

Editor's note: Reconsideration denied by order dated Feb. 13, 1980; Appealed – aff'd Civ.No. 80-3046 (W.D. Ark. Sept. 17, 1981), aff'd, No. 81-2064 (8th Cir. June 3, 1982) 679 F.2d 747

TOM BROWN

IBLA 78-410

Decided November 6, 1978

Appeal from a decision of the Eastern States Office, Bureau of Land Management (BLM), declaring 101 mining claims null and void ab initio.

Affirmed.

1. Administrative Authority: Estoppel–Estoppel

Reliance upon erroneous or incomplete information provided by Government employees cannot create any rights not authorized by law. 43 CFR 1810.3(c)

2. Mining Claims: Generally–Mining Claims: Lands Subject to–National Park Service Areas: Generally

Unless the statute creating the area specifically provides otherwise, areas within the National Park system are not open for location of mining claims.

3. Acquired Lands–Mining Claims: Lands Subject to

Patented lands which are subsequently acquired by the United States for the National Park Service are not, by mere force of acquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land is not subject to location under the mining laws. 30 U.S.C. § 22 (1970).

APPEARANCES: Tom Brown, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Tom Brown appeals from the April 14, 1978, decision of the Eastern States Office, Bureau of Land Management (BLM), declaring 101 mining claims located within the area designated as the Buffalo National River, Marion County, Arkansas, null and void ab initio. The claim locations and recordation data are described in Appendix 1 of the Eastern States decision. As the claims were unnamed, the numbers are those given by the National Park Service for identification purposes. The descriptions are corrected to eliminate the commas within the subdivisional designations. ^{1/}

The filings of the locations of the mining claims were made by Mike Cozad in April, May, and June 1976. On July 6, 1976, Mike Cozad conveyed his interest in these claims to Tom Brown, appellant. Brown has submitted a general power of attorney to him from Cozad, limited to matters in the State of Arkansas.

The lands involved are part of the Buffalo National River, established March 1, 1972, by P.L. 92-237, 86 Stat. 44, 16 U.S.C. § 460m-8, *et seq.* (1976). The statute gives the Secretary of the Interior authority to establish and administer the Buffalo National River, and to acquire lands within the boundaries. 16 U.S.C. §§ 460m-8, 460m-9. The area is to be administered in accordance with 16 U.S.C. §§ 1 and 2 to 4 (1976), provisions relating to national parks, monuments, and reservations.

The BLM decision declared the claims null and void ab initio because the claims were located after the establishment of the national river, and areas of the National Park System are withdrawn from location, entry and patent under the mining laws of the United States unless the language creating the area specifically makes lands within the area subject to the mining laws. 43 CFR 3811.2-2; *United States v. Wallace W. Vaux*, 24 IBLA 289 (1976); [Solicitor's Opinion, M-36838, November 16, 1971,] 78 I.D. 352 (1971).

In his statement of reasons appellant seeks to distinguish his case on the ground that the statute does not specifically refer to the Buffalo National River as a park or monument and that the Department of the Interior led him to believe his claims were valid, a belief on which he relied to his detriment.

^{1/} The claims are described as being within the following sections in townships in the 5th principal meridian, Arkansas: sections 3-9, 17, T. 17 N., R. 14 W.; sections 11-13, T. 17 N., R. 15 W.; sections 35, 36, T. 18 N., R. 14 W.

He also bases his right to these mining claims on the fact that, in acquiring lands for the national river, the Government has had to accept deeds from some owners which reserve the mineral rights to the owner or his assigns for a term of years. Under such deeds mining is permitted in the area; thus, appellant argues, it is unfair to deny him the right accorded others. The situations are inapposite. Whether the lands involved were acquired by the United States with or without such a reservation affords appellant no rights.

Appellant finds further support for his contentions in a later withdrawal notice specifically withdrawing lands added to the national river from mineral entry. He contends this was an unnecessary action if the area was already so withdrawn. The later withdrawal notice adding public lands already owned by the United States to the river is also irrelevant. Once the lands were within the national river they were not subject to location under the mining laws even if they had been public lands before. Additions to the area by withdrawal order expressly noted what was provided by the statute. See discussion, *infra*, on the effect of the national river designation.

[1] Appellant has submitted no information which would show he was informed claims could be located under the mining laws, 30 U.S.C. § 22 (1976), for lands within this national river area. In any event, reliance by appellant on information from, or the opinion of, any officer or agent of the Department of the Interior concerning the validity of his mining claims cannot vest in appellant any rights not authorized by law. 43 CFR 1810.3(c); Arthur W. Boone, 32 IBLA 305 (1977); John F. Brown, 22 IBLA 133 (1975).

[2] The Buffalo National River was established for the purposes of conserving and interpreting an area containing unique scenic and scientific features, and preserving as a free-flowing stream an important segment of the Buffalo River in Arkansas for the benefit and enjoyment of present and future generations * * *.

