

DARRELL CECILIANI

IBLA 2003-63

Decided August 31, 2005

Appeal from a decision of the Prineville (Oregon) Field Office, Bureau of Land Management, finding a privately owned cabin to be in trespass on public lands and determining liability for unauthorized use and occupancy. OR-57394.

Affirmed.

1. Trespass: Generally

Any use, occupancy, or development of the public lands without authorization is a trespass. BLM may properly require the removal of structures unintentionally constructed in trespass on public land. A party constructing a cabin in trespass on the public lands is liable for the administrative expenses incurred in dealing with the trespass, as well as the fair market value rental of the land for the period of trespass.

2. Administrative Authority: Estoppel--Estoppel--Trespass: Generally

Even assuming arguendo that appellant was informed by a BLM employee that a fence served as a public/private land boundary, such action would not estop BLM from charging him with trespass in the construction of a cabin on public land, when there is no affirmative misconduct in the nature of an erroneous statement of fact in an official written decision.

3. Administrative Authority: Estoppel--Estoppel--Trespass:  
Generally

While situations may arise where the Government may be estopped because a private party, acting in reliance upon a Governmental representation, was prevented from obtaining a right which might have been obtained, the Government cannot be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance.

APPEARANCES: Gerald A. Martin, Esq., Bend, Oregon, for Darrell Ceciliani; and Bradley Grenham, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Darrell Ceciliani appeals from an August 28, 2002, decision of the Prineville (Oregon) Field Office, Bureau of Land Management (BLM), finding that Ceciliani had constructed a cabin on public lands without authorization, and concluding that he was liable for trespass damages and costs.

The record shows that the Oregon State Police contacted BLM on April 15, 2002, reporting that a newly constructed cabin was observed in the lower Deschutes River area near Frog Springs.<sup>1/</sup> (Apr. 18, 2002, Memorandum to File.) Upon investigating the matter, BLM issued a Notice to Cease and Desist to Ceciliani on April 25, 2002, asserting that this cabin constituted a trespass on the public lands in lot 1, sec. 13, T. 9 S., R. 13 E., Willamette Meridian, Jefferson County, Oregon. These lands are located within the Lower Deschutes Wild and Scenic River corridor.<sup>2/</sup> At the time, Ceciliani held a grazing lease for lands in the area, whereby

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<sup>1/</sup> The Oregon State police officer later reported to BLM that Ceciliani “knowingly did not obtain any building permits to construct said cabin,” and that “he wanted to get [his guide] business up and running and then deal with the agencies.” (BLM Incident Report No. 0246200016 at 3.)

<sup>2/</sup> Congress has designated a 100-mile stretch of the Deschutes River between the Pelton Dam and its confluence with the Columbia River as a recreational river and part of the national wild and scenic rivers system, 16 U.S.C. § 1274(a)(73)(E) (2000), thereby rendering it subject to management under the Wild and Scenic

(continued...)

BLM had granted him permission to access the grazing allotment twice annually from the Trout Creek Campground for routine fence maintenance. (Sept. 4, 2001, Letter from BLM to Ceciliani.) Otherwise, this access road was closed, by locked gates and posted signs, to all public motor vehicle use in order to protect the natural resources.<sup>3/</sup> BLM concluded in its April 25 Notice that Ceciliani had “used this access to haul construction materials and tools needed to erect” the cabin, contrary to the purpose of the access grant. (Apr. 25, 2002, Notice at 1.) BLM advised Ceciliani of his liability for rental value, rehabilitation/stabilization costs, and administrative costs as a result of the trespass. *Id.* BLM further suspended Ceciliani’s access authorization, and provided him with 30 days to either settle or present evidence rebutting the trespass. *Id.* at 2.

Thereafter, BLM sought a cadastral survey, to be conducted as soon as possible “to prove allegations of a trespass by Darrell Ceciliani.” (May 1, 2002, Request.) BLM explained: “The cabin location was determined with the use of a Trimble G.P.S. unit by the Law Enforcement Officer \* \* \* investigating the trespass. No corners were found and no markers to indicate a surveyed line. Posting the line indicated on the enclosed map (in red) will be necessary to determine if a trespass has occurred.” *Id.* Before conducting the survey, the BLM field surveyor met with Ceciliani. He reported that Ceciliani was “interested in where the property lines were actually located,” that Ceciliani “said that he had been using an old map that the Title Co. gave him,” and that upon “show[ing] him the 1908 GLO map,” Ceciliani “said he thought that was the same map.” (May 21, 2002, note to record.)

A dependent resurvey was conducted from May 21 to June 4, 2002, under Special Instructions for Group No. 2022, dated May 10, 2002, to restore sec. 13 according to the 1869 survey and the 1908 resurvey. The resulting plat was officially accepted on November 15, 2002. With respect to all four section corners which control the subdivision of sec. 13, substantial evidence existed to authenticate each original corner. These controlling corners were employed in identifying the NW1/16 section corner and the center N1/16 section corner. The line between these two corners forms the boundary between the public lands on the north (lot 1, approximating the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of sec. 13) and the private lands on the south (the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of sec. 13). According to the results of the dependent resurvey, the

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<sup>2/</sup> (...continued)

Rivers Act, as amended, 16 U.S.C. §§ 1271-1287 (2000).

<sup>3/</sup> Ceciliani’s access was facilitated by having his own personal lock on the gate. However, he was instructed to contact BLM each time before using this access. (Sept. 4, 2001, Letter.) Apparently, he did not contact BLM prior to use.

cabin at issue is situated approximately 320 feet north of the boundary line on public lands. The field surveyor met again with Ceciliani after the survey was completed, and, upon being informed that the cabin was on public lands, Ceciliani reportedly stated that “he hoped to work out some kind of lease with the BLM to keep the cabin in place.” (May 29, 2002, note to record.)<sup>4/</sup>

In his May 10, 2002, response to the Cease and Desist Notice, Ceciliani admitted that he used the access road to haul materials to build the cabin “on what he believed to be private property.” As for the trespass, he stated: “In the spirit of cooperation, as always, I would like to work with the BLM to improve the allotment specifically in and around the Frog Springs area. As for the cabin, if this is on public property, I am willing to pay fair market value rent.”

On August 28, 2002, BLM issued notice to Ceciliani that, pursuant to 43 CFR 2920.1-2, it was instituting trespass proceedings against the unauthorized cabin and personal property inside and outside.<sup>5/</sup> BLM further stated: “As a consequence of this act you are liable for the rental value of the lands, the cumulative value of the current use fee for unauthorized use of the access road, rehabilitation/stabilization of the lands damaged by your act, and administrative costs incurred by the Bureau as a consequence of your act.”<sup>6/</sup> As an additional measure “to eliminate public hazard and prevent further trespass,” BLM also declared an emergency closure of the area “to all public use including foot and horse traffic,” effective September 9, 2002, citing 43 CFR 9268.3(d)(2)(i) and 8364.1(a).

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<sup>4/</sup> Our records do not show that the results of the dependent resurvey were challenged or appealed.

<sup>5/</sup> Although the results of the dependent resurvey were not officially approved until November 2002, BLM relied upon the surveyor’s findings in its Notice of Trespass, stating: “The survey shows the cabin constructed by you is on public lands \* \* \*.” (Trespass Notice at 1.) In the official report, the Oregon State Office, BLM, noted that it had kept the Prineville Office apprised of the survey results to facilitate processing the trespass and closure decisions. (Survey Report, Group No. 2002, at 1.) A plat of the dependent resurvey was provided the Prineville Office on June 13, 2002.

<sup>6/</sup> Subsequent to the trespass notice, BLM prepared a cost estimate in the amount of \$25,016.36, as follows: fair market rent - \$11,666.67, rehabilitation cost - \$2044.93, survey costs - \$8,714.00, and other administrative costs - \$2,590.76. (Financial Plan Estimate of Total Costs as of Nov. 1, 2002.)

In his initial statement of reasons, Ceciliani argues that the cabin is not located on public lands based upon a fence which he contends is “the dividing line between his property and the BLM property.”<sup>7/</sup> He then argues that, if the structure is indeed situated on BLM property, it was located there by mistake. He contends that, if the cabin is on public lands by mistake, BLM should have allowed him to simply move the structure off BLM lands rather than “treat [him] as if he were a criminal and \* \* \* seize the structure and the property.” He further asserts that it is inconsistent to treat the structure as illegal and then charge rent,<sup>8/</sup> and that his “innocent mistake” should not be the basis for BLM’s “unilateral seizure of property and threat of criminal prosecution.”

In its answer, BLM argues that, according to the survey, there is no doubt that this cabin is located on public lands and that Ceciliani built it without receiving any authorization from BLM. With respect to the fence mentioned by Ceciliani as an agreed-upon boundary between his land and the public lands, BLM states that it has never agreed to use this fence as a boundary, and that Ceciliani fails to point to any specific document or conversation which would support that fact. BLM argues that Ceciliani’s actions were inappropriate, stating that, even if he assumed he was building on his private property, he did not consult BLM before hauling cabin materials and equipment over a road he knew was closed to motorized access except for specified purposes. As for Ceciliani’s assertion that BLM has seized the cabin and his personal property, BLM notes that it has merely “closed” the land to any further unauthorized use and that removal of the cabin and incidentals pursuant to the trespass notice would not be unauthorized, as long as it is done in cooperation with BLM. BLM further states that any costs assessed for the trespass, including rent, administrative costs, and rehabilitation costs, are appropriate under 43 CFR 2920.1-2.

Ceciliani, in a reply, argues that BLM should be estopped from this trespass action, a situation which “BLM invited,” based upon at least three conversations he had with BLM employees. According to Ceciliani, in approximately 1991 or 1992, J. C. Hanf of the Prineville Field Office, BLM, contacted him about an “exclosure” fence to protect the Frog Springs area. In their discussion about where the fence

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<sup>7/</sup> Ceciliani maintains that there was plenty of room for the cabin on his own property, and therefore that there was no reason for him to intentionally place it on public land.

<sup>8/</sup> Ceciliani also argues that, if the cabin is on BLM property and BLM is charging rent for it to be there, BLM has failed to protect it and prevent others from vandalizing and destroying his property.

would be located, Hanf purportedly told Ceciliani that “it would be on the boundary line,” noting at that time the boundary was substantially higher up the canyon than the old railroad bed where Ceciliani would have placed it. Ceciliani states that BLM built the fence later that summer where Hanf had said the boundary was. He further states that in 1998 or 1999, he met with BLM employees Hanf, Robert Towne, and Helen McGlanahan to discuss a problem with his cattle getting into the enclosure area. He reports that Towne at that time talked to him about his responsibility to maintain the “boundary” fence, and that McGlanahan later met him on his property to inspect the “boundary” fence. He asserts that he built his cabin, approximately 200 yards “up the hill from the fence,” because, relying on the statements made by BLM employees, he believed it to be part of his ranch property.

In addition, Ceciliani disputes the trespass costs reported by BLM.<sup>2/</sup> He argues that the cost of the survey should not be included because he was not given notice of the costs or an opportunity to remove the cabin and repair any damage before the survey was ordered. He avers that he was not told that he would be responsible for survey costs, or else he would have removed it before the survey was begun to avoid such costs. He further contends that the survey was for BLM’s benefit, as it obviously did not know where the boundary line was. He also argues that the alleged fair market value employed by BLM to determine the rental amount is not reasonable or realistic because it is based upon a use which is not permitted for these lands. Describing the condition of the surrounding area and asserting that the condition of the lands at issue cannot be shown to be any different despite the alleged trespass, Ceciliani asserts that rehabilitation costs should be minimal.

In its response, BLM disputes Ceciliani’s description of events concerning the enclosure fence. In an attached declaration, Hanf attests:

In 1993, the BLM built an enclosure fence to keep livestock out of Frog Springs Creek campground. The fence was not constructed as a boundary between public and private lands. I would not have represented this as a boundary fence without some reliable basis, such as a survey. The fence was located in its present location because of the presence of physical barriers (rock), where both ends of the fence terminate to preclude livestock access around the ends. I am not aware of BLM having ever referred to this fence as a private/public boundary fence \* \* \*. Any reference to a boundary would have been to an

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<sup>2/</sup> This reply was filed on Dec. 23, 2002, subsequent to the cost analysis discussed in fn. 4.

allotment or pasture boundary which is not the same as a private/  
public land boundary.

(Declaration of J. C. Hanf, dated Jan. 28, 2003.)

BLM further disputes Ceciliani's statement that he did not have an opportunity to avoid the costs associated with this trespass. BLM suggests that Ceciliani could have taken greater care in delineating his property before undertaking construction, and that he should have contacted BLM before using the access road for a purpose for which he did not have authorization. As for his argument that BLM should have better explained the options available once the trespass was discovered, BLM notes that the relevant regulations clearly provide notice and explanation of the consequences of a trespass on public lands. BLM therefore asserts that the cost of the survey, which was conducted solely to verify the trespass, is an appropriate administrative cost, fair market rental value is the proper remedy as set forth in the regulation, and rehabilitation costs are justified based upon verifiable disturbances. BLM further contends that Ceciliani never offered to remove the cabin once the trespass action was commenced, noting that he "offered to work out an arrangement with BLM" whereby he would be able to continue to occupy and use the cabin.

[1] Section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (2000), authorizes the Secretary of the Interior to allow various uses of the public lands. Under 43 CFR 2920.1-1, BLM may authorize "[a]ny use not specifically authorized under other laws or regulations and not specifically forbidden by law," including "residential, agricultural, industrial, and commercial" uses. However, section 303(g) of FLPMA, 43 U.S.C. § 1733(g) (2000), provides that "the use, occupancy, or development of any portion of the public lands contrary to any regulation \* \* \* is unlawful and prohibited." See Parkway Retail Centre, LLC, 154 IBLA 246, 251 (2001). The implementing regulation, 43 CFR 2920.1-2, clearly warns that "[a]ny use, occupancy, or development of the public lands, other than casual use \* \* \*, without authorization under the procedures in § 2920.1-1 of this title, shall be considered a trespass." A person in trespass shall be liable to the United States for the administrative costs incurred as a consequence of the trespass, the fair market value rental of the public lands for the current and past periods of trespass, and the rehabilitation and stabilization of the lands or the costs incurred by the United States in performing the necessary rehabilitation and stabilization. 43 CFR 2920.1-2(a); Universal City Studios, Inc., 120 IBLA 216, 221 (1991).

The applicability of 43 CFR 2920.1-2 "hinges on whether the use, occupancy, or development [of the public lands] was without authorization 'under the

procedures in 2920.1-1.” William H. Snavelly, 136 IBLA 350, 356 (1996). Two facts are clear from the record. One, the cabin constructed by Ceciliani is situated on public lands, and, two, he had no authorization under Part 2920 to occupy those lands in this manner on April 25, 2002, when BLM issued its notice to cease and desist. Hence, 43 CFR 2920.1-2 applies.

Ceciliani has not shown that BLM, upon learning of his unauthorized use and occupancy, had any choice under the relevant statutes and regulations but to order the cabin and other property removed and to assess trespass costs. This situation is similar to that found in James W. Bowling, 129 IBLA 52 (1994), in which Bowling constructed a cabin and outbuildings on public lands, relying upon a fence as marking what he believed was the property line. The Board ruled that BLM may properly require the removal of structures unintentionally erected on public land and assess trespass costs as outlined in 43 CFR 2920.1-2. 129 IBLA at 54. We further explored Bowling’s estoppel claim that he relied upon BLM’s knowledge of the fence and its failure to advise him that it was not the property line. We ruled that this claim failed because there was no written decision embracing that notion, and that allowing the unauthorized cabin on public lands would be contrary to law. 129 IBLA at 55-56.

Applying the principles articulated in Bowling, we must affirm BLM’s finding that Ceciliani’s construction of the private cabin on public land constituted a trespass. We agree with the following analysis, offered by BLM:

BLM’s approach is supported by prior Board decisions. In Sharon R. Dayton, 117 IBLA 162 (1990), the Board held that BLM may properly require the removal of structures erected in trespass upon public land. In so holding, the Board noted that the BLM Manual, 2920.11.A.4., provided that “[u]nauthorized recreational residence and recreational cabin site occupancies must be terminated as soon as practicable.” 117 IBLA at 164. In that case, the Board also held that Appellant was liable for administrative costs arising from the trespass including labor costs, operation costs, and indirect costs (i.e. administrative overhead) in accordance with the regulations and BLM Manual. 117 IBLA at 165. In fact, the Board further held that “the United States is entitled to order an unauthorized occupant of the public lands to remove himself and his possessions from Federal land and direct that if he does not do so by a specified date, any remaining structures will be deemed abandoned and property of the United States.” 117 IBLA at 181 fn. 2

(1990) (citing James E. Billings, 38 IBLA 353, 356 (1978); United States v. Smith Christian Mining Enterprises, 537 F. Supp. 57 (D. Or. 1981)).

(Answer at 6.)

Ceciliani's assertion that BLM has inappropriately taken "precipitous and unilateral action" takes on an ironic tone when considering that he failed to ask BLM for authorization to haul cabin materials and equipment over a BLM road that he knew was closed to motorized access, and "did not even obtain any of the required local government building permits to construct a cabin on private land." Id. at 5; Record, Exh. 14, at 3. In fact, BLM points out that as of the date of its answer, Ceciliani was "still advertising the cabin as available for rent. See [www.bitterbrush.com](http://www.bitterbrush.com) (stating: 'Stay in our snug Frog Springs Cabin on the river' . . . 'in rustic luxury' in 'a spectacular private setting' with 'five miles of river access')." (Answer at 6.)

Further, we affirm BLM's assessment of Ceciliani's liability as expressed in the appealed decision. As we recently stated in Stanley Dimeglio, 163 IBLA 365, 378 (2004):

Anyone properly determined by BLM to be in trespass on Federally-owned lands shall be liable to the United States for damages, including the administrative costs incurred by the United States as a consequence of such trespass (43 CFR 2920.1-2(a)(1)) and the fair market value rental of the lands for the current year and past years of trespass. 43 CFR 2920.1-2(a)(2); Factory Homes Outlet, 153 IBLA 83, [89] (2000); Michael Rodgers, 137 IBLA 131, 135 (1996); Sierra Production Service, 118 IBLA 259, 263 (1991).

With regard to BLM's determination of fair market value rental, the Board will generally uphold the fair market value established by an appraisal unless an appellant shows error in the appraisal method used or demonstrates by a preponderance of the evidence that the charge is excessive. See Factory Homes Outlet, 153 IBLA at 89; Regina B. Perry, 142 IBLA 278, 281 (1998). In this case, "[i]n order to minimize administrative costs, BLM has based the rental on the estimation by the Jefferson County appraiser rather than conducting a formal appraisal." (Answer at 8.) As to Ceciliani's concern that the lands in question should be valued for nothing more than its grazing and recreational uses, we refer to our holding in Stanley Dimeglio that "in determining the 'fair market rental value of the lands,' it was proper for BLM to include in 'the lands' the improvements placed on the Federally-owned lands in

trespass.” 163 IBLA at 379 (improvements placed upon Federally-owned lands by trespassers belong to the United States from their inception). Under 43 CFR 2920.1-2(a)(2), BLM was correct in charging the rental value of the lands at the time of trespass.

BLM charged Ceciliani for the cost of the survey in accordance with 43 CFR 2920.1-2(a)(1), which clearly specifies that liability includes “[t]he administrative costs incurred by the United States as a consequence of such trespass.” 43 CFR 2920.1-2(a)(1). For such costs not to apply, Ceciliani would have to demonstrate that BLM’s determination to include the cost of the survey was arbitrary and capricious. See Norman Reid, 163 IBLA 324, 329 (2004). We view the survey, however, as not only reasonable but indeed necessary to the investigation and termination of Ceciliani’s trespass.

Moreover, Ceciliani is explicitly responsible for “rehabilitating and stabilizing” the lands disturbed by his trespass under 43 CFR 2920.1-2(a)(3). We have held that BLM can properly direct a party in trespass “to rehabilitate and stabilize the lands that were the subject of the trespass, including bringing the lands back to their pre-trespass condition.” Stanley Dimeglio, 163 IBLA at 380. Where the trespasser does not rehabilitate and stabilize the lands subject to the trespass within the period set by the authorized officer, the trespasser will be liable for the costs incurred by the United States in completing such tasks. See Norman Reid, 163 IBLA at 329.

Ceciliani suggests that BLM should allow him to keep the cabin on the public lands, which suggestion is similar to the recommendation made by the Board in Juliet Marsh Brown, 64 IBLA 379 (1982). We held in Brown that a notice to cease trespass and an order to remove may be set aside to allow consideration of a special use permit with appropriate restrictions where appellant concedes lack of right to the land, and it is not clear that a temporary use authorization would interfere with any immediate need of the land for public purposes. 64 IBLA at 382. However, in this instance the presence of the cabin is contrary to the protection and management of the subject lands under the wild and scenic river guidelines. Accordingly, any such recommendation by the Board would be inappropriate. As BLM states:

Nowhere do the regulations require that BLM allow parties in trespass to continue enjoying their unauthorized structure in order for BLM to collect rent. The cabin remains in trespass and remains an intrusion on river values even if Appellant is not staying in it. Appellant did not

promptly remove the structure and cannot now complain of rental costs while the cabin continues to intrude on wild and scenic river values.

(Answer at 6.)

[2] For the following reasons, we reject Ceciliani's argument that BLM should be estopped from treating him as a trespasser. See Reply at 3. In accordance with long-standing practice, the Board will look to the elements of estoppel set forth in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970), as the initial test in determining estoppel questions presented to the Board. Floyd Higgins, 147 IBLA 343 (1999); Carl Dresselhaus, 128 IBLA 26 (1993); Leitmotif Mining Co., 124 IBLA 344 (1992); and United States v. White, 118 IBLA 266, 98 I.D. 129 (1991). In Ptarmigan Co., 91 IBLA 113, 117 (1986), aff'd, Bolt v. United States, 944 F.2d 603 (9th Cir. 1991), we stated:

First, we have adopted the elements of estoppel described by the Ninth Circuit Court of Appeals in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970):

Four elements must be present to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury.

Id. at 96 (quoting Hampton v. Paramount Pictures Corp., 279 F.2d 100, 104 (9th Cir. 1960)). See State of Alaska, 46 IBLA 12, 21 (1980); Henry E. Reeves, 31 IBLA 242, 267 (1977). Second, we have adopted the rule of numerous courts that estoppel is an extraordinary remedy, especially as it relates to the public lands. Harold E. Woods, 61 IBLA 359, 361 (1982); State of Alaska, supra. Third, estoppel against the Government in matters concerning the public lands must be based on affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D.F. Colson, 63 IBLA 121 (1982); Arpee Jones, 61 IBLA 149 (1982). Finally, we have noted that while estoppel may lie where reliance on Governmental statements deprived an individual of a right which he could have acquired, estoppel does not lie where the effect of

such action would be to grant an individual a right not authorized by law. See Edward L. Ellis, 42 IBLA 66 (1979).

91 IBLA at 117.

Our review of the record shows that none of the elements necessary for application of estoppel appear in Ceciliani's case. BLM offers Fred Wolske, 137 IBLA 211 (1996), as a case involving similar circumstances in which the Board rejected the same estoppel argument made by Ceciliani. In Wolske, the appellant argued that BLM was estopped from charging him with trespass since he relied upon BLM's prior verbal approval of a boundary line. The Board's analysis in Wolske disposes of Ceciliani's estoppel argument:

Even assuming arguendo that appellant was informed by a BLM employee prior to logging of the correctness of his determination of the public/private land boundary, we conclude that BLM is not equitably estopped from charging him with trespass. We have long held that a claim of estoppel cannot be made to rest simply on an oral opinion, even where it is given by a responsible Government official. United States v. Webb, 132 IBLA 152, 168 (1995); James W. Bowling, 129 IBLA 52, 55 (1994). Reliance on such an informal, verbal opinion would have been unreasonable and thus could not form the basis for an estoppel, especially where more reliable means (such as a formal land ownership review based on a cadastral resurvey) were available for ascertaining the status of the lands. See Heckler v. Community Health Services of Crawford County, 467 U.S. 51, 59, 63-66 (1984).

137 IBLA at 218. As in Wolske, Ceciliani's assertion of a verbally agreed-upon boundary is no defense to the charge of trespass, even if he had "acted on the basis of a mistaken belief that the land was privately owned." Id. at 216. As the Board stated in James W. Bowling, 129 IBLA at 55: "Most significantly, the record fails to disclose any indication of affirmative misconduct on the part of BLM personnel. In defining the element of affirmative misconduct required to establish estoppel, the Board has held that an erroneous statement of fact upon which reliance is predicated must be in the form of a crucial misstatement in an official written decision." We find that Ceciliani's claim of reliance is simply unreasonable under the circumstances.

[3] There is a further reason which is equally as compelling as to why estoppel will not apply in the context of this appeal: "It is a well-settled principle that reliance on erroneous or incomplete information supplied by BLM employees cannot create rights not authorized by law." Id. at 56, and cases cited. The

Government cannot be estopped where the effect of the estoppel is to grant someone a right which was not available in the first instance. Id.; Shama Minerals, 119 IBLA 152, 156 (1991); see also 43 CFR 1810.3(c); Parker v. United States, 461 F.2d 806 (Ct. Cl. 1972); Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972). As the public lands at issue are currently managed and protected as part of the Wild and Scenic River System, Ceciliani would not have been permitted to place his cabin and other property on them in the first place.<sup>10/</sup> At no time could the cabin have been anything but a trespass, and estoppel cannot be invoked to alter that fact.

To the extent not addressed herein, all other arguments presented by Ceciliani have been considered and rejected as immaterial or contrary to the facts or law.

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.

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James F. Roberts  
Administrative Judge

I concur:

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Will A. Irwin  
Administrative Judge

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<sup>10/</sup> Each component of the National Wild and Scenic River System is to be administered to protect and enhance its special characteristics. 16 U.S.C. § 1281(a) (2000). BLM has indicated that this is the very reason it is unable to authorize rental or occupancy in this instance. (Trespass Notice at 1.)