

Appeals from decisions of the California State Office, Bureau of Land Management, declaring lode mining claims and a millsite claim null and void ab initio. CA MC 183204 et al.

Affirmed

1. Courts--Mining Claims: Lands Subject to--Segregation--Small Tract Act: Classification--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Revocation and Restoration

Where a Federal district court issues a preliminary injunction which has the effect of suspending the termination of a small tract classification which segregated the land from mineral entry, thereby reinstating the terms of the classification, a mining claim subsequently located on land subject to that injunction is properly declared null and void ab initio.

APPEARANCES: Chester C. Reddeman, pro se; William R. Murray, Esq., and Mary Katherine Ishee, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D. C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Chester C. Reddeman has appealed from two decisions of the California State Office, Bureau of Land Management (BLM). The first, dated November 6, 1986, declared a millsite claim null and void ab initio, 1/ and the second, dated April 13, 1987, declared three lode mining claims null and void ab initio. 2/ The basis for the decisions was that the land was not open to

1/ The Majestic Sunrise Millsite (CA MC 183204) claim was located Aug. 30, 1986, and filed for recordation with BLM on Sept. 8, 1986. The appeal related to this claim is docketed as IBLA 87-188.

2/ The Silver Sundown (CA MC 184107) and Mountain Princess (CA MC 184108) lode mining claims were located Sept. 20, 1986, and filed for recordation with BLM on Oct. 16, 1986, and the Sandy Sunshine (CA MC 184707) lode mining

mineral entry at the time of location of the claims by virtue of a small tract classification order. Because of the substantial similarity of legal and factual matters involved, we have consolidated the two appeals.

In order to understand BLM's decisions declaring the claims null and void ab initio, we must first set forth the circumstances which preceded the location of appellant's claims. In an order dated December 2, 1941, entitled "Five-Acre Tract Classification No. 11," the Commissioner, General Land Office, stated that the Secretary of the Interior had, on November 13, 1941, "classified and opened" the NW 1/4 SW 1/4 sec. 15, T. 13 S., R. 4 E., San Bernardino Meridian, San Diego County, California, for leasing under section 1 of the Small Tract Act, as amended, 43 U.S.C. § 682a (1970) (repealed effective October 21, 1976, section 702 of the Federal Land Policy and Management Act of 1976, P. L. 94-579, 90 Stat. 2787 (1976)). See 6 FR 6363 (Dec. 11, 1941). Such a classification, where it did not otherwise provide, segregated the affected land from all other forms of appropriation under the public land laws, including locations under the mining laws. ^{3/} See Thom Seal, 92 IBLA 9 (1986); Las Vegas Sand & Gravel Co., 67 I.D. 259 (1960). By order dated August 21, 1981, BLM terminated the December 1941 classification order and, effective October 5, 1981, opened the NW 1/4 SW 1/4 sec. 15 to all forms of appropriation under the public land laws, including locations under the mining laws. See 46 FR 43886 (Sept. 1, 1981).

However, before the location of appellant's claims, the National Wildlife Federation (NWF) filed suit in Federal district court on July 15, 1985,

fn. 2 (continued)

claim was located Oct. 12, 1986, and filed for recordation with BLM on Oct. 24, 1986. The appeal related to these claims is docketed as IBLA 87-512. All of the claims, including the millsite, are, according to the notices of location, situated in the SW 1/4 sec. 15, T. 13 S., R. 4 E., San Bernardino Meridian, San Diego County, California. The maps on the backs of the location notices place the claims more specifically in the NW 1/4 SW 1/4 sec. 15. To the extent any of the claims embrace other areas of the SW 1/4, BLM's Apr. 13, 1987, decision stated that the NE 1/4 SW 1/4 and the S 1/2 SW 1/4 sec. 15, among other lands, were patented under Cash Entry Patent 4145, dated Nov. 3, 1891, without a reservation of minerals. Therefore, this land was not subject to subsequent mineral entry. James W. Phillips, 92 IBLA 58 (1986).

^{3/} That segregative effect arose as a result of Departmental promulgation of 43 CFR 257.3(b) (20 FR 366 (Jan. 15, 1955)), which stated that land classified under the Small Tract Act "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." See 43 CFR 2091.3-1. In addition, the December 1941 classification order was issued in response to the filing of four Small Tract Act applications, which may have encompassed the NW 1/4 SW 1/4 sec. 15. At the time of that order, the applicable regulation, 43 CFR 257.8 (5 FR 2285 (June 19, 1940)), provided that the filing of a Small Tract Act application "will segregate the land from other disposition under the public land laws."

challenging the Department's termination of classifications and revocation of withdrawals which had taken place on or after January 1, 1981, as inconsistent with the Department's statutory obligations. In conjunction with that suit, NWF filed a motion for a preliminary injunction. In a memorandum opinion dated December 4, 1985, (*National Wildlife Federation v. Burford*, 23 Env't Rep. Cas. (BNA) 1609 (D.D.C. Dec. 4, 1985)), the district court granted NWF's motion for a preliminary injunction and enjoined the Department from taking any action inconsistent with any withdrawal or classification which was in effect on January 10, 1981, including the approval of any plan of operations. In discussing the effect of granting NWF's motion for a preliminary injunction, the court concluded that it "would bar present holders of mining claims * * * from developing their interests [but] alone would not sever these parties' interests." *Id.* at 1616.

