

**Editor's note: Erratum dated Feb. 9, 1982 (OR MC 2358 should read OR MC 15698).**

JUNIOR L. DENNIS

IBLA 80-583

Decided December 29, 1981

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting filing for recordation and declaring mining claim OR MC 2385 null and void ab initio.

Affirmed as modified.

1. Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Generally

Lands which were revested under the Act of June 9, 1916, 39 Stat. 218, and were subsequently conveyed to private owners do not regain their status as revested O&C lands upon a later reconveyance back to the United States.

2. Federal Land Policy and Management Act of 1976: Acquisitions

Lands acquired by donation under sec. 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1715 (1976), become "public lands" upon acceptance of title.

3. Federal Land Policy and Management Act of 1976: Acquisitions

Lands acquired pursuant to sec. 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1715 (1976), are not open to mineral location until a notice of availability has been duly published.

4. Mining Claims: Lands Subject to

Where the public records of the Department indicate that land is not open to

entry, even if the notation is in error, any mining claim thereafter located is null and void ab initio until the records are changed to indicate that the land is available.

APPEARANCES: Junior L. Dennis, pro se; Robert H. Memovich, Esq., Office of the Regional Solicitor, Portland, Oregon, for the Government.

#### OPINION BY ADMINISTRATIVE JUDGE BURSKI

Junior L. Dennis has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 24, 1980, refusing recordation of the Hard Times lode mining claim situated in sec. 12, T. 33 S., R. 5 W., Willamette meridian, Oregon, within the boundaries of the original Oregon and California Railroad (O&C) revested grant lands. See generally 43 U.S.C. §§ 1181a to 1181d (1976).

The land embraced by the subject claim was originally located by A. R. Shipley as the Hard Times lode mining claim on July 7, 1938. This claim was patented to one Rolly C. Shipley, and his two sons, Morris F. Shipley and Robert A. Shipley, Patent No. 1196709, issued June 24, 1959. Rolly C. Shipley died in 1960. Title eventually became vested in Morris F. Shipley and Jessie B. Shipley as tenants by the entirety.

In December 1975, BLM became interested in acquiring an easement across the patented claim in order to manage its surrounding O&C timber lands. Negotiations thereupon ensued with the Shipleys to obtain such an easement. During the course of these discussions, the Shipleys decided to make a gift of the entire patented claim to the United States. Accordingly, on September 2, 1976, the Shipleys signed a deed conveying the lands to the United States under the Act of July 14, 1960, 74 Stat. 506, 43 U.S.C. § 1364 (1970). By decision of June 28, 1978, the Chief, Branch of Land and Minerals Operations, Oregon State Office, accepted the title to the offered lands.

However, between the signing of the deed on September 2, 1976, and the acceptance of title on June 28, 1978, two actions, relevant to the instant appeal, transpired. First, Congress enacted the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2744, repealing, inter alia, the Act of July 14, 1960, as it related to donations of land. See section 705(a), 90 Stat. 2793. Second, on May 28, 1977, appellant located a mining claim, also identified as the Hard Times, embracing the formerly patented claim. 1/

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1/ In order to minimize confusion, the Hard Times claim located in 1977 will be referred to simply as the Hard Times claim. The Hard Times claim which appellant subsequently located in 1979 will be referred to as the new Hard Times claim.

Appellant filed papers to record the claim with BLM, pursuant to section 314 of FLPMA, on August 26, 1977. By decision of April 4, 1978, the Oregon State Office rejected the attempted recordation, OR MC 2385, and held the claim null and void ab initio. This decision stated that the lands had been conveyed to the United States on September 2, 1976, but rejected the claim because, even if the lands were determined to be public lands subject to mining, the land would not be open to entry and location until an opening order was published in the Federal Register. A timely appeal was taken from this decision.

In Junior L. Dennis, 40 IBLA 12 (1979), this Board affirmed the decision of the State Office, but did so on grounds considerably different from those utilized by the State Office. The Board examined in detail the sequence of events surrounding the Shipleys' donation and held that title was not conveyed to the United States until June 28, 1978, when the Chief, Branch of Minerals Operations, accepted title. Inasmuch as FLPMA had repealed the Act of July 14, 1960, the Board held that the acceptance of title could not relate back to the tender of the deed of conveyance, nor could title have been accepted pursuant to the Act of July 14, 1960. Rather, the Board stated that title had been accepted pursuant to section 205 of FLPMA, 43 U.S.C. § 1715 (1976).<sup>2/</sup> Since the mining claim had been located prior to BLM's acquisition of title, the Board held the claim was null and void ab initio. The Board did not, however, purport to pass on any other facet of the State Office decision.

Eight days after the Board's decision, appellant located the new Hard Times mining claim, once again embracing the land donated by the Shipleys. He duly filed a copy of his location notice with BLM on June 15, 1979, when it was serialized as OR MC 15698. By decision of March 24, 1980, the State Office once again refused recordation of the claim and declared it null and void ab initio. This decision stated that lands acquired under section 205(c) of FLPMA were considered acquired lands insofar as the 1872 mining law was concerned, and stated that "acquired land is not subject to appropriation under the 1872 mining law." The decision further noted that the land status records of the State Office showed that the land was not open to entry. Dennis timely appealed from this decision.

In his statement of reasons, Dennis generally argues that all lands belonging to the United States are open to entry and location, citing section 1 of the Act of May 10, 1872, 17 Stat. 91, 30 U.S.C. § 22 (1976), and also points out that the lands embraced by the claim are O&C revested lands. In response, the Office of the Regional Solicitor argues that acquired lands are not subject to the Mining Act of 1872 and that nothing in FLPMA was intended to alter the treatment of acquired lands.

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<sup>2/</sup> We note that section 307(c) of FLPMA, 43 U.S.C. § 1737(c) (1976), also provides for the acceptance of donations of real property.

[1] The first question which we must analyze is whether these lands are O&C lands such as would be subject to the general mining laws of the United States. By the Act of June 9, 1916, 39 Stat. 218, Congress declared revested in the United States certain lands which had been granted to the Oregon and California Railroad Company. <sup>3/</sup> Section 2 of the Act provided that the various lands would be classified as powersite lands, timberlands, or agricultural lands. Section 3 of this Act provided that the lands revested, except for lands classified for powersite purposes, would be open to exploration, entry and disposition under the general mining laws if they were chiefly valuable for the mineral deposits contained therein.

Subsequently, however, Congress adopted the Act of August 28, 1937, 50 Stat. 874, 43 U.S.C. §§ 1181a-1181f (1976). Section 1 of this Act provided, inter alia:

[N]otwithstanding any provisions in the Acts of June 9, 1916 (39 Stat. 218), and February 26, 1919 (40 Stat. 1179), as amended, such portions of the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands as are or may hereafter come under the jurisdiction of the Department of the Interior, which have heretofore or may hereafter be classified as timberlands, and power-site lands valuable for timber, shall be managed, except as provided in section 1181c of this title, for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principal of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities: Provided, That nothing in this section shall be construed to interfere with the use and development of power sites as may be authorized by law. [Footnotes omitted.]

This Act was subsequently interpreted as, in effect, partially repealing section 3 of the Act of June 9, 1916, supra, so that lands classified as valuable for timber were deemed no longer open to mineral location or leasing. See Applicability of Mining Laws to Revested Oregon and California and Reconveyed Coos Bay Grant Lands, 57 I.D. 365 (1941). <sup>4/</sup>

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<sup>3/</sup> These lands were granted by the Act of July 25, 1866, 14 Stat. 239 and the Act of May 4, 1870, 16 Stat. 84.

<sup>4/</sup> The opinion of Assistant Secretary Chapman did note that lands which had been classified as agricultural lands under Class Three of section 2 of the Act of June 9, 1916, if shown to be more valuable for minerals than for agriculture, continued to be subject to disposition under the general mining laws (57 I.D. at 374).

By the Act of April 8, 1948, 62 Stat. 162, Congress provided that:

[N]otwithstanding any provisions of the Act of August 28, 1937 (50 Stat. 874), or any other Act relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands, all of such revested or reconveyed lands, except power sites, shall be open for exploration, location, entry, and disposition under the mineral-land laws of the United States, and all mineral claims heretofore located upon said lands, if otherwise valid under the mineral-land laws of the United States, are hereby declared valid to the same extent as if such lands had remained open to exploration, location, entry, and disposition under such laws from August 28, 1937, to the date of enactment of this Act \* \* \*.

This Act, in effect, restored the "revested or reconveyed lands" to the status of lands subject to mineral location, though subject to certain limitations. See 30 CFR 3821.1(a).

We have set forth the history of the O&C lands in some detail in order to examine an argument which appellant had pressed in his original appeal which we did not address in Junior L. Dennis, supra. Pointing to the language of the 1937 Act which provides that "such portions of the revested Oregon and California \* \* \* grant lands as are or may hereafter come under the jurisdiction of the Department of the Interior \* \* \* shall be managed \* \* \* for permanent forest production" (43 U.S.C. § 1181a (1976)), appellant contended that all lands within the original O&C grant, regardless of however or whenever acquired, possess the status of O&C lands and are thus open to mineral location. We do not agree.

In the first place, the Act of August 28, 1937, did not purport to define what was or was not O&C land. Rather, it provided for management of such lands for permanent forest production. The phrase concerning land which "may hereafter come under the jurisdiction" referred to lands acquired by exchange from private land owners either within or adjacent to the limits of the original O&C grant as authorized by the Act of May 31, 1918, 40 Stat. 593. That Act expressly provided that "all lands and timber secured by virtue of such exchange shall be disposed of in accordance with the terms and provisions of said act of revestment." 5/ Thus, lands acquired by exchange pursuant to the provisions of the Act of May 31, 1918, would have been administered as revested lands. However, it does not follow that lands which had

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5/ This Act was subsequently repealed by the Act of July 31, 1939, 53 Stat. 1144, which substituted an authorization to exchange lands of approximately equal aggregate value with the state and counties as well as private land owners. The 1939 Act was, itself, repealed by section 705(a) of FLPMA.

revested pursuant to the 1916 Act but which subsequently passed from Federal ownership (in this case by a patented mining claim) would upon reacquisition by the Federal Government regain their status as revested O&C lands subject to mineral location. Prior to FLPMA, such lands were properly treated as either acquired or public lands dependent upon the statutory basis of their acquisition. They would not, however, regain the status of O&C lands or become subject to management under the 1937 Act.

[2] As we noted in Junior L. Dennis, supra, title to the instant land was acquired under the authority of section 205 of FLPMA, 43 U.S.C. § 1715 (1976). Section 205(c) provides in relevant part, that: "Lands and interests in lands acquired by the Secretary pursuant to this section or section 1716 of this title shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands."

The Regional Solicitor argues that this section must be read in conjunction with section 103 of FLPMA, 43 U.S.C. § 1702 (1976), which provides:

Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act--

\* \* \* \* \*

(e) The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except--

- (1) lands located on the Outer Continental Shelf; and
- (2) lands held for the benefit of Indians, Aleuts, and Eskimos.

The Solicitor's Office contends that section 103 makes it clear that the definition of public land as used in any other statute is unaltered and argues, therefore, that these lands retain the same status of "acquired lands" which they would have possessed prior to FLPMA and as such, are not public lands for the purposes of the Act of May 10, 1872, citing Rawson v. United States, 225 F.2d 855 (9th Cir. 1955), cert. denied, 350 U.S. 934 (1956).

"Acquired lands," as distinguished from public domain lands have traditionally referred to those lands "in federal ownership which \* \* \* hav[e] been obtained by the Government by purchase, condemnation, or gift, or by exchange for such purchased, condemned or donated lands, or for timber on such lands." Phillips Petroleum Co., 10 IBLA 275, 276 (1973).

Not all land, however, which is acquired by the United States is "acquired land." Thus, where public domain land was exchanged by the Government for land in private ownership under the General Exchange Act of 1922, 16 U.S.C. § 485 (1976), such land has the status of public domain land and not acquired land. See The Atchison, Topeka & Santa Fe Railway Co. v. Cox, 4 IBLA 279 (1972), aff'd sub nom. Rawls v. United States, 566 F.2d 1372, 1376-77 (9th Cir. 1978); Solicitor's Opinion, M-36421 (Feb. 18, 1957). Such lands are thus not available for leasing under the Mineral Leasing Act for Acquired Lands, 61 Stat. 913, 30 U.S.C. §§ 351-359 (1976). Wyoming Fuel Co., 52 IBLA 302 (1981). Similarly, revested O&C lands are treated as public lands, even though specific laws such as the Act of August 28, 1937, supra, control their management, and all mining claims located therein are subject to the specific requirements and limitations of the Act of April 8, 1948, supra. Cf. Heirs of Joseph A. Troxclair, A-29194 (Mar. 1, 1963). 6/

While section 1 of the Act of May 10, 1872, 17 Stat. 91, as amended, 30 U.S.C. § 22 (1976), is expansive in scope, declaring that "all valuable mineral deposits in lands belonging to the United States \* \* shall be free and open to exploration and purchase," it has long been recognized that the general mining law does not apply to all land "belonging to the United States." Thus, in Oklahoma v. Texas, 258 U.S. 574 (1922), the Supreme Court noted:

This section is not as comprehensive as its words separately considered suggest. It is part of a chapter relating to mineral lands which in turn is part of a title dealing with the survey and disposal of "The Public Lands." To be rightly understood it must be read with due regard for the entire statute of which it is but a part, and when this is done it is apparent that, while embracing only lands owned by the United States, it does not embrace all that are so owned. Of course, it has no application to the grounds about the Capitol in Washington or to the lands in the National Cemetery at Arlington, no matter what their mineral value; and yet both belong to the United States. And so of the lands in the Yosemite National Park, the Yellowstone National Park, and the military reservations throughout the western States. Only where the United States has indicated that the lands are held for disposal under the land laws does the section apply; and it never applies where the United States directs that the disposal be only under other laws. [Emphasis supplied.]

Id. at 599-600.

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6/ Lands acquired under section 8 of the Taylor Grazing Act, Act of June 28, 1934, 48 Stat. 1272, as amended, 43 U.S.C. § 315g (1970) (repealed by section 705(a) of FLPMA), were also classified as "public lands." See 43 CFR 2211.2 (1980).

In Rawson v. United States, supra, the Ninth Circuit Court of Appeals examined the question of whether lands acquired pursuant to the Emergency Relief Appropriations Act of 1935, 49 Stat. 115, were open to location under the Mining Act of 1872. In its opinion holding that such land was not available, the Court stated:

It may be stated as a universal proposition that patented lands reacquired by the United States are not by mere force of the reacquisition restored to the public domain. Absent legislation or authoritative directions to the contrary, they remain in the class of lands acquired for special uses, such as parks, national monuments, and the like--areas which it could not rationally be argued remain open to location and exploitation under the mineral laws.

Id. at 858.

Similarly, in Thompson v. United States, 308 F.2d 628 (9th Cir. 1962), the court held that land acquired pursuant to section 7 of the Act of June 7, 1924, 43 Stat. 654, 16 U.S.C. § 569 (1976), was also not open to location under the general mining law. The Thompson court focused on the distinction between lands held subject to the general land laws and land acquired for a particular purpose which would be incompatible with mineral entries. The court held that inasmuch as the land was acquired "for the specific purpose of preserving the timber \* \* \* recognition of a mining location pursuant to 30 U.S.C.A. § 22 would be wholly inconsistent with the purpose of the acquisition." Id. at 632.

Thus, the analysis utilized in the past in determining whether lands which were acquired became "public lands" has been one focused on the reasons for which the United States acquired title, as well as the statutory authority by which title was obtained. In this regard, we note that BLM was originally interested in obtaining an easement for a road to enable it to manage its surrounding timber. It is not difficult to determine that, insofar as the area of the right-of-way is concerned, mineral entry would be inconsistent with the purposes for which the land was acquired.

The essential question before us is whether land acquired by donation under section 205 of FLPMA becomes "public land" upon acceptance of title, subject to appropriation under the general mining laws. We believe that it does.

As noted above, the language of section 205(c), 43 U.S.C. § 1715(c) (1976), is explicit. It provides that upon acceptance of title, lands acquired "become public lands and for administration of public land laws not repealed by this Act, shall remain public lands." In Oklahoma v. Texas, supra, the Supreme Court noted that the mining laws apply "only where the United States has indicated that the lands are held for disposal under the land laws." 258 U.S. at 600. See also Thompson v. United States, supra at 632. It seems reasonably clear that Congress has determined that lands acquired under the authority of

section 205 are to be held for disposal and management under the public land laws.

The argument pressed by the Solicitor's Office, namely, that public land as used in section 205(c), 43 U.S.C. § 1715(c) (1976) must be read in conjunction with section 103(e), 43 U.S.C. § 1702(e) (1976), is inapposite. Section 103(e) defined public lands so as to include, with certain exceptions not relevant here, all land administered by the Bureau of Land Management. The obvious reason for this broad definition was the congressional desire that the management principles and considerations which animate FLPMA should apply to all lands under BLM management, without regard to whether they were public domain or acquired lands. The introductory caveat to the definition section which noted that it was not intended to change or "alter in any way the meaning of the following terms as used in any other statute," was designed to make it clear that to the extent different definitions were relevant in other laws, nothing in FLPMA was intended to alter those definitions. As an example, the Mineral Leasing Act, by its express terms, is not applicable to lands acquired under other Acts "subsequent to February 25, 1920." 30 U.S.C. § 181 (1976). Such lands are leasable, again with certain exceptions, under the Mineral Leasing Act for Acquired Lands, Act of August 7, 1947, 30 U.S.C. § 351 (1976). While for purposes of FLPMA no distinction is to be made between these two types of land, nothing in FLPMA purported to terminate the distinction as it relates to mineral leasing.

These considerations, however, are irrelevant to the specific question before us. That issue involves the interpretation of an express provision of FLPMA which provides that upon acquisition of title, those lands which are acquired become public lands. Indeed, interpreting this provision to mean that they become "acquired lands" would directly contradict the clear language of the Act. If Congress had intended that such acquired lands should be treated as they had been in the past, there would have been no need for section 205(c) whatsoever.

We are aware that section 205(c) also applies to exchanges completed pursuant to section 206, 43 U.S.C. § 1716 (1976). Prior to January 6, 1981, the regulations implementing exchanges, with the exception of the regulations relating to state exchanges (see 43 CFR 2211.2 (1980)), had no express provision relating to the status of land acquired through an exchange. On January 6, 1981, however, the regulations involving exchanges were totally revised. <sup>7/</sup> The regulations now

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<sup>7/</sup> These regulations were originally promulgated with an effective date of Feb. 5, 1981. The effective date of these regulations was subsequently extended to Mar. 30, 1981. See 46 FR 10707 (Feb. 4, 1981). The effective date was further extended to Apr. 15, 1981, and comments were requested as to whether the regulations were major rules under Exec. Order No. 12291. See 46 FR 19234 (Mar. 30, 1981). These regulations were eventually made effective on Apr. 15, 1981. See 46 FR 22585 (Apr. 20, 1981).

provide that "land and interests in lands acquired by exchange shall, upon acceptance of title by the authorized officer, become public lands." 43 CFR 2200.3(a) (46 FR 1640 (Jan. 6, 1981)). It would be impossible to develop a rational theory that would justify the treatment of exchanges in a different manner than gifts and acquisitions, particularly since the same section of FLPMA is applicable to both. We hold, therefore, that land acquired by donation pursuant to section 205 has the status of public land.  
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[3] The next question which we must examine is whether land acquired under section 205 must be opened before entry can be made thereon. Here it is helpful to note that section 8 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315g (1970), also provided for acceptance of donations of land as well as exchanges. That section expressly stated that "lands conveyed to the United States under this chapter shall, upon acceptance of title, become public lands." 43 U.S.C. § 315g(d) (1970). In Southern California Petroleum Corp., 66 I.D. 61 (1959), the Department held that land acquired under a section 8 exchange did not become available for oil and gas lease offers until an order opening them to such disposition was issued. Quoting an earlier decision involving land restored under the Transportation Act of 1940, 54 Stat. 954, 49 U.S.C. § 65b (1976), the Department noted that:

Through the years, the Office and the Department have had frequent occasion to consider the status of restored lands, --lands once segregated by various kinds of adverse claims or appropriations, even those of a patent, and restored to the United States by congressional act, by court decision, by individual relinquishment, by land office cancellation or by revocation of some withdrawal, Executive or departmental. In a long line of decisions in such cases, the Department has held that although restored lands become part of the public domain immediately, it remains for the Department and for it alone in the absence of congressional direction to give the "indication" spoken of by the court and to determine when and how such lands shall be opened for disposal.

Id. at 63 (citing Earl Crecelouis Hall, 58 I.D. 557, 560 (1943)).

While section 8 of the Taylor Grazing Act was repealed by section 705(a) of FLPMA, the language which section 205(c) employs is an almost

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8/ Land acquired prior to FLPMA, however, retains its former status. Thus, we are of the view that land acquired by exchange under the Act of May 31, 1918, 40 Stat. 593, or the Act of July 31, 1939, 53 Stat. 1144, retain their special status as lands managed under the Act of August 28, 1937, 43 U.S.C. §§ 1181a-1181j (1976). Lands acquired in future exchanges in the O&C, however, would not possess such special status. See Memorandum of Feb. 1, 1978, from the Associate Solicitor to the Director, BLM, reprinted in OAD 78-6.

verbatim replication of the language in section 8(d) of the Taylor Grazing Act. There would seem little reason to alter the consistent Departmental approach requiring the publication of an opening order prior to the allowance of entries and applications. <sup>9/</sup>

We also note that the recent changes to the exchange regulations also apparently provide that while lands acquired by exchange become public lands, they do not become available for mineral entry or leasing until a notice of availability is published and noted on the public land records. <sup>10/</sup> This comports with our own analysis above. Therefore, we hold that while land acquired by donation pursuant to section 205 becomes public land upon acceptance of title, such land is not available for entry under the mining laws until the land has been formally opened to such entry. See Petro Leasco, Inc., 42 IBLA 345 (1979).

There has been no order opening the land acquired from the Shipleys to any form of mineral location. This being the case, the new Hard Times claim was located by appellant while the land was not open to entry and the claim must be deemed null and void ab initio. See J. C. Babcock, 25 IBLA 316 (1976). The State Office properly rejects recordation of mining claims under section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), where the claims are null and void ab initio. Cf. Silver Spot Metal, Inc., 51 IBLA 212 (1980).

[4] Finally, we would note that the records of the Oregon State Office clearly showed that the land involved herein was not open to entry. As the Department has long held, the notation of land office records that a particular parcel of land is not available for disposition serves to segregate the land even if the notation was made in error. See John C. Thomas (On Reconsideration), 59 IBLA 364 (1981); Kenneth D. Makepeace, 6 IBLA 58, 68, 79 I.D. 391, 396 (1972). Thus, the notation herein, in and of itself, would serve to segregate the land from mineral entry until it is removed. For this additional reason, appellant's mining claim must be held null and void ab initio and the State Office correctly refused recordation.

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<sup>9/</sup> Moreover, inasmuch as the Public Land Law Review Commission expressly adverted to the interpretation which the Department had pursued in implementing section 8(d) of the Taylor Grazing Act (see Legal Study of the Nonfuel Mineral Resources at 148-49), the congressional repromulgation of the same operative language could be seen as a ratification of the Department's approach.

<sup>10/</sup> The actual language of the new regulation, 43 CFR 2200.3(a) published at 46 FR 1640 (Jan. 6, 1981), is almost indecipherable. The proposed regulation, however, provided that "such public lands are not available for entry, sale, location or leasing until opened to such forms of authorization." 45 FR 41864 (June 20, 1980). We trust that the final version was intended to reflect this concept and expect that the language deficiencies of the present regulation will be remedied in due course.

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 as modified for the reasons stated above.

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James L. Burski  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

