

Editor's note: 92 I.D. 83; Appealed -- rev'd, sub nom. Webb v. Hodel, Civ.No. C-85-1293-J (D. Utah May 7, 1987), aff'd, No. 87-1997 (10th Cir. June 19, 1989), 878 F.2d 1252; Vacated by Order dated Dec. 27, 1990 -- See 85 IBLA 92A & B below

GEORGE R. SCHULTZ ET AL.

IBLA 84-263
84-298

Decided February 14, 1985

Appeal from decisions of the Utah State Office, Bureau of Land Management, declaring 359 mining claims to be void ab initio. UMC-253294-344 et al.

Affirmed.

1. Federal Employees and Officers: Interest in Lands -- Mining Claims:
Location

Location of a mining claim is a purchase of public land within the meaning of 43 U.S.C. § 11 (1982) and the claim may be declared void where it is shown that the locator's spouse who is an employee of the Bureau of Land Management (BLM) has a direct or indirect interest in the claim because "an act done in violation of a statutory prohibition is void and confers no right upon the wrongdoer."

2. Federal Employees and Officers: Interest in Lands -- Mining Claims:
Location

A mining claim is properly declared to be void ab initio, in accordance with 43 CFR 20.735-24, where the locator is the spouse of a BLM employee and the mining claim is located on land administered or controlled by the U.S. Department of the Interior.

3. Federal Employees and Officers: Interest in Lands -- Mining Claims:
Location

Because the Department of the Interior retains control over the validity of mining claims on U.S. Forest Service lands administered by the Department of Agriculture, location of mining claims by the spouse of a BLM employee on such lands is prohibited by 43 CFR 20.735-24.

4. Administrative Procedure: Standing -- Intervention -- Mining Claims:
Generally

A mining claimant may be allowed to file a brief in the appeal of a conflicting claimant.

5. Conveyances: Generally -- Conveyances: Interest Conveyed -- Mining
Claims: Title

A quitclaim deed conveys only the interest held by the grantor. Conveyance by quitclaim deed of an interest in a mining claim which is properly held to have been void ab initio conveys no interest to the grantee.

APPEARANCES: George R. Schultz, W. William Howard, James L. Schultz, pro sese; Joseph Coleman, Esq., and Amanda D. Bailey, Esq., Grand Junction, Colorado, for Jay Coates and Larry Lahusen.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

George R. Schultz, W. William Howard, and James L. Schultz appeal from decisions of the Utah State Office, Bureau of Land Management (BLM), that declared a total of 359 unpatented lode mining claims to be void ab initio because "the attempted mining locations by a spouse of a Bureau of Land Management employee is a violation of the Statute at 43 United States Code § 11 (1976) and the regulation at 43 Code of Federal Regulations § 20.735-24

(1982)." ^{1/} Larry Lahusen and Jay Coates petitioned to intervene, representing that several of Schultz's claims overstaked theirs. By order dated February 14, 1984, they were allowed to file a brief on the grounds that they had "alleged an interest in the mining claims which, if true, entitles them to intervene."

George Schultz married Diana Webb on February 16, 1979. At the time Diana Webb was employed by the Moab District Office, BLM. George Schultz states that in 1982, and until December 1, 1983, Diana Webb was the Moab District Wilderness and Environmental Coordinator, and that from December 1, 1983, to the present time she has been the Moab District Environmental and Planning Coordinator. Schultz states that Diana Webb's jobs have not involved her with the management of mining claims nor with mining claim records. All of the claims at issue were located in 1982 or 1983. All but two are located on public lands administered by BLM; two are on national forest lands administered by the U.S. Forest Service, Department of Agriculture (Statement of Reasons of George Schultz at 7).

Appellants raise several arguments against the BLM decisions which we will discuss seriatim.

[1] George Schultz argues that as a citizen of the United States he is entitled to locate mining claims on public lands open to mineral entry under

^{1/} BLM's Dec. 21, 1983, decision concerned 356 claims, its Jan. 10, 1984, decision another 3 claims. George Schultz appeals both decisions. W. William Howard and James L. Schultz appeal the Dec. 21 decision because they received deeds dated July 18, 1983, from George R. and Mary Schultz, "husband and wife," quitclaiming undivided fractional interests in several of the claims to them. George Schultz filed notice of these transfers in accordance with 43 CFR 3833.3 on Sept. 12, 1983. For a list of the claims (and interests involved) affected by the two BLM decisions, see Appendix I.

the authority of the general mining act of 1872, 30 U.S.C. § 22 (1982). The provisions of 43 U.S.C. § 11 (1982) do not apply to him, he argues, because he is not an employee of BLM, and do not apply to his wife because she "is neither an owner, co-owner, nor locator" of any of his claims, and because a mining claim does not involve a "purchase" of public land within the meaning of that law. ^{2/} Even if there is a violation of 43 U.S.C. § 11 (1982), he argues, the statute provides that the proper sanction is to dismiss his wife from BLM's employ, not to declare his mining claims void.

43 U.S.C. § 11 (1982) provides that the "officers, clerks, and employees in the Bureau of Land Management are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and any person who violates this section shall forthwith be removed from his office." The original of this provision was enacted in 1812. Act of April 25, 1812, ch. 68, § 10, 2 Stat. 717. The provision was not repealed by the general mining act of 1872. Lavagnino v. Uhlig, 71 P. 1046 (Utah 1903), aff'd, 198 U.S. 443 (1905).

The leading case construing 43 U.S.C. § 11 (1982) is Waskey v. Hammer, 170 F. 31 (9th Cir. 1909), aff'd, 223 U.S. 85 (1912). In that case the U.S. Supreme Court held the readjusted location of a mining claim by a U.S. mineral surveyor void. The purpose of the prohibition, wrote Mr. Justice Van Devanter, "is to guard against the temptations and partiality likely to attend efforts to acquire public lands, or interests therein, by persons [holding positions under the General Land Office, predecessor to BLM, and

^{2/} However, 30 U.S.C. § 22 (1982) provides that "mineral deposits in lands belonging to the United States * * * shall be free and open to * * * purchase." (Emphasis added.)

participating in the work assigned to it], and thereby to prevent abuse and inspire confidence in the administration of the public land laws." 223 U.S. at 93. ^{3/} To the argument, also made by Schultz, that a mining claim is not a "purchase," the Court responded "we think * * * that the term 'purchase' is inclusive of the various modes of securing title to or rights in public lands under the general laws regulating their disposal." Id. To the argument that the statute provides the sanction of dismissal the Court answered that there was in the language of the statute "nothing indicating that its scope is to be confined to the exaction of that penalty," and that nothing in the nature of the statute militated against the application of the "general rule of law * * * that an act done in violation of a statutory prohibition is void and confers no right upon the wrongdoer." Id. at 94-95. Waskey v. Hammer was followed by the Supreme Court of Montana in holding that a deputy mineral surveyor could not become interested in a mining claim by purchasing it from a qualified locator. Montana Manganese Co. v. Ringeling, 211 P. 333 (Mont. 1922).

Schultz states that Utah is not a community property state and that Diana Webb is not an owner, co-owner, or locator of his claims and therefore

^{3/} Elaborating on the section in a later case, the Supreme Court stated: "Section 452 affects a class of persons having superior opportunities and power to perpetrate frauds and secure undue advantage over the general public in the acquisition of public lands." After quoting the passage from Waskey v. Hammer contained in the text, the Court continued:

"The provision is to be so applied and enforced as to effectuate its purpose. And it is evident, that to deny an officer, clerk or employee of the land office the right to make an entry while occupying that relationship, but to validate such an entry upon his retirement from the service, would thwart the statutory policy, since the result would be to allow the entryman still to reap the fruit of his undue advantage, superior knowledge and opportunities, and, perhaps, of his fraud, which it is the aim of the statute to forestall."

Lowe v. Dickson, 274 U.S. 23, 26-27 (1927).

has no legal interest in his claims. This is not conclusive, however, of whether Diana Webb is "indirectly purchasing or becoming interested in the purchase of any of the public land." There are, of course, numerous legal or business arrangements under which Webb could be or become indirectly interested in the lands involved. We do not know, for example, whether any will or trust of Schultz's creates in her any legal interests in the claims or any eventual patents emanating from them. ^{4/} Nor do we know about her role, if any, in Chinle Associates, of which Schultz is president, which is named as "operator" of the claims. Either of these routes could bring her within the ambit of the statutory prohibition. ^{5/}

[2] The Department's regulations and Board decisions applying them, however, clearly proscribe Schultz's holding of mining claims while his wife is employed by BLM. 43 CFR 20.735-24(b)(1) prohibits a "member" of BLM from "voluntarily acquiring a direct or indirect interest in federal lands." "Indirect interest" is defined to include "[h]oldings in land, mineral rights, grazing rights or livestock which in any manner are connected with or involve the substantial use of the resources or facilities of the federal lands and specifically includes "[s]ubstantial holdings of a spouse." 43 CFR

^{4/} Under some circumstances Webb could request a waiver for interests acquired by a trust. See 43 CFR 20.735-24(e)(1)(iv).

^{5/} Schultz argues that our decision in Joseph T. Kurkowski, 24 IBLA 58 (1976), acquiescing in an interpretation of the Department of Justice that similar "directly or indirectly" language in 18 U.S.C. § 431 (1982) would not preclude Congressman Melcher's spouse from holding a grazing lease under certain circumstances, should guide the Department's interpretation of 43 U.S.C. § 11 (1982). Not only are the peculiar circumstances of that case not present here, we expressly stated in that decision that a contrary result could be required for the spouse of a Federal employee. 24 IBLA at 67, n.5.

20.735-24(a)(4). 6/ The term "Federal lands" is defined to mean "lands or resources or an interest in lands or resources administered or controlled by the Department of the Interior," a definition designed to avoid confusion with the terms "public lands" and "acquired lands." 43 CFR 20.735-24(a)(1); 45 FR 66372 (Oct. 6, 1980).

These regulations were adopted in December 1981. They were amended in September 1982. 47 FR 42359, 42361 (Sept. 27, 1982). At the time of their adoption, the preamble contained the following comment:

Several comments were received regarding the proposed rules on Interests in Federal Lands -- § 20.735-24. Two commenters stated that prohibiting all Department employees from acquiring or retaining personal rights to Federal lands was too restrictive. This rule is already contained in 43 CFR Part 7 7/ and it was incorporated into proposed § 20.735-24 in an effort to consolidate into one section, all regulations dealing with interests in Federal lands. The prohibition dates back to the early 1900's and is based on the facts that (1) a primary mission of the Department of the Interior is the administration of the Federal lands, (2) particular rights to use federal lands for personal needs are granted by the Bureau of Land Management (BLM) and (3) there is often competition to obtain BLM permits or other rights. Given these facts, the rule was adopted to avoid allegations that

6/ A note at 43 CFR 20.735-21 provides examples of types of interests not covered by this definition of indirect interest:

"NOTE: Examples, not all-inclusive, of the types of interests that are not covered by the terms 'direct interest' or 'indirect interest' are: diversified mutual funds, vested pension plans, life insurance investments, state and municipal bonds, U.S. Savings bonds and bank, credit union or loan association savings certificates. Financial interests in other investment clubs may be approved by the appropriate ethics counselor if the club's portfolio is well diversified and independently managed by a licensed investment broker. These examples also apply to the definitions of direct and indirect interests contained in §§ 20.735-24 -- Interests in federal lands, * * *."

7/ The former regulations at 43 CFR Part 7 (1980) expressly prohibited an "employee and the spouse of an employee" from "[v]oluntarily acquiring an interest in the lands or resources administered by the Bureau of Land Management." 43 CFR 7.3(a)(1). The statutory authority cited for promulgation of this regulation was 5 U.S.C. § 22 (1964) (now codified at 5 U.S.C. § 301 (1982)) and 43 U.S.C. § 11 (1982). 27 FR 3812 (Apr. 20, 1962).

Department employees received preferential treatment in the awarding of BLM rights because of their employment in the Department. Accordingly, the prohibition is not changed in the final rule.

46 FR 58423 (Dec. 1, 1981).

The rule referred to in 43 CFR Part 7, 43 CFR 7.3(a)(1) (1980), was applied by the Board in affirming BLM's rejecting of an application for a desert land entry filed in April 1980 by a person who became a BLM employee in May 1980 and married a BLM employee in June 1980. Karen (Johnson) Bradshaw, 75 IBLA 342 (1983). 8/ In Donald E. and Nancy P. Janson (On Reconsideration), 23 IBLA 374 (1976), a Bureau of Indian Affairs employee's 50 percent ownership of a corporation, the other 50 percent of which was owned by his brother, disqualified the brother as a preference right applicant for a grazing lease. In response to the brother's argument "that 43 CFR Part 7 cannot be applied to deny him the lease because he is not an employee of the Department, and

8/ Schultz's attempt to distinguish Bradshaw on the grounds that, unlike his right to locate a mining claim, Bradshaw's application for a desert land entry involved the exercise of Secretarial discretion, is unavailing. Then as now the definition of interest in the regulations makes no such distinction. At the time the definition of "interest" in 43 CFR 7.2(b) and (c) (1980) read:

"(b) The term 'interest' means any direct or indirect ownership in whole or in part of the lands or resources in question, or any participation in the earnings therefrom, or the right to occupy or use the property or to take any benefits therefrom based upon a lease or rental agreement, or upon any formal or informal contract with a person who has such an interest. It includes membership in a firm, or ownership of stock or other securities in a corporation which has such an interest: Provided, That stock or securities traded on the open market may be purchased by an employee if the acquisition thereof will not tend to interfere with the proper and impartial performance of the duties of the employee or bring discredit upon the Department.

"(c) The prohibition in § 7.3 includes but is not limited to the buying, selling, or locating of any warrant, script, lieu land selection, soldier's additional right, or any other right or claim under which an interest in the public lands may be asserted. The prohibition also extends to any interest in land, water right, or livestock, which in any manner is connected with or involves the use of the grazing resources or facilities of the lands or resources administered by the Bureau of Land Management."

he meets the only regulations governing qualifications for holding a grazing lease," the Board held:

Regulation 43 CFR 4121.1-1 prescribes the minimum qualifications, but not the only qualifications, for holding a grazing lease. Petitioner's brother might well be qualified to hold a lease if reference is not made to Part 7. The regulations in 43 CFR Part 7 must be construed in conjunction with Part 4120 to determine qualification to hold a lease. The regulations in Part 7 are not explicitly addressed to petitioner, but they do prohibit the lease from issuing in such a way as to allow petitioner's brother, a Departmental employee, to obtain the albeit indirect benefit accruing to his 50 percent interest in Cumming Land and Livestock Corp. Persons who engage in business ventures with employees of the Department of the Interior assume thereby the burden that the regulations of the Department may have adverse impact on such a business.

23 IBLA at 375. See also Donald E. and Nancy P. Janson (On Reconsideration), 19 IBLA 154, 82 I.D. 93 (1975). ^{9/}

In Carmen M. Luna, 6 IBLA 176 (1972), the Board held, on the basis of 43 CFR 7.3(a)(1), that BLM properly rejected an oil and gas lease offer filed jointly by Luna and Josephine Block, an employee of the Department, stating:

It does not appear that the appellant is in any way disqualified individually. But in the filing of this offer the two individuals engaged in a joint venture, a relationship in which the appellant's interest became inseparable from Mrs. Block's interest. Because of this community of interest, the bar raised by the regulation against the acquisition of an interest by

^{9/} Schultz points out that in Janson the Board indicated that BLM could reconsider the brother's application if the employee later obtained favorable action by the Secretary on his request under 43 CFR 7.4(b)(3) (1980) to retain his interest. 23 IBLA at 376. Similar provisions for a waiver exist in the present regulations, but it is apparent that under the facts of this case none of the four conditions for approval can be met. See 43 CFR 20.735-24(e)(1)(i)-(iv).

Mrs. Block could not be surmounted separately by the appellant in her individual capacity, and necessitated the rejection of the offer, as presented, in its entirety.

6 IBLA at 178.

Schultz complains the regulation is "presumptuous, insulting, beyond statutory authority, and in violation of the non-employee's rights to own property, pursue a living, and speak freely, as guaranteed by the United States Constitution and by law" (Statement of Reasons at 23). To this we must respond that we are not constituted to review arguments that the Department's regulations are illegal or unconstitutional. As long as they are in force we are bound by them. United States v. Nixon, 418 U.S. 683, 696 (1974); Steve D. Mayberry, 82 IBLA 339, 343 (1984); Donald E. and Nancy P. Janson (On Reconsideration), 23 IBLA 374, 375 (1976).

Thus, we conclude that under the regulation Diana Webb has acquired an indirect interest in Federal lands via her spouse's locating a substantial number of mining claims. Even if George Schultz is otherwise qualified to locate mining claims, 43 CFR 20.735-24 prohibits him from doing so, so long as he is married to an employee of BLM. As it may the prohibition in 43 U.S.C. § 11 (1982), the Department may enforce this prohibition by declaring any claims located by him void if they were located during his marriage to a BLM employee. Further, it may undertake remedial action with Diana Webb in accordance with 43 CFR 20.735-40. Schultz's argument that 43 CFR 20.735-40 deprives BLM of authority to declare his claims void is in error. Remedial or disciplinary action for violations of the regulations in 43 CFR Part 20

"may be in addition to any criminal or civil penalty provided by law." 43 CFR 20.735-4. Waskey v. Hammer, supra, clearly provides another penalty. 10/

[3] Schultz argues that the two mining claims located within the Manti-La Sal National Forest are not void because those lands are administered by the U.S. Forest Service, Department of Agriculture, and are therefore not "federal lands" within the meaning of 43 CFR 20.735-24(a)(1). Although national forest lands are indeed administered by the Department of Agriculture, 36 CFR 200.1(c)(2) (1983), the Department of the Interior retains control over the validity of mining claims as well as over the disposition of minerals under the mining laws in national forests. Section 2(b), (c), Pub. L. No. 86-509, 74 Stat. 206 (1960). See United States v. Diven, 32 IBLA 361, 364-66 (1977); United States v. Bergdal, 74 I.D. 245, 249-52 (1967). Therefore, Schultz's mining claims in the national forest are "holdings in * * *

10/ Although position descriptions for Diana Webb's present and former positions with BLM have not been made a part of the record, we note that the titles of these positions are given by George Schultz in his statement of reasons. These titles indicate that her activities are connected in some way with mining activities, as that term is defined in 43 CFR 20.735-27(a)(3), and thus she would be prohibited from holding a direct or indirect interest (ownership) in mining activities by 43 CFR 20.735-27(b)(4). ("Indirect interest in mining activities" includes substantial holdings of a spouse. 43 CFR 20.735-27(a)(2)(ii).) George Schultz states that neither her job as Moab District Wilderness and Environmental Coordinator (when the claims were located) nor her present position as District Environmental and Planning Coordinator "intrinsically involves management of mining claims or BLM mining claim records." Given the definition of the term "mining activities," that interpretation is too narrow. Her duties would logically include investigation leading to and preparation of planning and wilderness-related documents which would affect Departmental programs, policies, research, or other actions relating to mining operations. Since the impact of past or future mining operations and imposition of constraints on later mining operations are likely to be the subject of evaluations by her pursuant to the National Environmental Policy Act, we find it difficult to conceive how she could avoid the appearance of having a conflict. The question is not whether there is a substantial conflict because of the specific claims involved in this case, but whether there is an apparent substantial conflict between her ownership of any indirect interest in mining operations and the performance of her duties. The titles of her positions alone give rise to an affirmative response to the question.

mineral rights" for "resources * * * controlled by the Department of the Interior" within the meaning of 43 CFR 20.735-24(a)(4)(i) and BLM may determine their validity.

Various other bases suggested by Schultz for overturning BLM's decisions may be disposed of briefly. Since this is not a contest proceeding, BLM need not make a prima facie case to support these decisions. Since we have rejected Schultz's view of the law, we likewise reject his argument that BLM should be equitably estopped from its decisions on the grounds it misrepresented the law and misapplied the penalty. ^{11/} Finally, Schultz complains that he has been unfairly treated because several other spouses of BLM employees who hold mining claims in Utah have not had them voided. However, the fact that BLM may not have carried out its obligations in the past does not justify a holding that it cannot do so in this case. T.E.T. Partnership, 84 IBLA 10, 15 (1984); George Brennan, Jr., 1 IBLA 4, 6 (1970). Cf. United States v. Rice, 73 IBLA 128, 132 (1983).

[4] Schultz has also moved to have briefs filed on behalf of Larry Lahusen and Jay Coates stricken from the record of this appeal on the grounds that, as a result of the Board's decision in Coates-Lahusen, 69 IBLA 137 (1982), these persons have no conflicting interest in any of the lands covered by his claims that would entitle them to intervene. Counsel for Coates

^{11/} Even had Schultz established BLM's affirmative misconduct, which he did not, another element necessary for the invocation of estoppel against the Government is missing: Schultz "must be ignorant of the true facts." United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978). Since he is presumed to know regulations published in the Federal Register, Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947), he cannot be deemed ignorant of the 1981 provisions prohibiting his wife's indirect interests in Federal lands at the time he located his mining claims in 1982 and 1983. Harriet C. Shaftel, 79 IBLA 228, 232 (1984).

and Lahusen dispute Schultz's assertions. The relative rights of these parties to their claims are currently before a Utah state court and we have no role in the adjudication of these rights. W. W. Allstead, 58 IBLA 46 (1981). Although we have permitted intervention under circumstances similar to this case, N. L. Baroid Petroleum Services, 60 IBLA 90 (1981), the February 14, 1984, order issued by this Board simply allowed the filing of a brief, and did not grant intervention as a party. We are not precluded from allowing this degree of participation. See United States v. United States Pumice Co., 37 IBLA 153, 160-61 (1978). Schultz's motion to strike the briefs is denied.

[5] James Schultz, George Schultz's brother, and W. William Howard also appeal BLM's December 21, 1983, decision. In addition to the arguments discussed above they contend that they were not served with copies of the decisions and that BLM cannot void their fractional interests in some of the claims because they are bona fide purchasers.

On July 18, 1983, George and Mary Schultz conveyed undivided interests to James Schultz and Howard by quitclaim deed. See note 1, supra. A quitclaim deed to an unpatented mining claim "passes the vendor's right to possession and inchoate right to a patent and puts the purchaser in the same relationship to the government as the vendor theretofore enjoyed." 3 American Law of Mining § 15.13 (1982). A quitclaim deed given at a time when the conveying party has no interest conveys nothing. Sorensen v. Bills, 261 P. 450 (Utah 1927). Thus, even if James Schultz and Howard were entitled to the protections afforded to bona fide purchasers, see generally 8A Thompson on Real Property § 4344 (1963), they acquired no interest in George Schultz's claims by reason of the conveyance because the claims were void ab initio.

George Schultz had no interests to convey. Since they had actual notice of the decision, have joined in the appeal, and have alleged no prejudice from BL,'s failure to serve them, they cannot complain of lack of notice under 43 CFR 3833.5(d). 12/ See Nabesna Native Corp., 83 IBLA 82 (1984); Defenders of Wildlife, 79 IBLA 62 (1984).

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 affirmed.

Will A. Irwin
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.

12/ Better practice would be for BLM to serve copies of such decisions on owners of fractional interests of whom it has received notice in accordance with 43 CFR 3833.3, in case its determination of void ab initio is not upheld or it makes a different kind of determination.

Editors note: The table in Appendix I was printed sideways in the original. Each page is split into two pages vertically, instead of horizontally.

