

J & B MINING CO., INC.

IBLA 82-742, 82-753  
82-766

Decided August 18, 1982

Consolidated appeals from the several decisions of the Arizona State Office of the Bureau of Land Management, holding that various mining claims are null and void.

Affirmed.

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 Mining Claims: Lands Subject to--Mining Claims: Withdrawn  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

Mining claims located on land after the land was segregated and closed to mineral entry are properly declared null and void.

APPEARANCES: William P. Sargeant III, Esq., Phoenix, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

In attempted compliance with the requirements of 43 U.S.C. § 1744 (1976), J & B Mining Company, Inc., submitted to the Arizona State Office of the Bureau of Land Management (BLM) notices of mining claims location and proofs of labor for numerous mining claims. 1/

By several decisions dated March 26 and April 6, 1982, BLM found that the claims had been located after the land had been segregated from mineral entry and location by the official notation of an application for the withdrawal of these lands for the Kofa National Wildlife Refuge on February 19, 1974, and it declared the claims null and void.

Appellant asserts "that the alleged withdrawal \* \* \* was illegal, improper, and of no force and effect" because the notices published in the Federal Register "served only to 'temporarily' segregate such lands"; that "[t]he Kofa National Wildlife Refuge was never lawfully established"; because "[t]here was no announced time limit for establishment of a wildlife refuge

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1/ See Appendix.

as required by law"; 2/ and because the notices "were invalid under 43 CFR 2311, in that they failed to state a justification and the period during which the withdrawal would remain in effect as required by the regulation."

We find no merit in these assertions. The record shows that on February 19, 1974, the Bureau of Sport Fisheries and Wildlife filed application A-7950 requesting that the public lands in the Kofa Game Range and an additional 87,200 acres in the New Water Mountain area, proposed for addition to the game range, be withdrawn from appropriation, including appropriation under the mining laws. This application was duly noted on the official records of BLM. Under the procedures then in effect, the noting of the receipt of the application had the effect of temporarily segregating the land to the extent the withdrawal or reservation applied for would prevent location, sale, selection, entry, lease, or other forms of disposal. 43 CFR 2091.2-5 (1974) and 43 CFR 2351.3 (1974). The regulation cited by appellant, 43 CFR 2311 (1974), is concerned exclusively with public water reserves, and is not germane to this case. Since no final disposition of withdrawal application A-7950 has yet been made, the temporary segregative effect of its filing and notation remains in force.

Moreover, notice of the withdrawal application was published in the Federal Register, describing all the lands affected and noting that they would be closed to appropriation under the mining laws and other public land laws. 39 FR 8640 (Mar. 6, 1974). Public hearings on the proposed withdrawal were conducted by BLM during April 1974 in Phoenix and Yuma, Arizona.

Following enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), another notice of the proposed withdrawal was published in the Federal Register in order to bring it into conformity with the requirements of the Act. 42 FR 64148 (Dec. 22, 1977). That publication included information that "Public Law 94-223 of February 27, 1976, transferred the Kofa Game Range to the sole jurisdiction of the U.S. Fish and Wildlife Service and redesignated the lands therein as the Kofa National Wildlife Refuge." Unless appellant is asserting that the Congress and the President acted unlawfully in enacting P.L. 94-223 (90 Stat. 199), it is difficult to comprehend appellant's assertions that the Kofa National Wildlife Refuge "was never lawfully established."

The 1977 Federal Register notice, supra, also states, "In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976 the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior." That disposes of appellant's contention that the notice "failed to state \* \* \* the period during which withdrawal would remain in effect." Prior to the enactment of FLPMA, when the original notice was published, there was no requirement to fix and publish a terminal date for the segregative effect of a withdrawal application.

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2/ Appellant provided no citation of the law to which he referred.

It is well settled that mining claims located on lands not open to mineral entry are properly declared null and void. Richard Thorpe, 59 IBLA 176 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

James L. Burski  
Administrative Judge

