

ROLAND AND MARIE OSWALD

IBLA 77-541

Decided May 12, 1978

Appeal from a decision of the California State Office, Bureau of Land Management dated July 27, 1977, rejecting application to amend patent 1040899, dated September 29, 1930. S 017165.

Affirmed in part, set aside and remanded.

1. Evidence: Official Notice

The Board of Land Appeals may take official notice of the approved plats of official surveys.

2. Homesteads (Ordinary): Generally -- Patents of Public Lands: Effect -- Surveys of Public Lands: Generally

Where both an original survey prior to the issuance of a patent and a dependent resurvey after issuance indicate that a homestead patent has issued on land within a national forest, the patent is invalid notwithstanding that the Federal Government may not by means of a second survey affect property rights acquired under an official survey.

3. Estoppel -- Federal Employees and Officers: Authority to Bind Government

Long-term belief by Federal officers that land was subject to a valid patent, when, in fact, the land could not legally have been conveyed because of withdrawal or reservation, does not serve as a basis for divesting the Government of title to the land by estoppel.

4. Homesteads (Ordinary): Amendment -- Patents of Public Lands:
Amendment

Prior to the enactment of sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior's authority to correct patents could not be exercised to divest the Government's title to land that was withdrawn or reserved at the time of the mistaken entry. Whether sec. 316 authorizes amendment of a patent in such situations is to be determined in the first instance by the BLM.

5. Homesteads (Ordinary): Generally -- Patents of Public Lands:
Generally

Where an entryman has mistakenly applied for and received a patent on one parcel of land which was not the land he actually occupied, he is not entitled to receive a patent on the land actually occupied by virtue of the fact that the statutes of limitation on the issuance and cancellation of patents has run.

6. Color or Claim of Title: Generally

A claim is not held in peaceful adverse possession where occupancy under color of title was initiated after land has been withdrawn or reserved for Federal purposes.

7. Evidence: Sufficiency -- Homesteads (Ordinary): Lands Subject to --
Patents of Public Lands: Effect -- Withdrawals and Reservations:
Effect of

Where land on which a valid settlement has been made and maintained according to the law under which it was made, was excepted from the effect of the withdrawal or reservation, occupancy of the land prior to reservation or withdrawal is insufficient to show exception where no filing has been made on the prior occupancy and the prior occupancy was not for homestead purposes.

APPEARANCES: Thomas R. O'Day, Esq., Jan Jose, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Roland and Marie Oswald appeal from a decision of the California State Office, Bureau of Land Management (BLM), dated July 27, 1977, rejecting their application to amend patent 1040899, dated September 29, 1930, because it does not describe the land actually occupied by them. The patent issued for land described as NW 1/4 NW 1/4 sec. 21, T. 34 N., R. 11 W., Mount Diablo meridian, California (hereafter sec. 21). Appellants actually occupy lot 4, sec. 16, T. 34 N., R. 11 W., Mount Diablo meridian, California (hereafter sec. 16), which lies within the boundaries of the Trinity National Forest. The land described by the patent lies outside of the forest.

Appellants' chain of title derives from the original homestead entryman, Pietor (or Pietro) Zuella, who, according to his final proof, established residence on the land in 1921. There is evidence on the record, however, that he engaged in mining activity in the area, as early as the 1890s. Zuella and his successors have maintained a log framed and veneered house on the lot, which also contains an orchard of apple, peach, plum, pear, and cherry trees, and a vineyard. At Zuella's death, title descended to his next of kin, John Zuella by a decree dated August 10, 1945. The younger Zuella deeded the property to Francis and Mary Hesser on March 18, 1946, who in turn conveyed to appellants, on November 30, 1950.

In 1971, appellants attempted to sell the property. Inquiries to the National Forest Service (hereafter Forest Service), however, raised doubts as to the appellants' title, and the transaction fell through. Specifically, the Forest Service discovered that a dependent resurvey of the area, begun in 1962, showed that appellants' lot was approximately a mile due north of the location described in the patent. This placed appellants' lot within the boundaries of the Trinity National Forest, which was established as the Trinity Forest Reserve in 1905, prior to Zuella's homestead entry. Proclamation of April 29, 1905, 34(3) Stat. 2998, as enlarged March 2, 1909. 35 Stat. 2243.

Negotiations between appellants and Forest Service ensued but were prolonged by delays in the completion of the new survey. Ultimately,, the Forest Service suggested that the matter be resolved by issuing a patent correcting the error in location. 1/ Appellants therefore filed an application on February 7, 1977, to amend patent 1040899 to conform to the actual location of their lot as indicated

1/ In letter to appellants' Congressman, Rep. Paul N. McCloskey, Jr., dated January 24, 1977, the Regional Forester writes:

"It is our conclusion that a new patent should be issued to eliminate the error in location * * *. We are forwarding instructions on how to make application to [appellants] and will work with them to bring this matter to a conclusion as rapidly as possible."

by the new survey, that is to change the description to include their improvements on lot 4, sec. 16, supra.

In a decision dated July 27, 1977, BLM rejected appellants' application stating in pertinent part:

The Trinity Forest Service was established in 1905 and the lands included in the Proclamation were reserved from entry or settlement and set apart as a Public Reservation. The original entryman, Pietor Zuella, indicates in his final proof that he first established actual residence in 1921 and built his house in 1922, a substantial time after the establishment of the Trinity Forest Reserve. Therefore, since said lot 4 is in a national forest which is not subject to entry, it cannot be included in an amended patent under Revised Statute 2372. By filing an application to amend patent 1040899 for lands within a national forest, the applicants are attempting to secure title to land which even the original entryman could not have secured in 1930. The case record shows that patent issued in conformity with the record upon which the right to it was based, and we have no authority to amend this patent.

Accordingly, your application to amend patent 1040899 is rejected.

Notice of Appeal was received August 29, 1977. By order dated September 21, 1977, appellants' time for filing a statement of reasons was extended to permit them to inspect the case file. Appellants filed their statement of reasons November 4, 1977.

Appellants' statement of reasons offers five arguments to support their claim of equitable title to sec. 16, the land they occupy. These are: (1) the lands now occupied by appellants were not part of the Trinity Forest Reserve at the time of homestead entry under the official survey then in force; (2) that the Government should be estopped from asserting title to the lands; (3) that the Government is barred by statutes of limitations governing the issuance and cancellation of patents from denying equitable title; (4) that appellants occupied sec. 16 under color of title; and (5) that sec. 16 was exempted from the operation of the proclamation creating Trinity Forest Reserve. We will deal with these points in turn.

Appellants first assert that the discrepancy between the description on the Zuella patent and the land Zuella actually occupied resulted from a shifting of the section lines between the original survey of the area and the current dependent resurvey. Therefore, they argue the homestead was valid (is outside of the Forest) under the original survey and cannot now be invalidated because resurvey

has changed the legal description of the land. This theory has apparently been adopted by the Forest Service -- as evidenced by the conclusion of its 1974 trespass report on appellants' occupancy:

The original patentee, Zuella, gained title to the NW 1/4 NW 1/4 of Section 21, T34N, R11W, in 1930; sometime after that, and prior to 1945, there was a change in the township through resurvey or remapping, which shifted Section 21 south. Subsequent owners purchased the area where the buildings are located thinking they were in Section 21 when in fact they were in Section 16. There is no indication of any attempt to defraud the government; all seemed to be honest mistakes.

An exhibit in the trespass report entitled "old plat approx. 1925" purportedly documents such a shift. Several geographic features appear on the "old plat" an entire section south of their location on the current plat.

If the shifting section theory were borne out, appellant would have made a strong case for equitable title to sec. 16. Much authority exists for the proposition that the Federal Government may not, by means of a second survey, affect property rights acquired under an official survey. New Mexico v. Colorado, 267 U.S. 30 (1925); U.S. v. State Investment Co., 264 U.S. 206 (1924); Kean v. Canal Co., 190 U.S. 452 (1903); Cragin v. Powell, 128 U.S. 691 (1888); U.S. v. Reimann, 504 F.2d 135 (10th Cir. 1974); 2/ U.S. v. Heyser, 75 I.D. 14 (1968); O. R. Williams, 60 I.D. 301 (1949); 43 U.S.C. § 722 (1964).