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APPENDIX I

UNPATENTED MINING CLAIMS VOIDED BY THE DECISIONS

OF DECEMBER 21, 1983, AND JANUARY 10, 1984

<u>Claim Name, No.</u>	<u>Location</u> <u>UMC Numbers</u>	<u>County,</u> <u>Date</u>	<u>Utah</u>
<u>Decision of December 21, 1983</u>			
Mary 1-3	253294-253296	02/82	San Juan
Mary 4	256030	04/82	San Juan
Diana 1-38	253297-253334	02/82	San Juan
Diana 39-47	256021-256029	04/82	San Juan
Bob 1-8	254910-254917	02/82	Grand
Naomi 1-10	254918-254927	02/82	Grand
Breccia 1-215	259818-260032	09&11/82	San Juan
Green Rock 1-2	260038-260039	10/82	San Juan
Lake 1-16	260040-260055	09&10/82	San Juan
Lake 17	265410	03/83	San Juan
Mail Trail 1-19	260056-260074	11/82	Grand
Dixie 1-3	262128-262130	12/82	Emery
Kevin D 1-3	262131-262133	11/82	Emery
Arrowhead 1-3	262134-262136	11/82	Emery
Red Arrowhead 1	264509	02/83	Emery
Pipe Dream 1-3	264510-264512	02/83	Emery
Metate 1-9	264513-264521	02/83	Emery
Tony 1-8	264522-264529	04/83	Emery
Tony 10-12	264531-264533	04/83	Emery
Mancos Pipe	264685	02/83	San Juan
Mancos Molly Pipe	272472	09/83	San Juan

Decision of January 10, 1984

DOE	272860	10/83	San Juan
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ONWI 272858 10/83 San Juan

NDUMP 272859 10/83 San Juan

[from] 85 IBLA 91 and 92

George Schultz'
Undivided Interest

after Execution of
Quitclaim Deeds to
James L. Schultz and
W. William Howard

Surface
Administer-
ing Agency

Claim Name, No.

Decision of December 21, 1983

Mary 1-3	BLM	100%
Mary 4	BLM	100%
Diana 1-38	BLM	100%
Diana 39-47	BLM	100%
Bob 1-8	BLM	100%
Naomi 1-10	BLM	100%
Breccia 1-215	BLM	100%
Green Rock 1-2	BLM	100%
Lake 1-16	BLM	85%
Lake 17	BLM	85%
Mail Trail 1-19	BLM	100%
Dixie 1-3	BLM	66-2/3%
Kevin D 1-3	BLM	66-2/3%
Arrowhead 1-3	BLM	66-2/3%
Red Arrowhead 1	BLM	100%
Pipe Dream 1-3	BLM	100%
Metate 1-9	BLM	100%
Tony 1-8	BLM	66-2/3%
Tony 10-12	BLM	66-2/3%
Mancos Pipe	USFS	100%
Mancos Molly Pipe	USFS	100%

Decision of January 10, 1984

DOE	BLM	100%
ONWI	BLM	100%
NDUMP	BLM	100%

[from]
85 IBLA 91 and 92

December 27, 1990

IBLA 91-17 : U MC 253294-344 et.al.
:
ESTATE OF GEORGE R. SCHULTZ : On Judicial Remand
:
: Decisions Vacated; Petition
: for Reconsideration Dismissed

ORDER

Our decision in George R. Schultz et al., 85 IBLA 77, 92 I.D. 83 (1985), was reversed and remanded by the U.S. District Court for the District of Utah in Webb v. Hodel, C-85-1293-J (D. Utah, May 7, 1987).

On appeal, the U.S. Court of Appeals for the Tenth Circuit affirmed the District Court's decision and remanded to that court "with instructions to order the claims reinstated." Webb v. Hodel, 878 F. 2d 1252, 1259 (10th Cir. 1989).

We have received no order from the U.S. District Court. We did, however, receive a petition for reconsideration from the personal representative of the estate of George Schultz. On November 6, 1990, we issued an order requesting reports recommending procedures to be followed, in accordance with 43 CFR 4.29. The Bureau of Land Management (BLM) filed a response on December 10, 1990; none has been received from the estate.

BLM states that it is "treating the mining claims as though they had never been declared void ab initio" and intends to continue to do so. BLM also states that it "does not see any need for further action by IBLA."

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we hereby vacate our decision and the BLM decisions it affirmed. The petition for reconsideration is dismissed.

Will A. Irwin
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

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