

ALLEN L. BRANNON, SR.

IBLA 80-848

Decided March 19, 1981

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring Ginger #1 and #2 placer mining claims null and void ab initio. A MC 94043 and A MC 94044.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land
-- Withdrawals and Reservations: Generally

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal confers no rights on the locator and is properly declared null and void ab initio.

APPEARANCES: Allen L. Brannon, Sr., pro se and on behalf of A. Fred Blinn.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Allen L. Brannon, Sr., has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated July 17, 1980, declaring the Ginger #1 and Ginger #2 placer mining claims null and void ab initio. 1/ BLM stated that the claims were located in the SW 1/4 of sec. 34, T. 4 N., R. 18 W., Gila and Salt River meridian, Arizona, "according to the location notice and map." The two claims were located on January 7, 1980.

The decision appealed from states: "Our records show that all of sec. 34 was included in withdrawal application for Kofa National Wildlife Refuge. This application was posted to our records at 10 a.m., February 21, 1974, and at that time the lands were segregated from all

1/ A. Fred Blinn was named in the decision below and was named as a colocator on the notices of location recorded with BLM. The statement of reasons for appeal is couched in the plural.

forms of entry including mining. The Ginger #1 and #2 mining claims located on lands described above are hereby declared null and void ab initio for the reason that the lands are not open to the location of mining claims."

On appeal, appellant denies that his claims are located on lands included within the proposed withdrawal application. He states, "According to the plats that we have extensively checked in your own BLM Kingman, Az. office, we are entirely out of the Kofa Game Refuge by several miles."

A review of the record confirms the BLM determination that sec. 34, T. 4 N., R. 18 W., Gila and Salt River meridian, Arizona, was included within a notice of proposed withdrawal for the Kofa National Wildlife Refuge published in the Federal Register March 6, 1974 (39 FR 8640). The lands were segregated from the operation of the mining laws as a result of an application, A-7950, filed by the U.S. Bureau of Sport Fisheries and Wildlife (now the U.S. Fish and Wildlife Service), February 19, 1974, for the addition of 87,200 acres of public lands to the refuge in the New Water Mountain Area.

Pursuant to the new procedures for publishing and processing withdrawal applications under section 204 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1714 (1976), a notice of proposed withdrawal as modified, was republished for this application in the Federal Register, December 22, 1977 (42 FR 64148), to show that the application was still pending and to give notice of the opportunity for further public hearings. All lands within section 34 were still included within the withdrawal application. In accordance with section 204(g) of FLPMA, since this application for withdrawal was pending on the date of the Act, the segregative effect of the application will not terminate until October 20, 1991, or unless sooner terminated by action of the Secretary of the Interior.

Although appellant argues his claims do not lie within the Kofa Game Refuge, he does not deny that his claims are not within section 34. It is undisputed that all lands within this section remain segregated from mining by this proposed withdrawal. Appellants offer no evidence to prove the claims are outside the area of the withdrawal. As we stated in Barry C. Binning, 39 IBLA 390 (1979) at 391, "[o]n appeal, a mining claimant bears the burden of showing by survey or other evidence that his claim is outside the withdrawn area."

[1] The filing of an application for withdrawal of public lands by a Federal agency segregates the lands from location, sale, selection, entry, lease or other forms of disposal under the public land laws, including mining to the extent that the withdrawal or reservation, if effected, would prevent such forms of disposal. Segregation of the

lands becomes effective on the date the proposed withdrawal is noted in the tract books or on the official plats maintained in the proper office. 43 CFR 2091.2-5; 43 CFR 2351.1 to 2351.6; Mark W. Boone and John L. Dutra, 33 IBLA 32 (1977). See also Donald Epperson, 50 IBLA 267, 269 (1980).

As indicated, the withdrawal application of the Fish and Wildlife Service effectively closed the land to subsequent mineral entry. It is well established that a mining claim located on land which is not open to such location confers no rights on the locator and is properly declared null and void ab initio. Stephen W. Fox, 50 IBLA 186 (1980); Glen H. Brooks, 48 IBLA 51 (1980); Mark W. Boone and John L. Dutra, *supra*; Jack D. Canon, 30 IBLA 112 (1977). Therefore, appellants' mining locations for Ginger #1 and #2 were properly declared to be null and void ab initio.

Accordingly, 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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

