

JAMES C. ROBINSON ET AL.

IBLA 80-906

Decided October 21, 1982,

Appeal from a decision of the Oregon State Office, Bureau of Land Management, holding various mining claims null and void ab initio. OR MC 34524 through OR MC 34569

Affirmed.

1. Federal Land Policy and Management Act of 1976: Withdrawals -- Withdrawals and Reservations: Generally -- Withdrawals and Reservation: Effect of

The segregative effect of an application to withdraw land filed prior to Oct. 21, 1976, continues, under sec. 204(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714(g) (1976), until Oct. 21, 1991, unless the application is either approved or rejected in the interim. Publication of a notice of hearing for such an application as provided by sec. 204(h), 43 U.S.C. § 1714(h) (1976), does not alter this time period.

APPEARANCES: William B. Murray, Esq., Portland, Oregon, for appellants; Lawrence E. Cox, Esq., Assistant Regional Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

James G. Robinson and Roger Prowell have appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated July 31, 1980, which refused recordation of the Elk Nos. 1 through 39, and Elk Nos. 41 through 47 association placer mining claims on the ground that they were located on land segregated from mineral entry by an application for withdrawal, OR 10676, which had been published in the Federal Register on April 26, 1973 (38 FR 10282), and that, therefore, the claims were null and void ab initio. Appellants timely appealed from this decision.

These claims, all of which were allegedly located on April 21, 1980, are situated in secs. 22, 23, 25, 26, and 27, T. 28 S., R. 32 E., Willamette meridian, and in secs. 1, 2, 3, 9, 10, and 11, T. 29 S., R. 32 E., Willamette

meridian in Harney County, Oregon. The lands embraced by these claims had been the subject of earlier placer locations made on January 31, 1978, by appellants and other locators. Recordation of these earlier claims had been rejected for the same reason as those herein, and that rejection had been affirmed in a decision styled Delmer McLean, 40 IBLA 34 (1979).

In this appeal, however, appellants argue that the State Office failed to consider the applicability of section 204(b)(1)(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1714(b)(1)(c) (1976). Specifically, they argue that the application for withdrawal had been republished in the Federal Register, pursuant to this section on March 24, 1978. See 43 FR 12388. Inasmuch as the application had neither resulted in the actual withdrawal of the lands or rejection of the application in the 2 years following this publication, appellants contend that, under the terms of section 204, the segregative effect of the application was automatically terminated. We disagree.

[1] The full text of section 204(b)(1) is as follows:

Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secretary, or (c) the expiration of two years from the date of the notice.

43 U.S.C. § 1714(b)(1) (1976). It should be noted, however, that the operative phrases relate to receipt by the Secretary of an application for withdrawal or proposal by the Secretary of a withdrawal on his own motion. As the Regional Solicitor points out, the withdrawal herein was proposed on April 6, 1973, and notice thereof was published in the Federal Register on April 26, 1973, 38 FR 10282. The Federal Register notice filed on March 24, 1978, was not a notice of a proposed withdrawal under section 204(b), but rather was designed to give notice of hearing pursuant to section 204(h), which is a statutory precondition of the approval of a withdrawal application.

In enacting section 204 of FLPMA, Congress was clearly aware of the fact that not only were numerous withdrawals already outstanding, many of which were of doubtful benefit, but that many applications for withdrawals, which also served to segregate the lands involved, had been pending for years without any final action whatsoever. Congress clearly desired that existing withdrawals be reviewed to assure they were still needed and that all pending withdrawals be acted upon. But Congress recognized as well that the magnitude of this task would necessarily consume a considerable period of time.

Accordingly, in section 204(1), 43 U.S.C. § 1714(1) (1976), which mandated review of certain existing withdrawals in designated states, Congress provided that such a review be completed within 15 years of October 21, 1976. Similarly, with respect to pending applications for withdrawals, Congress provided that: "All applications for withdrawal pending on October 21, 1976, shall be processed and adjudicated to conclusion within fifteen years of October 21, 1976, in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date." Section 204(g), 43 U.S.C. § 1714(g) (1976). Thus, a pending application for withdrawal, which OR 10676 clearly was, was required to be "processed and adjudicated to conclusion" within 15 years, failing in which the segregative effect of the application would terminate.

As part of the processing of this application for withdrawal, BLM was required by section 204(h) to provide an opportunity for hearing. In accordance with this provision, BLM caused to be published the notice of March 24, 1978. Such publication, however, in no way served to bring section 204(b) into play, for that provision relates only to applications for withdrawal proposed after the adoption of FLPMA. Appellants' arguments to the contrary distort both the purpose and language of section 204.

This being the case, it is clear that appellants' claims, being located when the land was not subject to appropriation under the mining laws, are null and void ab initio, as the State Office correctly held. See, e.g., Sherman C. Smith, 58 IBLA 188 (1981); Harry H. Wilson, 35 IBLA 349 (1978).

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.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

