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*F. 6 Obtained from Hall Susce at PAX BLM, Nov 72
Refers to Yellow Hammer area in Growler Pass.*



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

P. O. Box 1042
Santa Fe, New Mexico 87501

March 31, 1967

4/4/67

Mr. R. W. Ludden, Jr.
Helps Dodge Corporation
Drawer 1217
Douglas, Arizona 85607

Regarding: Mining Upon Acquired Lands in Organ Pipe
Cactus National Monument, Arizona

Dear Mr. Ludden:

In your December 14, 1966 letter to Mr. Daniel P. Beard, Regional Director, Southwest Region, National Park Service, it was requested that your office be furnished citations to Federal statutes or opinions and decisions supporting the position that acquired lands within Organ Pipe Cactus National Monument are not open to mining under the mining laws of 1872. Because of the legal nature of your request, Mr. Beard has requested my cooperation.

Briefly, the general mining laws of 1872 (R.S. sec. 2319; 30 U.S.C. sec. 22), are applicable to "all valuable mineral deposits in lands belonging to the United States." A literal interpretation of the language would seemingly include not only public but also acquired lands, as well as lands upon which the National Capitol, post offices, etc. have been constructed; however, the courts have considered the law in its entirety and have not so literally construed the language set out above. Oklahoma v. Texas, 258 U. S. 574, 599 (1922). Historically, and prior to the Act of October 27, 1941 (55 Stat. 745; 16 U.S.C. sec. 450z), the mining laws have been not applicable to acquired lands. See Rawson v. United States, 255 F. 2d 855 (9th Cir. 1955), cert. den. 350 U. S. 934 (1956).

The 1941 act extended the mining laws only to "mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States." (Emphasis supplied.) The 1941 act extended the mining laws only to such deposits as would have been locatable except for their inclusion within the boundaries of the Monument, i.e., deposits within public lands withdrawn for the Monument. The National Park Service obtained such legal determination prior to authorizing use of appropriated funds for the acquisitions.

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Your concern in this matter is appreciated. Please advise this office if we may be of further assistance.

Yours truly,

/s/ Gayle E. Manges

Gayle E. Manges
Field Solicitor, Santa Fe

cc:

Regional Director, Southwest Region, NFS

bc:

Associate Solicitor, Division of Parks & Recreation

Regional Solicitor, Denver

✓ Field Solicitor, Phoenix



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

Room 410, Arizona Title Building Annex
135 North 2nd Avenue
Phoenix, Arizona 85003

March 9, 1967

Memorandum

To: Manager, Arizona Land Office
From: Field Solicitor
Subject: Status of Reconveyed Land in the Organ Pipe National Monument

In response to your memorandum of December 3 concerning whether certain acquired lands in the Organ Pipe National Monument are open to mineral entry, I am enclosing copies of memorandums on this subject written by members of the Solicitor's Office in Washington and Santa Fe. These memorandums all conclude that acquired lands within the Organ Pipe National Monument are not open to mineral entry. I have no reason to disagree with this conclusion.

Your file is returned.

L. K. Luoma

Encls.
File returned

cc: Regional Solicitor, Los Angeles

*Conf. copy given to LEX by Holl Swire
V.S. Blm PHX Nov 72*

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

P. O. Box 1042
Santa Fe, New Mexico 87501

March 6, 1967
3/8/67

Memorandum

To: Regional Director, Southwest Region, National Park Service

From: Field Solicitor, Santa Fe

Subject: Mining on Acquired Lands - Organ Pipe Cactus
National Monument, Arizona

My opinion was requested as to the status of the minerals in two tracts of land purchased by the United States within the boundaries of Organ Pipe Cactus National Monument, Arizona. By deeds dated September 29, 1956 and April 3, 1957, the United States purchased certain mining claims patented on January 15, 1913 by the United States under the mining laws.

The files concerning the acquisition have been obtained from Records Center and WASO and indicate that prior to the acquisition of the claims the problem was presented to the Solicitor's Office as to whether the patented claims would become subject to the mining laws if acquired.

On August 8, 1955, Associate Solicitor Ferriott, by the Acting Associate Solicitor for Public Lands, issued a memorandum opinion that the Act of October 27, 1941 (58 Stat. 745, 16 U.S.C. Section 450z) did not extend the mining laws to acquired lands within the Monument. By memorandum dated February 27, 1967, Associate Solicitor Meyer concurred in the opinion. The basis of the memoranda was that the 1941 act extended the mining laws only to such lands as were open for mining prior to the 1941 act, i.e., public, not acquired lands. Copies of the memoranda are enclosed.

At the Superintendents' Conference next week we can discuss the reply to Phelps Dodge and the procedure to follow so that the acquired lands

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may be cleared of existing claims. It would prove helpful if the Superintendent of Organ Pipe has a map indicating all claims located upon the acquired lands.

s/ Gayle E. Mangas.

Gayle E. Mangas
Field Solicitor, Santa Fe

In duplicate

Enclosures

cc:

Associate Solicitor, Parks and Recreation

Regional Solicitor, Denver

✓ Field Solicitor, Phoenix, w/copies of enclosures



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

B-67-2019.18

FEB 27 1967

Mar. 8, 1967

Air Mail

Memorandum

To: Field Solicitor, Santa Fe, New Mexico
From: Associate Solicitor, Parks and Recreation

Subject: Mining on Acquired Lands--Organ Pipe Cactus National Monument

This is in reply to your memorandums of February 2 and February 8, 1967, regarding the applicability of the mining laws to acquired lands within the subject monument. As we understand the factual situation, the National Park Service in 1956 and 1957 acquired 26 patented mining claims for approximately \$26,000. Your memorandums indicate that the Phelps Dodge Corporation has located numerous mining claims on these acquired lands and their attorneys are of the opinion that the acquired lands are subject to the mining laws. Apparently the attorneys for Phelps Dodge interpret the provisions of the act of October 27, 1941, 55 Stat. 745, 16 U.S.C. 450z (1964) as extending the mining laws to acquired lands.

Your office requested copies of any previous opinions on this subject. We enclose an opinion of the Acting Associate Solicitor for Public Lands dated August 8, 1955, which states that the mining laws are inapplicable to acquired lands within the monument. We concur in this view. By the provisions of the 1941 statute Congress only extended the mining laws to the monument to the same extent as they are applicable to other public lands. Since the mining laws only apply to public lands, as distinguished from acquired lands, it follows that the mining laws would be inapplicable to acquired lands within the monument. See Rawson v. United States, 225 F. 2d 855 (1955), cert. den. 350 U.S. 934 (1956).

Bernard R. Meyer

Bernard R. Meyer
Associate Solicitor
Parks and Recreation

Enclosures

cc: Regional Solicitor, Denver, Colorado, w/c of enclosures

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UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D. C.

AUG 8 1955

Memorandum

To: Acting Assistant Solicitor, National Parks
Through Associate Solicitor Edwards

From: Associate Solicitor Parriott

Subject: Mining claims on acquired land in Organ Pipe National
Monument, Arizona

You have asked for my comments on two matters:

(1) Whether the Act of October 27, 1941 (55 Stat. 745; 16 U. S. C., 1952 ed., sec. 450z), which provides that all mineral deposits in the Organ Pipe National Monument subject to location, entry and patent under the mining laws shall be, exclusive of the lands containing them, subject to disposal under those laws, applies to acquired lands, and

(2) If it is concluded that the law applies should 43 CFR 185.330 be amended to except such lands from location?

The answer to the second question necessarily would have to be in the negative since if the law applies there is no authority to exclude the lands from its operation. Regulations may interpret but they cannot change the law or prevent its operation under its plain terms.

However, in my opinion there is no basis for saying that the 1941 law extends the mining laws to acquired lands. The law applies only to "mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States." It is possible, of course, to give this language a narrow construction and to say that it refers to the types of minerals to which the mining laws apply whether or not they occur in lands then or previously subject to location. But it is to be remembered that the mining laws are part of the body of public land laws which have never been held to extend

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to other than public lands, at least in the absence of explicit and express language so extending them. Oklahoma v. Texas, 253 U. S. 574, 599. "It is a well-established principle of law that where a statute sets up a general scheme for the administration of a given field, subsequent and more particular statutes will not readily be construed to enact a departure from the general scheme." United States v. Barnes, 222 U. S. 513; Automatic Registering Machine Company v. Fine County, 285 Pac. 1034; Hone Camers Loan Corporation, (Opinion of Solicitor) 54 I. D. 324. Historic examples of the application of this rule are the practice under the Mining Law of May 10, 1872 (17 Stat. 91; 30 U. S. C. sec. 22), and the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. sec. 181). You will note that both acts in terms apply to "lands belonging to the United States" without qualification. Yet as to the former see Oklahoma v. Texas, supra, and as to the latter see 40 Op. Atty. Gen. 9 and 34 Op. Atty. Gen. 171. In the Attorney General's opinion reported in Vol. 40, he rejects the Interior Department Solicitor's argument that the Mineral Leasing Act applies to acquired lands.

If the Court and the Attorney General were unwilling to concede that the broad language in the two general laws providing for mineral disposal should be literally construed, I am sure that neither would hold that Congress intended in a special act of extremely limited application to extend the mining laws beyond their established range.

In this view your efforts to distinguish 60 I.D. 299 would be immaterial since it is apparent that that decision was predicated upon the same line of reasoning as led to the decision and opinions discussed above.

E. A. Bradlow
Acting Associate Solicitor
for Public Lands

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D. C.

July 29, 1955

(Enclosure)
3/6/67

Memorandum

To: Associate Solicitor, Public Lands
Through: Associate Solicitor Edwards

From: Acting Assistant Solicitor, National Parks

Subject: Mining Claims in Organ Pipe Cactus National Monument,
Arizona

There is attached a memorandum of July 15, 1955, to the Director of the National Park Service from the Regional Chief, Division of Cooperative Activities, Region Three, Santa Fe, New Mexico, in which a question is raised as to whether, upon their purchase by the United States, certain patented mining claims, 22 in number, within Organ Pipe Cactus National Monument, would be reopened to prospecting and mining under the act of October 27, 1941 (55 Stat. 745; 16 U.S.C., 1952 ed., sec. 450z), which provides:

"That within the Organ Pipe Cactus National Monument in Arizona all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws, with right to occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior."

The regulations issued pursuant to the act of August 27, 1941, supra, are found in 43 CFR 185.33h--185.33o. Section 185.33o provides:

"Lands containing certain features not subject to location. Lands containing springs, wells, water holes, other sources of water supply, monument headquarters, and recreation areas not subject to location."

It is true, as pointed out in the memorandum of July 15, that the Department has held that the term "public lands" generally does not include lands acquired by the United States from private

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ownership. 60 I. D. 299. However, upon acquisition of the mining claims, the lands would become a part of Organ Pipe Cactus National Monument since they are situated within the exterior boundaries of the area which, subject to existing rights, was reserved and set apart by Proclamation No. 2232 of April 13, 1937 (50 Stat. 1827), for national monument purposes. It would seem to follow that, unless the lands were within one of the areas excepted from mining location under the regulations, mineral deposits therein would become subject to disposal as provided by the October 27, 1941, act. We would appreciate your views in this regard.

It will be noted also that the National Park Service suggests the possibility of amending Section 185.330 of the regulations by adding to the excepted areas "lands acquired by purchase, condemnation, or exchange." Your comments regarding this suggestion would also be appreciated.

Julian H. Golden
Julian H. Golden
Acting Assistant Solicitor
National Parks

Attachment

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