

B. W. COPELAND

IBLA 83-611

Decided August 11, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims null and void. A MC 153065 through A MC 153072.

Affirmed.

1. Administrative Procedure: Hearings--Constitutional Law: Due Process--Mining Claims: Generally--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

APPEARANCES: B. W. Copeland, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

B. W. Copeland appeals the Arizona State Office, Bureau of Land Management (BLM), decision of May 4, 1983, which declared the unpatented Golden Sand #2 through #9 placer mining claims, A MC 153065 through A MC 153072, null and void because they are situated within an area included in application A 7950 filed by the Fish and Wildlife Service for an addition to the Kofa National Wildlife Refuge. The area, in which the claims are situated, secs. 6 and 7, T. 3 N., R. 18 W., Gila and Salt River meridian, was withdrawn from operation of the mining law when the application for withdrawal was posted to the land status records at 10 a.m., February 21, 1974.

The Golden Sand #2 through #9 placer mining claims were located in November 1981. It is thus evident that the Golden Sand claims were located at a time when the land was not open to operation of the mining laws of the United States. The claims have been declared null and void ab initio.

Appellant has indicated his confusion about the status of the lands on which his claims were located. As above stated, the lands were not open to location when the claims were purportedly located, and they are not open to such location at this time. The area is within a proposed addition to the Kofa National Wildlife Refuge. Posting of the application to the land status records segregated the land from operation of the mining laws. 43 CFR 2310.2(b).

[1] No property rights are created by the location of mining claims on lands which are not open to mineral entry and location, and such claims are void as a matter of law, and thus no contest proceeding or hearing is required. United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966); see Lutzhizer v. Udall, 432 F.2d 328 (9th Cir. 1970).

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.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

R. W. Mullen
Administrative Judge

