Office, Bureau of Land Management, decision of May 28, 1971, which rejected his application for a coal prospecting permit on the ground that the lands applied for were withdrawn from leasing by Executive Order 5327 of April 15, 1930.

Executive Order 5327 temporarily withdrew oil shale deposits and lands containing such deposits owned by the United States and reserved

them for purposes of investigation, examination, and classification. Withdrawal of Oil Shale Lands - Executive Order of April 15, 1930, Instructions: 53 L.D. 127 (1930).

On October 29, 1970, Shelburne filed a coal prospecting application for 5,118.70 acres in Carbon County, Utah. The State Office determined that the lands for which Shelburne applied are within the Oil Shale Withdrawal, E.O. 5327, which precludes issuance of coal permits or leases, and, therefore, in a decision dated May 28, 1971, rejected Shelburne's application. Notice of appeal was filed on June 28, 1971.

Appellant asserts three main arguments in his appeal: 1) no oil shale is contained within the applied for lands; 2) E.O. 5327 has exceeded its temporary period for withdrawal since it has been in existence for 41 years; and 3) coal prospecting permits and leases previously having been allowed within the same township from time to time after issuance of the order on lands covered by E.O. 5327, his application should be allowed.

Shelburne's first contention, that oil shale does not exist in the applied for lands, challenges the classification made by the Geological Survey. The Geological Survey has reported informally that, except for small areas which would not be suitable for prospecting permits, the lands applied for have been determined to contain deposits of oil shale. 1/ Shelburne has offered in rebuttal only general references to some geological papers and maps. One who attempts to disprove a classification of lands by the Geological Survey must demonstrate the error in the Geological Survey's determination and, in the absence of a clear showing of error, the Geological Survey's determination will not be disturbed. J. D. Archer, 4 IBLA 323 (1972). Since Shelburne has failed to make such a showing this Board must uphold the Geological Survey classification of the land as containing oil shale. 2/

Appellant's second basis for appeal is that E.O. 5327 specified merely a temporary withdrawal and the time period has been exceeded. No legal support has been advanced for the appellant's contention. The position of the Interior Department is clearly opposed to such a contention. A temporary withdrawal remains in effect until modified or revoked by another executive order or by an act of Congress. Allen E. Mecham, A-30244 (Dec. 23, 1964); Langdon H. Larwill, 54 I.D.

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1/ The lands applied for are also described in PLO 4522, September 13, 1968, 33 FR 1439, which withdrew lands containing oil shale from location under the mining laws relating to metalliferous minerals.

2/ See: Eugene V. Simmons, A-30933 (March 3, 1969); Supp. (Aug. 29, 1969).

190, 191 (1933). Thus, the withdrawal orders are still in force and appellant's application was properly rejected.

Finally, Shelburne alleges that coal prospecting permits have been issued for adjoining lands, and thus no oil shale is contained within the subject land. That coal prospecting permits and leases were issued for adjoining land not covered by E.O. 5327 does not alter the classification of the lands involved in the instant case. It is not for this Board to determine whether the previous permits were properly granted. Our only concern is with Shelburne's appeal, and we find it to be without merit.

Therefore, pursuant to the authority delegated to the Board of Lands Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Martin Ritvo, Member

We concur:

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Joseph W. Goss, Member

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Joan B. Thompson, Member

