INTERIOR BOARD OF LAND APPEALS

Mt. Gaines Consolidated

144 IBLA 49 (May 8, 1998)

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MT. GAINES CONSOLIDATED

IBLA 98-109 Decided May 8, 1998

Appeal from a Decision of the California State Office, Bureau of Land Management, declaring various mining claims null and void ab initio for failure to file notices of intention to locate mining claims. CAMC 267395, etc. 1/

Appeal dismissed in part; Decision affirmed; petition for stay denied as moot.

1. Mining Claims: Generally–Mining Claims: Location–Mining Claims: Notice of Intent to Locate–Mining Claims: Special Acts–Stock-Raising Homesteads: Notice of Intent to Locate Mining Claims

Under 43 C.F.R. § 3833.1-2(c), beginning on Oct. 13, 1993, mining claims cannot be located on lands patented under the Stock Raising Homestead Act, as amended, until the claimant has first filed a notice of intent to locate with the proper BLM state office and served a copy of the notice upon the surface owner(s) of record. In the absence of such, there was no compliance with 43 C.F.R. § 3833.1-2(c), and such claims are properly declared null and void ab initio. Filing a location notice or proof of labor with BLM does not meet the regulatory requirements for a notice of intent to locate.

APPEARANCES: Daniel F. Reidy, Esq., San Francisco, California, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Mt. Gaines Consolidated (Mt. Gaines) appealed the November 28, 1997, Decision of the California State Office, Bureau of Land Management (BLM

1/ The claim numbers listed on BLM's Decision are: CAMC 267395, CAMC 267397 through CAMC 267401, CAMC 267403, CAMC 267405, CAMC 267407 through CAMC 267419, and CAMC 267421.

or Bureau), declaring various mining claims null and void ab initio for failure to file notices of intention to locate (NOITLs) mining claims, as required by 43 C.F.R. § 3833.1-2(c), and because they were located on lands that were closed to the location and entry of mining claims. 2/

All of the claims in question are located completely or partially on lands patented under the Stock Raising Homestead Act of 1916 (SRHA), as amended, with the mineral estate being reserved to the United States. These "split estate" lands are subject to the April 16, 1993, amendment to SRHA, Pub. L. 103-23, 107 Stat. 60. According to BLM's Decision, 43 C.F.R. § 3833.1-2(c) provides that, beginning on October 13, 1993, mining claims cannot be located on lands patented under SRHA, as amended, until the claimant has first filed a NOITL with the proper BLM state office and served a copy of the notice upon the surface owner(s) of record. Ruling that Mt. Gaines did not file NOITLs to locate these claims, BLM declared them null and void ab initio as to the portions of those claims patented under SRHA. (Decision at 1.)

In addition, BLM held that portions of the Goldfield Ext. (CAMC 267409) and New Year No. 2 (CAMC 267411) lode mining claims located in SW¼NW¼, sec. 36, T. 4 S., R. 16 E., Mount Diablo Meridian, were null and void ab initio, as title to those lands vested in the State of California without reservation of minerals to the United States. The Bureau also held that the SE¼SE¼, sec. 26 in the same township was also patented without reservation of minerals to the United States as of the date of attempted location of claims here. The Bureau also noted that lands in secs. 25 and 26 had been segregated from the operation of the general mining laws on September 29, 1997. See 62 Fed. Reg. 50962.

Mt. Gaines appealed and has requested that the effect of BLM's Decision be stayed pending appeal. It explains in its statement of reasons (SOR) that it had to relocate these claims in September 1995, having inadvertently missed the August 31, 1995, deadline to file necessary maintenance fees, presumably as required by section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993, 30 U.S.C. § 28f (1994), and 43 C.F.R. §§ 3833.1-5, 3833.1-6, and 3833.1-7. It notes that it has been paying the annual filing and assessment fees for the claims. It does not allege that it met the requirements of 43 C.F.R. § 3833.1-2(c), establishing the requirement to file and serve NOITLs, when it relocated these claims.

The Bureau has submitted its response to the request for stay, pointing out that its "review of the official land records in this office, including the pertinent mining claim case files, reveals no record indicating [Mt. Gaines] file a NOITL at any time prior to the segregation

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2/ Mt. Gaines also initially appealed BLM's letter decision of the same date determining the status of portions of various lode mining claims. However, in an Amended Notice of Appeal filed on Jan. 29, 1998, Mt. Gaines withdrew that appeal. (Amended Notice of Appeal at 7.) Its appeal is accordingly dismissed in part.

that took effect on September 29, 1997," referring to the segregation order published at 62 Fed. Reg. 50962. The Bureau asserts that the "filing of location notices and/or proofs of labor, which [Mt. Gaines] states was done in 1995, does not constitute the filing of an NOITL as required 43 CFR 3833.1-2(c)."

