

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. N MC-372755 through N MC-372757.

Affirmed in part, reversed in part.

1. Mining Claims: Lands Subject To

Mining claims were properly declared null and void ab initio when located on land subject to a small tract classification that had been terminated but was, at the time of location, revived by the February 1986 injunction issued in National Wildlife Federation v. Burford, 676 F. Supp. 280 (D.D.C. 1986).

APPEARANCES: George Essayian, Las Vegas, Nevada, for Anna Essayian.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Anna Essayian has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated November 24, 1992, declaring the Blue Sky Nos. 3 through 5 placer mining claims, N MC-372755 through N MC-372757, null and void ab initio.

On July 26 and 27, 1986, Essayian, together with Gladys Feinn, located the Blue Sky Nos. 3 through 5 placer mining claims in Clark County, Nevada. The land is described in amended location notices (filed for recordation with BLM on October 20, 1986) as the $W\frac{1}{2} W\frac{1}{2} NW\frac{1}{4}$ sec. 31, T. 19 S., R. 60 E. (Blue Sky No. 3), the $E\frac{1}{2} E\frac{1}{2} NE\frac{1}{4} NE\frac{1}{4}$ sec. 36, T. 19 S., R. 59 E. (Blue Sky No. 4), and the $SW\frac{1}{4} NE\frac{1}{4}$ sec. 1, T. 20 S., R. 59 E. (Blue Sky No. 5), Mount Diablo Meridian, Nevada. The November 1992 BLM decision declared the claims null and void ab initio because they were entirely located on land that was closed to mineral entry. BLM found that under a March 11, 1955, classification for disposal under the Small Tract Act, as amended, 43 U.S.C. §§ 682a-682e (1972) (repealed 90 Stat. 2787), the land was closed to mineral entry. See Small Tract Classification Order No. 106 (20 FR 1704 (Mar. 22, 1955)). While the classification was terminated effective November 30, 1981 (see 46 FR 58192 (Nov. 30, 1981)), BLM explained that the termination was suspended effective February 18, 1986, by a February 10, 1986, injunction issued in National Wildlife Federation v. Burford, 676 F. Supp. 280 (D.D.C. 1986), aff'd, 835 F.2d 305 (D.C. Cir. 1987). Relevant to this appeal, the district court "enjoined [the Department] from * * * terminating * * * any classification that was in effect on January 1, 1981" and "suspended" terminations "occurring since [that date]" (51 FR 5809, 5810 (Feb. 18, 1986)).

In this case, BLM had terminated, after January 1, 1981, a classification then in effect. There is therefore no question that the termination was suspended by the injunction. Notice of the injunction was published, at the direction of the court, in the Federal Register. See 51 FR 5809 (Feb. 18, 1986). According to BLM, the suspension had the effect of reinstating the March 1955 classification, once again closing the land to mineral entry so that it was closed at the time of location of Essayian's claims in July 1986. Essayian appealed from the November 1992 BLM decision.

[1] She contends that BLM improperly declared her mining claims null and void ab initio because the Federal district court, in National Wildlife Federation v. Burford, 699 F. Supp. 327, 332 (D.D.C. 1988), rev'd, 878 F.2d 422 (D.C. Cir. 1989), rev'd, 110 S. Ct. 3177 (1990), subsequently dismissed the action supporting the February 10, 1986, preliminary injunction and dissolved that injunction on November 4, 1988, once again giving effect to the November 1981 termination of the March 1955 classification. Dissolution of the injunction did reinstate termination of the small tract classification. That the classification was finally terminated on November 4, 1988, however, did not work to validate any claim located while the termination was suspended. See Shama Minerals, 119 IBLA 152, 154 (1991), and cases cited therein. Dissolution of the injunction did not nullify the injunction during the time it was in effect (Feb. 18, 1986, to Nov. 4, 1988). See id. at 154. Instead, the injunction prevented termination of the classification or, put another way, reinstated the classification. See id. at 155. Any mining claim located during the injunction was subject to the classification.

All of Essayian's claims were located then. It is now well established that land subject to a small tract classification is segregated from all forms of appropriation under the public land laws, including locations under the mining laws, and any claim located on that land while it remains classified is properly declared null and void ab initio. See 43 CFR 2091.7-1(a)(1); Chester C. Reddeman, 101 IBLA 33, 34 (1988), and cases cited therein. If, therefore, the March 1955 classification covered the land encompassed by the subject claims, they were null and void ab initio since they were located when the February 1986 preliminary injunction made the land subject to that classification.

Essayian, however, also contends that the Blue Sky Nos. 3 and 5 claims were not affected by the March 1955 classification, either as originally issued or as amended on March 29, 1957 (see 22 FR 2285 (Apr. 5, 1957)). She admits that the Blue Sky No. 4 claim was affected by the classification, even as it was amended. See Letter to BLM, dated Dec. 8, 1992, at 2. This is confirmed by the record. The original small tract classification covered all of the land in sec. 36, T. 19 S., R. 59 E., Mount Diablo Meridian, Clark County, Nevada. See 20 FR at 1705. Some land was deleted from the classification on March 29, 1957, but the classification remained in effect on the E½ E½ NE¼ NE¼, which includes the Blue Sky No. 4 claim. See 22 FR 2285 (Apr. 5, 1957).

The record also confirms that the land encompassed by the Blue Sky Nos. 3 and 5 claims was affected by the original small tract classification. Nonetheless, BLM subsequently amended the classification on March 29, 1957, deleting land including the SW¼ NE¼ sec. 1, T. 20 S., R. 59 E., Mount Diablo Meridian, Clark County, Nevada, which is the land encompassed by Blue Sky No. 5. See 22 FR 2285 (Apr. 5, 1957). There is no record that BLM ever reclassified that land. The March 1957 amendment left intact the original classification of lands covered by the Blue Sky No. 3.

Accordingly, we conclude that, with the exception of the Blue Sky No. 5 claim, Essayian's mining claims were subject to the March 1955 classification when it was terminated in November 1981. That termination was enjoined by the Federal district court in National Wildlife Federation v. Burford, supra, effective February 18, 1986, and was without effect until the injunction was dissolved on November 4, 1988. The land encompassed by the Blue Sky Nos. 3 and 4 claims was therefore subject to the March 1955 classification at the time of location in July 1986. BLM properly declared those claims null and void ab initio, since the land was segregated from mineral entry by the small tract classification. Essayian is correct, however, that the Blue Sky No. 5 claim was not subject to the March 1955 classification in November 1981. Consequently, that land was not subject to the classification when the Blue Sky No. 5 claim was located in July 1986. Therefore, BLM incorrectly held the land was then closed to mineral entry and declared the claim null and void ab initio. As a result, the BLM November 1992 decision properly declared the Blue Sky Nos. 3 and 4 placer mining claims null and void ab initio. To that extent, the decision is affirmed. However, BLM erroneously declared the Blue Sky No. 5 placer mining claim null and void ab initio. To that extent, the decision is reversed.

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 in part and reversed in part.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge