



WOLFRAM JACK MINING CORPORATION

176 IBLA 183

December 10, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

WOLFRAM JACK MINING CORPORATION

IBLA 2008-128, 129, & 156

Decided December 10, 2008

Appeal from decisions of the Nevada State Office, Bureau of Land Management, declaring mining claims null and void *ab initio*. NMC 964474 to 964590, NMC 964366 to 964473.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Withdrawals--Withdrawals and Reservations: Authority to Make--Withdrawals and Reservations: Revocation and Restoration

Section 204(j) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714(j) (2000), provides that the Secretary “shall not make, modify, or revoke any withdrawal created by Act of Congress.” Lands are closed to entry or appropriation when Congress declares them withdrawn by statute, the legal effect of which does not depend upon BLM’s promptness in noting the withdrawal in the public land records.

2. Administrative Authority: Estoppel--Estoppel

Although estoppel may lie if reliance on BLM’s written statements deprived an individual of a right which he could have acquired, it does not lie if the effect of such action would be to grant an interest not authorized by law. Reliance upon information or the opinion of an officer, agent, or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

APPEARANCES: Edward L. Devenyns, Vice President of Lands and Corporate Development, Reno, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Wolfram Jack Mining Corporation (Wolfram) has appealed three March 4, 2008, decisions of the Nevada State Office, Bureau of Land Management (BLM), declaring numerous mining claims¹ in three Townships within White Pine County, Nevada, null and void *ab initio* because they were located on lands that were withdrawn² from mineral entry.

After identifying the sections and township in which Wolfram's claims are situated, the decision in IBLA 2008-128 states simply that those lands were transferred from the Department of Agriculture, U.S. Forest Service (Forest Service), to BLM pursuant to Pub. L. No. 109-432, and when enacted on December 20, 2006, "the described lands either became part of a Withdrawal Area or the Highland Ridge Wilderness Area. Lands within the Withdrawal Area and Wilderness Area are not

¹ The mining claims involved in IBLA 2008-128 are the TG #1, #41 through 44, and #117, respectively serialized as NMC 964475 through 964514, NMC 964517 through 964590, and NMC 964474. They were located in secs. 8-10, 15-17, 20-22, and 28-29, T. 12 N., R. 68 E., Mt. Diablo Meridian (MDM), on June 30 and July 2, 2007. The mining claims involved in IBLA 2008-129 are the TB #1 through #108, serialized as NMC 964366 through 964473, located in secs. 9-10, 15-16, 21-22, and 27-28, T. 11 N., R. 68 E., MDM, on June 17-19, 2007. The mining claims involved in IBLA 2008-156 are the TF 1 through 27, serialized as NMC 967988 through 968014; TF 29 through 36, serialized as NMC 968016 through 968023; TF 38 through TF 54, NMC 968025 through 968041; TF 56 through TF 72, NMC 968043 through 968059; TF 74 through TF 90, NMC 968061 through 968077; and TF 92 through TF 108, NMC 968079 through 968095, located in White Pine County, Nevada, in secs. 17-20, 27-29, 32-33, T. 13 N., R. 68 E., MDM, on Sept. 9, 2007.

² *Withdrawal* means

withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, *as amended* (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1702(j) (2000); *see also* 43 C.F.R. § 2300.0-5(h).

open to entry and location under the general mining laws.” Decision in IBLA 2008-128 at 1.

After listing the sections and township in which Wolfram’s claims are situated, the decision in IBLA 2008-129 briefly states that on December 20, 2006, Pub. L. No. 109-432 transferred the land from the Forest Service to BLM, and that lands within the Withdrawal Area are withdrawn from all forms of:

1. entry, appropriation, or disposal under the public land laws;
2. location, entry and patent under the mining laws;
3. operation of the mineral laws, geothermal leasing laws, and mineral materials laws.

Decision in IBLA 2008-129 at 1. In addition, both decisions state that, “[i]n accordance with the regulations at 43 CFR 3830.91(8)(b) you will forfeit your mining claim/site if you locate your mining claim/site on lands closed to mineral entry at the time you locate it.” Decisions in IBLA 2008-128 and 129 at 1.³

The decision in IBLA 2008-156 states that the mining claims are located on lands transferred from the Forest Service to BLM pursuant to Pub. L. No. 109-432, and when enacted on December 20, 2006, those lands became part of a Withdrawal Area. Decision in IBLA 2008-156 at 1. Additionally, however, the decision states that the land in sec. 27, T. 13 N., R. 68 E., MDM, is within the Great Basin National Park, which is withdrawn from entry and location under the mining laws. *Id.* The decision in IBLA 2008-156 contained no forfeiture language.

³ The correct citation is 43 C.F.R. § 3830.91(b), which answers the question “What happens if I fail to comply with these regulations?” The regulation describes the effect of locating a mining claim on lands closed to mineral entry as a *forfeiture*. In fact, a forfeiture is in the nature of a penalty or punishment and entails the loss or destruction of a right as a result of fault, nonperformance of a condition or obligation, error, or breach. In contrast, a thing or act that is *null and void ab initio*, or from the beginning, is of no legal force or binding effect, and thus no right or entitlement arises which could thereafter be lost or forfeited. See definitions of *ab initio*, *forfeit*, *null*, *void*, Black’s Law Dictionary (Rev. 4th Ed. 1968). Nonetheless, BLM has defined the concepts as if they were synonymous. See 43 C.F.R. § 3830.5, definition of *forfeit* or *forfeiture*.

All three of the decisions advised Wolfram that a refund of location and initial claim maintenance fees would be authorized when the appeal period expired. Wolfram timely appealed.

On appeal, Wolfram states that its agent, Dave Rowe, is a registered land surveyor with more than 30 years of experience in locating mining claims, and that Rowe researched the official records of BLM's Nevada State Office to determine the status of the lands at issue. Wolfram avers that, prior to locating its claims, those "records clearly indicated that the lands were open to location and were managed by the United States Forest Service." Notice of Appeal and Statement of Reasons (NA/SOR) at 1. Wolfram further states that a second records search was conducted, and that it obtained certified copies of the Master Title Plats (MTPs) and Historical Indices (HIs), copies of which were submitted to the Board as Ex. C to the NA/SOR. Wolfram argues that these records show that the surface is managed by the Forest Service, and that the Federal mineral estate is open to entry.

Wolfram alleges that unidentified BLM personnel were contacted after the decisions were received, that BLM followed its usual procedure of submitting location notices to the "adjudication department" for review in light of BLM's "internal records" to "insure the lands on which the claims were located are in fact open to entry at the time of location," and as a result, that BLM also determined that the subject lands are open to mineral entry. NA/SOR at 2. Wolfram surmises that

[t]he BLM decisions [sic] letter apparently was generated as a result of BLM personnel becoming aware that the Tax Relief and Health Care Act of 2006 contained language potentially affecting the subject lands. The BLM personnel had not previously received a copy of the Act nor were they aware it contained any language regarding the land status of these public lands. Certainly the name of the Act would not provide any indication!

Id. Wolfram moves the Board to reverse the decisions on three basic grounds: first, neither Wolfram's efforts to research the land records before locating the claims nor BLM's subsequent review of Wolfram's mining claims disclosed a withdrawal; second, if an order opening withdrawn lands to entry must be noted on the land records to be effective, it reasonably follows that a notation on the public land records should be required for a withdrawal to be effective; and third, the public is entitled to rely on public lands records, and where such records are inaccurate or not reliable, "the expense for inaccurate records should not be the burden of the public." *Id.* at 2-3.

Discussion

The administrative records in these appeals include copies of the MTPs Wolfram submitted in reduced form as Ex. C to its SOR, but none includes copies of the relevant HIs. The MTP for T. 12 N., R. 68 E., MDM (in IBLA 2008-128), has no date showing when it was last updated; the MTPs for Ts. 11 and 13 N., R. 68 E., MDM (in IBLA 2008-129 and 2008-156) indicate they are current to September 20, 2007. We visited BLM's website at www.blm.gov to consult the public land records database (LR2000) and confirmed that the MTPs and HIs were last updated on September 27, 2008, slightly more than a year after Wolfram's mining claims were located, to show that the subject lands are withdrawn from entry and appropriation.

The MTPs included in IBLA 2008-128 and 2008-156 show that lands in Ts. 12 and 13 N., R. 68 E., MDM, were withdrawn as a result of two separate withdrawals (which adjoin each other along the eastern boundary of one and the western boundary of the other). One withdrawal resulted from Pub. L. No. 99-565, 100 Stat. 3181 (Oct. 27, 1986), the Great Basin National Park Act of 1986, codified at 16 U.S.C. §§ 410mm-1 to 410mm-3 (2000). The other withdrawal was effected by Public Land Order (PLO) No. 1487 abolishing the Nevada National Forest (NF) and transferring its lands to and consolidating them with the Humboldt and Toiyabe NFs.⁴ The MTP in IBLA 2008-129 shows that lands in T. 11 N., R. 68 E., MDM, also were withdrawn for the Humboldt NF. The three MTPs show that the surface is managed by the Forest Service.

The HIs in all three appeals show that the three Townships were classified for multiple use on June 20, 1967, by notice serialized as N-1005. The following is noted under the Remarks section relative to this classification entry: "All public land in White Pine County; Vac [vacated] 10/11/83; OE [open to entry] 11/10/1983." The notice of classification, N-1005, provided that with certain exceptions not relevant to these appeals, the public lands in White Pine County were segregated

⁴ We reviewed Presidential Proclamation No. 839 (Feb. 10, 1909) creating the Nevada NF, and Nos. 1221 (Oct. 28, 1912) and 1509 (Jan. 25, 1919), by which its boundaries were changed. When the Nevada NF was created, it was "reserved from settlement or entry." The land eliminated from the Forest by the 1912 Proclamation was withdrawn for classification, with the provision that it would, "when compatible with the public interests, be restored to settlement and entry under the laws applicable thereto" when the Secretary deemed it advisable. Under the 1919 Proclamation, President Wilson declared certain lands eliminated from the Nevada NF and, "subject to valid rights and the provisions of existing withdrawals," opened the eliminated lands to entry "only under the provisions of the homestead laws requiring residence."

from appropriation only under the agricultural land laws and remained open to all other forms of applicable forms of appropriation, including the mining laws. 32 Fed. Reg. 9239 (June 29, 1967).

The classification and its segregative effect were vacated in 1983. 48 Fed. Reg. 46105 (Oct. 11, 1983). The notice vacating the classification provided that all the lands (with certain exceptions not relevant here) would be open to the operation of all the public land laws, subject to valid existing rights, on November 10, 1983. *Id.* at 46106. Thus, Wolfram correctly states that the lands withdrawn for the Humboldt NF were open to location and entry under the mining laws prior to December 20, 2006.⁵

However, on December 20, 2006, Congress enacted Pub. L. No. 109-432, the Tax Relief and Health Care Act of 2006 (the Act). Title III of that Act enacts the White Pine County [Nevada] Conservation, Recreation, and Development Act of 2006, 120 Stat. 3028. Subtitle A thereof, Land Disposal, provides for the sale of 45,000 acres of Federal land, to be jointly selected by the Secretary of the Interior or the Secretary of Agriculture and White Pine County (the County), to qualified bidders as such lands become available, subject to valid existing rights, and subject to the State's or County's selection of acreage from such land in accordance with the Recreation and Public Purposes Act, codified in relevant part at 43 U.S.C. §§ 869 *et seq.* (2000). *See* Title III, Subtitle A, Land Disposal, Sec. 311(a), (f), (g), 120 Stat. 3028-29.

Under Subtitle B, Wilderness Areas, Congress enacted the "Pam White Wilderness Act of 2006," codified at 16 U.S.C. § 1132 (2000). Among others, 68,627 acres of Federal lands managed by BLM and the Forest Service, as shown on a map titled "Southern White Pine County" and dated November 29, 2006, were added to the National Wilderness Preservation System as the Highland Ridge Wilderness. Title III, Subtitle B, Wilderness Areas, Sec. 323(a)(4), 120 Stat. 3031. Subject to valid existing rights, those newly added wilderness lands were withdrawn from:

- (1) all forms of entry, appropriation, and disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and

⁵ Although the HI is less than clear on the point, BLM later provided the official case file for N-1005, and it confirms that the public lands within White Pine County had been closed only to agricultural entry and appropriation prior to Dec. 20, 2006.

- (3) operation of the mineral leasing and geothermal leasing laws.

Id., Withdrawal, Sec. 323(d), 120 Stat. 3033.

Subtitle C of the Act effected the transfer of jurisdiction over acreage between and among BLM, the Forest Service and the U.S. Fish and Wildlife Service (FWS). BLM transferred 645 acres known as the Ruby Lake Land Transfer to FWS, and also transferred 5,799 acres in White Pine County to the Forest Service. Title III, Subtitle C, Transfers of Administrative Jurisdiction, Secs. 341, 343, 120 Stat. 3037-38. The Forest Service transferred to BLM lands described as the “Withdrawal Area” and as the “Highland Ridge Wilderness,” identified on a map entitled “Southern White Pine County” dated November 29, 2006. *Id.*, Sec. 342, 120 Stat. 3038. These transferred lands were withdrawn by the Act, subject to valid existing rights, from:

- (1) entry, appropriation, or disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) operation of the mineral laws, geothermal leasing laws, and mineral materials laws.

Id., Sec. 342(d), 120 Stat. 3038.

BLM provided maps depicting the lands on which Wolfram located the mining claims in these appeals. These maps clearly show that the claims are on the lands withdrawn by the Act.

[1] Article IV, Section 3, Clause 2, of the U.S. Constitution vests in Congress the exclusive authority to promulgate appropriate laws governing the public lands and other property of the United States. *Bruce Parke*, 42 IBLA 18, 19 (1979), and cases cited. Congress has generally conferred the authority for management of the public lands and their resources upon the Secretary of the Interior. *Darrell Palmer*, 156 IBLA 360, 365 (2002), and cases cited. However, the Secretary’s broad plenary powers can furnish no lawful basis for taking actions that are not consistent with such laws as Congress may enact to govern the disposition and administration of the public lands. In section 204(j) of FLPMA, 43 U.S.C. § 1714(j) (2000), Congress has expressly provided that the Secretary “shall not make, modify, or revoke any withdrawal created by Act of Congress.” Accordingly, lands are not open to entry or appropriation when by statute Congress declares them withdrawn, the legal effect of which does not and cannot depend upon BLM’s promptness in noting the withdrawal in the public land records.

Wolfram does not contend that the Act was ineffective, and yet it seeks reversal of BLM's decisions on the ground that the withdrawals had not been noted in the official public land records at the time its claims were located. To grant the relief Wolfram requests would require nothing less than the negation or evasion of Congress' plainly expressed will. See *Richard Bargaen*, 117 IBLA 231, 241-42 (1991). Manifestly, neither this Board nor BLM can wield greater authority than that vested in the Secretary, who has no authority to modify or revoke a Congressional withdrawal.⁶ *Id.* at 242.

[2] Wolfram further argues that BLM personnel also reviewed the land records and confirmed that the lands were open to location, suggesting that this circumstance is an additional ground for reversing BLM. NA/SOR at 2. This argument, which is in the nature of a claim of estoppel, must fail as well. Estoppel is an extraordinary remedy, especially as it relates to public lands. See *Continental Land Resources*, 162 IBLA 1, 6 (2004), and cases cited. Although estoppel may lie if reliance on BLM's written statements deprived an individual of a right he could have acquired, see, e.g., *William C. Kirkwood*, 175 IBLA 292, 313 (2008), it does not lie if the effect of such action would be to grant an interest not authorized by law. The regulations thus provide that information or the opinion of an officer, agent, or employee or on records maintained by land offices cannot operate to vest any right not authorized by law. 43 C.F.R. § 1810.3(c); *William H. Shepherd*, 157 IBLA 134, 138 (2002); see also *U.S. v. Winkley*, 160 IBLA 126, 147 (2003), and cases cited.

As Congress had withdrawn the subject lands from mineral entry on December 20, 2006, before Wolfram located its claims in 2007, BLM properly declared the claims null and void *ab initio*.

The decision in IBLA 2008-156 requires one further comment. As stated, lands in T. 13 N., R. 68 E., MDM, were withdrawn for both the Humboldt NF and the Great Basin National Park. Wolfram's mining claims are located in secs. 17-20, 28-33, T. 13 N., R. 68 E., MDM. According to the MTP provided in IBLA 2008-156, the enumerated sections are included among the lands withdrawn for the Humboldt NF.

⁶ While we can appreciate Wolfram's argument that the logic and policy underlying the notation rule seemingly would require that "the public [MTPs] . . . must be noted for the withdrawal to be effective," just as the MTP must be noted to open lands to entry and appropriation, SOR at 2, it is simply not correct. The effectiveness of a statute is derived from the fact of its enactment by the Legislative Branch. Moreover, all persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations. *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384-85 (1947); *Ron Coleman Mining, Inc.*, 172 IBLA 387, 391 (2007); *Dan Adelman*, 169 IBLA 13, 18 (2006); *Lester W. Pullen*, 131 IBLA 271, 273 (1994); *Thomas Williams*, 56 IBLA 55, 57 (1981).

Of the several small color-coded maps BLM subsequently submitted to the Board, two are consistent with the MTP in that they do not show that any of Wolfram's mining claims in IBLA 2008-156 intrude onto the lands withdrawn for the Great Basin National Park. However, one of those maps does depict mining claims TF 54, TF 72, TF 90, and TF 108 as extending very slightly into secs. 27 and 34, which are clearly Park lands.⁷ If all the claims in IBLA 2008-156 are entirely outside the Great Basin National Park they are null and void *ab initio* because of the provisions of the Tax Relief and Health Care Act of 2006 discussed above; if any part of the claims are within the Park, they are null and void *ab initio* because the Great Basin National Park Act of 1986 withdrew those lands from disposition under the public land laws and from entry or appropriation under the mining laws. 16 U.S.C. § 410mm-1(d) (2000).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decisions appealed from are affirmed.

/s/
T. Britt Price
Administrative Judge

I concur:

/s/
Christina S. Kalavritinos
Administrative Judge

⁷ The case file includes a map of the claims apparently prepared and submitted by Wolfram. It shows that the four claims extend into the Great Basin National Park approximately 62.5 feet.