[1] A claimant of a mineral interest in lands patented under SRHA, as amended in 1993, is required to give notice to the Department and the surface owner before locating a placer mining claim on the lands in 1995. Karry Keith Klump, 141 IBLA 166, 168 (1997). The Bureau's position that filing a location notice or proof of labor with BLM does not meet the requirements for a NOITL is consistent with SRHA, as amended, and the governing regulation. There is no showing that the surface owner or BLM was served with a NOITL here. In the absence of such, there was no compliance with 43 C.F.R. § 3833.1-2(c). Mt. Gaines has shown no error in BLM's application of SRHA, and its appeal from the Decision here under review must therefore be denied.

Mt. Gaines argues that BLM is estopped from taking this action "by statements and omissions of its staff in dealing with [Mt. Gaines] regarding the filing of its mining claims in 1995." It complains that "BLM staff unfairly lulled them into concluding that their claims were valid and in order," and "did not inform them of the then-current requirements so that they could promptly refile and correct any deficiencies." Further, it complains that it was harmed by BLM's delay in issuing a written decision concerning the missed filing deadline of August 31, 1995. (SOR at 3.)

These arguments must fail. First, it is well established that the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 C.F.R. § 1810.3(a). Thus, BLM's obligation to enforce the requirements of 43 C.F.R. § 3833.1-2(c) was not vitiated or lost by the alleged delays of its staff.

Further, the Board has well-established case precedent governing consideration of estoppel questions. See, e.g., Ptarmigan Co., 91 IBLA 113, 117 (1986), aff'd sub nom. Bolt v. United States, 944 F.2d 603 (9th Cir. 1991). As we reiterated in James W. Bowling, 129 IBLA 52 (1994), for a misrepresentation to be affirmative misconduct sufficient to justify invocation of estoppel, it must be in the form of a crucial misstatement in an official written decision. Oral advice, by its nature, provides an unstable foundation on which to base future actions. For these reasons, the Board has consistently refused to entertain estoppel claims unless based on an official written document, particularly in those situations, such as the one herein, wherein the effect of the invocation of estoppel would be to nullify an express Congressional directive that surface owners of lands on which claims are located receive notification.

We do not see how BLM's actions disadvantaged Mt. Gaines here. The regulation establishing mandatory NOITL filing of claims on split-estate lands was of record long before the need to relocate these claims arose

in 1995. The fact that BLM did not immediately notify Mt. Gaines that it missed its deadline is irrelevant: Mt. Gaines already knew that, and BLM's delay in notifying Mt. Gaines did not cause it to miss any deadline, as the requirements for relocating the claims were the same in 1995 as they were in 1996, when BLM confirmed the effect of missing the maintenance fee deadline. Nothing suggests that BLM's purported misadvice or failure to act directly related to the action at issue herein, namely, Mt. Gaines' failure to comply with 43 C.F.R. § 3833.1-2(c)(1).

Mt. Gaines complains that BLM did not notify it of the requirements of the SRHA amendments. Regardless of the fact that its representatives may have actually been ignorant of the obligations imposed by the amendments to SRHA and 43 C.F.R. § 3833.1-2(c)(1), Mt. Gaines is properly charged with constructive knowledge of the statute and implementing regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947); John Plutt, Jr., 53 IBLA 313, 319 (1981).

Finally, Mt. Gaines faults BLM for not determining the availability of lands for mineral entry sooner, asserting that "the legal effect of these old laws * * * are not of record to put a property owner on constructive knowledge." The record does not support this statement. The Bureau's public land status records show that these lands were patented without mineral reservations, the only relevant legal question here. In any event, it is well established that BLM is not obligated to review the validity of mining claims or the availability of the lands on which they located when notice of locations are filed. The applicable regulation expressly advises claimants that

> [f]ailure of the government to notify an owner upon his filing or recordation of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

43 C.F.R. § 3833.5(f); Washington Prospectors Mining Association, 136 IBLA 128, 130 (1996). 3/

3/ Although Mt. Gaines does not raise this argument, it might appear that the provisions of 43 C.F.R. § 3833.1-2(c)(3) impose an obligation on BLM to review all mining claim recordation filings to determine whether they concern split-estate lands under SRHA and, if so, to return certificates or notices of location where no NOITL has been previously filed. However, such reading would be completely inconsistent with 43 C.F.R. § 3833.5(f), discussed above. We regard 43 C.F.R. § 3833.1-2(c)(3) as instead imposing on BLM the duty to review all cases where a NOITL is filed to determine whether "the claimant has complied with the requirements of this section," most notably the requirement that a copy of the NOITL be served upon the surface owner. If that requirement (or any of the other many requirements for the NOITL set out in § 3833.1-2(d)) is not met, BLM must return the documentation to the claimant without recording the claim.

As noted above, Mt. Gaines has requested a stay of the effectiveness of BLM's Decision pending review on appeal. That request is denied as moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal is dismissed in part, the Decision appealed from is affirmed, and the request for stay is denied as moot.

David L. Hughes
Administrative Judge

I concur:

James P. Terry
Administrative Judge