

NATIONAL CEMENT COMPANY OF CALIFORNIA

IBLA 2001-41

Decided December 31, 2001

Appeal from a decision of the California State Office, Bureau of Land Management, declaring notice of intent to locate mining claims null and void ab initio. CACA 42386.

Affirmed as modified.

1. Exchanges of Land: Generally--Federal Land Exchange Facilitation Act of 1988: Generally--Mining Claims: Lands Subject to

The notation on the public land records of the Department of the Interior of a proposal to exchange lands under the Federal Land Exchange Facilitation Act of 1988, as amended, 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.

2. Act of December 29, 1916--Mining Claims: Location--Mining Claims: Notice of Intent to Locate--Mining Claims: Special Acts--Stock-Raising Homesteads: Notice of Intent to Locate Mining Claims

When lands are segregated from entry under the mining laws, such a segregation attaches to the mineral estate of lands patented under the Stock Raising Homestead Act, which are included within the lands described in the segregation, and although it has no effect on mining claims covering part of that mineral estate, if those claims are forfeited by operation of law for failure to pay the maintenance fees while the segregation is still effective, the segregation automatically becomes effective, eo instanti, as to the mineral estate covered by those claims, thus closing it to future mineral entry for the period of the segregation. A notice of intent to locate mining claims on such mineral lands, filed while the segregation is still effective, must be rejected.

APPEARANCES: James E. Good, Esq., San Bernardino, California, for National Cement Company of California; State Director, California State Office, Bureau of Land Management, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

National Cement Company of California (National) has appealed the September 30, 2000, decision of the California State Office, Bureau of Land Management (BLM), declaring National's notice of intent to locate (NOITL) mining claims (CACA 42386) null and void ab initio because the lands identified in the notice had been segregated from appropriation under the mining laws as part of a proposed land exchange. 1/

On September 19, 2000, National filed a NOITL mining claims pursuant to the Stock-Raising Homestead Act of 1916, as amended, 43 U.S.C. § 299(b)(2)(1994), signifying its intention to locate claims on approximately 85 acres of Federal mineral estate within the SE¹/₄SW¹/₄, lot 5, and the W¹/₂ lot 4, sec. 22, T. 9 N., R. 18 W., San Bernardino Meridian, Kern County, California. These lands had previously been embraced by five placer mining claims owned by National which had been declared forfeited and null and void when National failed to pay the \$100 per claim maintenance fee required by 30 U.S.C. § 28f (Supp. IV 1998) on or before September 1, 2000.

At the time National filed its notice, the lands identified therein were among the lands segregated from location under the mining laws by the June 21, 1999, notation on the public land records of the proposed Tejon Creek land exchange (CA 39350FD). The notation had been precipitated by a June 16, 1999, memorandum from the Bakersfield Field Office, BLM, requesting that the California State Director make the notation on the appropriate public land records. 2/ In accordance with 43 CFR 2201.1-2(a), the notation segregated the lands included within the proposed exchange from appropriation under the public land laws and mineral laws for a period of 5 years, but did not affect National's then extant placer claims which were valid existing rights specifically exempted from the segregation by the regulation.

In its decision, BLM noted that the mineral estate within the lands identified in the notice had been determined to be suitable for disposal by exchange and had been included in proposed land exchange CA 39350FD. BLM

1/ BLM has requested that the Board expedite review of this appeal because of time deadlines affecting an entity assisting in the land exchange. We grant BLM's request and now decide the merits of the appeal. National has requested a hearing before the Board. Because we find that the issues have been adequately addressed in the appeal submissions before us and no disputed material facts warranting a hearing under 43 CFR 4.415 exist, we deny National's request.

2/ Although not part of the official case file forwarded to the Board by BLM, a copy of the June 16, 1999, memorandum was appended to National's appeal submission as Exhibit B.

explained that, in accordance with 43 CFR 2201.1-2, a June 21, 1999, notation on the public land records had segregated the described mineral estate from appropriation under the mining laws for a period of 5 years from the date of the notation. Because the mineral estate was closed to location and entry of mining claims on June 21, 1999, and remained closed on September 19, 2000, when National filed its notice, BLM declared the notice null and void ab initio.

On appeal, National argues that it had a pre-existing right in the area at the time of the segregation through its then existing placer claims and that, but for the segregation, it would have relocated the claims after their nullification and revalidated its property rights. Given these circumstances, National maintains that the Board should recognize its inchoate right to relocate the claims as a matter of equity, especially since, at the time of the segregation, limestone from its placer claims was an integral component of the cement produced at its plant located approximately three miles south of the mining area.

National also attacks the validity of the segregation, asserting that it conflicts with statutory and regulatory authority and with the Caliente Resource Management Plan (RMP). Specifically, National contends that, pursuant to 43 U.S.C. § 1716(i)(1994) and 43 CFR Subpart 2201, there must be a proposal involving specific lands and interests in land in order to initiate a segregation. National claims that the Tejon Creek land exchange arose, not from a specific proposal, but from generic language in the overview of the BLM land exchange process found in the Caliente RMP.

While admitting that its own omissions led to the forfeiture of its placer claims, National nevertheless insists that the segregation was inequitable because it based on a "vague request" by the Bakersfield Field Office. (Statement of Reasons at 4.) National insists that such a request should not preclude its relocation of the claims. In National's opinion, the segregation was significant action taken without notice or consideration of the impacts that action would have on National's operations and the viability of its cement plant. National asserts that equity and justice demand that the Board grant its appeal and vacate BLM's decision.

In response, BLM explains that the Tejon Creek land exchange arose from the provision of the 1997 Caliente RMP directing that all mineral estate lands under BLM's jurisdiction be considered potentially suitable for disposal through exchange or sale. BLM states that it proposed the exchange pursuant to 43 CFR 2201.1(a) and, on June 19, 1999, segregated the Federal mineral estate lands for a 5-year period pursuant to 43 CFR 2201.1-2(b). BLM notes that the segregation had no effect on National's five placer claims at that time because they were valid existing rights, but asserts that when National lost the claims due to failure to pay the requisite maintenance fees, the segregation prevented National from relocating the claims on the subject land.

BLM contends that the segregation's effect on National's operations is irrelevant since the lands were lawfully segregated and points out that not only does National have an alternate quarry site on nearby private

lands, but it will also have the opportunity to acquire the mineral estate through the exchange process. BLM asserts that the segregation fully complied with statutory and regulatory authority since the Bakersfield Field Office properly proposed the exchange and 43 CFR 2201.1-2 specifically sanctions the segregation of lands by notation. BLM maintains that the segregation was lawfully imposed and serves the public interest and thus is not inequitable. Since National lost its placer claims through its own inaction, BLM submits that making an exception and allowing National to relocate its claims despite the segregation would be unfair to others whose forfeited claims cannot be relocated due to the closure of the lands to mineral entry.

[1] Section 3(a) of the Federal Land Exchange Facilitation Act of 1988, amended section 206 of the Federal Land Policy and Management Act of 1976, by adding a new subsection (i)(1), which 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 of not to exceed five years. Upon a decision not to proceed with the exchange or upon 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.

Under 43 CFR 2201.1(a), "[e]xchanges may be proposed by the Bureau of Land Management or by any person, State, or local government." When such a proposal is made, 43 CFR 2201.1-2(a) provides that the BLM authorized officer may direct the appropriate State office to segregate the lands by notation on the public records. Such a segregation is subject to valid existing rights and segregates the land from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of notation. *Id.*; see Tri-Star Holdings, Ltd., 153 IBLA 201, 203 (2000); John D. Bernt, 147 IBLA 352, 354 (1999); Washington Prospectors Mining Association, 136 IBLA 128, 129-30 (1996). Any interests of the United States in the non-Federal lands covered by the exchange proposal may be segregated from appropriation under the mineral laws for the same period. 43 CFR 2201.1-2(b).

[2] In this case, the record shows that, based on a land exchange proposal properly initiated by the Bakersfield Field Office in accordance with 43 CFR 2201.1(a), the lands covered by that proposal, including the mineral estate in question, were segregated from entry under the mining laws by notation on the public land records on June 21, 1999. While that segregation had no effect on National's claims at that time, when the claims were forfeited by operation of law on September 1, 2000, for failure

to pay the maintenance fees, the segregation automatically became effective, eo instanti, as to the mineral estate covered by those claims, thus closing it to future mineral entry for the period of the segregation. See Richard L. Goergen, 144 IBLA 293, 297 (1998). Thus, National acquired no rights to the mineral estate within the lands described in its notice because at the time it was filed, that mineral estate was segregated from appropriation under the mining laws.

Although National attacks the validity of the segregation, the law has long been clear that, to assure fairness to the general public, a segregation notation on the public land records bars mining entries until the notation is either corrected or superceded, regardless of whether the underlying segregation was erroneous or otherwise unlawful. Kosanke v. U.S. Department of the Interior, 144 F.3d 873, 877 (D.C. Cir. 1998); John J. Schnabel, 90 IBLA 147, 149-150 (1985); Northwest Exploration, Inc. (On Judicial Remand), 89 IBLA 189, 191-93 (1985); B.J. Toohy, 88 IBLA 66, 78-82, 85, 92 I.D. 317, 324-26, 328 (1985). National's assertion that its earlier placer claims somehow entitle it to relocate those claims, despite the segregation, similarly fails because whatever rights National had under the earlier claims were lost when the claims were declared forfeited and null and void. See, e.g., John J. Schnabel, 90 IBLA at 151 n.4.

In this case, BLM declared the notice null and void ab initio. The regulations provide at 43 CFR 3833.1-2(d)(4): "Upon acceptance of a notice of intent by the authorized officer, the notice of intent will be entered upon the official land status records of the Bureau of Land Management." Thus, the regulations contemplate an acceptance or rejection of the notice. Therefore, the proper action to take when the mineral estate covered by a notice of intent to locate is unavailable for mineral entry is to reject the notice, and we modify BLM's decision accordingly.

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 as modified.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge