

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring placer mining claim null and void ab initio. A MC 101398.

Affirmed.

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 Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land  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

A mining claim located on land after the land was segregated and closed to mineral entry, by notation of receipt of an application for withdrawal, is properly declared null and void ab initio.

APPEARANCES: Lester M. Holt, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Lester M. Holt has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated December 31, 1981, declaring the Big Trench placer mining claim, A MC 101398, null and void ab initio.

On January 23, 1980, appellant, along with Audrey M. Holt and Lee M. Holt, located the Big Trench placer mining claim in sec. 4, T. 3 N., R. 18 W., Gila and Salt River meridian, Yuma County, Arizona. In its December 1981 decision, BLM declared the mining claim null and void ab initio because the land involved had been included in an application for withdrawal for the Kofa National Wildlife Refuge (A-7950), filed February 19, 1974. Under the regulations then in force, noting of the receipt of the application in the official BLM records had the effect of temporarily segregating the land to the extent the withdrawal applied for would prevent disposal under the public land laws. See 43 CFR 2091.2-5 (1974). On March 6, 1974, notice of the proposed withdrawal was published in the Federal Register, indicating that the land would be withdrawn, in part, from "appropriation under the public land laws including the mining laws (30 U.S.C., Ch. 2)." 39 FR 8640 (Mar. 6, 1974). On December 22, 1977, notice of the proposed withdrawal was republished in the Federal Register. 42 FR 64148 (Dec. 22, 1977). The original notice was modified to reflect the fact that the lands sought to be withdrawn had been designated the Kofa National Wildlife Refuge by the Act of February 27, 1976, P.L. 94-223, 90 Stat. 199 (1976), and to comply with the

withdrawal provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1976). The December 1977 notice stated: "In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976 [43 U.S.C. § 1714(g) (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." No final disposition of withdrawal application A-7950 has yet been made.

[1] The applicable current regulation, 43 CFR 2310.2(b), provides that:

[P]ublic lands described in a withdrawal application filed before October 21, 1976, shall remain segregated through October 20, 1991, from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the Federal Register notice or notices that pertain to the application, unless the segregative effect of the application is terminated sooner in accordance with other provisions of this part.

As we held in James G. Robinson, 68 IBLA 84 (1982), republication of a withdrawal proposed prior to the enactment of FLPMA does not constitute a new application for withdrawal and, accordingly, the 2-year limitation of 43 U.S.C. § 1714(b)(1) (1976) does not apply. The land, thus, remains segregated from mineral entry. It is well settled that mining claims located on lands not open to mineral entry are properly declared null and void ab initio. J & B Mining Co., 66 IBLA 279 (1982).

In his statement of reasons for appeal, appellant contends that the land involved is "better suited to mining," especially as it borders on a number of patented mining claims. However, regardless of the suitability of the land for mining or any other use, until the application for withdrawal is terminated, it continues to segregate the land according to its terms. We conclude that BLM properly declared appellant's mining claim null and void ab initio.

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.

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James L. Burski  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge