

GLORIA ANN SANDVIK  
JUDY NEFF

IBLA 83-303

Decided May 18, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management, declaring placer mining claim null and void in part ab initio. NM MC-95914.

Affirmed.

1. Mining Claims: Withdrawn Land -- Recreation and Public Purposes Act -- Withdrawals and Reservations: Effect of

Land segregated pursuant to a Recreation Public Purpose Act classification was not available for the location of mining claims, and claims thereafter located are null and void ab initio.

APPEARANCES: Peter Van Domelen, Esq., Aspen, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Gloria Ann Sandvik, d.b.a. Terra Mining Company, and Judy Neff appeal from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 10, 1982, declaring the G & J placer mining claim, NM MC-95914, null and void in part, ab initio.

In March 1980, appellants located a mining claim for 80 acres within lots 8, 9, and 10, sec. 17, T. 29 N., R. 14 W., New Mexico principal meridian, San Juan County, New Mexico. On June 6, 1980, appellants filed with BLM a notice and an amended notice of location. On a decision dated December 10, 1982, BLM declared the mining claim null and void as to lot 8 of sec. 17 for the following reasons: "The right to mine and remove minerals from an [Recreation and Public Purposes] patent is governed by regulations to be established by the Secretary of the Interior. At present time no regulations have been developed that would provide for the extraction of locatable minerals on lands under the [Recreation and Public Purposes] Act." The claim was declared null and void in part as to the lands within lots 9 and 10 of sec. 17 in a separate and previous decision dated June 12, 1982, because those lots are withdrawn for the Navajo Indian Reservation.

[1] It is well established that a mining claim located on land withdrawn from mineral entry is null and void ab initio. Lester M. Holt, 69 IBLA 180 (1982); J & B Mining Co., 66 IBLA 279 (1982); Richard Thorpe, 59 IBLA 176 (1981). Appellants, however, argue that the land in lot 8 upon which they have located has not been so withdrawn and that the preclusion of mineral entry (save under the mineral leasing laws) is contrary to statutory authority.

Lot 8 of sec. 17 was patented to the Board of County Commissioners of San Juan County, New Mexico, on September 14, 1967, pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. § 869 (1976), reserving the minerals to the United States. Prior to issuance of the patent, the land within lot 8 was classified pursuant to 43 CFR Subpart 2411 (1967) under the authority of the Secretary of the Interior for disposition under the Recreation and Public Purposes Act. 1/ That Act, it is contended by appellants, contemplates regulations under which the mining and removal of deposits may be pursued rather than prohibited. 2/

Pursuant to the Recreation and Public Purposes Act, pertinent regulations were promulgated without provision for mineral entry or appropriation under the general mining laws. This Board has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department. Altex Oil Corp., 61 IBLA 270 (1982). 3/ However, appellants aver that 43 CFR 2232.5 (1967), in effect when the land was patented under the Act, was the authority upon which BLM based its decision and assail that regulation as contradicting the statutory mandate. They claim that the Act does not provide for withdrawing the reserved mineral deposits from appropriation under the mining laws. 43 CFR 2232.2-5(a) (1967) reads:

Any minerals subject to the leasing reserved to the United States in lands patented or leases under the terms of the Act may be disposed of to any qualified person under applicable laws and regulations. Until rules and regulations are issued, other minerals are not subject to disposition or to prospecting except by an authorized Federal agency. [Emphasis added.]

Appellants ignore in their arguments another of the pertinent regulations in effect in 1967, 43 CFR 2232.1-4 (1967), which states:

1/ 43 CFR Subpart 2411 (1967) was the regulatory application to recreation and public purposes selections of section 7 of the Act of June 28, 1924, as amended, 43 U.S.C. § 315f (1964). 43 CFR 2410.0-3 (1967).

2/ Section 2 of the Act reads in part: "Each patent or lease so issued shall contain a reservation to the United States of all mineral deposits in the lands conveyed or leased and of the right to mine and remove the same, under applicable laws and regulations to be established by the Secretary." 43 U.S.C. § 869-1 (1976).

3/ Appeal pending, Altex Oil Corp. v. Watt, No. 82-0424A (D. Utah filed Apr. 30, 1982).

(a) \* \* \* lands in the States classified pursuant to the act under section 7 of the act of June 28, 1934 (48 Stat. 1272, 143 U.S.C. 315f), as amended, will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof.

The regulations governing recreation and public purposes leasing and conveyances were revised in 1979 prior to appellants' mining location. 44 FR 43472 (July 25, 1979). Although the last sentence of 2232.2-5(a), governing "other minerals," was not recodified, 2232.1-4(a) reappears at 43 CFR 2741.4(h), as follows: "The issuance of a notice that public lands are suitable for sale or lease under the act and are classified as such shall segregate such public lands from other appropriations, including locations under the mining laws, except as provided in the notice of an amendment thereof." Thus, the regulatory directive is evident. A recreation and public purposes classification will withdraw the land it covers from disposition under the public land laws, including the mining laws, and proper supervision of the interests within lands so classified necessitates declaring all subsequent mining locations as null and void unless otherwise provided for by the Secretary.

The Department met and answered the same argument as offered by appellants, but in the context of the Small Tract Act, in Dredge Corp., 64 I.D. 368, 374 (1957), saying:

The appellant contends that the fact that the Secretary has issued no regulations relating to mining on those lands is proof that the mining laws apply. This is not so. The act makes the reserved minerals subject to disposition only under applicable laws and "such regulations as the Secretary may prescribe." The Secretary has prescribed that there shall be no prospecting for or disposition of the reserved deposits at this time and until he prescribes regulations permitting the prospecting for, mining and removal of such reserved deposits the lands in which such deposits may be found are not open to location under the mining laws.

This decision was affirmed on judicial appeal in Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966). Appellants allege that the conclusion reached there, based on the Small Tract Act, can be distinguished from this situation, under the Recreation and Public Purposes Act, in that the latter act differs from the former in its legislative history and language amendments. See also Superior Sand and Gravel Mining Co. v. Territory of Alaska, 224 F.2d 623 (9th Cir. 1955).

In their discussion of statutory authority, appellants fail to recognize language in section 1 of the Recreation and Public Purposes Act, which reads as follows: "Lands so classified may not be appropriated under any other public land law unless the Secretary revises such classification or authorizes the disposition of an interest in the lands under other applicable law." 43 U.S.C. § 869 (1976). The Department considered this language as it relates to mining claims on recreation and public purposes classified lands in R. C. Buch, 75 I.D. 140 (1968), saying:

If we were to hold in this case that the classification action was not effective to segregate the land despite the action taken, the intent of Congress to have such land free from appropriation under other public land laws would be frustrated. \* \*  
 \* Thus, we must conclude that as there was a classification of the land under the Recreation and Public Purposes Act, it was effective to segregate the land from mining location.

Id. at 146. That decision was upheld on appeal in Buch v. Morton, 449 F.2d 600 (9th Cir. 1971), where the court stated:

The reason for barring appropriation under the mining laws of lands classified for recreational or other public use was to "prevent the defeat of the proposed disposition of a particular tract under the Recreation Act by locations, entries, or the acquisition of other interests after such classification." S.Rep. No. 1146, 83d Cong., 2d Sess. 4 (1954), U.S. Code Cong. & Admin. News 1954, p. 2319.

Id. at 605.

Therefore, in the absence of action by the proper authority to restore the land to entry, a recreation and public purpose classification segregates the land from appropriation under the public land laws, including the general mining laws. R. C. Buch, supra, aff'd, Buch v. Morton, supra; Delmer McLean, 40 IBLA 34 (1979). <sup>4/</sup> Once the land was patented, it continued to be unavailable for mineral entry absent adoption of a regulatory provision allowing the location of claims. As appellants have failed to offer contrary proof, BLM was correct in its decision that the Secretary has not restored the land in lot 8, classified and patented under the Act, to mineral location.

Accordingly, 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.

Edward W. Stuebing  
 Administrative Judge

We concur:

Franklin D. Arness  
 Administrative Judge  
 Alternate Member

James L. Burski  
 Administrative Judge

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<sup>4/</sup> See also Gerald D. Heden, 6 IBLA 291 (1972); Henri Guzek, 5 IBLA 133 (1972); Raymond P. Heon, 76 I.D. 290 (1969); Carl F. Murray, 67 I.D. 132 (1960).