86 Stat. at 44.

The Secretary shall administer, protect, and develop the Buffalo National River in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. § 1 et seq), as amended and supplemented; except that any other statutory authority available to the Secretary for the conservation and management of natural resources may be utilized to the extent he finds such authority will further the purposes of this Act.

86 Stat. at 45. The Act further requires the Secretary to study the area and make recommendations as to the suitability of any portion of it for inclusion in the Wilderness system. 86 Stat. at 46.

The Act referred to above, 39 Stat. 535, 16 U.S.C. § 1 et seq., established the National Park Service to promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

39 Stat. at 535. From the terms of the Act creating the national river, making it subject to administration by the National Park Service, it is clear that by designating the area as a national river rather than a national park, Congress did not intend for the Buffalo National River to be different from any other national park system area. Unless the statute creating the area specifically provides otherwise, National Park Service Areas are not open for location of mining claims. Such location would be inconsistent with the purposes for which the areas are set aside.

In Solicitor's Opinion, M-36702, February 24, 1967, 74 I.D. 97 (1967), it is noted that:

notwithstanding the broad textual reference in the mining laws to "lands belonging to the United States, both surveyed and unsurveyed," unless the lands are "public lands," i.e., open to entry, location, selection, sale or other disposal under the general public land laws, they are closed to activities under the mining laws. Oklahoma v. Texas, 258 U.S. 574 (1922); Rawson v. United States, 225 F.2d 855 (9th Cir. 1955), cert. den., 350 U.S. 934 (1956) * * *. The only exceptions to this rule are statutory * * *. [T]he mining laws are inapplicable to all national parks and monuments, except the four specifically open to mining by statute, and, except as may otherwise be specifically provided for by statute or order, the same conclusion applies to all other units of the national park system. [Footnote omitted.]

74 I.D. at 101, 102.

This view is reinforced by a subsequent Solicitor's Opinion, M-36838, November 16, 1971, 78 I.D. 352 (1971):

The fact, however, that some statutes establishing areas of the National Park System do not contain such language [specifically prohibiting mining] should not be read to infer a Congressional intent that the area is open to mineral entry. In our judgment, just the opposite intent should be inferred * * *. Whenever Congress has desired to make lands within an area of the National Park System open to mineral entry, the establishing act specifically so states.

78 I.D. at 353.

It can be assumed that Congress was aware of these Solicitor's Opinions when it enacted the law to establish the Buffalo National River, and yet, the Act does not authorize opening the land to mineral entry. Furthermore, in 1976, Congress passed P.L. 94-429, 90 Stat. 1342, 16 U.S.C. § 1901 (1976), which repeals the provisions of six organic acts allowing mining claims in national park system areas. The legislative history of the Act, 1976 U.S. Code Cong. & Adm. News, p. 2487, provides ample support for the view expressed in the opinions mentioned above and by this Board in United States v. Vaux, 24 IBLA 289 (1976), that areas of the National Park System are not open for mining claims unless the statute creating the area specifically makes the lands subject to the mining laws. House Report No. 94-1428 (94th Cong., 2d Sess.) at 8, states "It should be noted that, of the more than 100 new units which have been added to the National Park System over the past two decades, not a single such area has been established subject to mineral entry." 1976 U.S. Code Cong. & Adm. News at p. 2493. Still further support for holding this national river closed to mineral entry may be found in the fact that the statute itself directs the Secretary to study and consider the area for possible wilderness designation. 16 U.S.C. § 460m-13. The Solicitor's Opinion, M-36702, supra, states that wilderness classification is the most protection Congress can give an area and finds that it is unnecessary specifically to terminate the applicability of the mining laws in these areas.

[3] Furthermore, we have been informally advised that lands involved in this appeal are acquired lands. "Acquired land * * * is land obtained by the United States through purchase or other transfer from a state or a private individual and normally dedicated to a specific use." McKenna v. Wallis, 200 F. Supp. 468, 470n.7 (E.D. La. 1961). "Public land is government land which was part of the original public domain." Barash v. Seaton, 256 F.2d 714, 715 (D.C. Cir. 1958). In the absence of specific legislative authority, acquired land does

not regain its status as public land. Bobby Lee Moore, et al., 72 I.D. 505 (1965), aff'd sub nom. Lewis v. GSA, 377 F.2d 499 (9th Cir. 1967). Land acquired by the Federal Government for prescribed uses is not public land, and, without legislation specifically allowing mining, is not open for location of mining claims under 30 U.S.C. § 22 (1976). 43 CFR 3811.1, 3811.2-9; Rawson v. United States, 225 F.2d 855 (9th Cir. 1955); J. C. Babcock, 25 IBLA 316 (1976); Ernest Smith, 4 IBLA 192 (1971).

Because lands involved are acquired, and because mining claims would be contrary to the purposes of the legislation authorizing the acquisition and administration of the area for a national river, and in the absence of legislation authorizing location and entry under the mining laws, these acquired lands are not subject to mining location for this reason as well. The BLM was therefore correct in declaring appellant's mining claims null and void ab initio.

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.

Joan B. Thompson
Administrative Judge

We concur.

Newton Frishberg
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

