

PLUESS-STAUFER (CALIFORNIA), INC.

IBLA 88-113

Decided December 21, 1988

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Key Nos. 3918, 3919, 4018, and 4019 placer mining claims null and void ab initio. CA 124816-17 and CA 124819-20.

Affirmed.

1. Classification and Multiple Use Act of 1964--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

Mining claims located on land which has been segregated from appropriation under the mining laws by publication in the Federal Register of a notice of classification under the Classification and Multiple Use Act of 1964 are properly declared null and void ab initio. A subsequent modification or revocation of the classification order will not retroactively validate locations made while the lands were segregated from mineral entry.

APPEARANCES: Robert J. Simpson, Esq., San Bernardino, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Pluess-Staufer (California), Inc. (Pluess-Staufer), has appealed from an October 30, 1987, decision of the California State Office, Bureau of Land Management (BLM), declaring placer mining claims Key Nos. 3918, 3919, 4018, and 4019 (identified by BLM serial Nos. CA 124816-17 and CA 124819-20, respectively) null and void ab initio. The basis for the decision was that the claims were located on lands segregated from mineral entry by a Notice of Classification of Public Lands For Multiple Use Management, R-236.

The record discloses the claims were located on February 17, 1983, in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  and the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of sec. 29, T. 14 N., R. 16 E., San Bernardino Meridian. Further, it appears the subject lands were segregated by classification notice published in the Federal Register on June 8, 1967. That notice provided that approximately 9000 acres, including sec. 29, NW $\frac{1}{4}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$ , T. 14 N., R. 16 E., San Bernardino Meridian, were segregated from appropriation under the general mining laws. 32 FR 8251-52 (June 8, 1967). The authority cited for the segregation was the Classification and Multiple Use Act of September 19, 1964, P.L. 88-607, 78 Stat. 986, as amended by,

P.L. 90-213, 81 Stat. 660 (1967) (formerly codified at 43 U.S.C. §§ 1411-1418 (1970)). 1/

Appellant contends in the statement of reasons for appeal that the segregation of the subject lands from appropriation under the mining laws was inconsistent with the multiple-use management mandate provided by the Act for those lands deemed appropriate for retention in Federal ownership. Appellant cites former Departmental regulations implementing the Act to the effect that lands classified for retention in Federal ownership shall not be closed to mining location unless the nonmineral use would be inconsistent with and of greater importance to the public interest than the continued search for deposits of valuable minerals. See 43 CFR 2410.1-4(b)(2) (1967). Appellant contends the classification was arbitrary in view of the lack of information as to the mineral character of the land and, further, that new discoveries since the 1967 classification establish the presence of valuable commercial mineral deposits of high-quality limestone. Finally, appellant requests the Board stay the instant appeal pending the outcome of its petition to BLM to change the classification to permit mining in the area.

Accordingly, the issues raised by this appeal are whether appellant's claims were located on lands lawfully segregated from location of mining claims pursuant to statutory authority and whether appellant may be afforded any relief pending possible future reclassification of the lands.

[1] It is clear from the record that the land upon which the claims at issue were located was segregated from appropriation under the mining laws in 1967 by paragraph four of the Notice of Classification of Public Lands for Multiple Use Management (R-236). 32 FR 8251 (June 8, 1967). The record does not support a finding that the segregation was inconsistent with the terms of the Classification and Multiple Use Act of 1964. Section 2 of the Act required public notice, including publication in the Federal Register, prior to classification of lands in excess of 2,560 acres for management by BLM when the classification action has the effect of segregating the lands from mineral production. 78 Stat. 986 (formerly codified at 43 U.S.C. § 1412 (1970)). The Federal Register notice reflects that notice of the proposed classification was published at 31 FR 14749 (1966) and that a public hearing was held January 4, 1967, in Barstow, California. Further, the notice reflects that as a result of evaluation of the comments received by BLM, the acreage segregated from mining location was reduced from approximately 48,882 acres to approximately 9,000 acres.

The fact that appellant disagrees with the judgment of the authorized BLM official who approved the classification does not establish error in the classification. Further, there are jurisdictional limitations which preclude review of this classification. The implementing regulations regarding

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1/ P.L. 90-213 amended P.L. 88-607 to provide that the authority to classify lands under the Act expired 6 months after the final report of the Public Land Law Review Commission has been submitted to Congress (set for June 30, 1970), "except that any segregation prior to such time of any public lands from settlement, location, sale, selection, entry, lease, or other form of disposal under the public land laws shall continue for the period of time allowed by this Act." 81 Stat. 660.

classification for retention in Federal ownership provided that a classification decision shall be subject to "administrative review and modification by the Secretary of the Interior" for a period of 30 days after publication of the classification in the Federal Register. 43 CFR 2411.2(c) (1967). The opportunity for seeking administrative review of this classification decision lapsed long ago. It is also well established in the Department that the Board of Land Appeals has no jurisdiction to review land classification decisions. See 43 CFR 4.410(a)(1), 2461.3; State of Utah, 83 IBLA 298 (1984); Ronald R. Graham, 77 IBLA 174 (1983).

Mining claims located on land which has been segregated from appropriation under the mining laws are properly declared null and void ab initio. E.g., J & B Mining Co., 69 IBLA 73 (1982); George H. Fennimore, 63 IBLA 214 (1982). This rule has been applied to affirm decisions invalidating mining claims located on lands segregated from appropriation under the mining laws pursuant to a notice of proposed classification under the Classification and Multiple Use Act of 1964. Rudolph Chase, 8 IBLA 351 (1972); H. E. Baldwin, 3 IBLA 71 (1971). Accordingly, the decision declaring the mining claims null and void ab initio must be affirmed.

It may be that the public interest would now be served by opening the lands within the claims at issue to location of mining claims. Appellant may pursue this matter further with BLM. However, even if the classification order is modified to permit appropriation of the subject lands under the general mining laws, the mining claims located while the land was segregated from appropriation under the mining laws will not be validated by the new land status. See Harold E. De Roux, 94 IBLA 350, 351 (1986); Kelly R. Healy, 60 IBLA 115, 116 (1981) (mining claims located on land withdrawn from operation of the mining laws are null and void ab initio and will not be validated by modification or revocation of the order of withdrawal thereafter).

In that the claims are null and void ab initio and cannot be validated by a modification or revocation of the classification, no purpose can be served by staying our decision pending BLM's action on appellant's petition for a modification of the classification. Therefore, we reject appellant's request for a stay.

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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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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Will A. Irwin  
Administrative Judge