



MARK D. MILLER
TERI L. MILLER

174 IBLA 398

Decided June 24, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

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IBLA 2008-158

Decided June 24, 2008

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring two unpatented placer mining claims null and void *ab initio* because they were located on lands subject to the Weeks Law and not open to mineral entry at the time of location. IMC 190610, 190611.

Affirmed.

1. Acquired Lands--Mining Claims: Lands Subject To--Public Lands: Generally

Lands acquired by the United States by donation and accepted by the Secretary of Agriculture for inclusion in a national forest under the Clarke-McNary Act of June 7, 1924, 16 U.S.C. § 569 (2000), which is subject to the Weeks Act, 16 U.S.C. § 521 (2000), are not open to location of mining claims.

APPEARANCES: Mark D. and Teri L. Miller, Boise, Idaho, *pro sese*.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Mark D. and Teri L. Miller appeal from an April 3, 2008, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring two unpatented placer mining claims, the Cedar Creek #1 and #2, null and void *ab initio* because they were located on national forest lands not open to mineral entry at the time of location. The Millers dispute BLM's interpretation of applicable law and contend the claims were validly located on lands open to mineral entry.

The issue of whether these locations are valid was previously before the Board in IBLA 2007-129, an appeal from a January 24, 2007, BLM decision. BLM concluded that the lands at issue were acquired on May 5, 1939, by donation to the United States. Citing the Act of March 1, 1911 (the Weeks Act), 16 U.S.C. § 521

(2000), and the Act of June 7, 1924 (the Clarke-McNary Act), 16 U.S.C. § 569 (2000), BLM determined that the lands embraced by the Millers' claims were permanently reserved and administered as national forest land; that the lands could not be disposed of by exchange, patent, or sale; and that the lands were not open to mineral entry. Jan. 24, 2007, Decision at 1. We set aside and remanded that decision to BLM by order dated January 15, 2008, concluding that the record did not adequately document the basis for BLM's decision. The April 3, 2008, decision was issued after BLM secured the documentation necessary to support its determination that the lands are not open to mineral location.

Background

The two mining claims were located by the Millers on October 14, 2006, on national forest lands situated in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 21 (Cedar Creek #1), and Lot 3 and W $\frac{1}{2}$ of Lot 4 (within the SW $\frac{1}{4}$ NW $\frac{1}{4}$) of sec. 22 (Cedar Creek #2), T. 5 N., R. 4 E., Boise Meridian, Boise County, Idaho. The Millers recorded the location notices on December 26, 2006, and filed copies with BLM on January 9, 2007.

In their appeal of the decision in IBLA 2007-129, the Millers had argued that they had relied upon BLM information that the lands were open to mineral entry.¹ They challenged the correctness of BLM's conclusion that the Weeks Act barred mineral entry. They further averred that BLM misconstrued the conveyances and that the subject lands were acquired through exchange as "Forest Reserve under the Act of 1897."

Examining the documents then in the case file, including, *inter alia*, copies of the MTP and the HI for the lands at issue, a Geographic Report for secs. 21 and 22 dated January 16, 2007, and a Memorandum to the File dated January 22, 2007, we found the record was insufficient to decide the matter. In particular, the case file

¹ As we explained in our Jan. 15, 2008, Order:

[T]he notations on the MTP [Master Title Plat] for T. 5 N., R. 4 E. are ambiguous on the subject of acceptance. One notation states: "All tp included in Wdl Boise NF Act of Cong 5/17/1934." The other notation states in part "Acq 5/5/1939 Deed to US." The notation on the attendant HI [Historical Index] similarly states "Deed (Donation) to US" under the purpose or entry section, opposite the action date of "5/5/1939." Neither record mentions the Department of Agriculture or Forest Service. [T]he Geographical Report contains the notation "ACQ - FS MISCELLANEOUS" for the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 21 and for Lots 3 and 4 within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of sec. 22, as well as the additional notations for Lots 3 and 4 of "ROW - FS Easement Grant" and "Wdl - FS - National Forests."

Order at 4.

failed to show that title to the subject lands had been accepted by the Secretary of Agriculture, and BLM had not submitted the documentation the U.S. Forest Service (FS) relied upon or evidence of acceptance of title that triggers the applicability of the Weeks Act. Order at 4, 5.

On remand, BLM contacted Donald H. Fuller, Lands Adjustment Group Leader, Boise National Forest, FS, who apparently provided the evidence now in the record that was missing when we initially considered the status of the Millers' mining claims.²

That documentation shows that Boise Payette Lumber Company (Boise Payette) conveyed 10,674.39 acres of land, including the lands contained within the Millers' mining claims, to the United States by deed dated May 5, 1939. A letter dated June 17, 1940, from the "Regional Law Officer" to the Solicitor of the U.S. Department of Agriculture refers to the Boise Payette acreage in the Boise National Forest and acknowledges that it was donated to the United States "under the provisions of the Act of June 7, 1924 (43 Stat. 653), by warranty deed dated May 5, 1939."

In response, a letter dated July 26, 1940, from the Acting Chief, Division of Land Acquisition, FS, to the Acting Chief, FS, states:

It is desirable to accept for the use of the Forest Service, under the provisions of the Act of Congress approved June 7, 1924 (43 Stat. 653), the title to a certain tract of land lying in Boise County, Idaho, containing 10,674.39 acres, which has been donated to the United States of America by Boise Payette Lumber Company, a corporation.

The following typed acknowledgment appears at the bottom portion of the July 26, 1940, letter: "Title Accepted: July 27th, 1940," and it is signed by the Acting Chief, FS.

In addition, BLM provided a copy of a letter dated February 6, 2008, from Fuller to Lynn McClure, the BLM Idaho State Office Lead Land Law Examiner, in which he stated that he had searched the FS's Status Atlas and determined that the subject lands in T. 5 N., R. 4 E., secs. 21 and 22, are subject to the Weeks Act.

² In the appeal in IBLA 2007-129, BLM submitted a duplicate of its official administrative record. In this appeal, the same duplicate record was forwarded to the Board, but supplemented by inserting the necessary documentation.

Based on the foregoing, on April 3, 2008, BLM issued the decision now before us, stating as follows:

The location notices and maps submitted on January 9, 2007, describe the location of the Cedar Creek #1 as the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of section 21, and the Cedar Creek #2 as Lot[s] 3 and 4 of section 22, T. 5 N., R. 4 E., Boise Meridian, Idaho.

On November 6, 1901, Homestead Patent No. 1649, which included the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of section 21, . . . was issued to Wilbert R. Reeves. On October 5, 1906, Patent No. 3553, which included Lots 3 and 4 of section 22, . . . was issued to Albert S. Holcomb. The United States did not reserve the minerals in either of these patents. Copies of these patents are enclosed.

On May 5, 1939, the United States acquired these lands by donation under the Clarke-McNary Act of June 7, 1924, subject to the Act of March 1, 1911 (Weeks Law) (36 Stat. 961). Title to these lands was accepted on July 27, 1940, by Department of Agriculture. Copies of the title acceptance documents are now part of the administrative record. See the enclosed copies of the May 5, 1939, deed and title acceptance documents. Under Section 11 of the Weeks Law, land acquired subject to this Act shall be permanently reserved, held, and administered as national forest lands. Disposal by exchange, patent or sale of these lands is prohibited, and they are not open to mineral entry.

Decision at 1-2.

In their Statement of Reasons (SOR), the Millers adopt by reference the arguments made in their previous appeal. They argue that BLM's April 3 decision did not provide "conclusive evidence or documentation" to support the claim that the land was acquired subject to the Weeks Act. SOR at 1. They contend that unspecified "[d]iscrepancies regarding the errors on the MTP and the dates on the deed have not been addressed, corrected nor explained." *Id.* The Millers offer an excerpt from *Lumberman in Idaho*, attributed to Ralph Hidey, to support their assertion that at least one noted historian familiar with Boise Payette has opined that the land at issue was in fact part of a land exchange. *Id.* at 2. They allude to "inaccuracies which are still unresolved in the BLM's records as well as crucial supporting data which is not being accounted for." *Id.* The Millers argue their mining claims should be restored until an investigation to correct those purported "discrepancies" is completed and the "full and complete details of the land donation are ascertained." *Id.* at 3.

Discussion

We set out the applicable law in our January 15, 2008, order and, because the Millers maintain their challenge to BLM's interpretation of the law, repeat it here. Lands acquired pursuant to the Weeks Act "shall be permanently reserved, held, and administered as national forest lands." 16 U.S.C. § 521 (2000). Congress has further stipulated that "[t]he Secretary of Agriculture is authorized, under general regulations to be prescribed by him, to permit the prospecting, development, and utilization of the mineral resources of *the lands acquired under the Act of [March 1, 1911], known as the Weeks law*, upon such terms and for specified periods or otherwise, as he may deem to be for the best interests of the United States." 16 U.S.C. § 520 (2000) (emphasis added).³ Therefore, the consent of the Secretary of Agriculture is necessary for mineral activities on national forest lands acquired subject to the Weeks Act. See *Equity AU, Inc.*, 134 IBLA at 320-21.

Under the terms of 16 U.S.C. § 521a (2000), Congress has further provided that

[i]n order to facilitate the administration, management, and consolidation of the national forests, *all lands of the United States within exterior boundaries of national forests which were or hereafter are*

³ In 1946, under section 402 of Reorganization Plan No. 3, 60 Stat. 1099, Congress transferred the functions of the Secretary of Agriculture with respect to uses of mineral deposits under the Act of March 4, 1917, 16 U.S.C. § 520 (2000), to the Secretary of the Interior, with the proviso that

mineral development of such lands shall be authorized by the Secretary of the Interior only when he is advised by the Secretary of Agriculture that such development will not interfere with the primary purposes for which the land was acquired and only in accordance with such conditions as may be specified by the Secretary of Agriculture in order to protect such purposes.

Thus, while transferring jurisdiction over the mineral development of Weeks Act lands from the Secretary of Agriculture to the Secretary of the Interior, Congress reserved in the Secretary of Agriculture, as the administrator of the surface estate, the authority to ban mineral development of such lands where it would interfere with the purposes for which the land was originally acquired or control such development in order to protect those purposes. *Equity AU, Inc.*, 134 IBLA 319, 321 (1996).

The Secretary of the Interior, through BLM, has promulgated regulations authorizing the issuance of hardrock mineral permits and leases, not the location of mining claims, for lands subject to the Weeks Act, subject to the consent of the Secretary of Agriculture, whose Department is the surface-managing agency. See 43 C.F.R. § 3503.13(a)(1).

acquired for or in connection with the national forests or transferred to the Forest Service, Department of Agriculture, for administration and protection substantially in accordance with national forest regulations, policies, and procedures, excepting (a) lands reserved from the public domain or acquired pursuant to laws authorizing exchange of land or timber reserved from or part of the public domain, . . . are made subject to the Weeks Act of March 1, 1911 (36 Stat. 961), as amended, and to all laws, rules, and regulations applicable to national forest lands acquired thereunder

(Emphasis added.)

Section 7 of the Clarke-McNary Act, 16 U.S.C. § 569 (2000) (land acquisition by donation), is also pertinent to the subject lands. The relevant portion states:

To enable owners of lands chiefly valuable for the growing of timber crops to donate or devise such lands to the United States in order to assure future timber supplies for the agricultural and other industries of the State or for other national forest purposes, the Secretary of Agriculture is authorized, in his discretion, to accept on behalf of the United States title to any such land so donated or devised All lands to which title is accepted under this section shall, upon acceptance of title, become national forest lands, subject to all laws applicable to lands acquired under the Act of March 1, 1911, and amendments thereto.

(Emphasis added.)

Moreover, we explained the importance of establishing the authority under which Boise Payette and the United States acted, citing *Northern Nevada Natural Mining*, 161 IBLA 318 (2004), in which we discussed the difference between *public national forest lands* and *acquired national forest lands*:

Pursuant to section 1 of the Act of June 4, 1897, ch. 2, 30 Stat. 34 (codified at 16 U.S.C. §§ 475, 478 (2000)), public lands reserved for national forest purposes are open for prospecting and location of mining claims. Thompson v. United States, 308 F.2d 628, 631 (9th Cir. 1962). A distinction is properly recognized, however, between acquired lands in which title is acquired by the United States from private parties and public lands constituting part of the original public domain. Id., citing Barash v. Seaton, 256 F.2d 714, 715 (D.C. Cir. 1958)

["I]t is only where the United States had indicated that the [acquired] lands are held for disposal under the general land laws that a mineral location might be filed." *Thompson v. United States*, 308 F.2d at 632; *Roberts and Koch*, 95 IBLA 239, 242-43 (1987); *Melvin Franzen*, 92 IBLA 20, 21 (1986); *Silver Buckle Mines, Inc.*, 84 IBLA 306, 309 (1985); *Maurice Duval*, 68 IBLA 1, 2 (1982). [Footnote omitted.] In *Junior L. Dennis* we found that the issue of whether lands which have been acquired become "public lands" is properly focused on the reasons for which the United States acquired title and the statutory authority under which title was obtained. 61 IBLA [8,] 15 [(1981)]

. . . Congress has generally provided at 16 U.S.C. § 521a (2000) that lands which are acquired within national forests, explicitly excepting lands reserved from the public domain or acquired by exchange for lands reserved from the public domain, are subject to all laws and regulations regarding lands acquired under the Weeks Act of March 1, 1911, ch. 186, 36 Stat. 961-963, *as amended*, 16 U.S.C. §§ 480, 500, 513-519, 521, 552 and 563 (2000). Development of mineral resources on lands acquired under the Weeks Act is authorized only under such regulations as the Secretary may prescribe and upon such terms and for such periods as the Secretary may determine to be in the best interests of the United States. 16 U.S.C. § 520 (1982). [Footnote omitted.] Thus, a mining claim located on such lands is properly declared null and void *ab initio*. *Melvin Franzen*, 92 IBLA at 21. Hence, the decision of BLM is properly affirmed on the basis that these acquired lands are not subject to the Mining Law of 1872.

161 IBLA at 320-21.

[1] BLM has obtained and submitted the FS documentation necessary to support its conclusions.⁴ As described above, by deed dated May 5, 1939, the United States acquired these lands by donation from Boise Payette under the Clarke-McNary Act, which by its terms is subject to the Weeks Act. Title to these lands, which are located within the Boise National Forest, was formally accepted by the Department of Agriculture on July 27, 1940, for the use of FS. Thus, the lands in question are plainly and conclusively subject to the Weeks Act, and nothing in the record shows or suggests that the Secretary of Agriculture has acted to open them to mineral entry. The Millers' assertions accordingly fail to demonstrate error in BLM's decision declaring the mining claims null and void *ab initio*. See *Melvin Franzen*, 92 IBLA at 21.

⁴ Copies of that documentation were served on the Millers with the decision here appealed.

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.

_____/s/_____
T. Britt Price
Administrative Judge

I concur:

_____/s/_____
Sara B. Greenberg
Administrative Judge