

DOUGLAS McFARLAND
SIERRA CLUB
DESERT SURVIVORS

IBLA 82-128

Decided July 20, 1982

Appeals from a decision of the California Desert District, Bureau of Land Management, approving a mine plan of operations. CA 010(B)-1178.

Dismissed.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Mining Claims: Discovery: Generally -- Mining Claims: Surface Uses

A Bureau of Land Management determination that mining claims located in a wilderness study area constitute valid existing rights under section 701(h) of the Federal Land Policy and Management Act of 1976, made in conjunction with a review of a proposed mine plan of operation, is an integral part of the review process, serving to identify the applicable standard governing regulation of mining activities on the claims. Where the claim operator withdraws the mine plan and indicates that he plans no activity on the claims, an appeal of the initial BLM determination must be dismissed because, in absence of the proposed operations, the determination is no longer ripe for review.

APPEARANCES: Jack M. Merritts, Esq., Denver, Colorado, for Douglas McFarland; Laurens H. Silver, Esq., San Francisco, California, for Sierra Club and Desert Survivors; Robert D. Conover, Esq., Office of the Solicitor, Department of the Interior, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On October 15, 1981, the California Desert District, Bureau of Land Management (BLM), issued a decision to approve, subject to stipulations, the mine plan of operations submitted by Douglas McFarland for the Keynot

mine located in the Inyo Mountains Wilderness Study Area. On November 16, 1981, McFarland filed a notice of appeal and a statement of reasons. On November 13, 1981, the Sierra Club and Desert Survivors (Sierra Club), jointly, also filed a notice of appeal from the BLM decision. The Board received Sierra Club's statement of reasons on March 2, 1982. By order dated March 31, 1982, the Board granted Sierra Club permission to intervene in McFarland's appeal.

On June 14, 1982, appellant McFarland filed with this Board notice of withdrawal of his plan of operations and a motion to dismiss both appeals as moot. The same day, Sierra Club filed a response in opposition to the motion to dismiss as it pertains to Sierra Club's appeal. Sierra Club states that "[w]hile McFarland's withdrawal of his original plan may moot any issues concerning BLM's approval of that plan, it in no way affects the appeal of the Sierra Club and Desert Survivors with regard to BLM's determination that the Keystone No. 1 and No. 2 [sic] mining claims constitute valid existing rights." The Field Solicitor, Department of the Interior, submitted a statement on June 21, 1982, presenting the Government's view that all issues are now moot.

As to McFarland's appeal, we agree that all issues on appeal are now moot because of the withdrawal of his mine plan of operations for the Keystone #1 and #2 mining claims. Thus, his appeal must be dismissed.

[1] Sierra Club's appeal must also be dismissed. Clearly, as Sierra Club recognizes, its challenge to BLM's approval of McFarland's plan of operations is mooted by the plan's withdrawal. Given that withdrawal, we find that any review of BLM's determination that the Keystone #1 and 2 claims constitute valid existing rights in a wilderness study area (WSA) under section 701(h) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 note (1976), would be premature.

BLM's mineral examination and finding were made in order to determine the applicable standard to govern the mining activities proposed by lessee-operator McFarland because the mining claims are located within a WSA. Specifically, having found that the proposed operations would impair the wilderness characteristics of the area, BLM had to determine whether McFarland could nevertheless proceed because the claims constituted valid existing rights. Mining activities on claims where valid existing rights have been established are subject to regulation by the Secretary of the Interior in order to prevent unnecessary or undue degradation of the land and its resources, rather than to insure nonimpairment. Havlah Group, 60 IBLA 349, 88 I.D. 1115 (1981); 43 U.S.C. § 1782(c) (1976).

The term "valid existing right" in this context means that a valid discovery had been made on each claim as of October 21, 1976, and that it continues to be valid as of the time of submission of the mine plan of operations. 43 CFR 3802.0-5(k). Thus, BLM's determination of a valid existing right is related to the exercise of the right at a particular time. Without such exercise, the determination serves no practical purpose.

If mining operations are again proposed on these claims in the future, BLM will have to reexamine them to determine whether a valid discovery not only existed on October 21, 1976, but that it continues to exist since the determination challenged here will no longer be applicable. At the present time, it does not appear that any activity is planned for the Keystone #1 and #2 claims. McFarland has reported that he is submitting a new mine plan of operations for different claims, located after the passage of FLPMA (October 21, 1976), but not for the claims at issue in this appeal.

Sierra Club is attempting to recast its appeal of BLM's approval of the McFarland plan of operations and associated access road construction into an independent challenge to the validity of the Keystone #1 and #2 mining claims, apart from any proposed activity on the claims. The problem in so doing is, again, that the determination of valid existing rights has no significance independent of the context in which it was made -- namely, during the review of a plan of operations for claims within a WSA. The land is not withdrawn from mining location. Thus, the October 21, 1976, date is determinative only of the standard to be applied to mining operations. A determination (in the absence of a formal contest proceeding) that there was no discovery as of 1976, or currently, would have no effect on the owner's possession of the claims and would not be binding on any future adjudication of the owner's rights.

The orderly administration of both this Board and the constituent agencies of the Department whose decisions we review requires that only appeals that are truly ripe for review be considered. Tenneco Oil Co., 36 IBLA 1 (1978).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals are dismissed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