[1, 2] Our examination of the evidence, however, does not support the shifting section theory. We have inspected the official plats and field notes of both the original and resurvey, and while we find substantial disagreement between the two, we do not see the shift asserted by appellants and the Forest Service. 3/ Our observations suggest a different explanation for the discrepancy from that offered by appellants. The original survey plat prepared from the notes of Charles Holcomb and approved March 12, 1883, shows regular

2/ The facts of U.S. v. Reimann resemble the present case in that two surveys -- an original survey placing claimant's property within a national forest and a correct resurvey placing it outside -- were involved. The court permitted the Government to rely on the resurvey and deny the claimant a patent, citing the fact that both surveys were made prior to the issuance of any patent. Had a patent issued before the resurvey was made, the court presumably would have upheld the patent.

3/ Although the official plat of the original survey was not included in the record, we may take official notice of it. 43 CFR 4.24.

square section lines as does the "old plat." In contrast, the section lines in the resurvey plat, approved April 8, 1976, are frequently trapezoidal in shape reflecting perhaps 20 degree deviations from the true in some places in the original survey.

These deviations crucially affect the location of the North Fork of the Trinity River, on which appellants' occupancy lies, as it passes northward close to the western boundaries of sections 28, 21, and 16, respectively. The western boundary of the 1883 section 16, shown as regular, *i.e.*, 1 mile, is actually about 1-1/2 miles on the ground, whereas section 28's western boundary is correspondingly only about 5/8 mile. Thus, on the 1883 plat, the portion of the North Fork passing through section 16 has been compressed to fit into square section, while the portion in section 28 has been elongated. Corrective resurvey in 1976 adjusted the geographic representation of the area to its true configuration on the ground without changing the legal description of any point -- hence, the nonsquare sections of the 1975 plat. The resurvey found and used the original SW (corner for secs. 16, 17, 29, 21) and NW (secs. 8, 9, 16, 17) corners of sec. 16. This indicates that appellants' occupancy has always been legally located in section 16. ^{4/}

Apparently, some time between 1883 and 1926 -- the date of Zuella's homestead application -- a map was published based on an unofficial resurvey of the area. Entries in the field notes of the official dependent resurvey indicate that such a survey was performed by County Surveyor H. L. Lowden in 1894, and that some subsequent surveyors followed Lowden's misidentification of the corner of secs. 20, 21, 28, and 29 as that of secs. 28, 29, 32, and 33. A possible explanation for the discrepancy would be that the surveyors were misled by the distortions in the official survey. In any event, the misconception appears to have arisen that features placed within secs. 20 and 21 in the official survey were located in the sections south of their legal description. Extrapolation of this error would mislead mapmakers into believing that some features in official sec. 16 were in sec. 21. The appearance of the "old plat" seems consistent with this chain of events. When regular square sections are superimposed on the 1976 plat, with the corner of secs. 28, 29, 32, and 33 placed where the corner of secs. 20, 21, 28, and 29 should be, appellants' occupancy, indeed, appears in the NW 1/4 of "sec. 21." Zuella apparently inferred that such a

^{4/} A survey of public lands creates and does not merely identify the boundaries of sections of land. A patentee of public land takes according to the actual survey on the ground, even though the official survey plat may not show the tract as it is located on the ground, or the patent description may be in error as to the course or distance or the quantity of land stated to be conveyed. *U.S. v. Heyser*, *supra*, and cases cited.

map was a correction of the official plat and imported the section designation from it.

Documents in the record surrounding Zuella's 1930 homestead patent support this explanation. Zuella's initial homestead application, filed October 21, 1926, was rejected by the Land Office in part because it conflicted with power site reserve No. 519, withdrawn by Executive Order of January 24, 1916, letter 576936. In a handwritten letter received November 20, 1926, Zuella appealed the rejection, stating:

I would ask that my Homestead Entry Be accepted and objection Be withdrawn For the Reason that those lands on which I have entered are not the lands set aside for Power Project no 519. owing to an error in the mapping of sec. 21 on the land official maps. It has been Positively shown and corrected by the U.S. Geological survey shown on Topography map of Big Bar & vacinity, Calif. sec. 21 is not on the North Fork of the Trinity River where land are set aside for Power Purposes, and is located in sec. 28. as shown By accurate surveys. 4a/

Accompanying Zuella's letter is a portion of a map labeled "Forest Service Map," which strongly resembles the "old plat" included in the Forest Service's trespass report.

This evidence seems to show that Zuella, in locating his homestead entry, relied on maps or surveys that deviated from the official Holcomb survey (which the Government presumably used to locate power reserve No. 519), and that subsequent owners and the Government failed to notice the discrepancy. 5/ Thus, reference to the resurvey of the area does not of itself lend legitimacy to appellants' claim.

Appellants next contend that the Government should be estopped from denying appellants' equitable title to lot 16 because the Government has long treated lot 16 as a valid homestead, and because the Secretary of the Interior has equitable power to correct patents and issue disclaimers of interest in land.

[3] While appellants' plight cannot fail to arouse sympathy, we feel compelled to reject their equitable argument. 6/ As will

4a/ Minor spelling corrections made.

5/ In a letter received January 3, 1978, appellants request a hearing on the question of whether sec. 21 has been shifted south by corrective resurvey. We feel, however, that the record is sufficiently complete to dispose of the issue and accordingly deny the request.

6/ Appellants may, of course, seek to vindicate their equities before Congress. As the Forest Service does not oppose appellants' occupancy, curative legislation may well be available.

be discussed below, occupancy under color of title is specifically dealt with by the Color of Title Act, 43 U.S.C. § 1068 (1964). To allow a claimant, who has not met the rather precise conditions laid down by the Color of Title Act, to gain title to public land would contravene the mandate of Congress.

The long-standing principle has been that the Government is not generally bound by laches or estoppel. U.S. Immigration and Naturalization Service v. Hibi, 414 U.S. 5 (1973); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Utah Power and Light Co. v. U.S., 243 U.S. 389 (1917); cf. 43 CFR 1810.3. In commenting on the assumption that there may be exceptions to the general rule, the court in the latter case said: "A suit by the United States to enforce and maintain its policy respecting lands stands upon a different plane in this and other particulars. Causey v. United States, 240 U.S. 393, 402."

This Board has specifically held that it would greatly harm the public interest to divest by estoppel the Government of title to lands which were never patented, and to which patent was never earned under the public land laws. Hudson Investment Co., 17 IBLA 146, 170 (1974). Cf. Utah Power and Light Co. v. U.S., *supra* at 409; Rod Knight, 30 IBLA 224 (1977); Pekka K. Merikallio, 30 IBLA 157 (1977).

[4] Section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq.* (West 1977) permits the Secretary to correct errors in any documents of conveyance which have been issued by the Federal Government to dispose of public lands. The provision replaces several repealed acts dealing with mistakes. In particular, former 43 U.S.C. § 697 (1964) allowed the Secretary to amend a patent where entry had erroneously been filed for a tract of land not intended to be entered. The repealed section expressly limited its operation to lands upon which entry could have been made. Thus, under the old law, no amendment would be possible in the present case because the lands intended to be entered had been withdrawn for a Forest Reserve. H. L. Bigler, 11 IBLA 297 (1973); Frank H. Steffle, 3 IBLA 255, 257 (1971); Henry C. Cleek, A-29257 (March 12, 1963).

No such limitation appears in the present section, which reads:

Sec. 316. The Secretary may correct patents or documents of conveyance issued pursuant to section 208 of this Act or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands.

On March 4, 1977, the Associate Director, BLM, issued Organic Act Directive No. 77-24. It provided:

Organic Act Directive No. 77-24

Expires: 12/31/77

To: AFO's

From: Associate Director

Subject: Interim Guidance for the Processing of Amendment of Patents or Documents of Conveyance Applications under P.L. 94-59, "Federal Land Policy and Management Act of 1976," hereafter referred to as the "Act"

Section 316 of the Federal Land Policy and Management Act of 1976 is far more liberal than any previous authority for the amendment or correction of patents or conveyance documents. Historically there were many erroneous patents or conveyance documents that because of one technicality or another were not subject to correction.

A cursory reading of Section 316 of the act indicates a clear intent to provide reformation for most documents of conveyance when it is necessary in order to eliminate errors.

Continue processing all applications for amendment of patent precisely as they have been processed in the past. If, under existing instructions, the amendatory patent can be issued, then proceed to issue same, citing as authority Section 316 of the act.

If existing instructions would require the application to be rejected, merely place the application in suspense and hold it for further instructions. Do not reject cases which indicate that good faith errors have been made.

Detailed instructions, perhaps even on a case-by-case basis, will be issued in the future. If you have questions pertaining to a specific situations, please address them to Director (320), identifying all significant issues and statements of fact in some detail. We will attempt to publish a question and answer paper in the future as these questions occur. In this way,

we hope to develop and maintain uniformity in the treatment of amendment applications.

/s/ George L. Turcott

This directive has been extended to September 30, 1978. Since it instructed the field offices not to reject applications to amend patents, but to suspend them, the State Office should have suspended applicant's application and awaited further instructions. Therefore, in accordance with the directive, the decision was in error insofar as it rejected the application for amendment and it is set aside to that extent.

The preceding section of FLPMA, section 315, 43 U.S.C.A. Supp. 1977 § 1745 authorizes the Secretary, in certain circumstances, to disclaim any interest in land. Because the case must be remanded, as above, we do not now comment on whether the disclaimer provisions are applicable here.

Appellant next urges that the Government is barred from contesting appellants' equitable title to lot 16 by virtue of the statutes of limitations governing the issuance and cancellation of patents.

[5] Appellants call our attention to 43 U.S.C. § 1164 (1964), which provides:

[A]fter the lapse of two years from the date of the issuance of the receipt of such officer as the Secretary of the Interior may designate on final entry of any tract of land under the homestead * * * laws * * * and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him.

This section does not advance appellants' case as its provisions are plainly inapplicable. No receipt or indeed any filing was made for lot 16; rather Zuella applied for and received -- erroneously it seems -- a patent to lot 21. There has therefore been no delinquency in issuing a patent to lot 16.

Reference to 43 U.S.C. § 1166 is also fruitless. That section states: "Suits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents." Section 1166 does bar BLM from contesting the validity of appellants' right to sec. 21, which BLM does not seek

to do. ^{7/} But to apply section 1166 to lot 16 would require a misrepresentation of the facts. One would have to infer that Zuella's patent actually intended to convey sec. 16 and that BLM's refusal to amend the patent is tantamount to denying the validity of that intended conveyance. We see no justification for holding that Zuella's patent was meant to convey any land other than sec. 21 -- the land it described. When lands are granted according to an official plat, that plat is incorporated into the grant, Cragin v. Powell, *supra*. As we have stated, the positions of sec. 16 and sec. 21 were represented more or less accurately by the 1883 Holcomb survey. The grant must therefore be construed in conformance with the official plat as describing sec. 21.

Appellants further argue that they are entitled to lot 16 under the Color of Title Act, 43 U.S.C. § 1068 (1964). Appellants raised this contention for the first time on appeal. At the outset we note that they have not filed an application as required by the pertinent regulation, 43 CFR 2450.2. However, since it is our opinion that appellants do not have a valid color of title claim, the contention is best disposed of here. As stated by 43 CFR 2540.0-5(b), the Act recognizes two types of claims:

A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units.

Outside the Color of Title Act there can be no adverse possession against the United States. U.S. v. California, 332 U.S. 19 (1947); U.S. v. Gossett, 416 F.2d 565 (9th Cir. 1969); Joe Stewart, 33 IBLA 225 (1977); Manley Rustin, 28 IBLA 205 (1976).

Color of title, requires conveyance of the land by an instrument which, on its face purports to convey the tract in question. U.S. v. Wharton, 541 F.2d 406 (9th Cir. 1975); Day v. Hickel, 481 F.2d 473 (9th Cir. 1973); Joe Stewart, *supra*; Manley Rustin, *supra*; Mildred A. Powers, 27 IBLA 213 (1976); Estate of James J. Lee, Deceased, 26 IBLA

^{7/} The record indicates, however, that appellants may be in danger of losing their rights through the adverse possession of third parties.

102 (1976); Cloyd and Velma Mitchell, 22 IBLA 299 (1975); James E. Smith, 13 IBLA 306, 80 I.D. 702 (1973); Marcus Rudnick, 8 IBLA 65 (1972). The appellants have no such conveyance here.

[6] Furthermore, even assuming their chain of title refers to the land in dispute, their occupancy under color of title was initiated in 1946 with the conveyance by the younger Zuella to the Hessers. See, Bryan N. Johnson, 15 IBLA 19 (1974).

Appellants' difficulty is that they cannot show peaceful adverse possession. Under 43 CFR 2540.0-5: "A claim is not held in peaceful adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes." Here possession under color of title was initiated 41 years after the land had been reserved for Trinity Forest Reserve in 1905. Therefore, appellants' claim fails. Estate of John C. Brenton, 25 IBLA 283 (1976); cf., Benton C. Cavin, 31 IBLA 145 (1977).

Finally, appellants assert that lot 16 was excepted from the operation of the proclamation creating Trinity Forest Reserve. They refer to the following language contained in the proclamation:

Excepting from the force and effect of this proclamation all lands which may have been, prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired; Provided, that this exception shall not continue to apply to any particular tract of land unless the entryman, settler or claimant continues to comply with the law under which the entry, filing or settlement was made.

34(3) Stat. 2998, 3001 (1905). They further assert that Zuella made entry or settlement on lot 16 prior to the 1905 establishment of Trinity Forest Reserve notwithstanding that Zuella's final proof indicates a settlement date of 1921.

[7] Appellant directs our attention to Benton C. Cavin, supra, in which we held that issuance of a patent on reserved lands subsequent to their reservation was conclusive proof that the patented land had been excepted from the force of the proclamation creating the reservation. As we have repeatedly said, however, the patent in the present case issued for sec. 21 -- not sec. 16; it cannot therefore serve as evidence of the exception of sec. 16. 8/

8/ In any event, Cavin is not analogous. Cavin was not seeking to establish a validity of his own patent by the fact of its issuance, but rather relied on the allowance of an entry to a third party to

Appellant also calls our attention to evidence that Zuella had occupied sec. 16 as early as the 1890s. The record contains statements by residents of the vicinity corroborating this contention and also contains evidence that Zuella filed several mining claims in the area. This evidence, however, leads nowhere. The language quoted above from the proclamation indicates that an entryman must continue to comply with legal filing requirements in order for the exception to remain in force. As Zuella made no filing with regard to sec. 16, no exception may be found. ^{9/}

In sum, we hold that the lands in question were reserved for forest purposes, that no valid patent covering the lot occupied by appellants has issued, that no estoppel lies against the Government, that no statute of limitations compels recognition of appellants' claim, and that no color of title has been established. However, in view of the OAD, supra, it was premature for BLM to refuse to amend appellants' patent.

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 insofar as it found appellants not entitled to an amendment to their patent prior to the enactment of FLPMA, and set aside and remanded for further consideration under section 316 thereof.

Martin Ritvo
Administrative Judge

I concur:

Frederick Fishman
Administrative Judge

I concur in result:

Joan B. Thompson
Administrative Judge.

fn. 8 (continued)

establish, for color of title purposes, that the land at issue had been excepted from a withdrawal. The validity of that entry does not seem to have been contested.

^{9/} In addition we are reluctant to look beyond Zuella's own proof indicating a 1921 settlement date. Cf. Consla v. Wetherelt, 30 IBLA 311 (1977). Entry for mining purposes does not constitute homestead entry. Cf. Boyd W. Haynes, 16 IBLA 6 (1974).

