

ROBERT N. SHANAHAN ET AL.

IBLA 89-254, 89-256, 89-442

Decided July 29, 1991

Appeals from decisions of the Idaho State Office, Bureau of Land Management, declaring certain mining claims null and void ab initio.

Set aside and remanded.

1. Act of March 20, 1922--Administrative Authority: Generally--Exchanges of Land: Generally--Exchanges of Land: Forest Exchanges

Lands conveyed to the United States under 16 U.S.C. § 485 (1988) become, upon acceptance of title, a part of the national forest within whose external boundaries they are located. Forest Service documents indicate that authority to accept title to exchanged land has been delegated to the Regional Forester. It is therefore the date the Regional Forester or his authorized designee accepts title which determines when exchanged land is subject to location of mining claims.

APPEARANCES: Robert N. Shanahan, Idaho City, Idaho, pro se; DeLoyd Cazier, Boise, Idaho, pro se; Robert S. Glenn, Boise, Idaho, pro se; Robert S. Burr, Esq., Office of the Field Solicitor, Boise, Idaho, for the Bureau of Land Management; Michael Sivak, Boise, Idaho, amicus curiae.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Robert N. Shanahan, DeLoyd Cazier, and Robert S. Glenn have each appealed separate February 2, 1989, decisions 1/ by the Idaho State Office, Bureau of Land Management (BLM), declaring several mining claims null and void ab initio. 2/ The reason for each decision was that the lands were

1/ These appeals involve similar fact patterns and the legal analysis is identical. We have therefore consolidated them for decision.

2/ The claims of Shanahan which were declared null and void ab initio are I MC 119640 to I MC 119642, I MC 119644 to I MC 119646, I MC 119648 to I MC 119650, I MC 119652 to I MC 119654, I MC 119656 to I MC 119658, I MC 119660 to I MC 119662, I MC 119664 to I MC 119666, and I MC 119668 to I MC 119670; Cazier's claims are I MC 119436 to I MC 119438, I MC 119443, I MC 119447, and I MC 119448; Glenn's claims are I MC 119429 and

not open to mineral entry at the time of location because title to the land was not accepted by the Office of the General Counsel (OGC), Department of Agriculture, until April 17, 1987.

The location of these mining claims was closely tied to a 1987 land exchange pursuant to 16 U.S.C. § 485 (1988) and 43 U.S.C. § 1716 (1988) between the State of Idaho and the U.S. Forest Service (FS). Prior to the exchange the subject lands were owned by the State, having been patented by the United States to the State without a mineral reservation. During the time the land was owned by the State, appellants conducted mining activities pursuant to State mining law, and they intended to establish mining claims on the same lands under Federal law after the exchange.

State of Idaho deed No. 12258 reconveying the subject land to the United States was signed by the Governor, the Secretary of State, and the Director of the Department of Lands of the State of Idaho on February 5, 1987. The deed was recorded by the Boise County recorder at 3:35 p.m. on that day. Appellant Shanahan's disputed notices of location were recorded at 3:36 p.m.; the notices of location for Cazier and Glenn were recorded at 4 p.m., all on February 5, 1987.

Lands conveyed to the United States pursuant to 16 U.S.C. § 485 (1988) shall, upon acceptance of title, become part of the national forest within whose boundaries they are located. ^{3/} Prior to acceptance of title, the land is not owned by the United States. See Junior L. Dennis, 40 IBLA 12 (1979). The record contains a copy of an April 28, 1987, letter from the Director, Recreation and Lands, Intermountain Region, FS, to the Director of the Idaho State Office, BLM, stating, "Title was accepted by General Counsel on April 17, 1987." BLM apparently based its decisions on this statement.

[1] A review of Department of Agriculture regulations, the FS Manual (FSM), and the FS Land Acquisition Handbook, however, makes it appear that authority to accept title pursuant to 16 U.S.C. § 485 (1988) and 43 U.S.C. § 1716 (1988) has been delegated by the Chief of the Forest Service to the Regional Forester, rather than to OGC. ^{4/} FS regulations state that title

fn. 2 (continued)

I MC 119431 to 119435. Except for placer claim I MC 119429, all of the claims are lode claims. Shanahan's claims are located in sec. 16, T. 7 N., R. 6 E., Boise Meridian, Boise County, Idaho; Cazier's claims in sec. 36, T. 7 N., R. 6 E., Boise Meridian, Boise County, Idaho; Glenn's claims in sec. 16, T. 5 N., R. 4 E., Boise Meridian, Boise County, Idaho.

^{3/} The lands in question are within the exterior borders of the Boise National Forest.

^{4/} See 7 CFR 2.3 for the authority of the Secretary of Agriculture to delegate authority. See 7 CFR 2.42(b) for the delegation of authority from the Secretary of Agriculture to the Chief of FS to administer the national forests, including "the acquisition and disposition of lands and interest[s] in lands as may be authorized for the protection, management, and administration of the National Forest System." (Authority to approve acquisitions

to land being acquired by the United States will be "approved" by the OGC. 36 CFR 254.14. FSM Chapter 5406.2 states: "The Attorney General delegated to the Office of the General Counsel authority to approve titles to lands or interests in lands."

Specific details for FS exchanges are contained in Title 5400 of the FSM. 36 CFR 254.4. FSM Chapter 5404.14(16) delegates to the Regional Forester the following responsibilities: "Accept title to non-Federal lands, execute deeds, and request patent or authorize delivery of other considerations after approval of exchanges, purchases, donations, transfers, interchanges, and sales." 5/

Chapter 32 of the FS Land Acquisition Handbook sets forth "steps [as] a guide to processing land exchanges; use them as a summary[,] not as a rigid order. To expedite the land exchange process many steps can be done concurrently or in advance of preceding steps."

A Forest Supervisor is to prepare a warranty deed conveying the non-Federal land to the United States and send it to the Regional Forester for review. The Regional Attorney or attorney-in-charge must approve the deed. The Regional Forester returns the approved deed to the Forest Supervisor with instructions to have the deed executed and recorded. Chapter 32.16(b). Then the Forest Supervisor submits a title docket through the Regional Forester to the Regional Attorney. Chapter 32.17. 6/

Chapter 32.18 of the FS Land Acquisition Handbook states: "Title Acceptance. The Regional Forester accepts title to the non-Federal land after the Regional Attorney approves the title and instructions in the title opinion have been fulfilled." Similarly, Chapter 38.3 provides 7/:

fn. 4 (continued)

of lands under the Weeks Act of Mar. 1, 1911, and specified forest receipts acts is limited to acquisitions of less than \$250,000 in value.) See 7 CFR 2.31(n) for the delegation of authority from the Secretary of Agriculture to the General Counsel to prepare or review deeds and examine titles to land to be acquired.

5/ FSM Chapter 5404.14(17) delegates authority to "[a]pprove (or disapprove) * * * and consummate all exchanges of land or interests in land," subject to any required approval or review and after any required review. Further delegation of these responsibilities to a Forest Supervisor is authorized by the FSM "if the Forest has an approved Landownership Adjustment Plan and has a staff with sufficient skills, knowledge, and training to perform the required landownership duties." There is no provision for delegation of these duties to OGC, however.

6/ The contents of a title docket or title file are outlined in Chapter 38.3 of the FS Land Acquisition Handbook.

7/ Chapter 38 is entitled Title Evidence, Conveyance Instruments, and Timber Cutting.

Upon receipt of the title papers, the Office of the General Counsel (OGC) reviews the title to the lands for conveyance to the United States. If OGC determines that valid title is vested in the United States, it approves the title and informs the Regional Forester.

* * * * *

When the instructions in the title opinion have been fulfilled, the Regional Forester accepts title to the non-Federal land.

After the Regional Forester accepts title to the non-Federal land, he submits a patent request letter to BLM. The patent is normally forwarded by the Regional Forester to the Forest Supervisor for delivery to the landowner. Chapter 32.19.

Procedures for closing exchange cases are described in Chapter 39.1 of the FS Land Acquisition Handbook. 8/ These procedures include having a patent or deed to the National Forest System lands, arranging a meeting with the non-Federal party, getting the deed signed, satisfying liens, exchanging conveyances, and recording conveyances. 9/

The record does not indicate exactly how these procedures were implemented in this case. It contains copies of patent No. 11-87-0008, issued by BLM on December 4, 1986, stating that the "State of Idaho is entitled to a Land Patent pursuant to the General Exchange Act of March 20, 1922 (42 Stat. 465), as amended by the Act of February 28, 1925 (43 Stat. 1090); and the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1716)" for 2,870.82 acres. It also contains copies of State of Idaho Deed No. 12258 reciting that

[f]or and in consideration of the exchange of National Forest System land by conveyance from the UNITED STATES OF AMERICA to

8/ See also Chapter 32.20 of the FS Land Acquisition Handbook.

