

CHARLES H. PHILLIPS

IBLA 83-915

Decided January 24, 1984

Appeal from the decision of the Utah State Office, Bureau of Land Management declaring placer mining claims null and void ab initio. UMC 265520 and UMC 265917 through UMC 265924.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands
Subject to -- Mining Claims: Withdrawn Land -- Oil Shale:
Withdrawals -- Withdrawals and Reservations: Effect of

A placer mining claim located for gold on land previously withdrawn from appropriation under the mining laws relating to metalliferous minerals by Public Land Order No. 4522, dated Sept. 13, 1968, is null and void ab initio.

APPEARANCES: Charles H. Phillips, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Charles H. Phillips has appealed the decision of the Utah State Office, Bureau of Land Management (BLM), dated July 29, 1983, declaring the Tuesday Nos. 1 through 3, 7 through 11, and 14 placer mining claims, UMC 265520 and UMC 265917 through UMC 265924, null and void ab initio.

On March 30, 1983, appellant and seven co-locators 1/ located the Tuesday No. 11 claim, in sec. 34, T. 6 S., R. 21 E., Salt Lake meridian. The notice of location was timely filed with BLM on June 24, 1983. The same locators located the Tuesday Nos. 1 through 3 and 7 through 10 claims on May 24, 1983, in secs. 21, 29, 30, and 35 and located the Tuesday No. 14 claim on June 2, 1983, in sec. 25 of the same township. BLM received the notices of location for these claims on July 19, 1983.

BLM's decision states that T. 6 S., R. 21 E., Salt Lake meridian, was withdrawn from appropriation under the United States mining laws on September 13, 1968, and thus the entire township is not open to mining location. The case file contains a copy of Exec. Order No. 5327, dated April 15,

1/ The other locators are identified as Charles M. Phillips, Patrick A. Phillips, Scott D. Phillips, Richard W. Willey, Pauline Willey, Warren E. Willey, and Janet Willey.

1930, that temporarily withdrew from lease or other disposal the deposits of oil shale and lands containing oil shale deposits owned by the United States and reserved them for investigation, examination, and classification. ^{2/} As a supplement to Exec. Order No. 5327, on September 13, 1968, the Secretary of the Interior issued Public Land Order No. (PLO) 4522. 33 FR 14349 (Sept. 24, 1968). It reads in part:

1. Subject to valid existing rights, the deposits of oil shale and lands containing such deposits, owned by the United States and under the administrative jurisdiction of the Department of the Interior in the following described areas, are hereby withdrawn (1) from appropriation under the United States mining laws relating to metalliferous minerals, and (2) from sodium leasing except as hereafter provided, for protection of the multiple development of the minerals and other resources in the lands:

Secs. 1 to 36, inclusive, of T. 6 S., R. 21 E., Salt Lake meridian, are included in the described lands. See 33 FR 14352 (Sept. 24, 1968).

In his statement of reasons, appellant points out first that the township in question was not included in a list of lands affected by Exec. Order No. 5327 contained in a 1931 letter of an official of the General Land Office in Washington, D.C. ^{3/} He argues that the key language of PLO 4522 is "deposits of oil shale * * * in the following described areas." He urges that the use of the word "deposit" suggests a distinction between occurrences of oil shale with potential economic value and the mere presence of small amounts of oil shale and contends that no area may be withheld from the operation of the mining laws unless actual oil shale deposits are present. He then refers to a report of the Geological Survey on oil shale which does not include T. 6 S., R. 21 E., Salt Lake meridian, as an area in Utah that contains potential oil shale reserves. ^{4/} Finally appellant argues that his claims derive from claims on which there had been a mineral discovery prior to 1968 and thus his claims constitute valid existing rights.

Exec. Order No. 5327 withdrew known oil shale lands from every form of entry or claim except claims under the mining laws for metalliferous minerals. Landon H. Larwill, 54 I.D. 190 (1933); Instructions Circular No. 1220, 53 I.D. 127 (1930). See also 43 CFR 3170.0-1 (1968). The Secretary of the Interior initially approved maps designating land containing oil shale of recognized commercial importance in Colorado, Wyoming, and Utah but recognized that lands not designated on the maps as containing oil shale, but

^{2/} The order states that it "[s]hall continue in full force and effect unless and until revoked by the President or by Act of Congress." The order was modified by Exec. Order No. 6016, dated Feb. 6, 1933, to authorize oil and gas leasing on withdrawn lands and by Exec. Order No. 7038, dated May 13, 1935, to authorize sodium prospecting and leasing.

^{3/} Appellant identifies the 1931 letter as that of C. C. Moore of the General Land Office in Washington, D.C., and states that the letter is on file with BLM, Salt Lake City, Utah. He did not include it with his statement of reasons.

^{4/} Appellant provided excerpts from the Geological Survey Prof. Paper 548, *Geology and Fuel Resources of the Green River Formation, southeastern Uinta Basin, Utah and Colorado*, W. B. Cashion, 1967.

which are otherwise found to be in fact valuable for oil shale, were also withdrawn by the order. Instructions Circular No. 1220, supra. In a 1966 decision, the Department held that lands known to be underlain by deposits of oil shale were withdrawn under Exec. Order No. 5327 whether or not the deposits have been found to be commercially valuable. Dale J. Merrell, A-30527 (May 20, 1966). This Board has consistently found that lands are withdrawn under Exec. Order No. 5327 once the Geological Survey has classified them as containing deposits of oil shale. Thomas E. Gaynor, 24 IBLA 320 (1976), 21 IBLA 178 (1975); Heath B. Fowler, 8 IBLA 376, 377 (1972); John R. Shelburne, 8 IBLA 115 (1972).

[1] As to appellant's claims, however, Exec. Order No. 5327 has no effect as the claims are for placer gold, a metalliferous mineral. Thus the controlling action is the withdrawal effected by PLO 4522. This Board has held that all lands in Utah described in PLO 4522 were withdrawn from the operation of the mining laws effective January 27, 1967, the date the application for withdrawal was noted to the records of the Utah land office. Kelly B. Hall, 4 IBLA 329 (1972). 5/ It is well settled that a mining claim located on land previously withdrawn from appropriation is null and void ab initio. Alan Kaiser, 72 IBLA 387 (1983); Floyd E. Benton, 62 IBLA 243 (1982); Sally Lester, 31 IBLA 43 (1977). Since appellant's claims were not located until 1983, BLM's decision is affirmed. 6/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge

5/ We note that 43 U.S.C. § 1714 (1976) now limits the Secretary's authority to make withdrawals affecting more than 5,000 acres of land and directs him to review all withdrawals existing on Oct. 21, 1976, which closed public lands administered by BLM to appropriation under the Mining Law of 1872 in the states covered by PLO 4522 and to report his determination whether and for how long such withdrawals should be continued by Oct. 21, 1991, to the President. 43 CFR 2310.2(b) (1982) provides that the public lands described in a withdrawal application filed before Oct. 21, 1976, shall remain segregated through Oct. 20, 1991, to the extent specified in the Federal Register notice of withdrawal unless the withdrawal is sooner terminated in accordance with 43 CFR Part 2300. No termination of the withdrawal covered by PLO 4522 has been effected pursuant to 43 CFR Part 2300.

6/ Phillip's statement that he was a "new locator" of claims existing before the 1968 withdrawal indicates that the 1983 notices were new locations or relocations, not amended locations that would relate back in time to before the withdrawal. See Fairfield Mining Co., 66 IBLA 115 (1982).

