

DOLORES OLSEN  
AND  
WESLEY E. MACE, ET AL.

IBLA 75-59; 75-303;  
75-348; 75-381

Decided February 4, 1980

Appeal from decisions of the California State Office, Bureau of Land Management, declaring various mining claims null and void ab initio. CA 1562, CA 2483, CA 2396, CA 2617.

Reversed and remanded.

1. Administrative Authority: Generally -- Executive Orders and Proclamations -- Mining Claims: Withdrawals and Reservations: Revocation and Restoration

A Presidential proclamation, which extended the boundaries of a forest reserve and which specifically stated that prior proclamations respecting the reserve were "superseded," had the effect of and was construed as restoring to entry lands earlier withdrawn by a Secretarial order which reserved from public entry, for protection of giant sequoia trees, a township situated within the boundaries of the forest reserve. This conclusion is particularly compelling in view of the long continued course of administrative action treating the subject township as having been restored to entry for purposes of prospecting, locating and developing mineral resources, subject to compliance with the rules and regulations pertaining to forest reserves.

2. Administrative Practice

A long continued course of action by administrative agencies regarding an interpretation

of the law within their jurisdictions should not be departed from by the agencies unless such course of action is clearly erroneous.

3. Mining Claims: Determination of Validity -- Mining Claims: Location -- Mining Claims: Possessory Right

Mining claims are properly declared null and void ab initio when they are located during a period when the lands are withdrawn from entry under the mining laws. However, under 30 U.S.C. § 38 (1976), if a person or predecessors-in-interest have held and worked the claims for a period of time equal to that prescribed by the state statute of limitations for adverse possession of mining claims, during which period the land was open to mineral location, that person is deemed to have made proper locations. Whether the locations are valid depends on whether discoveries have been made on each claim within the meaning of the mining laws.

APPEARANCES: Dolores Olsen, pro se; 1/ Wesley Mace, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Dolores Olsen has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated June 13, 1974, declaring 15 placer mining claims null and void ab initio. The claims, known as the Blue Eyes Consolidated Mines, are situated in secs. 4, 8, 9, 16, 17, and 20, T. 14 N., R. 13 E., Mount Diablo meridian, California, and were located during a period between 1896 and 1916.  
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Wesley E. Mace, Ann Mace, Welsey D. Mace, and Lewis E. Mace have appealed from three separate decisions of the California State Office,

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1/ Ms. Olsen states in her statement of reasons that her appeal is a joint effort and is concurred in by the current heirs of Sandy Scott Caples, the previous record holder of all the claims in dispute. In addition to Ms. Olsen, the State Office decision was issued to Leta Lucille Capen, Raymond Scott Caples, Ruby Dole, Elsie McElroy, Dorothy Turco, Forest L. Campbell, Arlene Jananyan, Roy Caples, and Helen Green. Subsequent to issuance of the decision, it was discovered that Leta Capen was deceased; her sole heir is her daughter, Eleanor Hayes.

2/ See Appendix A.

BLM, dated December 10, 1974, January 16, 1975, and February 11, 1975, respectively, declaring the Yellow Nos. 1, 2, and 3 placer mining claims null and void ab initio. These three claims were located in 1974 and 1975, at least in part, in various sections within T. 14 N., R. 13 E., Mount Diablo meridian, California.

On November 23, 1973, the State Office received a memorandum from the Forest Service, Department of Agriculture, which informed BLM of the following:

It appears that T. 14 N., R. 13 E., M.D.M. was reserved in 1892 for the preservation of the Big Trees now known as the Placer county Grove. \* \* \* This reservation acted as a withdrawal and \* \* \* any subsequently located mining claims would be null and void ab initio. We are aware of a number of such claims and would appreciate an appropriate decision.

Attached to the memorandum were copies of the location notices and amendments for the claims in dispute in the Olsen appeal.

