

CHARLES N. OLSON

IBLA 70-561

Decided February 18, 1972

Appeal from decision (M 072354) by Montana land office, Bureau of Land Management, closing the case re application for fee title to portion of unpatented mining claim.

Affirmed as modified.

Conveyances: Generally--Mining Claims Occupancy Act:  
Conveyances

Under the Mining Claims Occupancy Act, 30 U.S.C. § 703 (1970), the Secretary of the Interior may convey an interest in land under the administrative jurisdiction of the Forest Service to a "qualified applicant" only with the consent of the head of the administering agency.

APPEARANCES: Charles N. Olson, pro se.

OPINION BY MR. FISHMAN

Charles N. Olson has appealed from a decision of the Montana land office, Bureau of Land Management, dated April 24, 1970, closing the case M 072354. On May 3, 1967, appellant had filed an application pursuant to the Mining Claims Occupancy Act of October 23, 1962, 30 U.S.C. §§ 701-709 (1970), to purchase a tract of land embraced in the Cleo Gulch placer mining claim in the Helena National Forest, Lewis & Clark County, Montana.

By letter of March 17, 1969, the forest supervisor notified appellant of the supervisor's consent to an occupancy lease during the lives of appellant and his wife. The supervisor did not consent to conveyance of fee title, despite the appellant's request therefor. In the letter appellant was informed of his right to appeal to the regional forester at Missoula, Montana, within 90 days. 36 CFR 211.20-211.37. No such appeal was filed. On October 21, 1969, the forest supervisor again offered the lifetime occupancy lease, and also advised appellant that if he did not wish to accept the occupancy lease and wanted to continue his occupancy, a new special use permit could be issued. When no response was received from appellant, the chief, division of recreation and lands, Forest Service, recommended the closing of the file.

Appellant appeals reciting that (1) he is a disabled veteran, (2) he has an investment in the property, (3) he has a 99-year lease with the Forest Service <sup>1/</sup> and (4) fee title is desirable for protection of the interests of his children.

The land in question is within the Helena National Forest and is therefore under the jurisdiction of the Forest Service. The Mining Claims Occupancy Act provides that the Secretary of the Interior may convey an interest in land withdrawn in aid of the function of another federal agency only with the consent of the head of that agency:

Where the lands for which application is made under section 701 of this title have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary. 30 U.S.C. § 703 (1970).

There is no right in an applicant to acquire a fee simple estate under the Act. Harold E. & Alice L. Trowbridge, A-30954 (January 17, 1969). In that case, the Senate Committee on Interior and Insular Affairs was quoted as to the purpose of the Act:

"\* \* \* The legislation does not intend that applicants shall displace public use of public land, or that land should be patented in fee in areas where such action would produce results at odds with public land programs. for these situations, where equities exist or hardship would result, the qualified applicants can generally be granted life estates for the remainder of their lives or permission to occupy the land for appropriate periods."

S. REP. NO. 1984, 87th Cong., 2d Sess. 5, 7 (1962)

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<sup>1/</sup> There is nothing in the record to show there is such a lease. It appears, however, from correspondence to Olson from the forest supervisor that a special land use permit has been in effect.

Since the forest supervisor has not given consent to a conveyance of fee title as requested by appellant and appellant did not appeal that decision to proper Forest Service authority, the jurisdiction of this Department does not extend to granting appellant his request for a fee conveyance. Charles H. and Bernice Waugaman, A-31071 (January 16, 1970). It was proper for the case to be ordered closed.

The record indicates, however, that the appellant may not have comprehended fully the effect of his failure to respond to the Forest Service communications. 2/ Accordingly, the case will be held open for a period of 60 days to afford the appellant an opportunity to notify the forest supervisor of his consent to accept a lifetime lease. If the appellant does not take that action within the time allowed, the case will be closed without further notice.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed as modified.

Frederick Fishman, Member

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We concur:

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Anne Poindexter Lewis, Member

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Joan B. Thompson, Member

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2/ 30 U.S.C. § 701 (1970) requires that an application under the Act must be filed prior to July 1, 1971. Therefore, if the case is closed for failure to take action, a lifetime lease could not be based upon a later application and the appellant would lose his opportunity to get such a lease. In any event, the Forest Service has authority to issue a special use permit to the appellant under other authority.

