NATURAL RESOURCES JOURNAL

Volume 24
Issue 1 *Winter 1984*

Winter 1984

Status of Mining Claims within the National Rivers of the United States

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STATUS OF MINING CLAIMS WITHIN THE NATIONAL RIVERS OF THE UNITED STATES

MINING LAW—MINING CLAIMS ON FEDERALLY OWNED LAND: The Eighth Circuit held that the establishment of the National Park system implicitly withdrew the land from mineral entry and location, thus invalidating plaintiff's mining claims. *Brown v. U.S. Department of Interior* 679 F.2d 747 (8th Cir. 1982).

INTRODUCTION

The Buffalo River in Arkansas was acquired by the United States under the Buffalo National River Act[1] on March 1, 1972. The river was given National River status for the purpose of preserving the undeveloped character of the river for recreational and historical reasons.[2]

In 1976, 101 mining claims located within the Buffalo National River area were filed by Mr. Tom Brown's predecessor in interest with the clerk of Marion County, Arkansas. These claims were conveyed to Mr. Brown, the plaintiff in this case, that same year. In 1978, the Eastern States Office of the Bureau of Land Management (BLM) informed Mr. Brown that his claims were null and void. Mr. Brown appealed the BLM's decision to the Interior Department's administrative court, the Interior Board of Land Appeals (IBLA). The IBLA affirmed the BLM's decision, finding that the river was part of the National Park System and was land acquired for a specific purpose.[3] Therefore, the river was not open to the location of mining claims, absent specific congressional authorization. Mr. Brown then filed a complaint for review in the U.S. District Court for the Western District of Arkansas.

The District Court used a test suggested by the 9th Circuit in *Rawls v. United States*[4] as grounds for dismissing Mr. Brown's complaint. The *Rawls* court had held that lands which were acquired for a specific purpose are exempt from mining claims because the lands were acquired by Congress for purposes that would be frustrated by their being subject to mineral claims. Applying the *Rawls* test of examining the suitability of

1. Pub. L. No. 92-237, 86 Stat. 44 (1972) (codified at 16 U.S.C. §§460m-8 thru 460m-12 (1976)).

2. The Buffalo River is located in north-central Arkansas.

A number of factors gave rise to the elevation in status of the river to a National River. Residential and commercial development on its banks is minimal, and the river is basically unchanged. There is a great variety of native flora and fauna, and the river itself has the highest free-leaping waterfall to be found between the southern Appalachians and the Rockies. The area also contains a number of sites of archeological value, and has high recreational potential. S. REP. NO. 130. 92d Cong., 2d Sess. 1, *reprinted in* 1972 U.S. CODE CONG. & AD. NEWS 1969.

3. Tom Brown, 38 I.B.L.A. 381 (1978).

4. 566 F.2d 1373 (9th Cir. 1978).

mining claims in light of the purpose of the acquisition, the District Court determined that although the Buffalo River was not a national park or monument, the areas involved were acquired for purposes which would be frustrated if mineral claims were allowed. The District Court, therefore, dismissed the complaint with prejudice.

Mr. Brown then appealed to the U.S. Court of Appeals for the Eighth Circuit. The Appeals Court agreed with the District Court on the result, but based their decision on the grounds that the establishment of the river as part of the National Park System implicitly withdrew the land from mineral entry and location, thus invalidating Mr. Brown's claims. The Appeals Court did not address the alternative ground relied on by the District Court that the land was exempt from the location of mining claims because it was land acquired for a specific purpose, rather than land given public domain status.[5]

STATUTORY BACKGROUND

The National Park Service was established in 1916 to promote and regulate federal areas created for the preservation of scenery, natural and historic objects, and wildlife ". . . by such means as will leave them unimpaired for the enjoyment of future generations."[6] The National Park Service governs the administration of the National Park System. The National Park System is defined as including "any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes."[7] The Buffalo River was given National River status in 1972, with the purpose of preserving the river's pristine, undeveloped character.[8] The river is administered by the Department of Interior under the National Park Service (as are other national rivers and national lake shores).

The conflict in this case is between the preservation of the river's pristine, undeveloped character and public accessibility to the land for mineral location. The conflict is between the Mining Claims Act of 1872[9] and the Wilderness Act of 1964.[10] The Mining Claims Act as amended

5. The classification of land as either public domain or acquired for a specific purpose is critical as public domain land has been viewed as being open to mineral entry and location. This view was promulgated statutorally in 1872 with the creation of the Mining Claims Act of 1872. Acquired lands, on the other hand, do not have the same accessibility to the public. However, the specific purpose ground required that the land be acquired by Congress.

6. Act of Aug. 25, 1916, Pub. L. No. 64-235, 39 Stat. 535.

7. 16 U.S.C. § 1c(a) (1976).

8. Pub. L. No. 92-237, 86 Stat. 44 (1972) (codified at 16 U.S.C. §§ 460m-8 thru 460m-13 (1976).

9. Ch. 159, 17 Stat. 91 (1872).

10. Pub. L. No. 88-577, 78 Stat. 890 (1964).

states that "Except as otherwise provided,[11] all valuable mineral deposits in lands belonging to the United States . . . are hereby declared to be free and open to exploration and purchase."[12] This promotes the policy of locating and developing our national resources, and of encouraging private enterprise in the process. This policy comes into direct conflict with the policy behind the Wilderness Act.

The Wilderness Act has been recognized as an acknowledgement by Congress of the ". . . necessity of preserving one factor of our natural environment from the progressive, destructive and hasty inroads of man . . ."[13] Wilderness is defined by Congress as ". . . an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain."[14] A wilderness area is to retain a primeval character, devoid of premanent improvements or human habitation, and may also contain other features of scientific, educational, scenic or historic value. Wilderness classification is the greatest degree of protection from mineral entry and location that Congress can give to an area.[15] Accordingly, mineral location and exploration practices are more severely restricted in areas administered by the National Park System and designated as wilderness, as compared to National Forest land. The National Forest lands are administered by the Office of the Secretary of Agriculture, which follows a multiple-use policy which makes for greater access to minerals.

One problem the Court of Appeals addressed in this case was whether a river which is declared a National River becomes a part of the National Park System, thereby coming under the umbrella of the more severe mining restrictions provided by that system. Mr. Brown argued that because the river is not a national park or a national monument, it is not

11. In 1920 Congress passed a law implementing a permit/leasing system of disposal for specified minerals on public land. As amended, the Mineral Leasing Act of 1920, ch. 85 § 1, 41 Stat. 437 (1920) provides that "deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semi-solid bitumen, and bitumenous rock . . . and lands containing such deposits owned by the United States . . . shall be subject to disposition in the form and manner provided by this act . . ." 30 U.S.C. § 181 (1976). Therefore, the minerals enumerated in the Mineral Leasing Act are no longer subject to disposal by location under the General Mining Law. Since the General Mining Law was no longer the exclusive statutory method of disposing of minerals on public lands after 1920, the words "except as otherwise provided" were added to the section of the United States Code now containing Section One of the 1872 statute 30 U.S.C. § 22 (1976).

12. 17 Stat. 91 § 1 (1872) (codified as amended at 30 U.S.C. § 22 (1976)). The Act was criticized in Cox, *Federal Mineral Policy: The General Mining Law of 1872,* 17 NAT. RES. J. 601 (1976).

13. Parker v. United States, 448 F.2d 793, 795 (10th Cir. 1971), *cert. denied,* 405 U.S. 989 (1972).

14. 78 Stat. 890, 891 (1964).

15. The Wilderness Act does extend mining laws applicable to national forest lands designated as wilderness areas, as administered by the Secretary of Agriculture, (until December 31, 1983). Such activies, however, must be carried out in a manner compatible with the preservation of the wilderness environment. 78 Stat. 890, 894 § 4(d), (1964).

to be considered a part of the National Park System. In support of his argument, Mr. Brown relied on the Mining Claims Act and the Wilderness Act. He claimed that the language of the Mining Claims Act implies that an express statement excluding public lands from mineral exploration is required in any congressional act setting aside land as a National River.[16] No such statement exists in the statutory language establishing the Buffalo National River. That statute does require, however, that the river be reviewed for suitability as a national wilderness area, as required by subsection 3(c) and 3(d) of the Wilderness Act.[17] Mr. Brown argued that since the Wilderness Act does not affect withdrawal of mineral exploration until 1983, claims may be asserted in wilderness areas before that date.[18]

ANALYSIS

The significance of the court's holding in *Brown* lies in the court's interpretation of the scope of the National Park System and the National Park Service, and the court's reliance on the legislative history of the Mining Activities Within the National Park System Area Act.[19] Section 1(c)(a) of the National Park Services Act defines the national park system.[20] This definition includes any area administered by the Secretary of the Interior for historic or recreational purposes. An examination of the statute creating the Buffalo National River reveals that the Secretary of the Interior is charged with administration of the river under the National Park Services Act,[21] "[f]or the purposes of conserving and interpreting an area containing unique scenic and scientific features, and preserving as a free-flowing stream an important segment of the Buffalo River in Arkansas for the benefit and enjoyment of present and future generations."[22] The legislative history of the Act also indicates that Congress intended to acquire land for historical and recreational purposes.[23]

The Mining Activities Within the National Park Systems Areas Act repealed the provisions of six organic acts allowing mining claims within

16. The Act states that "all valuable mineral deposits in lands belonging to the United States are hereby declared to be free and open to exploration and purchase . . ." 17 Stat. 91 (1872).

17. The Secretary of the Interior "shall review every roadless area . . . under his jurisdiction . . . as to the suitability or non-suitability of each such area . . . for preservation as wilderness." Both the Secretaries of the Interior and Agriculture are also required to provide public notice and hearings before they recommend an area for preservation. 78 Stat. 890, 891–893 (1964).

18. *See, supra* note 16.

19. Pub. L. No. 94-429, 90 Stat. 1342 (1976).

20. 16 U.S.C. § 1(c)(a) (1976) states: "The 'national park system' shall include any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes."

21. 16 U.S.C. § 460m-12 (1976).

22. 16 U.S.C. § 460m-8 (1976).

23. S. REP. NO. 130, *supra* note 2.

the national park system areas.[24] The legislative history of the Act points out that not one of the more than 100 new additions to the System since the 1950s was established subject to mineral entry. Also, the few areas which were classified as open to mineral entry required specific legislation to that effect.[25]

The court determined that the Buffalo River was within the National Park System and, therefore, entitled to protection designed to leave the area unimpaired for future generations. This purpose, said the court, implies that mineral entry and exploration is not allowed. Mr. Brown's argument regarding the potential wilderness status of the river and the possibility of asserting claims in wilderness areas before December 31, 1983, was quickly disposed of by the court. The National Wilderness Preservation System Act states that the right to mineral entry is preserved in national forest lands administered by the Secretary of Agriculture.[26] The court determined that the Buffalo River was not national forest land and was not administered by the Secretary of Agriculture. Therefore, the provision allowing mineral entry and location in wilderness areas did not apply to the Buffalo River.

The court disposed of Mr. Brown's Mining Claims Act argument in the same summary fashion. In doing so, the Court relied on *Oklahoma v. Texas*,[27] *Thompson v. United States*,[28] and *Rawson v. United States*.[29] *Oklahoma v. Texas* concerned a controversy over title to the south half of the riverbed of the Red River. The Red River is the boundary between Oklahoma and Texas and also happens to have oil-rich sections. The issue in that case was whether the oil-rich section of the riverbed was subject to location and acquisition under the mining laws. The claimants wishing to undertake mineral exploration relied on statutory language which stated that all mineral deposits on U.S.-owned land were open for exploration and purchase.[30] The Supreme Court of the United States in *Oklahoma v. Texas* responded that when the section relied on by the claimants was read with due regard for the entire statute, ". . . it is apparent that, while embracing only lands owned by the United States, it does not embrace all that are so owned."[31] The Supreme Court held that the Mining Claims

24. Pub. L. No. 94-429, § 2, 90 Stat. 1342 (1976).

25. H. REP. NO. 1428, 94th Cong., 2d Sess., *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS 2487, 2489, 2493.

26. Pub. L. No. 88-577, § 3, 78 Stat. 890, 893 (1964) (codified at 16 U.S.C. § 1133(d)(3) (1976). ". . . the United States mining laws . . . shall . . . extend to those national forest lands designated by this Act as 'wilderness areas'; subject, however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture. . . ."

27. 258 U.S. 574 (1921).

28. 308 F.2d 628 (9th Cir. 1962).

29. 225 F.2d 855 (9th Cir. 1955).

30. 17 Stat. 91 (1872).

31. 258 U.S. at 600.

Act applied only to public lands held for disposal under specific laws. The Act never applied where the government directed disposal of land under other laws such as the homestead and townsite laws.[32] As the riverbed was not land held for disposal under the land laws, it was not subject to acquisition under the mining laws.

The issue in *Rawson v. United States*[33] was whether land purchased by the United States for a specific purpose was open to exploration under the general mining laws. Prior to mineral location, the government purchased the land in question for the purpose of retiring submarginal land from agricultural use, preventing soil erosion, protecting watersheds, and conserving wildlife. The *Rawson* court held that mineral entry may be made only on public lands subject to entry, sale, or other disposal pursuant to general law and that "patent lands reacquired by the United States are not by mere force of the reacquisition restored to public domain."[34] As such, the *Rawson* court said that the land was not subject to mineral entry because it was not part of the public domain and because it was land acquired for a specific purpose. In the language of the court, the land was an area ". . . which it could not rationally be argued remain open to location and exploration under the mineral laws," an area similar to "parks, national monuments and the like."[35]

The land in *Thompson v. United States*[36] was acquired by the government as a donation for the specific purpose of encouraging forestry practices for the benefit of the general public. The *Thompson* court found that this was land acquired for a specific purpose, and was not land which was part of the original public domain. The court, therefore, held that recognition of mining claims would be wholly inconsistent with the purpose of the acquisition.

All three cases involved land acquired by the government for specific puposes which remove it from mineral entry, absent contrary legislation. The Eighth Circuit in *Brown v. U.S. Department of Interior,*[37] however, decided not to address the "specific purpose" doctrine and its possible application to this case. The land in this case was acquired by the government for the specific purpose of preserving its "pristine character," among other reasons. Presumably mining would frustrate this specific purpose. It is because of the "specific purpose" that the District Court held for the Department of the Interior. To hold otherwise and allow

32. The part of the riverbed in question was made part of the territory of Oklahoma in 1890. Congress at this time had indicated that the land in that territory be disposed of only under the homestead and townsite laws. Act of May 2, 1890, ch. 182, 26 Stat. 81 (1890). These laws provided for the transfer of acreage for the establishment of a homestead (after 5 years) or a townsite.

33. 225 F.2d 855 (9th Cir. 1955).

34. *Id.* at 858.

35. *Id.*

36. 308 F.2d 628 (9th Cir. 1962).

37. 679 F.2d 747 (8th Cir. 1982).

mineral entry would frustrate congressional intent to preserve the undeveloped character of the Buffalo River.

The Appeals Court, however, based its analysis not on the "specific purpose" doctrine but on a construction of congressional intent, using the National Park System/National Park Service approach. This approach uses two prongs: 1) Is the land within the scope of the National Park Service? and 2) Has mineral entry been affirmatively granted? This test is inferred from the fact that when Congress has desired to make lands open to mineral entry, it specifically so states in the establishing act or through a separate specific act of Congress.[38] The Eighth Circuit Court held then that Mr. Brown's claims were invalid because the Buffalo River is part of the National Park System and the act creating the Buffalo River did not specifically open the river for mineral exploration.

CONCLUSION

The Appellate Court reached its result based on proper statutory interpretation. However, the court refused the opportunity to expand on the "specific purpose" doctrine. At worst, the court's refusal to apply the specific purpose doctrine can be viewed as a rejection of the doctrine as the higher court chose to agree with the District Court in the result, but disagreed with the District Court on the best path to that result. Under these circumstances, the 8th Circuit opinion may be viewed as confusing the issue of future mineral exploration within the National Park System. This confusion may weaken the usefulness of the doctrine as a powerful legislative and judicial tool.[39]

Increased reliance on non-renewable resources, be it for aesthetic value or economic gain, stresses the importance of an orderly progression in policy concerning mineral exploration within our national parks and wilderness areas. This case provided an excellent opportunity for the Eighth Circuit Court of Appeals to further that policy. Whether the court has advanced that policy or simply muddied the waters remains to be seen.

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38. The court concluded that when Congress has desired to make lands within an area of the National Park System open to mineral entry, the establishing act specifically so states. *Id.* at 750. *See* 16 U.S.C. § 94 (1976) (Mount Rainer National Park); 16 U.S.C. § 127 (1976) (Crater Lake National Park); 16 U.S.C. § 252 (1976) (Olympic National Park; and 16 U.S.C. § 350(a) (repealed 1976) (Mount Kinley National Park). Also, the National Park Systems Areas Act. Pub. L. No. 94-429, § 2, 90 Stat. 1342 (1976) repealed the provisions of six organic acts allowing mining claims in National Park Systems areas.

39. The Court of Appeals also had the opportunity to clarify the policy differences between the Department of Interior and the Department of Agriculture regarding land use. This "missed opportunity" is more understandable, however, as once the Appeals Court had determined that the Buffalo River was part of the National Park System, it is arguable whether there was any need for the court to examine any policy inconsistencies between the two departments.