

D. ESTREMADO

IBLA 80-506

Decided May 29, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring the Lucky Strike mining claim abandoned and void. OR 3833.

Affirmed as modified.

1. Mining Claims: Lands Subject to -- Mining Claims: Recordation.

Land which has been patented without a reservation of minerals to the United States is not available for the location of placer mining claims, and BLM properly may reject documents submitted for recordation of a mining claim insofar as they cover patented land.

APPEARANCES: W. V. Deatherage, Esq., Medford, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

D. Estremado has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting his filing of a quitclaim deed for the Lucky Strike mining claim for recordation under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). In its memorandum transmitting the appeal, the State Office noted that since issuing its decision, it has been authorized to accept such secondary evidence as quitclaim deeds for recording. ^{1/} The memorandum stated, however, that the question of

^{1/} We do not read Organic Act Directive (OAD) 80-19 (Feb. 25, 1980) as approving the acceptability of quitclaim deeds in all situations. The OAD 80-19 refers to Organic Act Directive 79-7 (Nov. 24, 1978), which indicated that quitclaim deeds may be accepted if the mining claimant demonstrates that the certificates of location were unavailable. See Marvin E. Brown, 52 IBLA 44 (1981).

recording is moot because the land involved has been patented. The State Office requested that the case be remanded so that the claim could be declared null and void ab initio.

The quitclaim deed which appellant originally offered for filing describes lot 1, sec. 4, T. 37 S., R. 3 W., Willamette meridian, Oregon. The notices of location submitted later described the E 1/2 NW 1/4 NW 1/4 and the W 1/2 NW 1/4 NW 1/4 of the same section. The title plat makes clear that lot 1 has been patented and appellant asserts ownership to that lot. The NW 1/4 NW 1/4 of sec. 4 was designated as lot 1 because three small mining claims totaling 4.428 acres in sec. 4 were excluded from the patent. In this appeal, Estremado is attempting to preserve his rights to the claims excluded from the patent.

[1] In Samuel A. Chesebrough, 49 IBLA 249 (1980), we held that land which has been patented without a reservation of minerals to the United States is not available for the location of placer mining claims, and BLM properly rejects a copy of a notice of placer location insofar as it covers patented land. We held, however, that BLM should not reject a notice insofar as it concerns unpatented lands. This decision, however, does not provide a basis for a decision in appellant's favor. Even if a quitclaim deed can be accepted as secondary evidence of location where there is no showing that the notice of location was unavailable, 2/ the quitclaim deed describes lot 1, and does not describe the unpatented portion of the NW 1/4 NW 1/4 sec. 4. No document describing such unpatented land was filed until appellant had taken his appeal, which is after the October 22, 1979, deadline established by section 314 of FLPMA, supra, for submitting such documents to the BLM. Accordingly, appellant's claim to these unpatented lands is properly declared abandoned and void. 43 U.S.C. § 1744(c) (1976).

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 is affirmed as modified.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

2/ See n.1, supra.

