



TETRA TECHNOLOGIES, INC.

184 IBLA 65

Decided July 30, 2013



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

TETRA TECHNOLOGIES, INC.

IBLA 2012-174, *et al.*

Decided July 30, 2013

Appeal from five decisions of the California State Office, Bureau of Land Management, declaring certain claims null and void *ab initio*. CAMC 300572, *et al.*

Decisions Reversed; Petitions for Stay Denied as Moot.

1. Mining Claims: Location--Mining Claims: Withdrawn Land--Segregation

Publication of a notice of an application for withdrawal of public land for defense purposes initiates a segregation of the land commencing upon publication of the notice and lasting 2 years unless the segregative effect is terminated sooner. However, publication of a notice of an application for withdrawal that is based on a prior withdrawal proposal shall not operate to extend the segregation period.

2. Mining Claims: Location--Mining Claims: Withdrawn Land--Segregation

Generally, the status of land is held to be that which is noted on the public records. When a notice published in the *Federal Register* provides that a land withdrawal will terminate upon a specific date absent an extension, and no extension is made, the withdrawal ends according to the terms of the notice. Failure to properly update the public records cannot impermissibly extend the withdrawal.

APPEARANCES: Robert W. Ritter, Esq., and Amanda Schneider, Esq., San Bernardino, California, for appellant; B. Demar Hooper, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Tetra Technologies, Inc. (Tetra) has appealed from and petitioned for a stay of five March 16, 2012, decisions issued by the California State Office, Bureau of Land Management (BLM) declaring a total of 358 mining claims null and void *ab initio*.<sup>1</sup> By order dated June 6, 2012, the Board granted a stay of these decisions pending the outcome of this appeal based on the non-objection of counsel for BLM.

Based on the following analysis, we reverse BLM's decisions.

*Background*

Tetra has been operating the mining claims at issue under a Mining Conditional Use Permit and Reclamation Plan (Plan 2001M-03) since it was approved on May 21, 2001. Tetra admits it failed to timely pay its annual mining claim maintenance fees by September 1, 2011, resulting in the forfeiture and abandonment of the claims. Subsequently, Tetra located new claims on the same lands.

Through five separate decisions, BLM rejected these location notices, citing a notice of the proposed withdrawal of the lands at issue for a period of 5 years. 75 Fed. Reg. 55824-27 (Sept. 14, 2010) (2010 Notice). This notice purported to segregate the identified land from mineral entry “[f]or a period of 2 years from the date of publication of this notice in the Federal Register . . . unless the application is denied or canceled or the withdrawal is approved prior to that date.” *Id.* at 55827. Therefore, BLM asserts that the claims were null and void *ab initio*.

Tetra has appealed these decisions, citing an earlier 2-year segregation of similar lands due to an application for withdrawal submitted by the Department of the Navy. 73 Fed. Reg. 53273 (Sept. 15, 2008) (2008 Notice). Tetra asserts that the 2010 Notice did not commence a 2-year segregation period because it constituted an impermissible extension of the segregation effected by the 2008 Notice.

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<sup>1</sup> The Board docketed the appeals of the decisions as follows: IBLA 2012-174 (Amboy Nos. 490–507 (CAMC 300872–300889), Amboy Nos. 540–547 (CAMC 300890–300897), Amboy Nos. 508–539 (CAMC 300898–300929)); IBLA 2012-175 (Amboy Nos. 229–303 (CAMC 300647–300721)); IBLA 2012-176 (Amboy Nos. 304–355 (CAMC 300722–300773), Amboy Nos. 360–382 (CAMC 300774–300796)); IBLA 2012-177 (Amboy Nos. 154–228 (CAMC 300572–300646)); IBLA 2012-178 (Amboy Nos. 383–443 (CAMC 300797–300857), Amboy Nos. 476–489 (CAMC 300858–300871)). These appeals were consolidated under IBLA 2012-174.

*Analysis**Automatic Segregation Upon Publication of Notice*

[1] The Department of Defense can seek withdrawal of public land for defense purposes under the Engle Act, 43 U.S.C. § 155-158 (2006). Land in excess of 5,000 acres can only be withdrawn from mineral entry by Act of Congress. 43 U.S.C. § 156 (2006). The Secretary of the Interior has responsibility for processing withdrawals under the Engle Act. 43 U.S.C. § 158 (2006); 43 C.F.R. § 2300.0-3(a)(3). Publication of notice of an application for withdrawal initiates a segregation of the lands commencing upon publication of the notice for 2 years unless the segregative effect is terminated sooner. 43 C.F.R. § 2310.2(a). However, “[p]ublication of a notice of a withdrawal application *that is based on a prior withdrawal proposal* . . . shall not operate to extend the segregation period.” *Id.* (emphasis added).

The 2008 Notice published by BLM indicated that, on behalf of the United States Marine Corps, the Department of the Navy had requested that the Secretary of the Interior process an application for a legislative withdrawal of 365,906 acres of public land and 507 acres of Federal subsurface mineral estate. The request was assigned serial number CACA 50194. The land identified in the 2008 Notice was “adjacent to the exterior boundaries of the USMC’s Marine Corps Air Ground Combat Center [(MCAGCC)] located in Twentynine Palms, California.” The purpose of the withdrawal was “for use as a military training range, involving live-fire exercises, necessary for national security.” Based on the publication of the 2008 Notice, the land was segregated until September 15, 2010. 43 C.F.R. § 2310.2(a).

On January 25, 2010, BLM published a Notice of Partial Cancellation of Proposed Withdrawal, indicating that 33,488 acres of public land were removed from the application for withdrawal. Those 33,488 acres were opened to mineral entry on February 24, 2010, at 10 a.m. The remaining land covered by the application for withdrawal remained segregated from mineral entry.

The 2010 Notice published by BLM indicated that the Assistant Secretary for Land and Minerals Management, “on behalf of [BLM],” proposed to withdraw 332,421 acres of Federal lands and 507 acres of reserved Federal minerals and referenced CACA 50194. The purpose of the proposed withdrawal was “to protect and preserve the status quo of the lands pending action on an application for withdrawal for military purposes under the Engle Act,” that application being for training grounds adjacent to the MCAGCC. This proposed withdrawal was assigned serial number CACA 51737.

The description of the land proposed to be withdrawn by the 2010 Notice is essentially identical to the land identified in the 2008 Notice less the land removed from the application according to the partial cancellation published in January 2010. BLM acknowledges in the 2010 Notice that the sole purpose of the proposed withdrawal of lands was to prevent any new or different activity on the land pending approval of the application that prompted the 2008 Notice.

Nevertheless, BLM asserts that publication of the 2010 Notice commenced a new 2-year segregation period under 43 C.F.R. § 2310.2, rather than extending an existing one. BLM asserts that it was “a separate action by a separate federal agency,” as evidenced by the use of “a different file number.” Answer at 3. Therefore, because the “rights and responsibilities associated with the BLM 2010 withdrawal rest with BLM, not with the Navy,” the 2010 Notice is not identical to the 2008 Notice.

BLM misinterprets the language and effect of the applicable regulation. The regulation does not merely prohibit an identical notice or a notice filed by the same entity. It prevents the extension of a segregative period when a notice is published “that is based on a prior withdrawal proposal.” 43 C.F.R. § 2310.2(a).

The Board previously considered a challenge to notices that effected consecutive segregative periods for the same land. On August 3, 1993, BLM published notice of a withdrawal application for 19,684.74 acres of public land in Montana for the purpose of preserving certain environmental and cultural resources. Shortly before the 2-year segregative effect was to end, and before the withdrawal application was approved, Congress took action to prevent mineral entry on that land: “[O]n July 19, 1995, Congressman Pat Williams of Montana introduced legislation to permanently prohibit mineral location and entry ‘within the Bureau of Land Management’s Sweetgrass Hills [ACEC] as identified in the West HiLine Resource Management Plan in the State of Montana.’ H.R.2074, 104th Cong. § 2 (1995), reprinted in JA at 401.” *Mount Royal Joint Venture v. Kempthorne*, 477 F.3d 745, 755 (D.C. Cir. 2007). On July 28, 1995, BLM published notice in the *Federal Register* of a proposed withdrawal of the same land “[i]n aid of legislation” and “to preserve the status quo . . . pending consideration of proposed withdrawal legislation introduced into the 104th Congress, 1st Session.” 60 Fed. Reg. 38852, 38853.

On appeal, the Circuit Court upheld the Board’s ruling that the statute does not prohibit consecutive segregation periods for the same land where the purposes of the withdrawal applications are different. Specifically, in *Mount Royal* the purpose of the initial withdrawal application was to protect certain natural resources by withdrawing the land from mineral entry for 20 years. The purpose of the later withdrawal application was to maintain the status quo by withdrawing the land from

mineral entry for 5 years while Congress considered specific legislation that a representative had introduced 9 days prior to the publication of the new notice. The identity of the legal entity filing the notice and any serial number assigned by the Department for processing the application were irrelevant. The differentiating characteristic of the second notice was its purpose of supporting imminent congressional action. Thus, the Circuit Court pointed out that a new notice of an application for withdrawal could commence a new segregation period when prompted by “new developments, *e.g.*, the introduction of legislation regarding the tract or the discovery of additional resource uses or values, and, correspondingly, the resulting segregation period gives the Secretary time to evaluate whether the withdrawal should be modified.” *Mount Royal Joint Venture v. Kempthorne*, 477 F.3d at 756.

In the instant case, BLM has referenced no new developments or changed circumstances that resulted in the 2010 Notice. BLM cites only superficial differences between the 2008 Notice and 2010 Notice. We find that the 2010 Notice sought an unauthorized extension of the segregative effect of the 2008 Notice, for no other purpose than to facilitate the continued processing of the application from 2008. BLM went so far as to label the CACA 51737 withdrawal proposal on its master title plats as “Dept of Navy Wdl Prop,” despite its assertion that the proposal is legally distinct from that announced by the 2008 Notice simply because BLM, not the Department of the Navy, was the applicant.

We conclude that while processing the application triggering the 2008 Notice could continue for more than 2 years, the automatic segregation could not. Absent any changed purpose or circumstances, BLM’s publication of the 2010 Notice did not commence a new 2-year segregation period. To hold otherwise would strip 43 C.F.R. § 2310.2 of any conceivable purpose, and permit automatic segregation periods to be renewed again and again simply by changing the serial number of the proposal. *See Casey E. Folks, Jr.*, 183 IBLA 24, 46 (2012).

#### *The Notation Rule*

[2] BLM argues that, even if the 2010 Notice itself did not commence a segregation period, the appealed decisions should nevertheless be affirmed because of the “notation rule.” Answer at 3-4. The notation rule is a creation of adjudication that determines the availability of land for disposition based on the contents of public records. *See, e.g., Casey E. Folks, Jr.*, 183 IBLA at 42. Generally, the status of land is held to be that which is noted on the records, even if the record entry is invalid. *Id.* But, the Board has consistently held that notation of an application on the public land records has a segregative effect only when a statute or Departmental regulation

provides that the filing of the application segregates the land. *Donald Graydon Jolly*, 173 IBLA 201, 212 (2007), and cases cited. Because in this case 43 C.F.R. § 2310.2(a) explicitly precludes giving segregative effect to the second application, because it is “based on” the prior application, the notation of the second application can have no segregative effect.

In this case, the segregation effected by the 2008 Notice ended on September 15, 2010, by its own terms. BLM could not have extended that notice through failure to update the public records. The master title plats and historical indices in this case show that BLM did update the records and recorded a segregation beginning on September 14, 2010, pursuant to the 2010 Notice. BLM’s regulations, however, make it quite clear that if the 2010 Notice was based on the 2008 Notice, and we have held it was, then the 2010 Notice “shall not operate to extend the segregation period which commenced upon the publication of the prior withdrawal proposal.” 43 C.F.R. § 2310.2(a). Under those circumstances, the only operative segregation period was that announced in the 2008 Notice, which expired “two years from the date of the notice.” 43 U.S.C. § 1714(b)(1) (2006). Neither the publication of another notice in the *Federal Register* nor a contrary notation on the public land records can extend a segregative effect that Congress specifically limited to 2 years. See *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA 359, 381 (2013). As a result, the 2010 Notice did not segregate the lands from entry under the public land laws or from operation of the mining laws.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decisions are reversed, and the petitions for stay are denied as moot.

\_\_\_\_\_/s/\_\_\_\_\_  
H. Barry Holt  
Chief Administrative Judge

I concur:

\_\_\_\_\_/s/\_\_\_\_\_  
James F. Roberts  
Administrative Judge