

RULON STEPHEN SCOTT

IBLA 71-221

Decided June 28, 1973

Appeal from a decision of the Sacramento Land Office offering a life estate in certain lands, pursuant to the Mining Claims Occupancy Act, contingent upon the payment of trespass damages.

Affirmed in part, reversed in part and remanded.

Mining Occupancy Act: Generally

The determination of the extent of the relief that will be granted to a qualified applicant under the Act of October 23, 1962, is committed to the discretion of the Secretary of the Interior as to lands within the jurisdiction of this Department, and where it is determined that a tract of land applied for is in an area having recreational potential, an applicant for the conveyance of the land is properly limited to a lifetime lease of the land applied for.

Mining Occupancy Act: Generally--Trespass: Generally

As the Mining Claims Occupancy Act was intended to be remedial for those bona fide occupants of mining claims which could not be taken to patent, no trespass damages should be assessed where the improvements were originally constructed on the land before it was withdrawn from settlement or location.

APPEARANCES: Jack E. Lund, Esq., of Diedrich, Bates and Lund, Bakersfield, California, for the appellant.

OPINION BY MR. HENRIQUES

Appellant seeks review of a decision S-1105 of Sacramento Land Office, Bureau of Land Management, dated January 26, 1971, offering a life estate in various lands pursuant to the Mining Claims Occupancy Act, 76 Stat. 1127, 30 U.S.C. §§ 701 et seq. (1970).

On July 26, 1962, appellant entered into an agreement of sale with C. Dean Bell and Lorena Bell, as to the purchase of the Bright

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Spot lode claim, located in sec. 35, T. 26 S., R. 32 E., M.D.M. This agreement was eventually consummated and the Bright Spot claim was quitclaimed to appellant and his wife on October 31, 1967. On October 17, 1967, appellant and his wife relinquished all rights in the claim and appellant applied under the Mining Claims Occupancy Act to purchase certain portions thereof, seeking title in fee simple. By decision dated January 26, 1971, the Chief of the Lands Adjudication Section informed the appellant that he was a qualified applicant, but declined to offer a fee simple interest, noting that it was in the public interest to retain the land for recreational and other public purposes. Accordingly, the appellant was offered a life estate in 2 + acres contingent on the payment of rentals either annually at the rate of \$208 a year or in a lump sum payment of \$1,660.

The proffered life estate, however, was made contingent upon payment of \$1,820 trespass charges for past use of the lands since the mining claim was declared null and void ab initio. Upon receipt of the decision, a notice of appeal was filed.

On March 25, 1971, appellant, through his attorney, submitted a statement of reasons for appeal. Four days later in an attempt to reach a compromise, the attorney wrote a letter to the State Office seeking clarification of a number of points. This offer of compromise arrived at the State Office after jurisdiction over the subject matter of the case had been transferred to this Board and the State Office so informed appellant. Subsequently, the District Manager in a letter to the State Director stated his views as regards the offer of compromise. Both documents are part of the record before us. We note particularly that as regards appellant's request that both he and his wife be included in the life estate offer, the District Manager readily concurred, noting only that the lump sum payments must be increased as Mrs. Scott is younger than Mr. Scott. Thus, at least to this extent the lease offer must be remanded for further modification.

Appellant also requested that the area granted be enlarged to include the spring and the access roads. The District Manager noted that the spring and water tank were included in the lease offer (by linear description) and declared that "access across public lands to the improvements will remain open to the occupants, as it has for the last 100 years." As regards the requested enlargement, the District Manager declared that the 2 + acres offer was fully consonant with the intent of the Mining Claims Occupancy Act and the prudent management of the public land and resource values of the area.

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While the District Manager was of the apparent belief that the spring and water tank were included in the offered lease, a careful perusal of the proffered lease shows that while the spring, water tank and pipeline were described, no actual right-of-way was granted. We are confident that this omission was merely an oversight in its drafting. On remand, the grant of a right-of-way should be explicitly provided for in the lease. Insofar as further enlargement of the grant is concerned, we believe that the District Manager's decision is sound.

The granting of any estate whether fee, life, or term of years, rests within the discretion of the Secretary of the Interior as to lands within the jurisdiction of this Department. Conveyances for less than a fee simple have been authorized when deemed in the public interest. See Harold Trowbridge, A-30954 (January 17, 1969). In the case before us it was noted below that the area involved has great potential for recreational use by the people of the Los Angeles area. Population pressures in the southern California area have increased to the point where existing recreational facilities are already overburdened. The decision reached by the State Office as to the offer of a life estate achieved a harmonious balance between prudent resource management and the beneficial aims of the Mining Claims Occupancy Act.

The appellant's strongest objection relates to the requirement that in order to qualify for the life estate he must tender payment of past trespass damages in the amount of \$1,820. Section 6 of the Act, 30 U.S.C. § 706(b) (1970), provides that no trespass charges shall be sought from a qualified applicant "[e]xcept where a mining claim embracing land applied for \* \* \* was located at a time when the land included therein was withdrawn or not otherwise subject to such location \* \* \*." The Bright Spot mining claim was originally located as a lode claim by one Mary Stavert on July 2, 1932. The claim was relocated on June 2, 1941, as a placer mining claim by one Melvin M. A. Marshall who had acquired the original claim from Mary Stavert on November 26, 1940. Marshall quit-claimed to Thomas F. Bailey on August 3, 1943, who in turn quit-claimed to C. Dean Bell and Lorena Bell on August 7, 1945, from whom the appellant purchased the claim. The land, however, had been withdrawn from mineral location on December 16, 1930, as part of Power Project EP 1139.

The record indicates that some of the improvements claimed by Scott were originally constructed before 1900, when the public lands were open to settlement and location. Although the appellant has

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stated his claim to the land derives from the Bright Spot mining claim located in 1932, after the land was withdrawn from mining location, the record does not show whether the Bright Spot location in 1932 was, in fact, a relocation of some earlier mining claim. If the original improvements had been constructed after the mining claim was located while the land was withdrawn, we could agree with assessment of some trespass charges. However, as the Mining Claims Occupancy Act was intended to be remedial for those bona fide occupants of mining claims which could not be taken to patent for reasons of invalidity of the claims, we are of the opinion that no trespass damages should be assessed in the circumstances set forth in this case; that is, where the improvements were originally constructed on the land before it was withdrawn from settlement or location.

From our study of section 6 of the Mining Claims Occupancy Act, and the legislative history of the Act, we conclude that the statute intends that trespass damages should be assessed only where a claim was located when the lands were in a withdrawn status and the improvements were thereafter constructed without legal sanction. In this case, construction of the improvements prior to 1900 at a time when the lands were open to settlement and location, and thereafter maintained, eliminates the reason for assessing trespass damages. The fact that the mining claim was located thereafter when the lands were withdrawn should make no difference under these circumstances. We determine the assessment of trespass charges to be inappropriate. Therefore, it is not necessary to discuss the contentions pressed by the appellant.

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 in part, reversed in part, and remanded for further action consistent with this opinion.

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Douglas E. Henriques, Member

We concur:

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Joan B. Thompson, Member

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Anne Poindexter Lewis, Member

11 IBLA 291

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