

MARTIN S. AND JOANN CHATTMAN

IBLA 99-252

Decided December 7, 2000

Appeal from a decision of the Field Manager, Phoenix Field Office, Bureau of Land Management, rejecting application for direct sale of public land. AZA-30136.

Affirmed, petition for stay denied as moot.

1. Federal Land Policy and Management Act of 1976: Sales

The existence of an unpatented mining claim of record under section 314 of FLPMA prevents an exchange or sale of public lands pursuant to § 203 of FLPMA. BLM properly refused to consider or process an application for direct sale of public land until the unpatented mining claim was relinquished, abandoned, or declared invalid on the basis of lack of discovery in a Government contest.

APPEARANCES: Frederick E. Davidson, Esq., Scottsdale, Arizona, for appellants, and Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Martin S. and Joann Chattman (appellants) have appealed from a March 24, 1999, Decision of the Field Manager, Phoenix Field Office, Bureau of Land Management (BLM), rejecting their application for direct sale 1/ of certain public land. 2/ Appellants filed their application to purchase land in the NE 1/4 of sec. 11, T. 6 N., R. 4 E., Gila and Salt River

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1/ Appellants' request was not styled an "application for direct sale," but it is clear that the Chattmans sought a noncompetitive sale of the parcel to them. See 43 C.F.R. §§ 2710.0-6(b) and 2711.1-1(c).

2/ Direct sale of public lands is authorized by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1784 (1994). Specifically, section 203 of FLPMA, 43 U.S.C. § 1713 (1994), provides that "[a] tract of the public lands [subject to certain exceptions not here relevant] may be sold under this Act where, as a result of land use planning required under section 1712 of this title, the Secretary determines that the sale of

Meridian, Arizona 3/ by letter dated April 11, 1997 (Application). Specifically, appellants sought a decision regarding whether BLM would or would not be willing to sell the described parcel to them. (Application at 2.)

Initially, by decision dated February 8, 1999, BLM had notified appellants that the application for direct sale was being held for rejection because the land was encumbered by the Wilson Claim, 4/ an unpatented mining claim held by the Trimbles, serialized as AMC-332271. The Chattmans were afforded 30 days from receipt thereof to clear the encumbrance created by the mining claim, subject to an appeal to this Board. 5/ In the meantime, BLM sent a letter to the Trimbles dated August 7, 1997, inquiring

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fn. 2 (continued)

such tract meets the following disposal criteria: (1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or (2) such tract was acquired for a specific purpose and the tract is no longer required for that purpose or any other Federal purpose; or (3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership." The subject tract has been identified for disposal by sale because it is difficult to manage and uneconomic in the relevant land use planning document, the September 1989 Resource Management Plan for the Phoenix Resource Area (RMP).

3/ The land at issue consists of approximately 1.0390 acres, triangular in shape. The parcel apparently was part of a larger claim known as the Wilson Claim. For convenience, we will refer to the parcel as the Wilson Claim because that is how the parties refer to it. State land lies to the north of the parcel, while land owned and occupied by the Chattmans lies to the north, south, and east. Land owned and occupied by Dan and Mary Trimble lies roughly northeast of the subject parcel. The Chattmans and the Trimbles obtain access to their property via a roadway that traverses the BLM parcel and adjoining State land.

4/ According to the location notice dated Nov. 29, 1996, the Trimbles located the Wilson Claim on Sept. 24, 1994. A copy of the location notice is contained in the case file. However, on Oct. 28, 1997, the Chattmans located the Homestake No. 1 mill site claim over the Trimbles' mining claim, a copy of which was filed with BLM on Nov. 5, 1997. The Chattmans' mill site was serialized as AMC-348435. Both the Chattmans and the Trimbles allude to the top-filing of a second mill site location by the Trimbles on Nov. 25, 1997 (Notice at 3; Letter to Bob Hale, BLM, from the Trimbles' counsel, Noel J. Hebets, dated May 11, 1999 at 2), but neither provided the BLM serial number or provided a copy of the location notice, and the case file does not contain a copy.

5/ BLM acknowledges in the Mar. 24, 1999, decision here appealed that no such appeal right should have been stated, because no adverse action was proposed or taken by the Feb. 8 decision.

whether they would relinquish the Wilson Claim. On August 15, 1997, BLM received a response from Hebets, the Trimble's attorney, who explained the Trimble's position at some length and declined to relinquish the mining claim unless the Chattmans agreed to settle all their grievances against the Trimbles.

At some point, the Chattmans retained the services of David E. Wahl, Jr., a consulting geologist, to evaluate the mineral potential of the Wilson Claim. Wahl prepared a report setting forth his "preliminary evaluation" dated October 6, 1997 (Wahl Opinion), in which he concluded that "a valid mineral discovery has not been made" (Wahl Opinion at 4) and raised questions regarding various technical requirements, such as the type and position of claim monuments. At another point, the Chattmans and the Trimbles began litigating competing claims regarding land boundaries, water rights, and trespass, and it is clear that appellants believe that the Trimbles located the Wilson Claim merely to create some bargaining leverage in the litigation, and further believe that they never intended to make use of it. (Notice at 2.) The record also shows that in 1997, the Chattmans were in litigation with the State regarding their allegedly deliberate and knowing encroachment onto State lands adjoining their property. The Chattmans also submitted a Color of Title application pursuant to 43 U.S.C. § 1068 (1994), AZA-29500, which was rejected by decision dated March 24, 1997. (Answer at 3.)

The Wahl Opinion ultimately became the basis of a letter to BLM dated March 15, 1999, from appellants' counsel, Frederick E. Davidson. The letter constituted the Chattmans' response to the February 8, 1999, decision to hold the application for rejection and argued Wahl's view that the Wilson Claim was not supported by a valid mineral discovery, and that the claim was vulnerable to numerous technical deficiencies. Counsel concluded that, because the land embraced by the Wilson Claim is nonmineral, a lode mining claim could not properly be located thereon, whereas such land was properly open to location as a millsite, and that the Chattman's millsite location therefore "takes precedence" over the Trimble's mining claim and subsequent millsite location. The letter concluded that, "given the invalidity of the Wilson unpatented mining claim, and the existence of the Homestake No. 1 Millsite Claim, no other use or modification of a previously filed notice could, under prevailing law, interfere with [the Chattmans'] rights with regard to the subject land." (Davidson Letter to BLM dated March 15, 1999, at 2.)

The letter asserted, moreover, that 30 U.S.C. § 42 (1994), the statute governing locations of millsites, requires actual use or occupancy as a condition to the right of exclusive possession, and only appellants have the right of exclusive possession, as provided in an agreement executed by the Chattmans and Trimbles to settle litigation. 6/ According

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6/ Appellants assert that the boundary disputes were "settled before trial in Maricopa County Superior Court Case No. 96CV-06837 \* \* \*,"

to Davidson, the Chattmans and Trimbles agreed "not to further encroach in any manner whatsoever, upon any public or private lands adjacent to any of their respective properties without prior written consent of the owners of said public or private lands," and since neither appellants nor BLM have given such prior written consent, the Trimbles could not actually use and occupy the land for purposes of perfecting a millsite claim. Appellants thus reason that there is no valid obstacle to approving their application because the Wilson Claim is invalid and the Trimbles cannot legally proceed with any millsite use of the subject land. In light of this stalemate, appellants perceive that BLM "is in a unique position of precluding the necessity for the occurrence of any costs associated with a quiet title action which would most assuredly be required if the Wilson unpatented mining claim is permitted to serve as the basis for the rejection of [appellants'] application." (Notice at 4.)

This stance later provoked a response from the Trimbles dated May 11, 1999, which was filed with BLM on May 13, 1999. They disputed the allegation that they had located their mining claim merely to gain a bargaining advantage in the litigation, reiterated that they have offered to convey their interest in the mining claim, and stated that they remain willing to do so as part of a global settlement, failing in which they are not willing to relinquish their interest in the Wilson Claim. Contrary to the Chattmans' view of it, the Trimbles characterized the settlement agreement as a partial settlement that was executed after the parties had staked their claims to the land embraced by the mining claim. In addition, the Trimbles responded to the Chattmans' arguments concerning the posting, size, and shape of the claim by noting that the Wilson Claim is the

remnant of what was previously a standard 20 acre claim that was properly posted within its time but inadvertently located on what was partially state land, and is one of a collection of a dozen of claims that were several decades old, where significant gold mining activity went back into the 1870's and substantial tungsten mining occurred in this century despite the conjecture of [appellants'] expert as to the lack of such minerals.

(Hebets Letter to BLM dated May 11, 1999, at 2.)

Lastly, the Trimbles accused the Chattmans of having destroyed their claim markers, alleged that a dwelling the Chattmans own prevents the Trimbles from digging a discovery hole, and noted that the Trimbles own

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fn. 6 (continued)

and further assert that they prevailed. (Davidson Letter to BLM dated Mar. 15, 1999, at 2, n.1.) A copy of the settlement agreement was not filed by either party, nor were we provided with any documentation relative to these allegations. It is unclear whether this is the only litigation between the parties, although there is evidence that they were involved in a water rights adjudication, Contested Case No. W1-102, before a Special Master. (Letter from Dan Trimble to BLM dated May 17, 1999.)

other land in the vicinity of the parcel, the use of which bears upon their use of the Wilson Claim. (Hebets Letter to BLM dated May 11, 1999, at 2.) Ultimately, in the March 24, 1999, decision, BLM rejected the application because "the requested evidence of mining claim resolution [had] not been provided in the allowed 30 days." (Decision at 1.)

Appellants' Notice of Appeal/Petition for Stay (Notice) also includes their reasons for appeal, and these are a reiteration of the arguments raised in their March 15, 1999, letter to BLM. <sup>7/</sup> (Notice at 1.) In addition, appellants petitioned for a stay of the March 24, 1999, decision. <sup>8/</sup> BLM filed its Answer on June 16, 1999, in which several salient points are made. First, BLM establishes that the Wilson Claim is not invalid on its face, despite the fact that BLM's list of mining claims in sec. 11, T. 6 N., R. 4 E., shows 1997 as the last year assessment work for the Wilson Claim was performed. Thus, it has submitted the June 11, 1999, affidavit of Ron Smith, a geologist in the Phoenix Field Office whose official duties include reviewing mineral case files and mineral records (Smith Affidavit). Smith avers that an unpatented mining claim is carried on BLM books and records as a claim in "good standing" if the required claim maintenance fee has been paid, or a waiver has been secured for the assessment year beginning Sept. 1, 1998. Smith attests that he personally checked BLM's files and determined that the Wilson Claim is in "good standing" for the 1999 assessment year, because the required claim maintenance fee was paid. (Smith Affidavit, Exh. J to Answer at 4.)

In addition, BLM insists that it "did not state that relinquishment of the Wilson claim was the only prerequisite to approval of [appellants'] application," (Answer at 4-5), and describes the authority and procedure for sales of public land pursuant to FLPMA. BLM concedes that the subject land was identified for disposal through land use planning in the September 1989 RMP for the Phoenix Resource Area, but notes that there is no indication that all the required criteria have been met, because BLM was not able to proceed with any of the sale procedures as a result of the existence of the Wilson Claim. (Answer at 12.)

Third, BLM correctly notes that the applicable standard of review is whether the March 24 decision not to proceed with processing the application was arbitrary, capricious, or an abuse of discretion. Thus the test

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<sup>7/</sup> The Notice with its statement of reasons was submitted subject to further supplementation. (Notice at 4.) Appellants did not supplement their Notice, however.

<sup>8/</sup> Appellants apparently believe that a stay would alter the outcome of BLM's decision. See Notice at 4. That is not correct. Staying the Mar. 24 decision merely would have restored the status quo ante, that is, appellants would be in the same position they were in before the decision issued: their application would be held for rejection because of the existence of the Wilson Claim. City of St. George, 116 IBLA 230, 236 (1990); see also Oregon Natural Resources Council, 148 IBLA 186, 190 (1999). Although BLM has thoroughly argued the merits of the requested stay, we have ruled upon the merits of the appeal and therefore the petition for stay is denied as moot.

is whether the decision is supported by substantial evidence, considering the record as a whole. (Answer at 13-14.)

Next, BLM contends that whether and when to question the validity of a mining claim by initiating a contest is a matter of discretion which is vested in the BLM State Director and begins with the preparation of a mineral report prepared by the Government's own experts. (Answer at 18-20.) BLM insists that until the claim is declared invalid "pursuant to a government mineral report and subsequent contest proceedings" (Answer at 15), the claim gives rise to certain rights so long as the claim is active and in good standing.

In conclusion, BLM notes that appellants have not chosen to avail themselves of the provisions of 43 C.F.R. § 4.450, which authorizes private contests by "[a]ny person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land." <sup>9/</sup>

The record before us demonstrates that appellants' application to purchase the Wilson Claim is just the latest skirmish between feuding landowners who have employed whatever means were available to wage the battle. Despite appellants' view of their application and the theories they have urged to negate the Trimbles' interest in the public land they seek, this appeal presents an uncomplicated issue: Whether it was error to reject appellants' application to purchase public land which has been identified for disposal in the relevant land-use planning document because the land is not clear of mining claims.

As BLM correctly states, the sale of public land pursuant to § 302(b) of FLPMA is a discretionary matter. Joyce and Tony Padilla v. BLM, 119 IBLA 33, 34 (1991) and Richard D. and Virginia Troon v. BLM, 93 IBLA 256, 260 (1986). However, the exercise of that discretion must be supported by a rational and defensible basis which is set forth in the decision, or it will be found to be arbitrary and capricious. Echo Bay Resort, 151 IBLA 277 (1999); Daniel T. Cooper, 150 IBLA 286, 291 (1999); Coalition for the High Rock/Black Rock Emigrant Trail, 147 IBLA 92, 95 (1998); Terry Kayser, 136 IBLA 148, 150 (1996); Four Corners Expeditions, 104 IBLA 122, 125-26 (1988).

[1] As noted, appellants sought to ascertain whether BLM would be willing to consider selling the parcel to them. In response, BLM's decision holding the application for rejection informed appellants that "clear title was mandatory in order for BLM to proceed with the purchase request." (Decision at 1.) As this Board observed in Hazel Anna Smith, 82 IBLA 230, 233-234 (1984) (noncompetitive section 203(a) FLPMA sale), "unless and until the claim is abandoned (by agreement or action of the claimants),

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<sup>9/</sup> BLM provides a good description of the nature of a private mining contest and the United States' position in relation thereto. (Answer at 21-23.)

or declared to be invalid in a contest proceeding[,] no public or modified public sale can take place." Accordingly, there was no point in even accepting an application for processing while the land was encumbered by an unpatented mining claim. Contrary to appellants' apparent view of the matter, BLM's decision was not a determination of the merits of the requested sale, and consequently, the arguments they have pursued before BLM and before this Board are premature and largely irrelevant at this juncture. The decision was nothing more than a refusal to begin processing of the Chattmans' request, and this is so regardless of the arguments appellants have advanced to demonstrate that there is no valid unpatented mining claim preventing the sale they seek. 10/

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 set aside and remanded to BLM for further action and the stay petition is denied as moot.

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T. Britt Price  
Administrative Judge

I concur:

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R.W. Mullen  
Administrative Judge

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10/ Appellants obviously would prefer that BLM adjudicate the merits of their arguments regarding the Wilson claim. (Notice at 4.) However, the record before the Board shows that the claim is not invalid on its face, and no Government mineral report has been prepared or is planned by BLM to ascertain, for BLM's purposes, whether the claim is supported by a discovery in anticipation of contesting the Wilson claim. Moreover, the BLM Manual requires BLM to determine whether the benefits of selling the tract outweigh the cost of a contest proceeding. Thus, it states that "a mining claim of record will be contested ('cleared') only if the Authorized Officer determines the sale to be in the public interest, i.e., a public purpose or program clearly will be served." (BLM Manual § 2710.06 A, I (Rel. 2-225, 10/30/85).) Compare Hazel Anna Smith, supra at 233-234; Roger B. Woody, 112 IBLA 51, 52-53 (1989). There is ample basis in the present record to infer that the costs of a contest in the circumstances of this case are outweighed by the potential benefits to BLM of a sale. While a determination regarding the sufficiency of mining claims may be made by BLM and this Board, this determination in response to third party requests should be avoided. Sandra Memmott (On Reconsideration), 93 IBLA 113, 115 (1986).

