PILOT PLANT, INC., ET AL.

IBLA 2003-111 Decided March 16, 2006

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. NMC 832557 through NMC 832559.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Exchanges--Federal Land Policy and Management Act of 1976: Withdrawals--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Lands--Public Records--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Temporary Withdrawals

   The segregative effect of a proposed land exchange automatically terminates 5 years from the date the segregation is noted on the public land records, but the termination does not instantly restore the lands to the operation of public land laws, including the mining laws. To effectuate the opening of lands to the operation of the public land laws requires a change in the status of the lands noted on the public land records. Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening, and any such attempted appropriation vests no rights against the United States. 43 CFR 2091.1(b). An opening order may be issued at any time, but is required when the opening date is not specified in the document creating the segregation. 43 CFR 2091.07(b).

2. Federal Land Policy and Management Act of 1976: Exchanges--Federal Land Policy and Management Act of 1976: Withdrawals--Mining Claims: Lands Subject to--Mining Claims:

Withdrawn Lands--Public Records--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Temporary Withdrawals

Under the notation rule, mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. The land is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired. 43 CFR 2091.1(b).

3. Estoppel

Reliance on the oral statements of a BLM employee will not support a claim of estoppel. To successfully invoke estoppel, a party must show detrimental reliance on an official written decision or a crucial misstatement or concealment of material facts. Estoppel will not be allowed where to do so would result in a party obtaining rights to which he is not entitled by law.

APPEARANCES: K. Ian Matheson, Henderson, Nevada, for appellants; John W. Steiger, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Pilot Plant, Inc. (Pilot), et al., have appealed the December 20, 2002, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the Mijo 16 2002 and Mijo 17 2002 association placer and the Mijo 18 2002 placer mining claims (NMC 832557 through NMC 832559) (Mijo 2002 claims), situated in sec. 14, T. 23 N., R. 63 E., Mount Diablo Meridian (MDM), Clark County, Nevada, null and void ab initio because they were located on lands segregated from location under the mining laws for land exchange purposes. By order dated October 29, 2003, the Board denied Pilot's petition for a stay of BLM's decision pending appeal. [1/]

[1/] The notice of appeal was filed on Jan. 17, 2003. Pilot, Kiminco Inc., Pass Minerals Inc. (PMI), Debra L. Matheson, Kenneth R. Matheson, Michael I. Matheson, Michael (continued...)

A brief recitation of the history of the status of the affected lands is crucial to understanding the issues raised in this appeal. On July 7, 1997, the Las Vegas (Nevada) Field Office (LVFO) of BLM requested that the Nevada State Office segregate approximately 116,612.41 acres of public land, including sec. 14, T. 23 N., R. 63 E., MDM, for exchange purposes. See Statement of Reasons (SOR), Ex. 2. The request noted that the segregation should be for a period not to exceed 5 years, citing 43 CFR 2201.1-2. The State Office posted the segregation, serialized as N-61855, on the Master Title Plat (MTP) and the Historical Index (HI) on July 23, 1997. [2/] See June 30, 2003, Update to SOR, Ex. 2. [3/]

[1/] (...continued)
Anderson, and Farrell Drozd located the Mijo 16 2002 and Mijo 17 2002 claims (collectively, Pilot). The shareholders of PMI are Pilot, Kiminco, and a defunct company called Pure Air. The shareholders of Kiminco are Matheson, his wife, Debra Matheson, and Pilot. The shareholders of Pilot are Debra Matheson's three children. United States v. Pass Minerals, Inc., 168 IBLA 115, 118 n.1 (2006). At the time the appeal was filed, K. Ian Matheson was the president of Pilot, Kiminco, and PMI, According to a letter to BLM dated Feb. 13, 2003, Anderson is the secretary of Pilot and Drozd is its treasurer. However, that letter also averred that K. Ian Matheson was no longer an officer of Pilot.

Pilot, Debra L. Matheson, PVS Minerals Inc. (PVS), Kiminco, Silver Mesa Mining Inc. (Silver Mesa), PVB Metals Inc. (PVB), PMI, and PVH Placers Inc. (PVH) located the Mijo 18 2002 claim. BLM's decision declared all three claims null and void ab initio, and was addressed to only the co-locators of the Mijo 16 2002 and Mijo 17 2002 claims. The notice of appeal was filed by K. Ian Matheson as president of Pilot, PMI, and Kiminco. Nothing in the record demonstrates or explains the relationship between appellants and PVS, Silver Mesa, PVB, or PVH, shows that those entities joined in the appeal, or shows that any of these appellants are authorized to represent PVS, Silver Mesa, PVB, and PVH before the Department. See 43 CFR 1.3. BLM's decision is therefore final as to PVS, Silver Mesa, PVB and PVH. Klamath Siskiyou Wildlands Center, 157 IBLA 332, 336 (2002); Resource Associates of Alaska, 114 IBLA 216, 218-19 (1990).

[2/] The official *public lands records* consists of the Tract Books, MTP's, and HI's, or automated representations thereof, maintained by BLM on which the status and availability of the public lands is recorded. 43 CFR 2091.0-5(e).

[3/] According to a 1999 Mineral Report, Serial No. 63126, at 3, the land embraced by the Mijos 2002 claims had previously been segregated from mineral entry on June 6, 1994, by order number N-58331. (June 2003 Update to SOR, Ex. 7.) Since that segregation did not expire until June 6, 1999, it appears that the land included in the Mijos 2002 claims was already segregated when the July 23, 1997, segregation was (continued...)

On July 2, 2002, the LVFO asked the Nevada State Office to segregate approximately 85,727.65 acres of land from appropriation under the general mining laws. See June 30, 2003, Update to SOR, Ex. 6. The lands identified incorporated both lands which had been previously segregated under N-61855, including sec. 14, T. 23 N., R. 63 E., MDM, which the LVFO stated was due to expire on July 7, 2002, and lands which had not previously been segregated. Id. The State Office posted this segregation, also denominated N-61855, on the MTP and HI on July 8, 2002. See June 2003 Update to SOR, Exs. 2 and 6.

Pilot located the Mijo 2002 claims on July 24, 2002. [4/] The claims embrace approximately 360 acres of land described as the W½W½NE¼, NW¼, and SW¼, sec. 14, T. 23 N., R. 63 E., MDM. In its December 20, 2002, decision, BLM advised Pilot that, in accordance with 43 CFR 2201.1-2(a), the lands encompassed by the claims had been segregated from mineral location for exchange purposes on July 8, 2002, under serial number N-61855. Accordingly, BLM declared the claims null and void ab initio. (Decision at 1-2.)

On appeal Pilot contends that, in accordance with 43 CFR 2201.1-2(a), the segregation requested on July 7, 1997, and noted on the public land records on July 23, 1997, as N-61855 segregated the land in sec. 14, T. 23 N., R. 63 E., MDM, for a period not to exceed 5 years, and that the July 8, 2002, segregation extends the 1997 segregation for an additional 5-year period, for a total of 10 years, in violation of the regulatory 5-year maximum segregation period. (SOR at 12.) Pilot asserts that it knew that the original segregation ended 5 years from July 23, 1997, because it had reviewed BLM's July 7, 1997, letter requesting the segregation with the notations indicating that the segregation related to N-61855 had been posted in the MTP and HI on July 23, 1997; the HI showing the date of the action and the date posted as July 23, 1997; and the mineral report stating that the segregation would expire 5 years from July 27, 1997. (June 2003 Update to SOR at 7, citing the attached Exs. 1, 2, and 7.) Pilot avers that it intended to locate claims on the land once the segregation expired and use the work it had performed on that land during the segregation period to establish a discovery on

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[3/] (...continued)
posted on the MTP and HI.

[4/] These claims are located over the Mijo 16 and Mijo 17 association placer claims located in 1983, which were determined to be invalid for lack of discovery by Administrative Law Judge Harvey Sweitzer in a May 8, 2003, decision styled United States v. Pass Minerals, et al., N-66052. See BLM Answer at 2-3. The appeal of that decision was docketed as IBLA 2003-268. The Board denied the petition for stay filed in that appeal. The Board recently affirmed Judge Sweitzer's decision. United States v. Pass Minerals, 168 IBLA 115. As a consequence, the claims located in 1983 are no longer extant.

the newly located claims. Id. at 7-8. Pilot states that, in accordance with its plan, it located the Mijo 2002 claims in the early morning of July 24, 2002, the day after the segregative effect of N-61855 automatically terminated under 43 CFR 2201.1-2(c)(3). (June 2003 Update to SOR at 9.)

Pilot acknowledges that the 2002 segregation was noted on the MTP and HI on July 8, 2002, and segregates the lands not previously included in the 1997 segregation for a 5-year period from that date, but insists the 2002 segregation could not legally extend the segregation period for the lands subject to the 1997 segregation which, by regulation, automatically terminated on July 23, 2002. Id. at 9-10. Pilot maintains that the 1997 segregation had to terminate before the land could again be segregated and that, therefore, the July 8 through July 23, 2002, overlap between the 1997 segregation and the 2002 segregation renders the 2002 segregation an invalid extension of the original segregation period. Id. at 10.

Pilot contends that BLM attempted to rectify its error and eliminate the overlap when it converted its official records from microfiche to computer in December 2002 by retroactively altering the date of action for the 1997 segregation on the HI from July 23, 1997, to July 7, 1997. Id. at 10-11, comparing attached Exs. 2 and 10. Since this alteration purportedly occurred after the location of the Mijo 2002 claims on July 24, 2002, Pilot argues that it properly located those claims on lands automatically freed from the 5-year segregation period that began on July 23, 1997. Id. at 11.

In its Answer, [5/] BLM contends that the record clearly demonstrates that the current segregation was noted on the MTP when the Mijo 2002 claims were located, citing Pilot's admission that the segregating effect of N-61855 was noted on the MTP when its agent inspected the MTP on July 24, 2002, shortly after staking the claims; the copies of the HI attached to the June 2003 Update to SOR as Exs. 2 and 10; the notations on the Las Vegas Field Office July 2, 2002, letter requesting the segregation; and the serial register for N-61855. (Answer at 3-4.) BLM maintains that, under the notation rule, regardless of whether the 2002 segregation was unlawful or expired, the fact that the lands embraced by the Mijo 2002 claims were shown on BLM's official public land records to be segregated from mineral requires that the claims be held to be null and void ab initio. Id. at 4-5.

Even if the validity of the 2002 segregation were subject to Board review, BLM argues that Pilot's challenge would be untimely because Pilot did not appeal within

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[5/] Although BLM did not initially file an answer in this appeal, the Board asked BLM to respond to Pilot's arguments, especially the argument that the segregative effect of N-61855, by regulation, could not extend beyond 5 years from July 23, 1997. See July 17, 2003, Order at 2.

30 days of discovering the segregation, which, BLM submits, occurred on July 24, 2002, when Pilot's agent inspected the MTP. Id. at 5-6. In any event, BLM contends that Pilot has failed to show that the current segregation is unlawful. BLM notes that the 2002 segregation was not simply an extension of the 1997 segregation, but arose from a separate request and was a discrete, independent action covering different lands, even though it also includes the lands containing the Mijo claims. Relying on that fact, BLM adds that Pilot has cited no authority, nor is BLM aware of any, that prevents two sequential segregations of the same lands, each of which expires in 5 years. Id. at 6. According to BLM, its retention of the N-61855 serial number for the 2002 segregation is a matter of administrative convenience that is not dispositive, because at most it constitutes harmless error. Id. at 6 n.3.

BLM agrees that the 1997 segregation expired before Pilot located the Mijo 2002 claims, but points out that the location occurred after the 2002 segregation became effective and was duly noted on the public land records. BLM argues that the change in the action date for the 1997 segregation is immaterial because the determination that the claims are null and void was based on the 2002 segregation, not the 1997 segregation. According to BLM, that change was made to reflect the date of the letter requesting the segregation (Date of Action), as opposed to the date of record notation (Posting Date), and therefore was not improper. Id. at 7-8.

In reply, Pilot denies that the MTP was posted with the 2002 segregation, insisting that the notation referencing N-61855 on the MTP referred to the 1997 segregation, not the 2002 segregation, a conclusion bolstered by the fact that the MTP was unchanged from April 2002, when Pilot received a copy indicating the last posting was on March 28, 2002 (Reply, Ex. 1), until May 21, 2003, when it received a copy stating that the last posting was on May 8, 2003 (Reply, Ex. 2). (Reply at 2.) Pilot contends that the notation rule does not dictate the fate of the Mijo 2002 claims because that rule does not apply to segregations in Nevada under 43 CFR 2201.1-2, citing the Nevada State Office policy of not issuing an opening order when a segregation expires. Since, according to Pilot, Nevada BLM policy is not to note in the records that a property is no longer segregated, Pilot avers that applying the notation rule would allow a single 5-year segregation to last forever, contrary to law and public policy. (Reply at 3.)

Pilot disputes BLM's characterization of the 2002 segregation as a discrete independent action, arguing that if it were discrete and independent, it should have had a different segregation number posted to the MTP. While acknowledging that the 2002 segregation included additional lands, Pilot contends that it also included all the

lands originally segregated under N-61855. [6/] Id. at 4, 9. Pilot further contends that, although the regulations require notification to all authorized users of lands to be segregated, BLM did not notify it of the 2002 segregation, an omission which undermines BLM's assertion that the 2002 segregation was a discrete and independent action. Id. at 5. Pilot adds that the use of the same serial number for both the 1997 and 2002 segregations was not simply a matter of convenience, but an action that failed to provide the public with effective notice of the 2002 segregation, because no new segregation number was posted on the MTP to alert the public that a new segregation had occurred. Id.

Pilot also argues that its appeal was timely because it was not adversely affected until BLM issued the challenged December 2002 decision; that by definition a second segregation cannot be made without the first segregation terminating and the land is "taken back into the body from which it has been separated;" and that BLM's official records at the time of location of the Mijo 2002 claims indicated that the 1997 segregation had expired and that the lands were open for location. Id. at 6-7. Finally Pilot avers that the United States is equitably estopped from amending the MTP and other official records retroactively. Pilot submits that it relied on erroneous advice from BLM employees who purportedly informed it on two separate occasions that no changes had been posted on the MTP and on an official reproduction of the MTP, notarized by a BLM employee, obtained at 9 AM on July 24, 2002, which contained no posting evincing a second segregation. Pilot further asserts that the MTP itself was defective because the 2002 segregation had not been posted on that plat. Id. at 7-8.

In response, BLM contends that, regardless of Pilot's confusion over the use of the same serial number for the two segregations, the fact remains that the MTP was noted with a segregation on the date the Mijo 2002 claims were located, and any such confusion could have been avoided by reference to the HI, which clearly showed the 2002 segregation. (BLM Response at 2.) Since the MTP, HI, and other relevant documents plainly showed the lands as subject to the 2002 segregation, BLM maintains that it was required to find the claims null and void under the notation rule. Id. Pilot's contention that the notation rule does not apply in Nevada does not undermine this result, BLM submits, because, although an opening order is not issued when a

[6/] The 2002 segregation embraced less acreage than the 1997 segregation and undisputedly included lands not segregated in 1997.

segregation expires, [7] even if BLM policy was to issue such an order, none would have been issued here, given the posting of the 2002 segregation. Id. at 3.

Finally, BLM disputes Pilot's assertion that BLM is equitably estopped from amending the MTP and other official records retroactively. BLM further maintains that the notarization of the official reproduction of the MTP simply verified that the MTP was a copy of a document on file; that the alleged oral assurances of BLM employees cannot estop BLM from finding the claims null and void ab initio; and that the record contains no evidence demonstrating the employees had examined all the relevant records or had assured Pilot Plant that there had not been a new segregation. Id. at 3-4.

Section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1716 (i) (2000), establishes the segregative effect of proposed land exchanges:

> (1) 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 5 years. * * *

Departmental regulation 43 CFR 2201.1-2(a) amplifies this statutory provision, providing that

> [i]f a proposal is made to exchange Federal lands, the authorized officer may direct the appropriate State Office of [BLM] to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

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[7] BLM explains that the Nevada State Office practice with respect to an expired segregation is to add an entry to the HI indicating the expiration and to remove the segregation's notation on the MTP, but that, given its limited personnel, the Nevada State Office generally updates records to show the expiration of a segregation only when notified of the expiration by the responsible field office. Id. at 3 n.2.

The regulations also specify that the segregative effect terminates, inter alia, "[a]utomatically, at the end of the segregation period not to exceed 5 years from the date of notation of the public land records." 43 CFR 2201.1-2(c)(3). [8/]

Thus, under section 206(i)(1) of FLPMA and 43 CFR 2201.1-2(a), Federal lands subject to a proposed exchange are segregated from entry under the mining laws when BLM notes on the public records that the lands are included in the exchange. The effect of this segregation is to preclude the location of mining claims, and mining claims located on segregated lands closed to mineral entry are null and void ab initio. Michael L. Carver, 163 IBLA 77, 80 (2004); William H. Shepherd, 157 IBLA 134, 136 (2002); Shiny Rock Mining Corp., 75 IBLA 136, 138 (1983). This longstanding rule prevents Federal lands subject to an exchange proposal from becoming encumbered with mining claims while the exchange is being considered and acted upon. Michael L. Carver, 163 IBLA at 80; William H. Shepherd, 157 IBLA at 136.

We need not reach questions challenging the legality of the 2002 segregation, because we must affirm BLM's decision based on the notation rule, which controls regardless of whether the 2002 segregation was proper.

[1] It is clear from Pilot's line of argument that it fails to distinguish between the termination of the segregative effect of a proposed land exchange, restoration of proposal lands to the operation of the public land laws, and the effect of the notation rule. Though obviously closely related, they are not the same. A segregation is effected by noting the official public lands records. The regulations in 43 CFR Subpart 2091–Segregation and Opening of Lands, state the general principle that "segregated lands are not available for application, selection, sale, location, entry, claim or settlement under the public land laws, including the mining laws, but may be open to the operation of the discretionary mineral leasing laws, and the material disposal laws and the Geothermal Steam Act [30 U.S.C. §§ 1001-1025 (2000)], if so specified in the document that segregates the lands." 43 CFR 2091.07(a).

With respect to land exchanges, Subpart 2091 provides that if a land exchange is proposed, "such lands may be segregated by a notation on the public land records for a period not to exceed 5 years from the date of notation. (See 43 CFR 2201.1-2 and 36 CFR 254.6.)" 43 CFR 2091.3-1(a). Regulation 43 CFR 2091.3-2 further provides:

[8/] Because 43 CFR 2201.1-2(a) and (c)(3) clearly set the date of record notation, not the date of the action, as the point when the segregation period commences, the change in the HI's action date for the 1997 segregation would not affect the date that segregation expired under the regulation.

> (a) If a proposal or an application described in § 2091.3-1 of this part is not denied, modified, or otherwise terminated prior to the end of the segregative periods set out in § 2091.3-1 of this part, the segregative effect of the proposal or application automatically terminates upon the occurrence of either of the following events, whichever occurs first:
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> (1) Issuance of a patent or other document of conveyance to the affected lands; or
>
> (2) The expiration of the applicable segregation period set out in § 2091.1-3 of this part.
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> (b) If the proposal or application described in § 2091.3 of this part is denied, modified, or otherwise terminated prior to the end of the segregation periods, the lands shall be opened promptly by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening. * * *

(Emphasis added.)

Subpart 2201 establishes the requirements more specifically applicable to land exchanges, and these mirror the principles of Subpart 2091:

> (a) If a proposal is made to exchange Federal lands, the authorized officer may direct the appropriate State Office * * * to segregate the Federal lands by a notation of the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.
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> * * * * * * *
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> (c) The segregative effect shall terminate upon the occurrence of any of the following events, whichever occurs first:
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> (1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;
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> (2) On the date and time specified in an opening order, such order to be promptly issued and published by the appropriate State Office * * * , if a decision is made not to proceed with the exchange or upon removal of any lands from an exchange proposal; or
>
> (3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation of the public land records.

43 CFR 2201.1-2 (emphasis added).

Pilot plainly errs in concluding that, upon automatic termination the lands are restored instantly to the operation of public land laws. In 43 CFR 2091.1(b), BLM has expressly addressed action on applications and mining claims on segregated lands: "Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening. Any such attempted appropriation * * * vests no rights against the United States." (Emphasis added.)

To be restored to the operation of the public land laws may require an opening order. An *opening order* is an "order issued by the Secretary or the authorized officer and published in the FEDERAL REGISTER that describes the lands, the extent to which they are restored to operation of the public land laws and the mineral laws, and the date and time they are available for application, selection, sale, location, entry, claim or settlement under those laws." 43 CFR 2091.0-5(g). Opening orders "may be issued at any time[,] but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date." 43 CFR 2091.07(b). In this case, no date was specified in the 1997 request to segregate the lands and none was noted on the MTP, and there is the question of whether the change in lands and acreage constitutes a modification of the proposal or application within the meaning of 43 CFR 2091.3-2(b). It thus appears that the regulations, if not the circumstances of this appeal, would require an opening order if and when the exchange lands are ever restored to the operation of the public land laws.

[2] In addition to, and regardless of, the possible requirement of an opening order, however, the change in status of public lands must be noted on the official public land records to effectuate restoration. Under the notation rule, if BLM's public lands records have been noted to reflect that public land is not open to entry under the public land laws, that land is not available for entry until the notation is removed and the land is restored to entry, even if the original notation was made in error. John Koldjeski, 166 IBLA 128, 129 (2005); Michael L. Carver, 163 IBLA at 77; William Dunn, 157 IBLA 347, 353 (2002), and cases cited.

> Pursuant to that rule, if a notation on the public land records indicates that land is closed to entry, the land is closed to entry even if the notation was erroneously made, or the segregative effect is void, voidable, or has terminated or expired. B. J. Toohey, 88 IBLA 66, 77-81, 92 I.D. 317, 324-26 (1985), aff'd sub nom. Cavanagh v. Hodel, No. 86-041 Civil (D. Alaska (Mar. 18. 1988)); Shiny Rock Mining Corp., 75 IBLA 136, 138 (1983). The notation rule is founded on the concept of providing fair notice to the general public of the availability of public domain lands and so to give to all the public an equal opportunity to file entries or mining claims. See Margaret L. Klatt, 23 IBLA 59, 63 (1975). Thus, a party checking public

> land records is entitled to rely on a notation that lands are not available so that no other party will be able to enter those lands. The rule is described as "the salutary rule that land segregated from the public domain, whether by patent, reservation, entry, selection, or otherwise, is not subject to settlement or any other form of appropriation until its restoration is noted upon the records of the local land office." California & Oregon Land Co. v. Hulen, 46 L.D. 55, 56 (1917); see also B. J. Toohey, 88 IBLA at 77-85, 92 I.D. at 324-28. [9/]
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> [9/] We are aware that the Board has in the past declined to apply the notation rule in certain limited circumstances, where Congress has expressly established a date by which a withdrawal or its segregative effect is to expire (see Richard Bargen, 117 IBLA 239, 243 (1991); John J. Schnabel, 90 IBLA 147, 150 (1985); David Cavanagh, 89 IBLA 285, 300-02, 92 I.D. 564, 573 (1985) (aff'd Civ. No. A86-041 (D. Alaska (Mar. 18, 1988)); and B. J. Toohey, 88 IBLA at 96-97, 92 I.D. at 335), or where a segregation is noted on the public land records beyond a Congressionally-imposed expiration for that segregation (see Phelps Dodge Corp., 115 IBLA 214, 217 (1990)). The present case does not present such circumstances.

Michael L. Carver, 163 IBLA at 84; see also Kosanke v. U.S. Department of the Interior, 144 F.3d 873, 876-77 (D.C. Cir. 1998); Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261, 263 (1983).

The record in this appeal clearly demonstrates that segregation N-61855 was noted on the MTP when Pilot located the Mijo 2002 claims, and Pilot does not argue otherwise. Instead, Pilot maintains that the reference to N-61855 on the MTP referred to the 1997 segregation, which automatically expired on July 23, 2002, not the 2002 segregation. Whether the notation reflected the 1997 segregation or the 2002 segregation is ultimately irrelevant, however, because the crucial fact is that, on July 24, 2002, the MTP contained the notation that a segregation had closed public lands in sec. 14, T. 23 N., R. 63 E., MDM, to appropriation under the general mining laws. The notation's existence on the MTP and on the HI, in and of itself, thwarted Pilot's attempted location of the Mijo 2002 claims, the very action the notation rule was designed to prevent, regardless of whether the notation accurately represented the status of the lands. See D. Stone Davis d/b/a Daisy Trading Co., 155 IBLA 133, 135 (2001); Margaret L. Klatt, 23 IBLA at 63-64. Accordingly, we modify BLM's decision to reflect the applicability of the notation rule to this case. Since the claims were located on land closed to mineral entry and conferred no rights on Pilot, they were properly declared null and void ab initio. See, e.g., James Aubert, 164 IBLA 297, 298 (2005);

William Dunn, 157 IBLA at 357; D. Stone Davis d/b/a Daisy Trading Co., 155 IBLA at 136.

[3] Pilot seeks to avoid this result by asserting that BLM is equitably estopped from relying on the 2002 segregation to support the invalidation of the claims. The estoppel is based on Pilot's argument on alleged oral assurances by BLM employees that no new segregations or other notations had been placed on the public land records for sec. 14, T. 23 N., R. 63 E., MDM, and on the certified copy of the MTP for that section which, while still showing the notation for segregation N-61855, lacked any new notations affecting the section.

The Board has repeatedly held that, to invoke estoppel, a party must show detrimental reliance on a written decision issued by an authorized officer, Continental Land Resources, 162 IBLA 1, 6 (2004); Bill Wegener, 150 IBLA 128, 134 (1999), or a crucial misrepresentation and/or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703-04 (9th Cir. 1978); Continental Land Resources, 162 IBLA at 6; Mineral Hill Venture, 155 IBLA 323, 329 (2001). Oral statements made by a BLM employee do not suffice to support a claim of estoppel. William H. Shepherd, 157 IBLA at 137-38; Mineral Hill Venture, 155 IBLA at 330. Additionally, estoppel cannot result in a party obtaining rights to which he is not entitled by law. See, e.g., William H. Shepherd, 157 IBLA at 138.

The MTP, rather than supporting the claimed estoppel, actually undermines that argument because, as discussed above, the MTP undisputedly contained a notation of a segregation closing sec. 14 to appropriation under the mining laws on the date the claims were located. Pilot's reliance on the oral assurances of BLM employees, even if proven, therefore cannot not estop BLM from finding the Mijo 2002 claims null and void ab initio, because doing so would enable Pilot to obtain rights that are contrary to law.

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 herein.

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T. Britt Price
Administrative Judge

I concur:

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Will A. Irwin
Administrative Judge