

TOM BROWN

IBLA 82-1068

Decided June 27, 1983

Appeal from decision of the Eastern States Office, Bureau of Land Management, declaring mining claims null and void ab initio. 3800 (922) JPH.

Affirmed.

1. Mining Claims: Generally -- Mining Claims: Lands Subject to -- National Park Service Areas: Generally

Unless the statute creating the area specifically provides otherwise, areas within the national park system are not open for location of mining claims.

2. Mining Claims: Generally -- Mining Claims: Lands Subject to -- Wilderness Act

The provision of the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3) (1976), which allows mining claims to be located in "wilderness areas" until Dec. 31, 1983, applies only to mining activities within national forest lands designated as wilderness. It is not applicable to lands such as the Buffalo National River which are part of the national park system, not national forest lands.

APPEARANCES: Tom Brown, pro se; Gayle E. Manges, Esq., Office of the Solicitor, United States Department of the Interior, Santa Fe, New Mexico, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Tom Brown has appealed from a decision dated June 2, 1982, of the Eastern States Office, Bureau of Land Management (BLM), declaring 37 placer

mining claims null and void ab initio. The claims were located in June 1981, ^{1/} within the boundaries of the Buffalo National River, Arkansas. Citing Tom Brown, 37 IBLA 381 (1978), the BLM decision declared the claims null and void ab initio because they were located on lands closed to location.

Appellant has filed a statement of reasons containing an extensive review of legislation pertaining to preservation of wilderness, protection of the environment, and establishment of national park and recreation areas. Appellant contends essentially that the Buffalo National River, Arkansas, being neither a national park nor a national monument, is not closed to mining location because the Act establishing it on March 1, 1972, P.L. 92-237, 86 Stat. 45, 16 U.S.C. § 460m-8 to 460m-14 (1976), did not mention closing the lands to mining. Further, appellant asserts that the portions of the Buffalo National River subject to the 1964 Wilderness Act are open to mineral entry until midnight, December 31, 1983. See 16 U.S.C. § 1133(d)(3) (1976).

The facts in this case are uncontroverted. Thus, the issues posed are strictly legal ones. The issues here, however, are identical to those the Board resolved in Tom Brown, *supra*, *aff'd*, Brown v. United States, 679 F.2d 747 (8th Cir. 1982).

[1] The appeal presently before us differs from the previous one only in that other, later located mining claims are involved. Brown's arguments are the same as those posed in the earlier case and H. E. Bingham, 73 IBLA 19 (1983). In responding to those arguments the Board in the Brown case reasoned that the Buffalo National River, though not a national park or monument, is clearly an area of the national park system as defined by 16 U.S.C. § 1c(a) (1976). Furthermore, the Brown decisions provide ample support for the conclusion that areas of the national park system are not open for mining unless the statute creating the area specifically makes the lands subject to the mining laws. The court held that since the Buffalo National River was "made part of the National Park System and not specifically opened to mineral entry by its establishing act," that the river is "part of a class of lands closed to mining and mining claims." Brown v. United States, *supra* at 747, 751. Thus, since appellant's mining claims were located on lands closed to location, BLM properly declared the claims null and void ab initio.

[2] Appellant reasons that because a section of the Wilderness Act of 1964 withdraws certain "wilderness areas" from mineral exploitation as of December 31, 1983, claims may be located in wilderness areas before that date. The court in Brown responded:

A careful reading of 16 U.S.C. § 1131(d)(3) reveals, however, that it applies only to mining activities within national forest lands designated as wilderness. As the district court correctly

^{1/} The claim names and location dates are listed in Appendix I to the decision. Tom Brown is listed as owner of most of the claims or as attorney-in-fact for the owners.

noted, "the Wilderness Act did not open areas for mineral entry; it merely preserved the right to mineral entry in those national forest lands administered by the Secretary of Agriculture, the right to mineral entry in national forests having been created by act of Congress, 16 U.S.C. § 478. Brown v. Department of Interior, supra, slip op. at 5. [Emphasis in original.]

Brown v. United States, supra at 751. The court then went on to hold that the provision of the Wilderness Act which allows the location of mining claims is not applicable to land acquired by the United States as part of the Buffalo National River. Brown v. United States, supra at 747, 751. 2/

The BLM decision was correct to rely on the Brown decisions and to declare appellant's mining claims 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.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

2/ Since the lands within the Buffalo National River are acquired lands, they are not subject to location under the general mining law. As the Board previously stated in Tom Brown, supra at page 386:

"Land acquired by the Federal Government for prescribed uses is not public land, and, without legislation specifically allowing mining, is not open for location of mining claims under 30 U.S.C. § 22 (1976). 43 CFR 3811.1, 3811.2-9; Rawson v. United States, 225 F.2d 855 (9th Cir. 1955); J. C. Babcock, 25 IBLA 316 (1976); Ernest Smith, 4 IBLA 192 (1971)."