

OSCAR E. HARDING

IBLA 87-688

Decided August 7, 1989

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring mining claim ORMC 88943 null and void ab initio in part.

Affirmed.

1. Mining Claims: Determination of Validity--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

A mining claim located in part on land withdrawn from appropriation under the mining laws is null and void ab initio in part.

APPEARANCES: Oscar E. Harding, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Oscar E. Harding (Harding) has appealed a July 10, 1987, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring null and void ab initio in part the New Hope placer mining claim, ORMC 88943.

The claim was located on August 29, 1986, by Oscar E. Harding, Jovita A. Harding, and Oscar E. Harding III, in the SW<sup>^</sup> NW<sup>^</sup> of sec. 6, T. 7 S., R. 33 E., and the NE<sup>^</sup> SE<sup>^</sup> NE<sup>^</sup> of sec. 1, T. 7 S., R. 32 E., Willamette Meridian, Grant County, Oregon. Notices of location were filed with Grant County on September 2, 1986, and with BLM on September 10, 1986.

The BLM decision is based on the following: "Our records show that your claim is located in part in an area covered by Forest Exchange Application OR 39961 filed for record on February 24, 1986. This action segregated the lands from location or entry under the general mining laws" (Decision at 1).

Pursuant to 43 CFR 2202.1(b),

The filing of a notice of an offer for forest exchange with the authorized officer and the notation of such proposed exchange on the public land records shall segregate the National Forest System lands included in the proposed exchange from appropriation, location or entry under the general mining laws \* \* \*. The segregative effect of the offer notation on the public land records

shall terminate upon issuance of patent or other document of conveyance to such lands, upon rejection or denial of the exchange offer or 2 years from the date of the notation whichever occurs first.

[1] The record reveals that on August 29, 1986, the date appellant's claim was located, the disputed land 1/ was segregated from operation of the general mining laws. Forest exchange application OR 39961 was filed on February 24, 1986, and although the record does not contain the date the proposed exchange was recorded on the public land records, it does contain a Master Title Plat (MTP) which is date-stamped as current to April 30, 1986, and shows the notation of the proposed exchange. It is therefore clear that the exchange was noted on the MTP by April 30, 1986. Thus, although BLM has not provided a record from which we can ascertain the exact date of segregation, we can determine that the land was withdrawn at the time of location. A mining claim located on land segregated from operation of the general mining laws is properly declared null and void ab initio. O. Glenn Oliver, 73 IBLA 56 (1983).

In his statement of reasons (SOR), appellant asserts that without use of the portion of his claim declared null and void ab initio he may have difficulty getting the water necessary to work the remaining portion of the claim. Harding states that the disputed land is the best claim he knows and indicates a desire to teach his son to mine there. In addition, he alleges that he first became aware of the disputed portion of the claim in 1958, that he tested it in 1962, and that he has "thought about and talked about this claim many, many times" since 1962 (SOR at 1).

Appellant does not allege that he located his claim prior to withdrawal of the land, nor does he dispute BLM's conclusion that a part of his claim is null and void ab initio. The allegations presented in his SOR are not legally relevant and create no basis for reversing the BLM decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision of July 10, 1987, is affirmed.

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John H. Kelly  
Administrative Judge

I concur:

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Wm. Philip Horton  
Chief Administrative Judge

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1/ The portion of the Harding claim which overlaps OR 39961 is lot 5, sec. 6, T. 7 S., R. 33 E., Willamette Meridian, Grant County, Oregon.