

INTERIOR BOARD OF LAND APPEALS

Edward A. Snider and Rebecca A. Snider

152 IBLA 309 (June 22, 2000)

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EDWARD A. SNIDER
REBECCA A. SNIDER

IBLA 2000-102

Decided June 22, 2000

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims null and void ab initio. MTMMC 206511-MTMMC 206513.

Affirmed.

1. Exchanges of Land: Forest Exchanges--Mining Claims: Lands Subject to

Pursuant to 43 C.F.R. § 2202.1(b), the filing of a notice of an offer for forest exchange with the authorized officer and the notation of such proposed exchange on the public land records segregated the National Forest System lands included in the proposed exchange from appropriation, location, or entry under the general mining laws for a period not to exceed 5 years. Mining claims located on these lands while the segregative effect is operative are null and void ab initio.

APPEARANCES: Edward A. Snider, Rebecca A. Snider, pro sese.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Edward and Rebecca Snider (appellants) have appealed the December 6, 1999, decision (Decision) of the Montana State Office, Bureau of Land Management (BLM), declaring lode mining claims King One, King Two, and King Three (MTMMC 206511 to MTMMC 206513) null and void ab initio. All three claims were found to have been located on lands segregated from mineral entry by a proposed United States Forest Service land exchange (MTM 89071) with Bair Land Company (Bair). 1/

1/ Appellants have provided a copy of a July 28, 1998, letter to Ed Snider from the Forest Service which identifies the proposed land exchange as being with the Bair Ranch Foundation, previously the Bair Company. We will refer to Bair.

The three claims were located in NW1/4 sec. 26, T. 14 N., R. 4 E., Principal Meridian, Montana (P.M.M.). The King One claim was located on August 20, 1999, and the King Two and King Three claims were located on August 22, 1999. In its Decision, BLM stated that on March 23, 1999, all of sec. 26, T. 14 N., R. 4 E., P.M.M. was segregated by the proposed Forest Service land exchange. BLM explained that the regulation at 43 C.F.R. § 2201.1-1 states that

[i]f a proposal is made to exchange federal lands, the authorized officer may direct the appropriate State Office of the Bureau of Land Management to segregate the Federal Lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws for a period not to exceed 5 years from the date of notation.

(Decision at 1.) Thus, BLM determined that, because the claims were located when the land was segregated from mineral entry, they were null and void ab initio.

In their Statement of Reasons, appellants aver that they were notified of a proposed land exchange and asked to give up their claims because the claims would affect the proposed exchange. They complain that they were never told that the land would be segregated. Additionally, appellants state that they were told that it would be up to Bair to buy them out or work out a deal and therefore they had held off paying the fees to register their King One claim because they were waiting to hear from Bair. Appellants maintain that at the time their claims were rejected, there was no active land proposal as there was no administrator of the Bair Ranch Foundation. Thus, appellants contend that under 43 C.F.R. § 2201.1-3(c)(2), BLM should have removed the lands from the exchange proposal because there was no active land proposal.

[1] Lands within an exchange proposal are segregated from location upon the filing of a notice of a forest exchange offer and the notation of such proposed exchange on the public land records. 43 C.F.R. § 2201.1-2(a); see Ronald C. Daugherty, 143 IBLA 41, 43 (1998); Dean Staton, 136 IBLA 161, 164 (1996); John & Maureen Watson, 113 IBLA 235, 236 (1990). The case file does not include the Forest Service request that the lands be segregated. The case file does contain a copy of the Historical Index noting the Forest Service exchange application with an action date of March 23, 1999, and also a Master Title Plat (MTP) for T. 14 N., R. 4 E., P.M.M. dated November 29, 1999, which bears the notation "MTM 89071 Segr from Approp under Public Land & Min Laws Eff: 3/23/1999 NTE 3/23/2004 * * * Sec.26: All." A notation on sec. 26 states "MTM 89071 FX Apln" which stands for Forest Exchange application. Under the notation rule, where the official records of the BLM have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach pursuant to any subsequent entry or application until the record has been changed to reflect that the land is no longer segregated. O. Glenn Oliver, 73 IBLA 56, 59 (1983); Paiute Oil & Mining Corp., 67 IBLA 17

(1982). Therefore the notation on BLM's MTP, under the provisions of the law and the regulations, served to close the lands involved herein to mineral entry.

Appellants state that they were notified on about September 29, 1997, that a land swap was proposed and that their claims were in the affected area. ^{2/} They have also submitted a copy of a July 28, 1998, letter from the Forest Service Kings Hill Ranger District wherein the District Ranger speaks of appellants' unpatented mining claims King and King 1 being within the proposed exchange area. However, there is nothing in the case record to show what claims appellants had in the proposed land exchange area in 1997 or 1998, nor do they assert that the claims at issue in this appeal were located prior to the segregation of the land.

The three claims at issue in this appeal were located in August 1999. The date of location of a mining claim is governed by the law of the state in which the claim is situated. 43 C.F.R. § 3833.0-5(h); C.B. Shannon, 55 IBLA 312, 313 (1981). Under Montana law, the date of posting the location notice on the claim is the date of location. MCA § 82-2-101(1). The certificates of location show that the King One claim was located on August 20, 1999, and that the King Two and King Three claims were located on August 22, 1999. On those dates, which are controlling (see C.B. Shannon, *supra*), the land was already segregated by the exchange application and was no longer open to location under the mining laws. The case law is clear that mining claims located on lands not open to appropriation are null and void ab initio. Thomas Daubert, 143 IBLA 186, 188 (1998).

Appellants contend that there was no active land exchange proposal at the time they located their claims. Their argument appears to be that because there was no active land exchange proposal at the time they located their claims, the land should have been considered open to location. In support of their argument, appellants cite 43 C.F.R. § 2201.1-2(c)(2). The cited regulation states that:

The segregative effect shall terminate upon the occurrence of any of the following events, whichever occurs first:

* * * * *

(2) On the date and time specified in an opening order, such order to be promptly issued and published by the appropriate State Office of the Bureau of Land Management in the FEDERAL REGISTER, if a decision is made not to proceed with the exchange or upon removal of any lands from an exchange proposal; * * *.

^{2/} Based on a July 28, 1998, letter to Ed Snider from the Forest Service, it appears that the Forest Service sent Snider a letter on Sept. 24, 1997, explaining that the Forest Service was in the process of a land exchange with Bair which included lands on which Snider had mining claims.

However, that argument is of no avail to appellants. It has long been held that lands which have been segregated from entry under some or all of the public land laws remain so segregated until there is a formal revocation or modification of the segregation. See James E. Morgan, 104 IBLA 204, 205 (1988); Samuel P. Speerstra, 78 IBLA 343, 344 (1984). The regulation cited by appellants simply requires that once BLM makes a decision not to proceed with an exchange, it publish an opening order specifying a date and time. Until the date set in the opening order, the land remains segregated. Thus, regardless of whether or not land exchange MTM 89071 was an active exchange at the time of the location of these claims, the land was still segregated from mineral entry at that time. A valid claim cannot be located until the segregation is revoked and the land is restored to mineral entry. Raymond C. Gardner, 34 IBLA 179 (1978).

We also note that there is another reason for rejecting the King One claim (MTMMC 206511). Under 43 C.F.R. § 3833.1-2(a), the owner of an unpatented mining claim located after October 21, 1976, on Federal land must file with the proper BLM office within 90 days after the date of location a copy of the official record of the notice or certificate of location of the claim filed under state law. The failure to record the notice or certificate of location within 90 days is deemed conclusively to constitute forfeiture of the claims. 43 C.F.R. § 3833.4(a)(2). See Roy E. Tidwell, Gene D. Mathern, 146 IBLA 62, 63 (1998); John C. Buchanan, 52 IBLA 387 (1981). Filing is defined by the applicable regulation to mean being received and date stamped by the proper BLM office or "if mailed to the proper BLM office, is contained within an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period * * *." 43 C.F.R. § 3833.0-5(m). Copies of all three certificates of location were transmitted on November 19, 1999, and received on November 26, 1999. However, the King One claim was located on August 20, 1999. Therefore, the certificate of location for the King One claim was transmitted more than 90 days after the date of location and the King One claim was forfeited.

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 decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge