

WASHINGTON PROSPECTORS MINING ASSOCIATION

IBLA 96-316

Decided July 16, 1996

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring a placer mining claim null and void ab initio. ORMC 148778.

Affirmed; petition for stay denied as moot.

1. Claims: Lands Subject to—Federal Land Exchange Facilitation Act of 1988:
Generally—Withdrawals and Reservations: Effect of

The notation on the public land records of the Department of the Interior of an offer to exchange lands under the Federal Land Exchange Facilitation Act of 1988, 43 U.S.C. § 1716 (1994), segregates the land so noted from all forms of appropriation under the mining laws for a period not to exceed 5 years. A mining claim located while the segregation is still in effect is null and void ab initio and affords the locator no rights.

2. Administrative Authority: Estoppel—Estoppel

While situations may arise where the Government can be estopped because a private party, acting in reliance upon Governmental conduct, was prevented from securing a right which might have been obtained, the Government can never be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance.

APPEARANCES: David Hoff, President, Washington Prospectors Mining Association, Seattle, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Washington Prospectors Mining Association (WPMA) has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 21, 1996, declaring the Big Four placer mining claim (ORMC 148778), which had been located within the NE $\frac{1}{4}$ sec. 28, T. 29 N., R. 8 E., Willamette Meridian, on February 18, 1995, null and void ab initio. The

decision noted that the land within the claim had been previously segregated from appropriation under the mining laws pursuant to the December 7, 1994, filing of an exchange application (OR 51517W) involving the Mt. Baker and Snoqualmie National Forests and the Washington State Department of Natural Resources, which included the subject land. WPMA duly appealed this determination. Together with its notice of appeal, WPMA filed a petition seeking a stay in the effectiveness of the decision during the pendency of the Board's consideration of the matter. For reasons set forth below, we hereby deny the request for stay and affirm the decision under review.

In its submission to the Board, WPMA advances various legal arguments asserting, *inter alia*, that the decision constitutes an illegal taking of its property rights and that, since BLM permitted the recordation of the claim, it is precluded from now attacking its validity. WPMA further alleges that many individuals joined their association because of this claim and that its invalidity might cause these individuals to seek refunds of "membership dues." As we shall explain, these allegations are insufficient, as a matter of law, to justify reversal of the decision of the Oregon State Office.

[1] The exchange in question is being pursued pursuant to the provisions of sections 3 and 9 of the Federal Land Exchange Facilitation Act of 1988, 102 Stat. 1086, 1087, 1092, as amended, 43 U.S.C. § 1716 (1994). Insofar as the instant appeal is concerned, the relevant section of that Act, 43 U.S.C. § 1716 (i)(1) (1994), provides:

Upon receipt of an offer to exchange lands or interests in lands pursuant to this Act or other applicable laws, at the request of the head of the department or agency having jurisdiction over the lands involved, the Secretary of the Interior may temporarily segregate the Federal lands under consideration for exchange from appropriation under the mining laws. Such temporary segregation may only be made for a period not to exceed five years. Upon a decision not to proceed with the exchange or the deletion of any particular parcel from the exchange offer, the Federal lands involved or deleted shall be promptly restored to their former status under the mining laws. Any segregation pursuant to this paragraph shall be subject to valid existing rights as of the date of such segregation.

A review of the exchange case file (OR 51517W) shows that, after receipt on December 7, 1994, of the Forest Service request that the Department segregate the lands involved in its exchange negotiations, including, *inter alia*, the NE¼ sec. 28, T. 29 N., R. 8 E., Willamette Meridian, the Master Title Plat (MTP) was duly noted of the pending exchange on December 12, 1994. Under the provisions of the Federal Land Exchange Facilitation Act of 1988, *supra*, as well as the applicable regulations, 43 CFR 2202.1(b), the notation of the application upon the MTP served to segregate the land from any subsequent appropriation under

the mining laws. While this segregation is limited to a maximum duration of 5 years (see 43 CFR 2202.1(d)(3)), it was clearly in effect when the subject claim was located on February 18, 1995.

It is well-settled that a claim located on land not available for appropriation is null and void ab initio and that such a location affords no rights, whatsoever, to the land included within the claim limits.

See, e.g., Shiny Rock Mining Corp. v. United States, 825 F.2d 216, 219 (9th Cir. 1987); United States v. Smith Christian Mining Enterprises, Inc., 537 F. Supp. 57, 61 (D. Or. 1981); Shama Minerals, 119 IBLA 152, 154 (1991). Since appellant acquired no rights by its location, there can be no taking under the fifth amendment.

Similarly, the fact that BLM originally serialized the claim when it was submitted for recordation, while unfortunate, affords the appellant no substantive rights. The applicable regulation, 43 CFR 3833.5(f), expressly advises claimants that:

Failure of the government to notify an owner upon his filing or recordation of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

[2] Estoppel against the Government will not lie where the effect of such an estoppel is to afford an individual rights not authorized by law. See, e.g., Ptarmigan Co., 91 IBLA 113 (1986), aff'd sub nom. Bolt v. United States, 944 F.2d 603 (9th Cir. 1991). Since Congress expressly provided that the notation of the exchange application would segregate the land from operation of the mining laws, appellant can acquire no rights by the failure of BLM employees to immediately inform it that the claim was null and void ab initio. As noted above, the public land records were duly noted. The failure of appellant or its agents to examine the public records or to apprehend the consequences of the notation found thereon prior to locating the Big Four claim must be laid at appellant's door, since it ultimately bears the responsibility of assuring that the land included within its locations is, in fact, open to mineral entry. See Shama Minerals, supra.

The decision of the Oregon State Office was clearly correct and must be affirmed. We note, however, that, consistent with 43 CFR 3833.1-1, BLM has indicated its intent to refund both the location fee and the maintenance fee upon completion of the appeals process. In light of our disposition of the substantive issues raised herein, the petition for stay is denied as moot.

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.

James L. Burski
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

