

WILLIAM L. BURNEY

IBLA 82-755, 82-767

Decided April 12, 1983

Appeals from decisions by the Arizona State Office, Bureau of Land Management declaring mining claims null and void. A MC 142335 through A MC 142344, and A MC 100642 through A MC 100665.

Dismissed.

1. Administrative Practice--Appeals--Practice Before the
Persons Qualified to Practice--Rules of Practice: Appeals: Dismissal

Department:

An appeal brought by a person who does not fall within the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

APPEARANCES: E. D. Black, president of MPH Consulting, Inc. for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

William L. Burney appeals from two decisions both dated March 26, 1982, declaring mining claims A MC 142335 through A MC 142344, and A MC 100642 through A MC 100665 null and void ab initio because the claims were located upon lands included in an application for withdrawal of land for the Kofa National Wildlife Refuge. The application, which segregated the land affected from location of mining claims, was posted on Bureau of Land Management (BLM) records on February 21, 1974. Appellant's claims were located in 1980 and 1981.

For purposes of decision, both appeals are consolidated, although different considerations are involved in each appeal. In IBLA 82-755, involving claims A MC 142335 through 142344, an order issued on July 23, 1982, granting appellant additional time to file a statement of reasons in support of his notice of appeal. The order noted that appellant had asked for "a public hearing of this appeal" and ordered also that appellant justify, in his statement of reasons, this request for an evidentiary hearing. A statement of reasons was subsequently filed in IBLA 82-755 by E. D. Black of MPH Consulting, Inc., a firm identified by its letterhead as "Domestic & International Oil, Gas and Mineral Consultants." The statement of reasons was filed within the allowed time. No statement of reasons was filed in IBLA 82-767 involving

claims A MC 100642 through 100665. Provision of 43 CFR 4.402(a) therefore subjects the appeal in IBLA 82-767 to summary dismissal for failure to file a statement of reasons in support of appeal within the time required by regulation. See 43 CFR 4.412, Since no statement of reasons has been received for IBLA 82-767 and no explanation has been given for the failure to file, IBLA 82-767 is dismissed.

[1] While appellant has apparently retained E. D. Black of MPH Consulting, Inc., to represent him in IBLA 82-755, there is no showing that Black is qualified to represent appellant before the Department pursuant to 43 CFR 1.3 1/ It appears E. D. Black is not an attorney or otherwise qualified to represent appellant before the Department. An appeal brought by a person who does not fall within any of the categories of persons authorized by the regulation to practice before the Department is subject to dismissal. Thomas L. Tuttle, 71 IBLA 265 (1983); Verne G. Long, 57 IBLA 263 (1981); W. Duane Kennedy, 24 IBLA 152 (1976); Pierce and Dehlinger, 22 IBLA 396 (1975); see also United States v. Gayanich, 36 IBLA 111 (1978); Haruyuki Yamane, 19 IBLA 320 (1975) aff'd sub nom. Burglin v. Secy., Civ. No. 77-1655 (9th Cir. 1978). The appeal in IBLA 82-755 is therefore also dismissed. Although this regulation may occasionally penalize a particular appellant, its enforcement is necessary to protect those who do business with the Department against the risk of inadequate representation by persons untrained in the law.

1/ 43 CFR 1.3 defines who may practice before the Department:

"(a) Only those individuals who are eligible under the provisions of this section may practice before the Department, but this provision shall not be deemed to restrict the dealings of Indian tribes or members of Indian tribes with the Department.

"(b) Unless disqualified under the provisions of § 1.4 or by disciplinary action taken pursuant to § 1.6:

"(1) Any individual who has been formally admitted to practice before the Department under any prior regulations and who is in good standing on December 31, 1963, shall be permitted to practice before the Department.

"(2) Attorneys at law who are admitted to practice before the courts of any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Trust Territory of the Pacific Islands, or the District Court of the Virgin Islands will be permitted to practice without filing an application for such privilege.

"(3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) a member of his family; (ii) a partnership of which he is a member; (iii) a corporation, business trust, or an association, if such individual is an officer or full-time employee; (iv) a receivership, decedent's estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary; (v) the lessee of a mineral lease that is subject to an operating agreement or sublease which has been approved by the Department and which grants to such individual a power of attorney; (vi) a Federal, State, county, district, territorial, or local government or agency thereof, or a government corporation, or a district or advisory board established pursuant to statute; or (vii) an association or class of individuals who have no specific interest that will be directly affected by the disposition of the particular matter."

See Act of July 4, 1884, 23 Stat. 101, 43 U.S.C. § 1464 (1976).

By way of dicta, the Board observes that, had it reached the merits in either of these appeals, the BLM decisions would have been affirmed. The record on appeal demonstrates that the lands were segregated from the operations of the mining laws at the time appellant filed his claims in 1980 and 1981. Following the application requesting withdrawal of the affected lands on February 19, 1974, the Department, on March 6, 1974, and again on December 22, 1977, published notice of proposed withdrawals. See 42 FR 64,148 (Dec. 22, 1977). The 1977 notice declares at 42 FR 64,148:

Upon the filing of the application for withdrawal on February 19, 1974, all the lands were temporarily segregated from the operation of the public land laws, including the mining laws and the mineral leasing laws to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. 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.

This is a correct conclusion concerning the legal effect of the application. See John Boyd Parsons, 22 IBLA 328 (1975). In Parsons, mining claims were also located upon the Kofa Refuge. In holding those claims void, this Board held, at 22 IBLA 329:

It is clear that the lands in question were segregated from entry on February 21, 1974, and that when appellant located his claims on December 25, 1974, and subsequently, he did so on land closed to mining entry. It is axiomatic that mining claims located on land closed to mineral entry are null and void ab initio. Russ Journigan, 16 IBLA 79 (1974); United States v. Anderson, 15 IBLA 123 (1974); Kelly B. Hall, 4 IBLA 329 (1972); Albert Gardini A-30958 (October 16, 1968); Leo J. Kottas, 73 I.D. 123 (1966), aff'd. sub nom., Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970).

Finally, appellant's argument which appears in the statement filed by MPH that the land upon which his claims are located is not suitable to be included in a wilderness area seems to be nearly identical to an argument advanced by the appellant in the Parsons case. This Board rejected this argument at 22 IBLA 329 for the reason:

[W]e are not dealing here with additions to the National Wilderness Preservation System, 16 U.S.C. § 1131 et seq. (1970). The purpose of this application for withdrawal includes the creation of a wildlife refuge from an existing area known as the Kofa Game Refuge. A notice of the proposed withdrawal was published in the Federal Register on March 6, 1974, inviting comments, suggestions, or objections. 39 F.R. 8640. This Board is not the proper forum to receive and decide complaints concerning the propriety and necessity of a proposed withdrawal

Likewise, in this case even though the reference may be to a wilderness study area established pursuant to section 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1752 (976), the rationale of Parsons would be applicable. Here, however, since appellant has failed to properly file a statement of reasons in support of his appeal and request for hearing, IBLA 82-755 is dismissed for procedural reasons.

Therefore, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals in IBLA 82-755 and 82-767 are dismissed.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Bruce R. Harris
Administrative Judge

Douglas Henriques
Administrative Judge.

