

JOHN AND MAUREEN WATSON

IBLA 87-741

Decided February 28, 1990

Appeal from a decision of the California State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. CA MC 183017, CA MC 183018.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location--Mining Claims: Location--Mining Claims: Recordation of Certificate or Notice of Location--Words and Phrases

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under California law, it is the date of posting location notice on the claim. Where the notice of location expressly states the date of location as a date after the land was segregated from location by the filing and notation of a forest exchange application, the mining claim is properly held to be null and void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claim Certificates or Notices of Location--Mining Claims: Recordation of Certificate or Notice of Location

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the location of the claims, failing which the claims are properly declared abandoned and void.

3. Estoppel--Federal Employees and Officers: Authority to Bind Government

Reliance on erroneous or incomplete information given by an employee of the Department cannot create any rights not authorized by law.

4. Administrative Procedure: Hearings--Constitutional Law: Due Process--Mining Claims: Hearings--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land

Mining claims located on lands closed to mineral entry are null and void ab initio and no property rights are created. Therefore, no deprivation of property rights occurs when such claims are declared null and void ab initio.

APPEARANCES: John and Maureen Watson, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BYRNES

John and Maureen Watson have appealed from a decision dated July 2, 1987, by the California State Office, Bureau of Land Management (BLM), declaring the Alaska #1 and #2 (CA MC 183017, CA MC 183018) lode mining claims null and void ab initio. The location notices and accompanying maps show that the claims were located on August 25, 1986, in the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ and in the N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ of sec. 30, T. 19 N., R. 11 E., Mount Diablo Meridian. BLM declared the claims null and void ab initio because according to its records all of sec. 30 was segregated from location and entry under the mining laws by Forest Service (FS) Exchange Application CA 19387, on July 8, 1986, as provided by 43 CFR 2202.1(b). 1/

Appellants assert in their statement of reasons (SOR) that they physically staked their claims on May 30, 1986, prior to the filing of the FS exchange application. Appellants also allege that in telephone conversations on May 29 and August 24, 1986, they were told by BLM personnel that sec. 30 was open to location. Appellants contend it would be unconstitutional to deprive them of their claims. We address each of appellants' arguments in seriatim.

[1] The segregative effect of the FS exchange application began on July 8, 1986, when the application was noted to BLM's records. 43 CFR 2202.1(b). The date of location of a mining claim is governed by the law of the state in which the claim is situated. 43 CFR 3833.0-5(h). Under California law, the date of posting location notice on the claim is the date of location. Marking the boundaries of the claim is a part of the process of locating a claim which, under California law, must be completed within 60 days of the date of location, but staking does not establish the date of location. Cal. Pub. Res. Code § 2301, 2303 (West 1984); C. B. Shannon, 55 IBLA 312 (1981). Appellants' notices of location recorded with the county recorder's office expressly state the date of location as August 25, 1986. On that date, which is controlling, C. B. Shannon, supra, the land was already segregated by the FS exchange application and no longer open to location under the mining laws. 2/

1/ The BLM decision also notes a discrepancy between the legal land description on the location notice and a map submitted by appellants. Since we decide this case on other grounds, we need not reach this issue.

2/ Appellants state that there was no notice of the land exchange published previously in a local newspaper, but we are aware of no requirement

Appellants contend in their SOR that they staked their claims and posted their notices on May 30, 1986, thus before the segregative effect of the FS exchange application. As noted above, the appellants' notices of location recorded with the county recorder's office specifically state the date of location as August 25, 1986. However, the appellants' argument fails regardless of whether the May or August date is the correct date of location. If August 25, 1986, is considered the date of location, the claims are void because the date is after the date of the FS application and the lands were already segregated and not available for location.

[2] If the May 30, 1986, date is the date of location, the appellants' claims must be declared abandoned and void because they were not filed with BLM until September 3, 1986. Thus, the claims were not filed within the 90-day period required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982). Under 43 CFR 3833.1-2, the owner of an unpatented mining claim located after October 21, 1976, on Federal land must file with the proper BLM office within 90 days after the date of location a copy of the official record of the notice or certificate of location of the claim filed under state law. If this record of the notice of location is not filed within 90 days, the claim is conclusively presumed to be abandoned by statute, 43 U.S.C. § 1744(c) (1982), and properly declared abandoned and void under 43 CFR 3833.4(a). C. B. Shannon, supra, at 313. Filing is defined by the applicable regulation to mean being received and datestamped by the proper BLM Office. 43 CFR 3833.0-5(m). We note that the appellants' notices of location bear a BLM datestamp of September 3, 1986. Therefore, even were we to accept the May 30, 1986, date of location advocated by the appellants it would be of no avail to them.

[3] As to the appellants' contention that they were given incorrect information by a BLM employee, it is sufficient to note that once land has been segregated by the notation of a forest exchange offer on the public land records, the land cannot be reopened simply by the misinformation provided by a BLM employee. Under 43 CFR 2202.1(b), the segregative effect terminates upon issuance of a conveyance of the land, rejection of the exchange offer, or 2 years from the date of the notation, whichever occurs

fn. 2 (continued)

to publish such a notice prior to the filing of an application in order for an exchange application to segregate the land from mineral location.

As stated above, the segregative effect occurs under the applicable regulation when the application is noted on the appropriate BLM records. It appears that appellants believe that publication of such a notice is required by 30 U.S.C. § 613 (1982), but we fail to see how that provision has any relevance to the instant appeal. It does not pertain to exchanges or to actions which segregate land from mineral location. The procedures established by that provision are used to determine whether holders of mining claims located on or before July 23, 1955, are subject to the provisions of 30 U.S.C. § 612 (1982). See Joseph A. Barnes, 78 IBLA 46, 56-57, 90 I.D. 550, 556 (1983).

first. It is a well-settled principle that reliance on erroneous or incomplete information supplied by BLM employees cannot create rights not authorized by law. See Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972); Atlantic Richfield Co. v. Hickel, 432 F.2d 587 (10th Cir. 1970); Raymond T. Duncan, 96 IBLA 352 (1987). Further, Departmental regulation 43 CFR 1810.3(c) provides in pertinent part that "[r]eliance upon information or opinion of any officer, agent or employee * * * cannot operate to vest any right not authorized by law." Therefore, even if the appellants could have demonstrated that they had received erroneous information, it would not have changed the status of the withdrawn lands in question.

[4] No property rights were created when appellants attempted to locate mining claims on lands not open to mineral entry and location. Therefore, there was no deprivation of property rights when BLM issued its decision declaring the claims null and void ab initio. Fletcher De Fisher, 93 IBLA 68 (1986). Even if we were to accept the May 30 date as the date of location, the invalidation of appellants' claims for failure to record the claim with BLM within 90 days thereafter as required by 43 U.S.C. § 1744 (1982) does not deprive them of property in an unconstitutional manner. The Supreme Court found this statute to be constitutional and held that a claim for which timely filings are not made, even if only 1 day late, is extinguished by operation of law notwithstanding the claimant's intent to hold the claim. See United States v. Locke, 471 U.S. 84 (1985).

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.

James L. Byrnes
Administrative Judge

I concur:

Charles B. Cates
Director, Ex Officio