

EDWARD C. MILLER

IBLA 81-141

Decided August 3, 1981

Appeal from decision of California State Office, Bureau of Land Management, rejecting application for disclaimer of interest. CA 8493.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Disclaimers of Interest--Federal Land Policy and Management Act of 1976: Rules and Regulations-- Regulations: Force and Effect as Law

While the Bureau of Land Management may suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1745 (1976), where no implementing regulations have been issued and where there is no contrary policy directive, an application may be properly rejected where the statutory criteria have not been met.

APPEARANCES: Edward C. Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Edward C. Miller has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated August 19, 1980, rejecting his application for a disclaimer of interest, pursuant to section 315 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1745 (1976). The land in question is a portion of the SW 1/4 SW 1/4 sec. 32, T. 12 S., R. 1 E., San Bernardino meridian, San Diego County, California.

The land borders lot 4, sec. 5, T. 13 S., R. 1 E., San Bernardino meridian, San Diego County, California, which is officially held in fee

simple by appellant pursuant to a grant deed dated January 11, 1973. The BLM decision notes that:

The official records of this office disclose that title to said lot 4 of Sec. 5 was conveyed out of Federal ownership based upon an official plat of survey approved on December 12, 1881, said survey showing lot 4 to contain 40.49 acres. The records show that in 1968, the Bureau of Land Management retraced and reestablished the portion of the Third Standard Parallel South between said lot 4 Sec. 5, T. 13 S., R. 1 E., SB Mer., and Sec. 32, T. 12 S., R. 1 E., SB Mer., California. This remonumentation had the effect of enlarging lot 4 by some 9.65 acres more or less. However in 1978, the 1968 resurvey was found to be erroneous and the Third Standard Parallel South was reestablished in accordance with the original 1881 survey. [Emphasis added.]

In his application, dated June 17, 1980, appellant requested a disclaimer of interest with respect to that portion of sec. 32 established as part of lot 4 pursuant to the 1968 resurvey. He asserts that the property was "bought in good faith based on Government survey and all neighboring property owners and the County of San Diego accepted this 1968 survey that established our ownership lines." On appeal, he asserts that improvements have been made in reliance on this survey and that "denial of [the] disclaimer would therefore mean that, for example, my neighbor's house would be on my land and his neighbor's house would be on his land etc." He also states that the area in dispute is only .79 acre.

BLM concluded in its decision:

Inasmuch as lot 4 Sec. 5, T. 13 S., R. 1 E., SB Mer., was conveyed out of Federal ownership based upon a plat of survey showing it to contain 40.46 acres, it cannot be subsequently determined to be enlarged based upon an erroneous survey of the Government; and inasmuch as the SW 1/4 SW 1/4 Sec. 32, T. 12 S., R. 1 E., SB Mer., has always been held in Federal ownership, no rights may attach to such land based upon an erroneous survey to the contrary. Accordingly, the application for a disclaimer to the hiatus area created by the 1968 resurvey must be denied.

[1] Section 315(a) of FLPMA, supra, provides for the issuance of recordable disclaimers of interest in any lands where "the disclaimer will help remove a cloud on the title of such lands and which [the Secretary] * * * determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid * * *." 43 U.S.C. § 1745(a) (1976).

The Board has held that BLM should suspend adjudication of applications for disclaimers of interest until regulations have been promulgated, implementing this statutory provision, or until there is

a contrary policy directive. Dennis Potts, 42 IBLA 355 (1979); Grace Cooley Coleman, 35 IBLA 236 (1978). We are unaware of any final regulations or policy statement having been issued. However, neither the circumstances of Potts nor Coleman are present herein. ^{1/} In this case clearly the statutory criteria have not been met.

The record indicates that the area in question was not conveyed out of Federal ownership. Moreover, the original conveyance was made pursuant to an 1881 survey. There is "[m]uch authority for the proposition that the Federal Government may not, by means of a second survey, affect property rights acquired under an official survey." Roland and Marie Oswald, 35 IBLA 79, 83 (1978), and cases cited therein. Accordingly, the 1968 resurvey did not vest any rights in appellant to the "hiatus area." See United States v. MacMillan, 331 F. Supp. 435, 439 (D. Nev. 1971).

The United States continued to retain a valid interest in the subject land which was not affected by the 1968 resurvey. There is nothing which could properly be the subject of a disclaimer of interest pursuant to section 315 of FLPMA, supra.

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.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

^{1/} In Dennis Potts, supra at 360, 363, the Board held that appellee had established entitlement to issuance of a disclaimer of interest in the mineral estate of the lands in question but that BLM should suspend action until issuance of regulations or a policy directive. In Grace Cooley Coleman, supra at 239, the Board also held that action should be suspended until issuance of regulations or a policy directive; however, the Board stated: "It is possible that regulations when issued will specify the type of showings an applicant is to make to help the Department in making its title determination, and will prescribe the factfinding and review procedures and standards." (Emphasis added.)