The court subsequently stayed its preliminary injunction on December 16, 1985, and on February 10, 1986, issued another memorandum opinion in an effort to clarify its first opinion. ^{4/} That opinion again granted NWF's motion for a preliminary injunction and enjoined the Department from taking any action inconsistent with the "specific restrictions" of any withdrawal or classification which was in effect on January 1, 1981, including the approval of any plan of operations. In discussing what it meant by the injunction, the court stated that, as a result of the injunction, the "term of the classification again apply." *National Wildlife Federation v. Burford*, 24 Env't Rep. Case (BNA) 1082, 1087 (D.D.C. Feb. 10, 1986). Moreover, the court specifically "suspended" terminations of classifications and revocations of withdrawals which had occurred since January 1, 1981, pending further action by the court. *Id.* at 1088.

In order to interpret and implement the court's February 1986 preliminary injunction, the Solicitor issued a memorandum to all Assistant Secretaries and Bureau Directors on March 10, 1986. The Solicitor particularly discussed the effect of the preliminary injunction on mining claims. With respect to mining claims located after the segregative effect of a withdrawal or classification had been lifted, the Solicitor interpreted the court's injunction of any Departmental action inconsistent with the specific restrictions of any withdrawal or classification which was in effect on January 1, 1981, to mean that the "claims remain valid but the order applies and the Department may take no further action, including the approval of plans of operations." (Solicitor's Memorandum, dated Mar. 10, 1986, at 4). The Solicitor also concluded that this directive applied equally under that portion of the court's February 1986 preliminary injunction which had suspended terminations of classifications and revocations of withdrawals which had occurred since January 1, 1981, because that suspension had the effect of "reinstating the terms of the original withdrawal or classification" and, thus, also precluded the Department from taking any action inconsistent therewith. *Id.* at 5.

^{4/} On Dec. 11, 1987, the Court of Appeals for the District of Columbia Circuit affirmed the district court's February 1986 preliminary injunction. *National Wildlife Federation v. Burford*, Nos. 86-5239 and 86-5240.

Following issuance of the court's February 1986 preliminary injunction and the Solicitor's March 1986 memorandum, appellant located the three lode mining claims and millsite claim involved herein. In its November 1986 and April 1987 decisions, ELM declared appellant's claims null and void ab initio stating that, as a result of the court's February 1986 preliminary injunction in National Wildlife Federation, the November 1941 classification, which was terminated after January 1, 1981, must be considered "still in effect" and, thus, the land was not subject to location under the mining laws at the time of location of appellant's claims. Appellant has appealed from those BLM decisions.

On June 16, 1987, in connection with IBLA 87-188, the Board issued an order to BLM to show cause why BLM's November 1986 decision should not be reversed and the case remanded to BLM with instructions to suspend further adjudication until final judicial resolution of National Wildlife Federation. We based this order on the fact that BLM's declaration of invalidity appeared to be "contrary to the directions of [the Solicitor's March 1986] memorandum" and the fact that the district court's February 1986 preliminary injunction might ultimately be reversed on appeal.

On July 23, 1987, BLM filed a response to the Board's order to show cause, contending that BLM's November 1986 decision was consistent with the Solicitor's March 1986 memorandum, as well as the district court's February 1986 preliminary injunction, and should be affirmed. BLM argues that the district court's February 1986 preliminary injunction had the effect of nullifying the Department's August 1981 termination of the November 1941 classification, thereby restoring the segregative effect of that classification, and that claims located thereafter on lands covered by that classification are null and void ab initio. BLM notes that this effect of the district court's February 1986 preliminary injunction was recognized in the Solicitor's March 1986 memorandum to the extent it stated that the court's preliminary injunction reinstated the terms of the original classification. 5/ Appellant has filed no brief in opposition to BLM's response to the show cause order.

In its response to the show cause order BLM has adequately explained the distinction between the effect of the court's preliminary injunction on mining claims located prior to that injunction and those located after. We

5/ We note that despite BLM's assertion that the Solicitor's memorandum specifically addressed the circumstances of mining claims located after the February 1986 preliminary injunction, the language in the Solicitor's March 1986 memorandum, at page 4, to which BLM refers as indicating that such a claim is void applies in the case where a claim "was located on lands * * * that were segregated from the operation of the mining laws." (Emphasis added.) At the time of issuance of that memorandum, appellant had not located his claims. Nevertheless, as noted infra, we do not take issue with BLM's ultimate conclusion that appellant's claims, located after the court's February 1986 preliminary injunction, are null and void ab initio given the action of the court.

conclude that BLM correctly declared appellant's claims null and void ab initio. The district court's February 1986 preliminary injunction suspending any terminations of classifications and revocations of withdrawals which occurred after January 1, 1981, was intended to reinstate and had the effect of reinstating the terms of any such terminated classification or revoked withdrawals. In the present case, the November 1941 classification was in effect on January 1, 1981, and was subsequently terminated on August 21, 1981 prior to the district court's February 1986 preliminary injunction in National Wildlife Federation. Accordingly, the August 1981 termination of the November 1941 classification was suspended by the district court's February 1986 preliminary injunction. This had the effect of reinstating the terms of the November 1941 classification. The terms of that classification segregated the affected land from all other forms of appropriation under the public land laws, including the location of claims under the mining laws. Appellant's lode mining claims and millsite claim were then located after the court's preliminary injunction. That injunction required that BLM administer the land in question under the terms of the classification. Accordingly, we must conclude that BLM properly declared the claims null and void ab initio. 6/ See Thom Seal, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Anita Vogt
Administrative Judge
Alternate Member

6/ On appeal, appellant contends that BLM informed him prior to filing his location notices that the land was open to location under the mining laws. However, even assuming that BLM provided incorrect information regarding the availability of the land, this will not avail appellant. David D. Beal, 90 IBLA 91 (1985); Silver Buckle Mines, Inc., 84 IBLA 306 (1985).