9/ These procedures are outlined in Exhibit 1 of Chapter 37 of the Land Acquisition Handbook:

- "OBTAIN AND RECORD SIGNED NON-FEDERAL
LAND WARRANTY DEED (SO)
- "OBTAIN TITLE INSURANCE POLICY
PREPARE FINAL TITLE OPINION (OGC)
- "ACCEPT TITLE (RO)
- "CONVEY FEDERAL LAND BY DEED
OR PATENT (RO AND BLM)
- "POST RECORDS, NOTIFY
COUNTY (SO, RO)"

The abbreviations RO and SO represent FS Regional and Supervisor's offices. OGC represents the appropriate Regional Attorney in the Office of the General Counsel.

the STATE OF IDAHO of certain lands * * * [described in the patent] the STATE OF IDAHO does bargain, sell, convey, and quit-claim to the UNITED STATES OF AMERICA and its assigns, the following described real property * * * containing 3,892.59 acres, more or less. Acquiring agency is the Forest Service, Department of Agriculture.

The deed includes secs. 16 and 36, T. 7 N., R. 6 E., and sec. 16, T. 5 N., R. 4 E., Boise Meridian. See note 3, supra. BLM's historical index for T. 7 N., R. 6 E., Boise Meridian, states that "All" was "Part Recon" on "2/5/87." It also shows:

<u>Acres</u>	<u>Kind of Entry</u>	<u>Serial File</u>	<u>Date of Action</u>	<u>Remarks</u>
3,892.59	I 21960	FX WD to USFS	2/5/1987	State of Idaho; See Pat 11870008, 12/4/1986, 4N 5E

The historical index for T. 5 N., R. 4 E., Boise Meridian, contains similar statements. According to a State of Idaho memorandum, the patent and the State of Idaho deed were exchanged on February 5, 1987. 10/ As noted above, the deed was recorded in Boise County on that day. FS letters refer to the "time of closing and exchanging of deeds." 11/ And, as stated above, there is an April 28, 1987, FS letter to the Director of the Idaho State Office, BLM, stating that title was "accepted by General Counsel on April 17, 1987."

We are unable to determine how these events correspond with the procedures set forth in the FSM and the FS Land Acquisition Handbook described

10/ Memorandum of Apr. 1, 1987, from Land Specialist, State of Idaho Department of Lands, to Director, entitled "Boise National Forest Clean-up Land Exchange." This memorandum reads in part: "The above mentioned land exchange was recently completed. The patent was received from the U. S. Forest Service on February 5, 1987, which is the effective completion date of the exchange."

11/ See text at note 9, supra. A May 31, 1989, letter from the FS Aviation, Fire Management, and Lands Officer to the Board concerning IBLA 89-254 states in part: "Mr. Shanahan was informed of the exchange with the State of Idaho. He was kept informed through the exchange process and at the time of closing and exchanging of deeds with the State of Idaho." Similarly, a Dec. 23, 1981, letter from the FS Recreation, Lands and Minerals Officer to DeLoyd Cazier states:

"We favor protecting your existing rights. To do this, we need to hold your application for mineral lease in our office pending consummation of the exchange. On the day of closing, we would concurrently file our deed from the State, your lease application, and our recommendation that the lease be issued with the Bureau of Land Management."

above. If, as these sources indicate, OGC approval of title is to be followed by Regional Forester or Forest Supervisor acceptance of it, the record does not indicate when the OGC approved the title and when the Regional Forester or Forest Supervisor accepted it. The April 28, 1987, FS letter upon which BLM relied apparently does not conform with the procedures FS has established. However, we cannot determine when title to the State of Idaho lands was accepted. Rather than attempt to obtain the complete facts and make this determination in the first instance ourselves, we think it is preferable to set aside BLM's decisions and remand these cases so that it may investigate exactly what actions were taken by which FS personnel and when. See Taylor Basin Partnership, 116 IBLA 23, 25 (1990). If this investigation leads to the conclusion that title to the lands involved had not been accepted when appellants located their mining claims, BLM may issue decisions setting forth the reasons for this conclusion in detail. See Kanawha & Hocking Coal & Coke Co., 112 IBLA 365, 368 (1990).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decisions of February 2, 1989, are set aside and these cases are remanded to BLM for action consistent with this opinion.

Will A. Irwin
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge