

THOMAS DAUBERT

IBLA 97-349

Decided March 24, 1998

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims null and void ab initio. MTMMC 203218- MTMMC 203221.

Affirmed.

1. Exchanges of Land: Forest Exchanges--Mining Claims: Lands Subject to

Pursuant to 43 C.F.R. § 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 segregated the National Forest System lands included in the proposed exchange from appropriation, location, or entry under the general mining laws for a period not to exceed 5 years. Mining claims located on these lands while the segregative effect is operative are null and void ab initio.

APPEARANCES: Thomas Daubert, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Thomas Daubert has appealed from an April 7, 1997, Decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Cooney Ridge Nos. 1 through 4 (MTMMC 203218-MTMMC 203221) mining claims null and void ab initio because they were located on land segregated from mineral entry at the time of location.

The above claims were located on February 27, 1997, in secs. 1 and 2, T. 10 N., R. 19 W., Principal Meridian, Montana and were recorded with BLM on April 1, 1997. <sup>1/</sup> The BLM's Decision states that on June 11, 1996,

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<sup>1/</sup> Daubert had previously located these claims on Aug. 30, 1995, and recorded them with BLM on Sept. 25, 1995. According to BLM letters to the Honorable Rick Hill and Honorable Conrad Burns, the claims were deemed to be forfeited effective Aug. 31, 1996, because Daubert had failed to file a small miner fee payment waiver certification. Daubert then relocated the claims on Feb. 27, 1997.

a proposal for a Forest Service land exchange which included the lands embraced by the mining claims, was filed.

The file includes a June 11, 1996, letter from a Department of Agriculture forest supervisor proposing to exchange and requesting BLM to segregate the following described lands: sec. 1, SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, sec. 2, SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, T. 10 N., R. 19 W., Principal Meridian. This segregation of lands was notated on BLM's Master Title Plat (MTP) on July 10, 1996. By letter of August 1, 1996, BLM notified the forest supervisor that the proposed exchange had been assigned serial number MTM 85489.

Daubert states on appeal that he checked BLM's microfiche records, dated February 14, 1997; he asserts that these were "the records that the public is required to use," and that they did not indicate that the lands had been withdrawn from mineral entry. Appended to Daubert's appeal is a September 27, 1995, letter from BLM acknowledging receipt of his original location of the claims on August 30, 1995. That letter contained the following "NOTICE TO CLAIMANTS:"

Please be advised that this acknowledgement does not verify that your claim(s) has/have been located on lands open to mineral entry. We encourage you to visit the nearest Bureau of Land Management office to check the official land record maintained by the Bureau of Land Management to ensure that your claim(s) is/are not located on private fee lands or federal lands that are not open to mineral entry. Our staff can assist you in the use of the land records if necessary.

Daubert asserts that he relied on this notice to check BLM's microfiche records from which he ascertained that the lands were open to mineral entry. On February 27, 1997, he restaked the claims on the ground, and, as indicated earlier, he filed his notices of location with BLM on April 1, 1997.

Daubert alleges that BLM has ill-treated him and requests that the BLM's Decision be reversed.

Examination of BLM's MTP for T. 10 N., R. 19 W. indicates that the proposed exchange was noted on the public land records prior to location of Daubert's claims. A notation on BLM's MTP reads "MTM 85489 Segr from Approp under Public Land Laws and Min Laws; Eff 7/10/1996; NTE 7/10/2001 Sec 1: SW 1/4 SW 1/4, Sec. 2 SE1/4 SE1/4." A notation on sec. 1 states "FX Appln" which stands for Forest Exchange application. Under the notation rule, where the official records of the BLM have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach pursuant to any subsequent entry or application until the record has been changed to reflect that the land is no longer segregated. O. Glenn Oliver, 73 IBLA 56, 59 (1983); Paiute Oil & Mining Corp., 67 IBLA 17 (1982). Therefore the notation on BLM's MTP, under the provisions of the law and the regulations, served to close the lands involved herein to mineral entry.

We note that the MTP which has been included in the case file is itself date stamped "April 1, 1997," which is after Daubert relocated his claims. However, there is no indication that an MTP on which the segregation was noted was not available for Daubert's inspection on his visit to the BLM office sometime prior to relocation of his claims. A May 21, 1997, BLM letter, responding to an inquiry by the Honorable Rick Hill, states it appears that Daubert reviewed BLM's mining claim microfiche records, "not the land status records." The BLM explained that the "official land status records \* \* \* are the Master Title Plats (MTP), not the mining claim microfiche," and the "MTP showed the proposed land exchange application on July 10, 1996."

[1] The case law is clear that mining claims located on lands not open to appropriation are null and void ab initio. See, e.g., Dean Staton, 136 IBLA 161, 164 (1996); Shiny Rock Mining Corp. v. United States, 825 F.2d 216, 219 (9th Cir. 1987); United States v. Smith Christian Mining Enterprises, Inc., 537 F. Supp. 57, 61 (D. Or. 1981). Lands within an exchange proposal are segregated from location upon the filing of a notice of a forest exchange offer and the notation of such proposed exchange on the public land records. See John and Maureen Watson, 113 IBLA 235 (1990); Oscar E. Harding, 110 IBLA 117 (1989); Walter MacEwen, 87 IBLA 210 (1985).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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James P. Terry  
Administrative Judge

I concur.

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Will A. Irwin  
Administrative Judge

