

MICHAEL L. CARVER, ET AL.

IBLA 2000-278

Decided September 8, 2004

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims null and void ab initio. CAMC-277020 and -277021.

Affirmed as modified.

1. Bureau of Land Management--Exchanges of Land:
Generally--Federal Land Policy and Management Act of 1976: Exchanges--Federal Land Policy and Management Act of 1976: Withdrawals--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Lands--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Temporary Withdrawals

BLM may not properly temporarily segregate lands from entry under the mining laws under the authority of section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1716(i) (2000), and 43 CFR 2201.1-2 in the absence of a proposal to exchange Federal lands. A statement in a resource management plan to the effect that upwards of 149,000 acres of Federal lands are “available for exchange” is not a “proposal” made by BLM to exchange lands within the meaning of 43 CFR Subpart 2201, as it does not identify the lands to be exchanged or the parties seeking the exchange. BLM’s improper use of this temporary segregation authority effectively works a withdrawal of the lands without compliance with the procedural requirements of section 204 of FLPMA, 43 U.S.C. § 1714 (2000).

2. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Public Records--Withdrawals and Reservations: Effect of

The notation rule directs that mining claims located at a time when BLM's records indicate that the lands on which they are located are segregated from mineral entry are void regardless of whether the underlying segregation was proper. Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error or the segregative effect is void, voidable, or has terminated or expired.

3. Bureau of Land Management--Evidence: Presumptions--Public Records

A presumption of regularity supports the official acts of public officers; absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. In the absence of evidence to the contrary, it is appropriate to presume that BLM officials noted the public land records to reflect the existence of a temporary segregation on January 19, 2000, where those records indicate that such notation was made at that time.

APPEARANCES: Michael L. Carver, pro se and for Donna L. Carver, Nichole A. Carver, and Ashley L. Moranda; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Michael L. Carver, on behalf of himself and others (hereinafter, collectively, appellants), has appealed from the May 3, 2000, decision of the California State Office, Bureau of Land Management (BLM), declaring the Dean Nos. 1 and 2 placer mining claims (CAMC-277020 and -277021) null and void ab initio in their entirety. BLM ruled that those claims had been located on public lands that were segregated from mineral entry at the time of location by virtue of a proposed land exchange.

Appellants' mining claims were located on January 20, 2000, and copies of the location notices were timely filed for recordation with BLM on March 16, 2000. The location notices described the lands claimed as encompassing specific aliquot parts of secs. 6 and 8, T. 22 N., R. 4 E., Mount Diablo Meridian, Butte County, California.^{1/}

The record contains copies of the February 1, 2000, Master Title Plat (MTP) and Supplemental MTP covering secs. 6 and 8, T. 22 N., R. 4 E., Mount Diablo Meridian, Butte County, California. Both MTPs state that the two sections are subject to "CACA 41373-FD BLM PX." The "PX" refers to a proposed land exchange, and "FD" indicates that the land constitutes part of the Federal domain offered in that exchange. In addition, pages 11 and 12 of the Serial Register for CACA-41373-FD stated that there had been a segregation of the surface and mineral estates of the offered lands on January 19, 2000, at which time the land records were noted. Page 9 of the Historical Index for T. 22 N., R. 4 E., Mount Diablo Meridian, indicates that CACA-41373-FD was posted on January 19, 2000.

In its decision, BLM declared that appellants' placer mining claims both "lie within lands included in a proposed land exchange," (Decision at 2) referring to a "Serial Register Page re pending exchange" that was evidently attached to its decision.^{2/} BLM ruled accordingly:

Under the specific requirements of 43 CFR 2201 * * *, [BLM] is directed to segregate those Federal lands involved in proposed exchanges from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation. (Said segregation may be extended for additional 5-year periods as necessary.) The date that this 5-year segregation began was January 19, 2000, the day prior to your attempted location. * * * Therefore, the Dean #1 and Dean #2 placer mining claims (CAMC 277020 and 277021) are hereby declared null and void ab initio (that is, from the beginning) in their entirety.

(Decision at 2 (emphasis original).) This appeal was timely filed from that decision.

^{1/} The Dean No. 1 claim was described as encompassing 80 acres of Federal land in the E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 6. The Dean No. 2 claim was described as encompassing 40 acres of Federal land in the W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ of sec. 8.

^{2/} Although copies of that document and other relevant material were evidently attached to BLM's decision, BLM did not place copies of those attachments in its administrative record.

[1] Section 206(i) of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1716(i) (2000), establishes the segregative effect of proposed land exchanges. It provides, in relevant part:

Upon receipt of an offer to exchange lands or interests in lands pursuant to this Act or other applicable laws, at the request of the head of the department or agency having jurisdiction over the lands involved, the Secretary of the Interior may temporarily segregate the Federal lands under consideration for exchange from appropriation under the mining laws. Such temporary segregation may only be made for a period of not to exceed five years. * * *

43 U.S.C. § 1716(i)(1) (2000) (emphasis added). The Department has provided in its implementing regulations at 43 CFR 2201.1-2(a) that such a segregation of Federal lands shall be effected, subject to valid existing rights, “by a notation on the public land records” for a period not to exceed 5 years. Further, that segregation will terminate automatically (1) upon conveyance of the affected lands, (2) on the date specified in an opening order when the decision is made not to go forward with the exchange or to delete the affected lands from the proposal, or (3) automatically after not more than 5 years, whichever of these three events occurs first. See 43 CFR 2201.1-2(c); see also 43 CFR 2201.1-2(a) and (b).

It is established that, when BLM notes on the public land records that Federal lands are subject to a proposed exchange (whether initiated by BLM or another party), those lands are segregated from entry under the general mining laws pursuant to section 206(i)(1) of FLPMA and 43 CFR 2201.1-2(a) and that mining claims located on such lands during the time such segregation remains in effect are properly declared null and void ab initio. Kosanke v. U.S. Department of the Interior, 144 F.3d 873, 876-77 (D.C. Cir. 1998); Tri-Star Holdings, Ltd., 153 IBLA 201, 203 (2000); Lucian B. Vandegrift, 137 IBLA 308, 309 (1997); Washington Prospectors Mining Association, 136 IBLA 128, 129-30 (1996). The purpose of this longstanding rule is to avoid having the Federal lands subject to the exchange proposal become encumbered with mining claims while the exchange is being considered and acted upon, and thus to maintain the status quo of the land pending such action. See, e.g., Thomas Daubert, 143 IBLA 186, 187 (1998).

However, appellants argue persuasively that the segregation imposed by the public land record notation of proposed exchange CACA-41373-FD at the time of the location of their mining claims violated section 206(i) of FLPMA and 43 CFR 2201.1-2(a) because, when considered with previous segregations, it effectively constitutes a “withdrawal” because it exceeds the statutory 5-year period for

segregation under section 206(i) of FLPMA.^{3/} (SOR at 2.) The record confirms that almost 150,000 acres have been continuously covered by “temporary segregations” for a proposed land exchange since January 22, 1993, when the land records were noted to show “NORA Prop PX” serial number CACA-31254-FD.^{4/} The segregation was continued (or renewed) first on January 20, 1995, when “BLM Prop PX” (serial number CACA-35209-FD) was noted on the public land records,^{5/} and most recently on January 19, 2000, when “BLM Prop PX” (serial number CACA-41373-FD) was noted.^{6/}

^{3/} In the context presented in this case, a “withdrawal” refers to the “withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws * * * for the purpose of limiting activities under those lands in order to maintain other public values in the area or reserving the area for a particular public purpose or program.” 43 U.S.C. § 1702(j) (2000). The Department’s authority to withdraw lands is set out in sec. 204 of FLPMA, 43 U.S.C. § 1714 (2000), along with specific procedural requirements. The authority to temporarily segregate lands under sec. 206(i) of FLPMA is discrete from that withdrawal authority. If lands do not fall within the terms of sec. 206(i), it appears that they may be withheld from entry under the mining laws only under the authority of sec. 204 of FLPMA.

^{4/} Thus, a notice of realty action (NORA) covering 149,216 acres was issued on Jan. 21, 1993, and was published in the Federal Register on Jan. 22, 1993. (58 FR 5752 (Jan. 22, 1993).) See BLM Response to Feb. 26, 2004, Order to Provide Information (BLM Response) at 2-3.) The NORA stated that the public lands described therein had been determined to be suitable for disposal by exchange under sec. 206 of FLPMA and had been identified for disposal under the Proposed Redding (California) Resource Management Plan (RMP).

^{5/} The second temporary segregation (CACA-35209-FD) was initiated by a “segregation memorandum” dated Jan. 18, 1995. That memorandum consists of a request from BLM’s Acting Area Manager, Redding Resource Area Office, noting that (ostensibly) the same lands covered by the January 1993 NORA were “proposed for exchange in the Redding Resource Area” and requesting “notation of land/mineral segregation to the public land records.” BLM cited 43 CFR 2201.1-2 as its authority for the request for notation. It does not appear that this memorandum was published in the Federal Register.

^{6/} The third temporary segregation (CACA-41373-FD BLM PX), covering inter alia the lands subject to appellants’ mining claims, came into effect as of the date BLM land records were noted. Those records show that this was done on Jan. 19, 2000. This segregation was also apparently initiated by an unpublished memorandum, this dated Jan. 14, 2000, being a request for notation to public land records of land/

(continued...)

BLM provided the casefile associated with the request for notation of land/mineral segregation to the public land records serialized as CACA-41373, but it discloses nothing showing the nature of any underlying request for exchange. At our request, BLM has provided information showing that, over the past 15 years, parcels from the lands temporarily segregated in this manner have been selected and processed for exchange. Nevertheless, the material presented by BLM clearly shows that BLM has used the section 206(i) segregative authority to cover all lands that might have potential to be suitable for disposal by exchange. This practice is clearly more like a withdrawal than the limited segregation envisioned by Congress in sec. 206(i) of FLPMA, supra.

BLM points to its June 1993 Redding RMP as evidence that there were specific exchange proposals for lands covered by segregation. Indeed, the RMP refers to nine specific possible transfers by exchange (or, in some cases, by Recreation and Public Purposes Act grants) (Redding RMP at 52-53), and BLM adds to that list in its Response. (BLM Response at 3-5.)

Some of those specific exchanges were ostensibly “proposals” within the meaning of 43 CFR 2201.1-2(a). As such, the lands covered by them could properly be segregated from appropriation under the public land laws and mineral laws under section 206(i). However, such segregation should have been, we hold, limited to the lands actually involved in those proposals. The segregation imposed by BLM went well beyond those acreages.

Noting that it may propose a land exchange itself and may properly segregate the lands covered by such proposal under 43 CFR 2201.1(a), BLM argues that it had done so here, in the Redding RMP: “For isolated and scattered tracts of public lands, such as the subject lands, the RMP states that these lands are ‘available for exchange.’ See RMP at 53. The RMP thereby constitutes BLM’s offer of those public lands for exchange to any interested parties.” (BLM Response at 2-3). The RMP states on

^{5/} (...continued)

mineral segregation from BLM’s Redding Field Office Manager to the California State Director. That memo noted that it was a re-serialization of a previous area wide exchange proposal (CACA-35209-FD), whose segregation effect was set to expire on Jan. 20, 2000. It noted that there had been some changes in the lands affected, presumably to reflect the fact that some of the lands previously segregated had been disposed of.

page 53 that “[a]ll public land interests not noted above in II A-H (1-10)” are available for exchange.^{7/}

We do not agree that this language served as an offer by BLM “to exchange lands or interests in lands pursuant to” section 206(i) of FLPMA or a “proposal” for exchange within the meaning of 43 CFR 2201.1(a). By its nature, the term “proposal” would seem to apply to specific lands that are identified for exchange. The large amount of lands covered by the temporary segregations is not consistent with that notion. BLM’s regulations fully support our conclusion that a “proposal” is limited to specific lands. Thus, 43 CFR 2201.1(a), which authorizes BLM to “propose” exchanges, specifies what BLM must do with “an exchange proposal,” including obtaining a preliminary estimate of the values of the lands involved in the proposal; identifying the specific parties involved in the proposed exchange and their legal status; describing the lands or interest in the lands being considered for exchange and any relevant easements, appurtenances, or tenancies; establishing inspection rights; and establishing a schedule for completing the proposed exchange. All of those actions are consistent only with consideration of an exchange concerning specific parcel or parcels of lands and specific parties known at the time the proposal is made.^{8/}

Moreover, an indication in an RMP that certain public lands are available for exchange cannot constitute a “proposed exchange” of all of those lands within the meaning of 43 CFR 2201.1(a). FLPMA make this clear. Section 202 of FLPMA establishes the obligation of the Secretary to maintain and revise land-use plans. 43 U.S.C. § 1712 (2000). While lands may be described therein as subject to an exchange proposal, nothing within that section suggests that the Secretary’s description within a land use plan of lands “as available for exchange” constitutes a

^{7/} This reference appears to be faulty. The section immediately above the reference is denominated “II. Land Use Allocations.” It refers to land use allocations in the Ishi Management Area. However, the only public land interests noted in section II are lettered “A.” through “G.” There is no “H.” Further, we are left to speculate that the reference to “1-10” is to the specific parcels designated for disposition by exchange or by R&PP Act allocations discussed in “G. Remainder of Management Area,” of which there are actually eleven.

Also, It is not clear from the material provided by BLM whether all of the lands subject to the most current temporary segregation are within the Ishi Management Area.

^{8/} Also, Chapter 1 of the BLM H-2200-1 Land Exchange Handbook provides additional support for the conclusion that a proposal requires identification of specific parties and parcels, and Chapter 15 supports the conclusion that a proposal requires identification of specific parcels.

proposal for exchange within the meaning of section 206(i). In the absence of such proposal, there was no basis for BLM to segregate the lands under section 206(i).

BLM's use of the temporary segregation authority of section 206(i) of FLPMA in this manner was not insignificant. By repeatedly applying it, BLM effectuated a withdrawal which avoided compliance with the procedural requirements of section 204 of FLPMA, 43 U.S.C. § 1714 (2000).

[2] Despite our concerns about the legality of the underlying segregation, we nevertheless affirm BLM's decision on different grounds. The notation rule directs that appellants' mining claims are void regardless of whether the underlying segregation was proper. Where public land records have been noted to show that a parcel of land is not open to entry under the public land laws, the parcel is not available for entry until such time as the notation is removed and the land is restored to entry, even if the original notation was made in error. William Dunn, 157 IBLA 347, 353 (2002), and cases cited. Pursuant to that rule, if a notation on the public land records indicates that land is closed to entry, the land is closed to entry even if the notation was erroneously made, or the segregative effect is void, voidable, or has terminated or expired. B. J. Toohey, 88 IBLA 66, 77-81, 92 I.D. 317, 324-26 (1985), aff'd sub nom. Cavanagh v. Hodel, No. 86-041 Civil (D. Alaska (Mar. 18, 1988)); Shiny Rock Mining Corp., 75 IBLA 136, 138 (1983). The notation rule is founded on the concept of providing fair notice to the general public of the availability of public domain lands and so to give to all the public an equal opportunity to file entries or mining claims. See Margaret L. Klatt, 23 IBLA 59, 63 (1975). Thus, a party checking public land records is entitled to rely on a notation that lands are not available so that no other party will be able to enter those lands. The rule is described as "the salutary rule that land segregated from the public domain, whether by patent, reservation, entry, selection, or otherwise, is not subject to settlement or any other form of appropriation until its restoration is noted upon the records of the local land office." California & Oregon Land Co. v. Hulen, 46 L.D. 55, 56 (1917); see also B. J. Toohey, 88 IBLA at 77-85, 92 I.D. at 324-28. ^{2/}

^{2/} We are aware that the Board has in the past declined to apply the notation rule in certain limited circumstances, where Congress has expressly established a date by which a withdrawal or its segregative effect is to expire (see Richard Borgen, 117 IBLA 239, 243 (1991); John J. Schnabel, 90 IBLA 147, 150 (1985); David Cavanagh, 89 IBLA 285, 300-02, 92 I.D. 564, 573 (1985) (aff'd Civ. No. A86-041 (D. Alaska (Mar. 18, 1988))); and B. J. Toohey, 88 IBLA at 96-97, 92 I.D. at 335), or where a segregation is noted on the public land records beyond a Congressionally-imposed expiration for that segregation (see Phelps Dodge Corp., 115 IBLA 214, 217 (1990)). The present case does not present such circumstances.

[3] BLM's records for the lands covered by appellants' mining claims were marked to show the segregation from mineral entry on the date the claims were located. A presumption of regularity supports the official acts of public officers; absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Forcenergy, Inc., 151 IBLA 3, 8 (1999); Alice Thompson, 149 IBLA 98, 102-03 (1999); Wilfred Plomis, 139 IBLA 206, 208 (1997), and cases cited. Thus, although appellants assert that unnamed BLM employees advised him on January 19 and 20, 2000, that the land records were not noted (Statement of Reasons at 1-2), we find that insufficient to overcome the indications that the land records were noted to reflect the temporary segregation on January 19, 2000, the day prior to the location of the claims at issue. That is, in the absence of probative evidence to the contrary, it is appropriate to presume that BLM officials noted the public land records to reflect the existence of a temporary segregation on January 19, 2000, where those records indicate that such notation was made at that time.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is affirmed as modified.

David L. Hughes
Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge