

GLEN H. BROOKS  
E. ALLEN BROOKS  
8 CORPORATION

IBLA 79-92

Decided January 14, 1980

Appeal from decision of Utah State Office, Bureau of Land Management, declaring 38 lode mining claims or portions thereof null and void ab initio. AD-34-78 (U-942).

Affirmed.

1. Withdrawals and Reservations: Authority to Make -- Withdrawals and Reservations: Effect of

A mining claim for metalliferous minerals located on land withdrawn from appropriation under the mining laws pursuant to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. § 141, 142 (1976), which provides that as to metalliferous minerals the withdrawn land shall remain open to the operation of the mining laws, is nevertheless null and void from its inception where the land is also withdrawn pursuant to the President's nonstatutory authority to make withdrawals.

APPEARANCES: Peter Van Domelen, Esq., Aspen, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Glen H. Brooks, E. Allen Brooks, and the 8 Corporation have appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated April 14, 1978, amended October 20, 1978, as to the named parties, declaring the Rim Rock #6 through #8, #11 through #22, portions of the Rim Rock #4, #5, #9 and #10 and portions of the Ute #1 through #9, #11 through #20 lode mining claims null and void ab initio. The decision stated the claims were located on land withdrawn from mineral entry pursuant to Exec. Order No. 5327, April 15, 1930,

and Public Land Order (PLO) No. 4522, 33 FR 14349 (Sept. 24, 1968), pertaining to lands containing oil shale deposits. The claims are situated in secs. 14-15, 21-23, T. 6 S., R. 24 E., Salt Lake meridian, Uintah County, Utah.

It is well established that a mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Ray L. Virg-in, 33 IBLA 354 (1978) and cases cited therein. The claims were located January 10, 1974, and July 10 and 11, 1975, well after the withdrawals in this case.

In their statement of reasons for appeal, appellants contend that the statutory authority for withdrawal of the subject land, the Pickett Act of June 25, 1910, as amended, provides that all withdrawn land "shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same shall apply to metalliferous minerals." 43 U.S.C. § 142 (1976). To the extent that PLO 4522 withdraws the subject land "from appropriation under the United States mining laws relating to metalliferous minerals" it is without effect. In the alternative, appellants argue that the subject land does not contain deposits of oil shale and is thus not subject to withdrawal for this reason.

[1] In addition to statutory authority to withdraw or reserve portions of the public land, prior to October 21, 1976, the President had nonstatutory authority to which Congress had given its implied approval. 1/ United States v. Midwest Oil Co., 236 U.S. 459 (1915). A withdrawal made pursuant to this authority is not impaired or affected by the Pickett Act, supra. P. & G. Mining Company, 67 I.D. 217 (1962); Alaska Pipeline Co., 38 IBLA 1 (1978). Opening withdrawn land to exploration, discovery, occupation and purchase under the mining laws would conflict with the purpose for which the land was withdrawn, and it may not be assumed that Congress so intended. 40 Op. Atty. Gen. 73 (1941).

PLO 4522 makes reference to Exec. Order No. 10355 as its authority. That executive order has been construed as drawing upon both the authority conferred by the Pickett Act, supra, and the President's nonstatutory authority to make withdrawals. Harry H. Wilson, 35 IBLA 349 (1978). In the case of such dual authority it is presumed that the President or his delegate intended the prohibition to be pursuant to a full exercise of his authority unless the contrary was noted. P. & G. Mining Company, supra. In the present case, the withdrawal order specifically withdrew the land from appropriation under the mining laws.

---

1/ This nonstatutory authority was explicitly repealed by section 704(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, 90 Stat. 2792.

Accordingly, the subject land was not open to mineral entry pursuant to the provisions of the Pickett Act, supra, and PLO 4522 was in full force and effect at the time the subject claims were located.

Regarding appellants' contention that the subject land does not contain oil shale deposits and is thus not included within the ambit of the withdrawal, they have offered no evidence supporting their contention. We will rely on the classification made of the land in PLO 4522. Kelly B. Hall, 4 IBLA 329 (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.

Joseph W. Goss  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Joan B. Thompson  
Administrative Judge

