

INTERIOR BOARD OF LAND APPEALS

D. Stone Davis d.b.a. Daisy Trading Company

155 IBLA 133 (May 18, 2001)

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D. STONE DAVIS D/B/A  
DAISY TRADING COMPANY

IBLA 2000-43

Decided May 18, 2001

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring mill site null and void ab initio. CMC-251007.

Affirmed as modified.

1. Mining Claims: Lands Subject To

Under the "notation" or "tract book" rule, where BLM's official records 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. Therefore the notation on BLM's master title plat that the lands were included in a wilderness served to close the lands to mineral entry, where lands within the wilderness are not subject to mineral entry, and a mill site claim located on such lands is null and void ab initio.

APPEARANCES: D. Stone Davis, Aspen, Colorado, for Daisy Trading Company.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

D. Stone Davis (d/b/a Daisy Trading Company) has appealed from the October 21, 1999, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring the Daisy Trading mill site claim null and void ab initio.

The Daisy Trading mill site claim was located on July 24, 1999. A copy of the location certificate was filed with BLM on August 9, 1999. The claim is described therein as being within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$ , sec. 35, T. 11. S., R. 84 W., 6th Principal Meridian (PM). BLM assigned serial number CMC-251007 to the claim.

BLM issued its decision declaring the mill site null and void ab initio on October 21, 1999, stating:

Pursuant to the provisions of the Wilderness Act (Act) of September 3, 1964 (78 Stat. 890; 16 U.S.C. § 1131 (1976)), the above-described lands were withdrawn from all forms of appropriation under the general mining laws. The Act provides that from September 3, 1964, until December 31, 1983, lands classified under the National Wilderness Preservation System will remain open to mining location. However, effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from the operation of the mining laws by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

On December 22, 1980, Public Law 96-560 designated the lands in your site for inclusion in the National Wilderness Preservation System[, at] which time these lands attached to the provision of the Wilderness Act, and they were automatically withdrawn effective January 1, 1984.

(BLM Decision at 1.)

Appellant states as follows in his appeal:

The simple reason for the appeal is that I do not believe that the mill site is located within the boundary of the National Wilderness Preservation System as described in Public Law 96-560.

After I received the MT PLAT of section 35, I can see the reasoning for [BLM's] decision. After that I went to the U.S. Forest Service (USFS) Aspen office and received a written language of the boundary of the Collegiate Peaks Wilderness. \* \* \* If you plot out the UTM coordinates, as I did, I believe that you will find that the Daisy Trading mill site is outside of the Collegiate Peaks Wilderness.

Also enclosed is a copy of part of the New York Peak Quadrangle map showing section 35 and the wilderness boundary. Additionally (with this original letter only) I am enclosing a White River National Forest map I purchased from the USFS depicting section 35 and wilderness boundary.

(Notice of Appeal at 1.)

It appears that the USFS has prepared a metes-and-bounds description representing the boundary of the Collegiate Peaks Wilderness as it existed as of the date of Public Law 96-560. That "boundary description" contains Universal Transverse Mercator (UTM) coordinates apparently describing the boundary in terms of quadrangle maps.

That boundary has been projected onto at least two quad maps, both of which show that it was influenced in sec. 35 by the "cherry-stemming" of a road. Both of the maps that are in the record depict the boundary

extending well into sec. 35 and suggesting that, as Appellant asserts, the NE $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of sec. 35 may lie outside the wilderness boundary.

The record also contains a plotting, apparently prepared by BLM, of BLM's Geographic Coordinate Data Base (GCDB) data, apparently using the UTM coordinates found in USFS' boundary description. That plotting shows the boundary lying just south of the NE $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of sec. 35, such that the claim lies inside the wilderness boundary.

It is unnecessary to resolve the question of where the boundary of the Collegiate Peaks Wilderness lies in comparison with Appellant's mill site claim. The record shows that, as of the date Appellant located his claim, the official BLM public land records, in the form of the Master Title Plat (MTP) for T. 11 S., R. 84 W., 6th PM, showed virtually all of sec. 35 to be within the Collegiate Peaks Wilderness (C-39452). <sup>1/</sup> The NE $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 35 is plainly shown within the boundary of the wilderness on the MTP.

It is well established that, under the "notation" or "tract book" rule, where BLM's official records 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. B. J. Toohy, 88 IBLA 66, 77-82, 92 I.D. 317, 324-26 (1985); O. Glenn Oliver, 73 IBLA 56, 59 (1983); Paiute Oil & Mining Corp., 67 IBLA 17 (1982); and cases cited therein. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious. Paiute Oil and Mining Corp., 67 IBLA at 20.

Therefore the notation on BLM's MTP, under the provisions of the law and the regulations, itself served to close the lands involved herein to mineral entry, regardless of whether or not it accurately depicts the boundary of the wilderness area in question. If at some future date BLM determines that the MTP is in error, lands outside the wilderness area may be open to location under the mining law, but only after a new plat is approved. See MM Holdings, Inc., 121 IBLA 26, 30 (1991). BLM's decision is hereby modified to reflect the applicability of the notation rule here.

On December 22, 1980, Congress enacted the Public Law 96-560, 94 Stat. 3265 (1980). Section 102(a)(3) of that Act designated the Collegiate Peaks Wilderness as a component of the National Wilderness Preservation System. 94 Stat. 3266. Lands included in the National Wilderness Preservation System are withdrawn effective at midnight December 31, 1983, by operation of section 4(d)(3) of the Wilderness Act of 1964, 16 U.S.C. § 1131(d)(3) (1994). Therefore, as of that date, the

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<sup>1/</sup> A small portion of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of sec. 35 is shown outside the boundary; the rest of sec. 35 is shown within that boundary.

lands shown on BLM's MTP as included within the Collegiate Peaks Wilderness were no longer open to mineral entry.

Mill site claims located on lands closed to entry under the mining laws confer no rights on the locator and are properly declared null and void ab initio. Golden Arc Mining & Refining Inc., 133 IBLA 90, 92 (1995). Appellant located the Daisy Trading Mill Site on July 24, 1999, after the lands within the Collegiate Peaks Wilderness had been withdrawn from mineral entry. Thus, since BLM's MTP showed at that time that the claim falls within the boundaries of that wilderness area, BLM properly declared it null and void ab initio.

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 as modified.

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David L. Hughes  
Administrative Judge

I concur:

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Gail M. Frazier  
Administrative Judge