

Editor's note: Reconsideration denied by Order dated Dec. 2, 1994.

PHILLIP A. DAVIS

IBLA 91-459

Decided September 22, 1994

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring 98 mining claims null and void. NMC 421961, et al.

Affirmed.

1. Taylor Grazing Act--Mining Claims: Lands Subject to

Unless there is specific direction to the contrary, lands acquired by the United States under the Taylor Grazing Act are not open for location of mining claims under 30 U.S.C. § 22 (1988).

APPEARANCES: Phillip A. Davis, Battle Mountain, Nevada, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Phillip A. Davis has appealed from an August 28, 1991, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring 98 mining claims null and void because they are situated on lands unavailable to mineral entry. ^{1/} The claims were located on June 20, 1987, in secs. 13, 23, 25, 27, and 35 of T. 31 N., R. 50 E., and sec. 19 of T. 31 N., R. 50 E., Mount Diablo Meridian (MDM), Eureka County, Nevada. BLM found that these lands were unavailable to mineral entry because, as to the claims in T. 31 N., R. 50 E., they were located on land that had not been opened to mineral location, while the mineral rights to the land described as T. 31 N., R. 51 E., were conveyed in 1964 to private individuals. Acknowledging that the mineral interest in sec. 19, T. 31 N., R. 51 E., is privately owned, Davis has appealed only so much of the August 1991 BLM decision as pertains to claims located in T. 31 N., R. 50 E., MDM.

Davis contends on appeal that the lands now put at issue were open to mineral entry in 1987 and that there was no need for an opening order, contrary to the finding by BLM. He argues that the deed conveying the lands to the United States and the public announcement of transfer published in the Federal Register both demonstrate that the mineral estate (less oil and gas) was not reserved to the grantors, but was conveyed to the United

^{1/} The claims are numbered NMC 421961-421964, NMC 421965-421966, NMC 421973-421980, NMC 421996-422001, NMC 422003-422010, NMC 422020-422025, NMC 422027-422034, NMC 422051-422058, NMC 422109-422116, NMC 422134-422141, NMC 422152-422159, NMC 422180-422187, NMC 422198-422205, and NMC 422216-422223.

States. He contends that ambiguous entries on the master title plat and the historical index, when considered along with the deed, would cause a "reasonably prudent locator" to conclude that the lands at issue were open to mineral entry. Davis also argues that BLM publications suggest that no opening order is needed before mineral entry may be initiated on Federal lands. He concludes that, because BLM treated the lands as open to location, the failure to issue an opening order would not render the claims invalid.

[1] The lands at issue were acquired in an exchange under the authority of section 8(b) of the Taylor Grazing Act of 1934, as amended, 43 U.S.C. § 315g(b) (repealed 1976). This statute made limited provisions for exchanges or gifts of private lands within a grazing district. Before land acquired under the statute could become subject to appropriation for uses other than grazing, an order by BLM opening the land for such use was required. Southern California Petroleum Corp., 66 I.D. 61, 62 (1959); Rachael S. Preston, 63 I.D. 40, 43 (1956). In a Taylor Grazing exchange, acquired lands became subject to administration for grazing use only, and were therefore not automatically subject to applications for other uses under the public land laws. Before such land could become subject to mineral entry, an opening order was needed. Id. The only record of an order opening the subject lands to any application other than grazing is the 1964 Federal Register entry at issue. This order did not identify the land at issue to be subject to mineral entry. Davis argues that this omission was error. Nonetheless, no opening order had issued when he located his mining claims on June 20, 1987.

Although Davis suggests that BLM treated these lands as though they were open to mineral entry, he has not presented any official publication to support his conclusion. He refers instead to entries on public records such as the master title plat and historical index that he argues would reasonably lead a locator to conclude the lands were open to mineral entry. Those records, however, support BLM's finding that the lands were not open to mineral entry. The entry on the master title plat cited by Davis reads "OE 10/8/1964 Nev. 059737 Rstd Min Recon." Davis asserts that the "OE" entry would cause the locator to conclude that the land was "open to entry." That would be a fair assumption, were it not for the fact that the date of the opening order was provided to direct those interested in these lands to the place where information regarding entry could be researched. He also argues that the "Rstd Min" entry, when construed with the warranty deed found in the identified BLM case file, Nevada 059737, would imply that only oil and gas were restricted from entry. Such an interpretation would, however, require that the opening order itself be ignored and that the "Recon" notation, meaning reconveyance to the United States (see BLM Manual, Appendix 10, section 1275), should also be disregarded. The "Recon" notation is an indication that acquired lands are involved and therefore serves as a warning to anyone interested in these lands to consider whether they were made subject to entry for whatever purposes entry might be sought. The contention by Davis that the BLM notation suggests the subject lands were open to mineral entry is therefore without merit. Davis has also failed to show that he was misled in any way by BLM employees; regardless of what he might have been told, any reliance on

upon erroneous advice provided by BLM employees cannot create rights not authorized by law. See Lynn Keith, 53 IBLA 192, 198, 88 I.D. 369, 372-73 (1981). Since the lands involved here were not subject to mineral entry and, the public records did not state that they were, advice to the contrary could not change their status.

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.

Franklin D. Arness
Administrative Judge

I concur:

David L. Hughes
Administrative Judge