INTERIOR BOARD OF LAND APPEALS

Chanley Christensen, et al.

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CHANLEY CHRISTENSEN ET AL.

IBLA 97-195 Decided May 21, 1999

Appeal from a decision by the Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. UMC Nos. 360925 through 360927.

Affirmed as modified.

1. Mining Claims: Abandonment--Mining Claims: Location

The regulation at 43 C.F.R. § 3833.1-2(b)(3) provides that a locator describe the "type of claim or site." Where location notices indicate that the claims are located "upon a valuable placer mining deposit containing Wonderstone and associated locatable minerals and stone," the description is sufficient to meet the regulatory requirement that the claimant provide a description of the type of claim, and appellants' claims cannot be declared "abandoned and void" simply because appellants did not amend their location notices to provide BLM with more specific information about the type of mineral located.

2. Mining Claims: Placer Claims--Mining Claims: Withdrawn Land

When lands are withdrawn from entry under some or all of the public land laws, the withdrawal remains in effect until there is a formal revocation or modification published in the Federal Register, and until notation of the withdrawal is removed from records in the local BLM office, and those records show that the land is once again open to entry.

3. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Lands

Where a master title plat indicates that lands on which appellants' claims are located are subject to "interpretation withdrawal OS EO 5327," and that withdrawal, as amended through subsequent public
land orders, extends to all

> minerals, appellants' claims are properly declared null and void ab initio to the extent they are located for nonmetalliferous minerals.

APPEARANCES: Robert G. Pruitt, Jr., Esq., Salt Lake City, Utah, for Appellants; David K. Grayson, Esq., Office of the Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Chanley Christensen and his several partners (Christensen or Appellants) have appealed from a January 16, 1997, decision of the Utah State Office, Bureau of Land Management (BLM), declaring their unpatented association placer mining claims, the Chanley Nos. 1 through 3 (UMC Nos. 360925 through 360927), "abandoned and void" for failure to declare the type of mineral located and the form of the location in accordance with its December 5, 1996, Notice. These claims were located on October 1, 1996, in secs. 22, 23, 25, and 26 of T. 22 S., R. 1 E., Salt Lake Meridian, in the Selena Canyon/Solder Canyon area, within the Fishlake National Forest, Sevier County, Utah. The location notices state that the claims are located for "Wonderstone and associated locatable minerals and stone."

BLM's December 1996 Notice to claimants stated:

> The official land records of the United States show the subject mining claims are located within lands covered by Executive Order (EO) 5327. This order withdrew lands containing oil shale deposits from location of nonmetalliferous minerals. Therefore, the subject land is closed to location of nonmetalliferous minerals.
>
> Within 30 days from receipt of this notice, you must inform this office, in writing, [of] the type of mineral you are locating and the form of your location (either metalliferous or nonmetalliferous). Failure to submit the requested information will result in the issuance of a decision declaring the subject mining claims abandoned and void.

On January 6, 1997, within the 30-day period, Christensen filed a response to the notice, but did not specifically provide the information requested, viz., the type of mineral located and whether it is metal or nonmetal in character. Instead, Christensen challenged BLM's assertion that EO 5327, as modified by later Public Land Orders (PLO's) and Departmental actions, withdrew any minerals other than oil shale from location. Christensen alleged that he has authority to locate any mineral on his claims, whether metal or nonmetal, if he can show that none of the claims contains "oil shale deposits." Accordingly, he requested BLM to order a fact finding hearing for purposes of proving that his claims are free of oil shale deposits.

On January 16, 1997, BLM issued a decision declaring Christensen's claims "abandoned and void," stating, in pertinent part:

> By Bureau of Land Management Notice dated December 5, 1996, you were notified that you must inform this office, in writing, [of] the type of mineral you are locating and the form of your location (either metalliferous or nonmetalliferous.) A period of 30 days was allowed in order for you to submit the required information.
>
> On January 6, 1996, this office received a response to the BLM Notice. However, the type of mineral you are locating or the form of your location was not identified. Therefore, the subject claims are hereby declared abandoned and void.

Christensen appealed to this Board, again claiming that EO 5327 has been modified and interpreted by later public land orders and official BLM actions, such that it no longer has the effect of segregating any mineral from location unless it can be proven that the claims are underlain by oil shale. He therefore contends that he should be granted a hearing before an administrative law judge to determine whether, in fact, his claims are underlain by oil shale deposits. His aim is to prove that oil shale does not underlay his claims; therefore, he is free to locate any substance locatable under the mining laws, as amended.

BLM has responded, first maintaining that Departmental regulations found at 43 C.F.R. § 3833.4 require BLM to declare Christensen's claims abandoned and void solely because he has not provided BLM with required information as requested. In the alternative, BLM argues that, even if the Board finds Appellants' argument regarding EO 5327 compelling, under the Department's "notation rule," these lands are segregated from entry, since notations on the master title plat always control, even if they are erroneous. According to BLM, in this instance, the master title plat indicates that the lands are withdrawn from nonmetalliferous mineral entry. Finally, BLM asserts, to the extent Appellants are seeking to have the withdrawal modified, the Board is an improper forum, as section 204(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1714(a) (1994), "limits delegation of the Secretary's authority to make, modify, extend, or revoke withdrawals to Presidential appointees who have been confirmed by the Senate." (Answer at 1.)

[1] Underlying BLM's decision is the premise that BLM has authority to declare Appellants' claims abandoned and void, first, because Appellants failed to supply all necessary information about their claims at the time they filed their certificates of location, and, second, because they have continued to withhold the information, even after receipt of BLM's December 1996 notice. BLM bases its authority to declare Appellants' claims abandoned and void under these circumstances on Departmental regulation 43 C.F.R. § 3833.4.

The regulations found at 43 C.F.R. Subpart 3833 were promulgated to establish procedures for filing the documents required, inter alia, by

section 314 of FLPMA, 43 U.S.C. § 1714 (1994), and the fees required by amendments to the 1872 Mining Law found at 30 U.S.C. § 28f (1994 Supp.). See 43 C.F.R. § 3833.0-1. Among other matters, they specify in detail the information to be provided BLM when filing location certificates. Regulation 43 C.F.R. § 3833.1-2 describes the manner of recordation on Federal lands and provides, in pertinent part:

> (a) The owner of an unpatented mining claim, mill site or tunnel site located after October 21, 1976, on Federal lands, * * * shall file within 90 days after the date of location of that claim or site in the proper BLM office, a copy of the official record of the notice or certificate of location of that claim or site that was or will be filed under state law. * * *
>
> (b) The copy of the notice or certificates filed in accordance with paragraph (a) of this section shall be supplemented by the following additional information unless it is included in the copy:
>
> (1) The name or number of the claim or site, or both, if the claim or site has both;
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> (2) The name and current mailing address, if known, of the owner or owners of the claim or site;
>
> (3) The type of claim or site;
>
> (4) The date of location;
>
> (5) For all claims or sites a description shall be furnished.

Where there is a "failure to file the complete information required in § 3833.1-2(b)," regulation 43 C.F.R. § 3833.4(b) grants a claimant a 30-day opportunity to cure defects in his filings. That regulation provides that, if the information requested is not filed within 30 days of receipt of BLM's request, the claims are deemed abandoned by the owner.

Citing 43 C.F.R. § 3833.4(b), BLM argues that, as Christensen has not complied with BLM's request, he has abandoned his claims. However, despite strict application of statutory mining claim filing and fee requirements, the courts and the Board have always limited BLM's power to void a mining location to those situations actually addressed by statute or regulation. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Add-Ventures, Ltd., 95 IBLA 44, 47-48 (1986), vacated and remanded, Civ. No. A87-075 (D. Alaska Feb. 24, 1990); Dist. Ct. reversed, No. 90-35573 (9th Cir. May 15, 1991); 933 F.2d 1013 (unpublished); cert. denied, No. 91-277 (Nov. 12, 1991), 112 S.Ct. 416.

Thus, in Add-Ventures, where BLM issued a 30-day notice to claimant to provide a chain of title for his mining claim, the Board reversed a decision declaring the claims abandoned and void, noting that there was

no statutory or regulatory requirement that the claimant provide such documentation prior to application for patent. The Board held in that case:

> The regulatory procedure for dealing with curable defects which allows a claim to be declared invalid for failure to file requested information applies only when the information sought by BLM is required by regulation. It does not apply to other information BLM believes might be useful to its administration of mining claim records.

Add-Ventures, Inc., supra at 48.

The regulation at 43 C.F.R. § 3833.1-2(b)(3) provides that a locator describe the "type of claim or site." The issue of what will be a sufficient description of the "type of claim or site" for purposes of a location notice has not previously come before this Board. However, the regulations define an "[u]npatented mining claim as a lode mining claim or a placer mining claim." 43 C.F.R. § 3833.0-5. That same regulation provides definitions for mill sites and tunnel sites.

All three of Christensen's location notices indicate that the claims are located "upon a valuable placer mining deposit containing Wonderstone and associated locatable minerals and stone." This description is sufficient to meet the regulatory requirement that the claimant provide a description of the type of claim, and Appellants' claims cannot be declared "abandoned and void" simply because they did not amend their location notices to provide BLM with more specific information about the type of mineral located than the regulations require.

[2, 3] The issue in this case is not whether Appellants have abandoned their claims, but whether the claims are null and void ab initio, either in whole or in part, because they are located on lands withdrawn from mineral entry. See e.g., Ronald A. Pene, 147 IBLA 153, 157 (1999); Richard L. Goergen, 144 IBLA 293 (1998); William Douglas Wells, 141 IBLA 144 (1997); Lucian B. Vandegrift, 137 IBLA 308 (1997); Merrill G. Memmott, 100 IBLA 44 (1987).

Reference to the copy of the master title plats in the case file indicates that all of this land was included in the "interpretation withdrawal OS EO 5327," and hence was "withdrawn from lease or other disposal and reserved" pursuant to the terms of EO 5327 dated April 15, 1930. EO 5327 was issued pursuant to the authority of the Act of June 25, 1910 (Pickett Act), 43 U.S.C. § 141 (1970) (repealed, FLPMA, Pub. L. No. 94-579, § 704(a), 90 Stat. 2792), for the purpose of "investigation, examination, and classification" of lands in Colorado, Wyoming, and Utah containing oil shale. See Withdrawal of Oil Shale Lands–Executive Order of April 15, 1930 (Circular No. 1220), 53 I.D. 127 (1930). Section 2 of the Pickett Act, as amended, 43 U.S.C. § 142 (1970), provided that lands withdrawn for this purpose would still be open to "exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same

apply to metalliferous minerals." See Mineral Life Corp., 81 IBLA 103, 104 (1984); L.H. Grooms, 70 IBLA 228 (1983); Langdon H. Larwill, 54 I.D. 190 (1933).

By EO 10355, 17 Fed. Reg. 4831 (May 26, 1952), the President delegated to the Secretary of the Interior the authority, under the Pickett Act, supra, to temporarily withdraw lands for public purposes, including the authority to modify or revoke withdrawals and reservations previously made. See Thomas E. Gaynor, 24 IBLA 320, 322 (1976). 1/ Under authority of EO 10355, the Bureau published PLO 4522, 33 Fed. Reg. 14349 (Sept. 24, 1968), which precluded appropriation of metalliferous minerals in areas previously withdrawn from nonmetalliferous entry by EO 5327. Thus, subsequent to January 27, 1967, the date the application for withdrawal was noted to the records of the Utah land office, land containing oil shale deposits as described in PLO 4522 was closed to all mineral entry. Charles H. Phillips, 78 IBLA 320 (1984); Kelly B. Hall, 4 IBLA 329 (1972).

As pointed out by Appellants, 2/ the lands were subsequently affected by PLO 5157, 37 Fed. Reg. 3057 (Feb. 11, 1972), which amended PLO 4522 "to delete * * * [certain] described national forest lands." 37 Fed. Reg. 3057. See Harry J. Ayala, 99 IBLA 19 (1987). Among the national forest lands reopened to metalliferous entry were those embraced in Appellants' mining claims. The terms of PLO 5157, however, provided that, "This order does not otherwise change the status of the lands or their withdrawal for oil shale made by Executive Order No. 5327 of April 15, 1930 * * *." 37 Fed. Reg. at 3058. Thus, the situation remains that the lands on which Christensen's claims are located are closed to the location of nonmetalliferous minerals.

Christensen argues that EO 5327 was intended to be a "temporary" withdrawal for purposes of classifying oil shale deposits, and was never intended to effect a permanent closure of vast areas of the public lands to all forms of mineral location. Christensen challenges the geological basis for EO 5327 as it has been modified by later PLO's, and contends that in February 1979, through Organic Act Directive No. 79-23, the Associate Director of BLM recognized that EO 5327 and its progeny are overly broad, and "modified" EO 5327 to "open the lands to all forms of location * * * including the mining and mineral leasing laws," except for mineral locations occurring within or below the oil shale horizons. (Appellants' Response to Notice, 2-3, Ex. B. See n.2, supra.) On these grounds, Appellants argue that they should be granted a hearing to establish that their claims do not overlie or impinge upon oil shale deposits. However, we have held that the PLO 4522 withdrawal operates as a presumptive finding that

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1/ The Secretary's authority to make, modify, extend, or revoke withdrawals is now defined and limited by section 204 of FLPMA, 43 U.S.C. § 1714 (1994); see Richard Bargen, 117 IBLA 239, 241-42 (1991).

2/ Appellants' Response to Notice at 2. Christensen's statement of reasons (SOR) incorporates by reference this "Response to Notice" filed with BLM on Jan. 6, 1997, protesting BLM's December 1996 Notice. (SOR at 1.)

the land described therein contains deposits of oil shale. Mineral Life Corp., supra at 105.

When lands are withdrawn from entry under some or all of the public land laws, the withdrawal remains in effect until there is a formal revocation or modification published in the Federal Register. Harry E. McCarthy, 128 IBLA 36 (1993); Resource Associates of Alaska, 114 IBLA 216, 220 (1990); Harry Ayala, supra at 20-21. While Organic Act Directive No. 79-23 proposes to modify EO 5327 in just the fashion Appellants assert, this recommendation does not rise to the level of a "formal revocation published in the Federal Register." Appellants have provided us with no evidence tending to establish that a formal revocation occurred. As of October 9, 1996, no such revocation had been recorded on the master title plat. "When BLM records have been noted to reflect use of land exclusive of another conflicting use, no rights of entry incompatible with noted use may attach through subsequent entry, application, or use, until records have been changed to show that land is once again available for use and notation removed from records." Jerry Lease, 139 IBLA 332, 335-36 n.2; see Shiny Rock Mining Corporation v. United States, 825 F.2d 216 (9th Cir. 1987).

To the extent Appellants argue that EO 5327 should be modified or revoked, the Board has no authority to consider the merits of these arguments. As BLM has pointed out in its Answer at 2-3, while Congress has recognized that "withdrawals exist which should be modified or revoked, and [has] provided for withdrawal review," 43 U.S.C. § 1714(f) and (l) (1994), the Board has no authority to review, modify, or revoke a withdrawal. Withdrawals of lands may only be made, modified, extended, or revoked by the Secretary of the Interior or a delegate who is a Presidential appointee confirmed by the Senate. 43 U.S.C. § 1714 (a) (1994).

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 decision appealed from is affirmed as modified, Appellants' claims are declared null and void ab initio to the extent they are located for nonmetalliferous minerals, and Appellants' request for a fact finding hearing is denied.

James P. Terry
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge