

MALCOLM L. FIGERT  
LEONARD WEINER

IBLA 82-1279

Decided November 16, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring mining claims null and void ab initio N MC-235796 through N MC 235798.

Affirmed.

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

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. Lands segregated by Acts of Congress from all forms of entry under the public land laws of the United States for a 10-year period for conveyance to the Colorado River Commission of Nevada acting for the State of Nevada are not available for location of mining claims where the Commission submitted a timely application for conveyance of the lands to the State in accordance with provisions of the Acts.

APPEARANCES: Malcolm L. Figert and Leonard Weiner, pro sese, Frederick J. Schmidt, Esq., and Gerald A. Lopez, Esq., Office of the Attorney General for the State of Nevada, and for the Colorado River Commission of Nevada.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Malcolm L. Figert and Leonard Weiner have appealed from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated August 9, 1982, which declared their Eldora Nos. 1, 2, and 3 lode mining claims null and void ab initio, N MC-235796 through N MC-235798.

Appellants asserted that they located the claims December 19, 1981, for lands within secs. 14 and 15, T. 25 S., R. 63 E., Mount Diablo meridian, Clark County, Nevada. BLM declared the claims null and void ab initio stating:

Records of the Nevada State Office, Bureau of Land Management show that the lands listed above, along with other areas, were segregated on April 7, 1958 by a Secretary's Order from all forms of entry under the public land laws of the United States by virtue of the authority and direction contained in section 2 of the Act of March 6, 1958 by Public Law 85-339 (72 Stat 31).

The Order provided for the withdrawal of lands in the El Dorado Valley to the Colorado River Commission of Nevada acting for the State of Nevada. The lands were closed to the location of mining claims at the time the subject claims were located and are still closed as of this date. Location of the claims conferred no rights upon the claimant(s) since they were located subsequent to P.L. 85-339, when the lands were not open to mineral location.

Appellants contend in their statement of reasons, *inter alia*, the period specified in P.L. 85-339 (72 Stat. 31) for the segregation of this land from all forms of entry was only 5 years, from March 7, 1958, through March 7, 1963, and expired on March 7, 1963, if the land involved was not purchased by the Colorado River Commission of Nevada, or its application for conveyance of title to the land had not been filed with the Manager of the BLM Land Office on or before March 7, 1963.

Appellants have not found the applied for lands included in a listing of the parcels owned by the Colorado River Commission of Nevada, nor have they found any record of transfer of ownership from the United States of America to the Colorado River Commission of Nevada. They concluded, "therefore, it can be assumed that the Colorado River Commission of Nevada never completely exercised its option to have this land patented to the State of Nevada."

They argued that since the Commission chose not to exercise its option to purchase this land then the right of entry should automatically be restored. Therefore, they contended, these particular parcels of land were open for entry on the date the Eldora Nos. 1 through 3 lode mining claims were located, and these claims were, and continue to be, valid.

The Deputy Attorney General for the State of Nevada has responded that appellants have overlooked and misinterpreted the relevant legislation:

The segregation period specified in sections 2 and 3 of the Eldorado Valley Act was amended on October 10, 1962 by P.L. 87-784, 76 Stat. 804, which extended the 5-year period to 10 years. Thus, the Commission was required to submit an application to the Secretary for the conveyance of title prior to March 6, 1968. On March 1, 1968 the Commission submitted its application for transfer of lands in the Eldorado Valley to various officials in the Department of Interior. [1]

(Answer at 3). He concluded:

The Eldorado Valley Act, as amended, segregated from public entry over 100,000 acres of land for ultimate purchase by the

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1/ To establish the fact of timely application by the State, the Deputy Attorney General has submitted copies of transmittal letters from the Commission to Department of the Interior officials and copies of corresponding certified mail receipts which indicate that the Commission's application was received on Mar. 4, 1968.

State of Nevada through its Colorado River Commission. In that legislation Congress placed several time constraints on the Commission. Those time constraints have been met. Congress did not require the ultimate transfer of title to take place by a certain date, and there is no basis for imposing such a deadline.

(Answer at 4-5).

[1] It is axiomatic that a mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. Lester M. Holt, 69 IBLA 180 (1982); R. J. Wall, 68 IBLA 122 (1982).

The record shows that the lands in question were segregated from all forms of entry under the public land laws of the United States for a 10-year period for conveyance to the Colorado River Commission of Nevada acting for the State of Nevada by P.L. 85-339 (Mar. 6, 1958), 22 Stat. 31, as amended by P.L. 87-784 (Oct. 10, 1962), 76 Stat. 804. 2/ Under section 3 of the original Act, segregation is extended by the filing of an application:

[T]he filing of any application for the conveyance of title to any lands within the transfer area, if received by the Secretary from the Commission prior to the expiration of such period, shall have the effect of extending the period of segregation of such lands from all forms of entry under the public land laws until such application is finally disposed of by the Secretary.

The Deputy Attorney General for the State of Nevada, has asserted that a timely application was received by the Department on March 4, 1968. If such is the case, the lands involved remain segregated from entry until the application is finally disposed of by the Secretary and the mining claims were properly declared null and void ab initio. 3/

In any event, a review of the case file shows that the master title plat (MTP) for this township indicates that the lands in question are segregated pursuant to the Act of March 6, 1958. As the Department has long held, where the official records of BLM have been noted to reflect the devotion of land to a particular use, no incompatible rights in that land can attach pursuant to any subsequent entry or application until the record has been changed to reflect that the land is no longer segregated. Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317, 327 (1982); Paiute Oil and Mining Corp., 67 IBLA 17 (1982). Thus, the notation of the MTP would independently serve to invalidate appellants' claims, regardless whether Nevada had or had not applied for the lands in this township.

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2/ While the Act of Mar. 6, 1958, did not, by its express terms, close the land to mineral entry and location, this Board examined the purposes of that Act in O. Glenn Oliver, 73 IBLA 56 (1983), and concluded that the Act, in effect, withdrew the lands involved from the operation of the mining laws.

3/ While we have no reason not to believe the assertions of the State of Nevada, the documentation which it submitted does not conclusively show that the specific parcels of land involved herein were applied for, as they contain no land descriptions of any of the land sought.

Appellants' request for copies of documentation as to the Commission's application and the plan of development is denied. As we noted above, regardless of any deficiencies in these documents, the notation of the withdrawal requires a finding that the claims are 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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Bruce R. Harris  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