On February 7, 1974, BLM initiated a status investigation of the subject township in order to establish the correctness of the information supplied by the Forest Service. An examination of documents from the National Archives, the official tract book records, and other Departmental reports produced, in part, the following information:

1. On October 17, 1892, a Department Special Land Inspector transmitted a report to Secretary of the Interior John W. Noble, informing the Secretary of the discovery of a group of giant sequoia trees in T. 14 N., R. 13 E., Mount Diablo meridian, Placer County, California. The Inspector recommended that the whole township be reserved.
2. On October 25, 1892, Secretary Noble transmitted a letter to the Commissioner of the General Land Office, which reads as follows: "Upon the report, a copy of which is herewith enclosed, I have to direct that you shall reserve from public entry township 14 North, range 13 East, California."
3. On October 29, 1892, the U.S. General Land Office received notice of the Secretary's order and referred the withdrawal information to Division "P" of the Department. 3/

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3/ By what appears to be sheer coincidence, Secretary Noble transmitted a similar directive to the Commissioner on October 17, 1892, which states in part the following: "It is my desire that lands in California on which

4. The land office tract book pages for T. 14 N., R. 13 E., have noted, either in ink or in pencil, for each section in the township, the following: "Withdrawn per Letter 'P' Nov. 1, 1892." 4/

5. Following an earlier State Office request concerning the possible existence of a restoration order for the lands withdrawn by "Letter 'P' 11-1-1892," an investigation report dated September 11, 1967, was developed. The report stated that no revocation of the 1892 order had been found.

Following receipt of the status report, the State Office issued its decision dated June 13, 1974, declaring the Olsen mining claims null and void ab initio. The decision stated:

According to the official tract book record in this office all of T. 14 N., R. 13 E., M.D.M., in which the above-named claims are situated, was withdrawn per letter "P" of the Commissioner of the General Land Office (now the Bureau of Land Management), dated November 1, 1892. Further inquiry regarding the purpose of this withdrawal was made in September 1967 and documents were submitted from the National Archives showing the entire township was reserved from public entry for preservation of the Placer County Sequoias. No evidence was found that the withdrawal had been revoked and the land restored to entry. Therefore, the withdrawal is still in full force and effect.

In view of the foregoing, and since all of the above-named placer mining claims are located subsequent to the withdrawal of the lands on November 1, 1892 they are hereby declared null and void ab initio.

In her Statement of Reasons appellant Olsen urges the following points as a basis for reversing the decision of the State Office: 1) The subject claims have been worked since the late 1800's; several thousand feet of tunnels, open pit mines, water systems and reservoirs, plus buildings in support of the operation have been

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fn. 3 (continued)

the 'Sequoia Gigantea' trees are found, shall be suspended from entry, and if there is no order of that kind yet made, I would like it communicated to the land officers there." Coincidence is suggested here because the Inspector's report was also dated October 17, 1892. Furthermore, the U.S. General Land Office received separate notice, dated October 18, 1892, of the earlier Secretarial order and again referred the information to Division "P" of the Department.

4/ The land office received notice of the withdrawal on November 1, 1892.

built; annual assessment work has been done and recorded each year and property taxes levied by Placer County have been paid. 2) The mineral character of the Manzanita and Robin claims was established by the Department in contest A. K. Robinson v. Central Pacific Railroad Co., Sacramento 025480 (May 23, 1930), affirmed by the Department on appeal (no citation given), resulting in the cancellation of Central Pacific's patent #89933 on December 29, 1923. 3) A patent application for the subject claims was submitted by the late Sandy Scott Caples on May 22, 1951, and after 6 years of proceedings was finally rejected due to poorly described locations and insufficient information as to mineral values recovered from the claims. (See Sandy Scott Caples, Sacramento 044710 (March 1, 1957).) An appeal was submitted with the required information 4 days past the appeal deadline; hence, no further consideration was granted by the Department. (The case file was closed on March 11, 1959.) 4) Mineral patents have been granted in the township during the years 1901 through 1954 after the alleged withdrawal order was to have been put into effect and such patents set a precedent which militates against declaring appellant's claims void ab initio. 5) The Department's Geological Survey map depicts the Sierra Redwoods Grove as being less than 1/4 of a section in size, astraddle secs. 18 and 19's common borderline in the west half of the section; this is approximately 1/2 mile from the nearest Blue Eyes Consolidated Mine boundary. There are only six remaining Redwoods within the exterior boundaries of the claims and these trees have been marked for identification, plus observation trails and roads have been installed in the area to permit public entry. Furthermore, on May 31, 1955, the Forest Service issued a proposed withdrawal (serial number Sacramento 05095) for portions of secs. 18 and 19, which would have removed the land from entry under the general mining laws in order to protect the Sierra Redwoods Grove, thus casting additional doubt upon the continuing validity of the 1892 withdrawal of the entire township from public entry. 6) On July 11, 1949, Sandy Scott Caples granted a right-of-way easement to the United States, and the Forest Service is presently permitting the removal of virgin timber on the Blue Eyes Consolidated claims by a commercial company. 7) The Department has failed to notify other mineral claim holders in the township that their claims are null and void. 8) At the present time a new lease is being negotiated to continue mining operations on the claims.

The three separate decisions in the Mace appeals merely recited the fact that the land had been withdrawn on November 1, 1892. The decisions also recited that much of the land embraced by these three mining claims had been withdrawn in 1927 by Powersite Classification No. 178 issued under section 24 of the Federal Power Act, 41 Stat. 1063, as amended, 16 U.S.C. §§ 791a-823 (1976). However, it was noted with respect to lands not located in T. 14 N., R. 13 E., that pursuant to section 2(b) of the Mining Claims Rights Restoration Act, 69 Stat. 682, 30 U.S.C. § 621 (1976), it had been determined that no public hearing would be necessary in order to determine whether mining would interfere with other uses of the land.

Appellants in the Mace appeals object to the application of the 1892 withdrawal to their recent claims, noting that the Giant Sequoias are located nearly 2 miles from their claims, and pointing out that the Forest Service had filed an application to withdraw the specific area encompassing the trees in 1955, implicitly indicating that the area was not embraced by a prior withdrawal.

[1] Although we shall make reference to some of appellants' contentions with regard to our discussion of the long continued course of action by the Forest Service and BLM, infra, we need not specifically pass upon appellants' arguments because the State Office decision must be reversed for another reason. 5/ It is the conclusion of the Board that the Presidential proclamation of September 17, 1906, 34 Stat. 3232, extending the boundaries of Tahoe Forest Reserve, had the effect of and was construed as restoring to entry the lands withdrawn by the earlier Secretarial order. Accordingly, in view of applicable law we hold that the long continued course of action by the Department of the Interior and the Forest Service reflecting restoration of the subject township to entry for purposes of prospecting, locating, and developing mineral resources may not be abandoned by the agencies unless such prior course of action was clearly erroneous. After reviewing applicable law and the evidence of record, we find no such clear error warranting a change in interpretation regarding the status of the subject township.

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5/ A number of points, however, are worth noting. The tract book and other records indicate that the California Hawaiian Development Company received mineral patent #50484 on January 15, 1916, for claims in secs. 21 and 22. B. L. Gorman received mineral patent #1147271 on October 8, 1954, for claims in sec. 4. The Central Pacific Railroad Company received a number of patents in 1931 and 1938 for lands in the township pursuant to the Act of July 25, 1866, 14 Stat. 239. Pursuant to the Mining Claims Rights Restoration Act of 1955, P.L. 359, 69 Stat. 681, 30 U.S.C. §§ 621-625 (1976), Don Moraga filed a location notice for land in sec. 4 on June 26, 1963, amended September 23, 1963 (Sacramento 076210), which the Department permitted with "no objection to mining." First, we note that, with the exception of the Morgan location, we have received no evidence regarding the dates when the other entries were initiated or vested, i.e., prior or subsequent to the 1892 withdrawal order. However, even assuming that all the above patents and location were allowed by mistake, they can form no precedent for permitting other claims located after the date of the withdrawal to be patented. Currie v. State of California, 21 L.D. 134, 135 (1895). Furthermore, we reject appellant's suggestion that the decision of the State Office to declare the subject claims void ab initio was discriminatory. United States v. Howard, 15 IBLA 139, 144-46 (1974); United States v. Zuber, 13 IBLA 193, 197-98 (1973); United States v. Gunn, 7 IBLA 237, 245, 79 I.D. 588, 591 (1972).

To understand the problem raised by this appeal, a brief review of relevant congressional, judicial, and departmental actions is appropriate. Prior to 1891, there was no specific statute granting the President a general authority to reserve public lands. Executive withdrawals were made, however, based upon the President's inherent authority "to order, from time to time, as the exigencies of the public service required, parcels of land belonging to the United States to be reserved from sale and set apart for public uses." Grisar v. McDowell, 6 Wall. 363, 381 (1867). See also United States v. Midwest Oil Co., 236 U.S. 459, 480 (1914).<sup>6/</sup> Similarly, the Department of the Interior initiated forest withdrawals based upon the President's power to do so. For example, in George Herring, 11 L.D. 60 (1890), the Department upheld a reservation to suspend from entry and sale an area covered by trees of the "sequoia gigantea" variety. The reservation had been initiated by the Department and was held to have been made, in legal effect, by the President who "speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties," citing Wolsey v. Chapman, 101 U.S. 755, 770 (1879).

Following increased national interest in the conservation of the natural resources of the country, Congress passed the General Revision Act of March 3, 1891, 26 Stat. 1905, also known as the Forest Reservation Act. Section 24 of the Act authorized the President to set apart and reserve public lands:

[I]n any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and limits thereof.

Following passage of the Forest Reservation Act, the President and the Secretary of the Interior issued numerous proclamations and orders, respectively, withdrawing forest lands. Division "P" was set up in the U. S. General Land Office to administer the withdrawn lands. One of the orders issued by the Secretary was the October 25, 1892, withdrawal of T. 14 N., R. 13 E., Mount Diablo meridian, California, which is in issue in this case.

The 1891 Act, in the words of Gifford Pinchot, the first U.S. Chief Forester,

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<sup>6/</sup> Section 704(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2792, repealed the implied authority of the President to withdraw land, to the extent such authority was premised on Congressional acquiescence.

[D]id not provide for the practice of Forestry on the Forest Reserves. It did not even set up a form of the administration. It gave the Reserves no protection, and they had none, except as an occasional Agent might be spared from the meager force of the Land Office. It merely set the land aside and withdrew it, legally at least, from every form of use by the people of the west or by the Government. [Emphasis added.]

See G. Pinchot, Breaking New Ground, 85 (1947). Due to the complete nature of withdrawals of lands in forest reserves, a storm of protest arose in the West charging that mining and lumbering, the two major industries, were being completely halted by Presidential proclamations establishing forest reserves. In the meantime, conservationists were upset over the lack of any operable administrative machinery to protect the reserves.

Compromise between the conservationists and the Western business interests eventually took the form of an amendment to a civil appropriations bill. The amended bill was enacted on June 4, 1897, 30 Stat. 11, and came to be called the Forest Management Act. The relevant portions of the 1897 Act provide the following:

All public lands heretofore designated and reserved by the President of the United States under the provisions of the Act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said Act, shall be as far as practicable controlled and administered in accordance with the following provisions:

\* \* \* \* \*

Nothing herein shall be construed as prohibiting \* \* \* any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: \* \* \*

\* \* \* \* \*

The President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve.

30 Stat. at 34-36.

In Rose Gold Mining and Milling Co., 30 L.D. 377, 378-80 (1900), the Department discussed the purposes of the 1897 Act and stated that Congress intended to provide a complete scheme for control and administration of the forest reserves in a manner which would not retard the development of the country by locking up and placing beyond lawful reach and utilization the timber, stone, mineral resources and waters found upon these reserves. However, we note that by the terms of the 1897 Act, only forest reserves designated by the President were subject to the provisions permitting entry for mineral location and development.

Thereafter, by Presidential proclamation of April 13, 1899, 31 Stat. 1943, President William McKinley created the Lake Tahoe Forest Reserve in California. This reservation did not include within its boundaries the township which is in dispute in this case. <sup>7/</sup> By Presidential proclamation of October 3, 1905, 34 Stat. 3163, President Theodore Roosevelt extended the boundaries of the Lake Tahoe Forest Reserve to include T. 14 N., R. 13 E., Mount Diablo meridian. The earlier reservation was modified because "the public good would be promoted by including within the said forest certain additional lands within the States of California and Nevada, which are in part covered with timber \* \* \*" (Emphasis added). 34 Stat. 3163. Accordingly, the subject township became part of the forest reserve. The reservation was known thereafter as the Tahoe Forest Reserve. There is no explicit language within this proclamation to the effect that lands within the exterior boundaries of the reserve earlier withdrawn from all forms of entry for forest protection would thereafter be restored to entry subject to compliance with the rules and regulations covering forest reserves. However, such restoration may have occurred by implication. See Battlement Mesa Forest Reserve, 16 L.D. 190 (1893), fully discussed infra.

By Presidential proclamation of September 17, 1906, 34 Stat. 3232, the Tahoe Forest and the Yuba Forest Reserves, plus additional lands, were included within one reservation. For our purposes, the relevant portions of this proclamation stated the following:

I, Theodore Roosevelt \* \* \* do proclaim that the proclamations heretofore issued respecting said forest reserves are hereby superseded, and the Tahoe Forest Reserve is hereby established in place thereof, \* \* \*.

This proclamation will not take effect upon any lands withdrawn or reserved, at this date, from settlement,

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<sup>7/</sup> By the Transfer Act of February 1, 1905, 33 Stat. 628, Congress transferred administration of the forest reserves to the Department of Agriculture. After the transfer, responsibility for surveying and for all mineral entries within the forests remained in the hands of the General Land Office (now Bureau of Land Management), Department of the Interior.

entry, or other appropriation, for any purpose other than forest uses, or which may be covered by any prior valid claim, so long as the withdrawal, reservation, or claim exists. [Emphasis added.] [8/]

For the reasons stated below, the Board concludes that this proclamation (or its predecessor of October 3, 1905, 34 Stat. 3163) had the effect of and was construed as restoring the subject township to entry under the mining laws, subject to compliance with the rules and regulations respecting forest reserves.

In State of California, 20 L.D. 327 (1895), Secretary Smith reversed a decision by the Commissioner of the General Land Office rejecting a State indemnity selection chosen in lieu of lands situated in the subject township. The Commissioner had rejected a State indemnity selection chosen in lieu of sec. 16, T. 14 N., R. 13 E., Mount Diablo meridian, on the grounds that sec. 16 was included within the Secretarial order of October 25, 1892, withdrawing the entire township from selection, and the Act of February 28, 1891, 26 Stat. 796, while permitting State selections from permanent reservations, did not apply "to a mere temporary withdrawal of land pending an investigation as to the character of the trees growing thereon" (Emphasis added). Id. The Commissioner's decision continues:

As to the information upon which the Hon. Secretary acted in directing the reservation of this township, or his purpose in regard to it in the future, I am not advised. It is probable, however, that an investigation will be ordered, and if it is found that said township, or the portions thereof that had not prior to the date of the order reserving them, been disposed of, contains sequoias, or other large trees, the preservation of which is desirable, he may recommend to Congress, or the President, that authority be given for the permanent reservation of the same.

But on the other hand, should an investigation be ordered and the trees found to be of the character indicated, or of insufficient number to warrant the attempt to preserve them, then the land will doubtless be restored to the public domain.

Id. Relying upon Battlement Mesa Forest Reserve, supra at 190-191, Secretary Smith reversed the Commissioner's decision on the ground

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8/ The Tahoe Forest Reserve was subsequently consolidated with other forest reserves under the name of the Tahoe National Forest. A portion of sec. 20, T. 14 N., R. 13 E., Mount Diablo meridian, was subsequently included within the El Dorado National Forest.

that it was unnecessary for a reservation to be of a permanent character to justify indemnity selection by the State. <sup>9/</sup>

The Battlement decision is extremely relevant to the matter at hand. The syllabus in the case reads as follows:

Lands embraced within a temporary order of withdrawal issued by the Department, with a view to creating a forest reservation under the act of March 3, 1891, are by such order excluded from settlement and entry, pending final action by the President in the matter of establishing such reservation.

On March 23, 1892, certain lands in Colorado were reserved by order of the Department, pending an examination with a view to creating a forest reserve. On December 24, 1892, the President issued a proclamation, 27 Stat. 1053, creating a forest reserve which embraced most of the lands withdrawn in the March 23 order. In the interim period, certain parties made settlement and tendered filings or entries for lands withdrawn in the first order. Some of the entries were for lands within the newly created forest reserve which continued the prohibition against settlement and entry; some were for lands which were not subsequently included within the forest reserve and which were restored to entry after the President's proclamation was issued. In the decision, Secretary Noble held:

While such withdrawal [March 23, 1892] is in force and effect, no party can obtain any rights, under the public land laws, as against the government, by entry or settlement upon said lands.

It follows, that any settlement or entry or filing or location, initiated subsequent to said withdrawal, cannot be considered a legal entry, a lawful filing, or valid settlement or location, as said terms are used in the President's proclamation, upon the lands finally reserved.

Under date of January 11, 1893, you [the Commissioner] transmitted a printed copy of the President's proclamation to the local officers, and in your instructions to them, said:

This proclamation supersedes office letter of March 23, 1892, to you, making a temporary

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<sup>9/</sup> We take note also that in dictum at the close of his decision, Secretary Smith remarked that, in any case, there was nothing in the 1892 Secretarial order which clearly indicated that the withdrawal was of temporary nature.

withdrawal of lands for the proposed "Grand Mesa Forest Reserve," the name of the proposed reservation, and the boundaries thereof having been changed, as indicated in the proclamation.

You will make the proper notations on your records for the lands lying in your district, affected thereby.

I am of the opinion that this should be interpreted as an order of restoration of said lands.

There is no reason why the reservation should exist after the proclamation was issued, and while the order is vague and indefinite, I think it should be held to operate as a restoration of the lands to entry. [Emphasis added.]

For our purposes we note that the President's proclamation in Battlement did not contain any language providing for the supersession of Departmental orders previously withdrawing lands not later included within the reserve. Nevertheless, the Secretary affirmed the Commissioner's determination that the final action by the President in establishing the reserve had the implicit effect of superseding the earlier withdrawal order with respect to lands not included within the reserve. Following this proper construction of the effect of the proclamation, the Commissioner issued his order which was held by the Secretary to operate as a restoration of the lands to entry. Similarly, we are of the opinion that the President's proclamation of September 17, 1906, which explicitly stated that prior proclamations respecting the Tahoe Forest Reserve were hereby "superseded," had the effect of and was construed as setting aside 10/ the 1892 Secretarial withdrawal order and restoring the subject township to entry subject to compliance with the rules and regulations pertaining to forest reserves. 11/

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10/ Black's Law Dictionary 1607 (4th ed. 1968) defines "supersede" as follows: "Obliterate, set aside, annul, replace, make void, inefficacious or useless, repeal."

11/ Our conclusion is not affected by the fact that the Presidential proclamation referred only to supersession of prior "proclamations" respecting the Tahoe Forest Reserve. First, we note that in the Battlement case, the Commissioner, with Secretarial affirmance, construed a proclamation as having superseded a prior order. Furthermore, in Wolsey v. Chapman, supra, cited in the Battlement case, the Supreme Court held that an order by the Secretary of the Interior reserving lands from sale was the legal equivalent of the President's own order: "It was, therefore, as we think, such a proclamation by the President reserving the lands from sale as was contemplated by the act" of September 4, 1891, 5 Stat. 453, granting preemption rights in

While we are aware of the differences between the two cases, we do not believe the distinctions are sufficiently significant to alter our conclusion. The differences which require discussion are as follows. In the Battlement case, the lands within the forest reserve were not also impliedly restored to entry because the reserve was created prior to passage of the Forest Management Act of 1897, which permitted both forest use and some forms of public entry. Had the reserve been created subsequent to the 1897 Act, as in the case at bar, it is probable that the superseding effect of the proclamation and the restoration of lands to entry would have been held to apply to lands within the reserve as well. Regardless of what lands were subsequently affected, the point we wish to stress is that the proclamation was held to have been properly construed as having impliedly superseded a prior Departmental order despite the absence of explicit language indicating that intent.

Next, in Battlement it was not the proclamation but rather the Commissioner's "vague and indefinite" order stating that supersession had occurred which was held to operate as a restoration of the lands to entry. The absence of such an order in the present case does not negate our conclusion that the proclamation could have properly been construed as a directive, albeit "vague and indefinite," to restore the subject township to entry. In the instant case the language of the proclamation explicitly stated that a supersession had occurred, thus obviating the necessity of a reiteration by the Secretary or the Commissioner. All that would be required after the issuance of the proclamation to open the land would be the entry on office records. We note that the tract book records disclose that immediately to the left of each section notation reading, "Withdrawn per Letter 'P' Nov. 1, 1892," there is stamped, "TAHOE FOREST RES." on the same entry line. While somewhat ambiguous, this action is conceivably consistent with the instructions given in the Battlement case by the Commissioner that notations should be made on the land office records indicating the superseding effect of the forest reserve created by the President's proclamation.

That such a superseding effect was understood to have been intended is further substantiated by subsequent administrative action. For example, in State of California, supra, it was the opinion of the Commissioner that the Secretarial withdrawal order of October 25, 1892, was probably of a temporary nature pending an investigation of

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fn. 11 (continued)

public lands, except for lands included in any reservation, treaty, law or proclamation of the President. See also Wilcox v. Jackson, 13 Pet. 498, 513 (1839). Accordingly, we conclude that the President's proclamation of September 17, 1906, could have properly been construed as having superseded both prior proclamations and their legal equivalent, prior Secretarial orders, which had withdrawn lands for forest purposes.

the desirability of preserving the sequoias within the township. If such preservation was desired, a permanent reservation could be created. But, if the sequoias were of insufficient number to warrant the attempt to preserve them, "[T]hen the land will doubtless be restored to the public domain." Id. We note that the Geological Survey map submitted by appellant depicts the sequoia grove as being confined to less than 1/4 of a section, astraddle secs. 18 and 19's common border. No permanent withdrawal was ever recommended until 1955, at which time the Forest Service proposed withdrawing portions of secs. 18 and 19 for the protection of the giant sequoias. The tract book records for secs. 18 and 19 read as follows: "Proposed W/D [description omitted] Withdrawn Under Gen. Mining Laws." An additional indication of the Forest Service's view that the township is not subject to the 1892 Secretarial order is the fact that selective timber cutting contracts have been permitted in the area.

Furthermore, we note that no mention was ever made of the 1892 withdrawal order throughout the years that appellant Olsen and her predecessors-in-interest held the claims: i.e., during the contest against the Central Pacific Railroad Company in 1930, at the time the Forest Service requested and was granted a right-of-way easement in 1949, and during the patent proceedings in the 1950's which lasted 6 years. As appellant Olsen also points out, the evidence indicates that the Department issued patents in the township subsequent to 1892, and also permitted the filing of a location notice in 1963 pursuant to 30 U.S.C. §§ 621-625 (1976), with "no objection to mining."

[2] A long continued course of action by administrative agencies regarding an interpretation of the law within their jurisdictions should not be departed from by the agencies unless such course of action is clearly erroneous. State of Wyoming, 27 IBLA 137, 145, 83 I.D. 364, 369 (1976), aff'd, Wyoming v. Andrus, 436 F. Supp. 933 (D. Wyo. 1977), aff'd, 602 F.2d 1379 (10th Cir. 1979); Earle T. Miller, 60 I.D. 387, 389 (1950); see also McDade v. Morton, 353 F. Supp. 1006, 1012 (D.D.C. 1973). We find no such clear error in the cases at bar. Accordingly, we hold that it was improper for BLM, upon recommendation of the Forest Service, to conclude that the 1892 Secretarial order was still in full force and effect and that appellants' mining claims were, therefore, null and void ab initio.

[3] We are aware of the fact that some of appellant Olsen's claims were located during the interim period between the Secretarial order and the Presidential proclamation. While the earlier withdrawal was in full force and effect, no rights could be obtained under the public land laws, as against the Government, by entry or settlement upon the lands. Battlement Mesa Forest Reserve, supra. However, as we noted in United States v. Guzman, 18 IBLA 109, 81 I.D. 685 (1974), under 30 U.S.C. § 38 (1976), if a person, or his predecessors in chain of title, has held and worked a mining claim for a period of time equal to that prescribed by the state statute of limitations for

adverse possession of mining claims, during which period the land was open to mining location, that person is deemed to have made a location. Whether the location is valid depends on whether a discovery has been made within the meaning of the mining laws. 12/ Cole v. Ralph, 252 U.S. 286, 307 (1920); W. E. Wicks, 14 IBLA 356, 359 (1974); Meritt N. Barton, 6 IBLA 293, 79 I.D. 431 (1972); see Harry A. Schultz, 61 I.D. 259, 263 (1953). Accordingly upon remand BLM should determine whether 30 U.S.C. § 38 (1976) is applicable to those claims located during the interim period when the township was not open to mineral entry.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the cases are remanded to BLM for further action consistent with this decision.

James L. Burski  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

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<sup>1/2</sup> We note that amended locations for all the claims were filed on July 9, 1952. For a discussion of the difference between "amended" and "relocated" claims, see R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979).

APPENDIX A

<u>Claim Name</u>	<u>Date of</u> <u>Location</u>	<u>Location</u> <u>Amended</u>	
Manzanita	7-6-1896		
Manzanita		7-9-1952	
Robin	7-6-1896		
Robin		7-9-1952	
Yellow Jacket	12-29-1903		
Yellow Jacket		7-9-1952	
Gold Dollar Mines	11-2-1898		
Gold Dollar Mines		7-9-1952	
Bonanza Gravel Mines	11-4-1898		
Bonanza Gravel Mines		7-9-1952	
New Port	11-18-1904		
New Port		7-9-1952	
Dennison	11-18-1904		
Dennison		7-9-1952	
Jennie Lind	5-15-1905		
Jennie Lind		7-9-1952	
Forest	5-12-1905		
Forest		7-9-1952	
California	5-13-1905		
California		7-9-1952	
Ohio	5-16-1905		
Ohio		7-9-1952	
Gold Eagle	5-28-1905		
Gold Eagle		7-9-1952	
Wonder	1-1-1916		
Wonder			7-9-1952
Jack Robinson Outlet		1-1-1916	
Jack Robinson Outlet			7-9-1952
Caples (Portion of Blue Eyes Consolidated Mines)	Originally part of Gold Dollar and Bonanza claims prior to resurvey.)		7-9-1952



