

INTERIOR BOARD OF LAND APPEALS

William H. Shepherd

157 IBLA 134 (August 6, 2002)

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WILLIAM H. SHEPHERD

IBLA 2001-254

Decided: August 6, 2002

Appeal of two decisions issued by the Nevada State Office, Bureau of Land Management, declaring lode mining claims NMC-819216 through NMC-819219 and NMC-822005 through NMC-822007 null and void ab initio.

Decisions affirmed.

1. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges--Mining Claims: Lands Subject To--Mining Claims: Lode Claims

BLM properly declares a lode mining claim null and void ab initio in its entirety where, at the time of location, all of the public land encompassed by the claim was segregated from mineral entry, pursuant to section 206(i)(1) of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. § 1716(i)(1) (1994), and 43 CFR 2202.1(b), by virtue of a notation on the public land records of the filing of a proposed land exchange.

APPEARANCES: William H. Shepherd, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

William H. Shepherd has appealed a March 21, 2001, and an April 5, 2001, decision issued by the Nevada State Office, Bureau of Land Management (BLM). The BLM decisions respectively declared the Blue Gold Nos. 1 through 4 and 7 through 9 lode mining claims (NMC-819216 through NMC-819219 and NMC-822005 through NMC-822007) null and void ab initio because they had been located on public lands segregated from mineral entry at the time of location.

Shepherd located the claims on September 2, and December 20, 2000, and filed copies of certificates of location for recordation with BLM on October 10, and December 26, 2000. The descriptions on the location certificates and attached maps show the seven claims to be contiguous and situate in sec. 14, T. 26 S., R. 64 E., Mount Diablo Meridian, Clark

County, Nevada. 1/ See also Letter to BLM from Shepherd, dated Mar. 20, 2001.

In its March and April 2001 decisions, the State Office held that the seven claims were located entirely on public lands "segregated from appropriation under the mineral laws on October 1, 1997, for a period not to exceed five years as provided in 43 CFR 2201.1-2", by proposed land exchange N-61968, and the claims were, therefore, null and void ab initio. Shepherd appealed. 2/

In his notice of appeal and statement of reasons(NA/SOR), Shepherd does not dispute that a notation of the filing of an exchange application on the public land records segregates land from mineral entry. 3/ He asserts that section 14 had not been segregated when he located the seven claims and filed copies of location certificates for recordation with BLM because BLM had not noted that section 14 was subject to an exchange application when the claims were located and recorded. Basing his assertion of error on his argument that the exchange application was not properly noted on the public land records, he states that he had been "told" by the State Office "in September, and October, 1999 [before locating his claims] * * * [that] the area was clear for filing." (NA/SOR at 2.) In addition, he relates that, following receipt of BLM's March 2001 decision, he visited Nevada BLM's Las Vegas Field Office, and found that the proposed land exchange was not noted on BLM's Master Title Plat (MTP) for the township:

On April 3, 2001[,] * * * I went to your Field Office of the BLM here in Las Vegas and conferred with Judy Fry. She looked up in the Master Plat[] and it did not show that this particular section of land was withdrawn. Then she went to a computer in the rear of the building where she found it did come up[] on the History Index[.] [I]t did not show up on the main computer at the service desk in the front of the building. [Emphasis added.]

Id. at 1.

[1] Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, 90 Stat. 2743, 2756, as amended on August 20, 1988, by section 3(a) of the Federal Land Exchange Facilitation Act of

1/ Shepherd also located the Blue Gold Nos. 5 and 6 lode mining claims (NMC-819220 and NMC-819221) on Sept. 2, 2000. These claims lie partially in secs. 13, T. 26 S., R. 64 E., Mount Diablo Meridian, Clark County, Nevada. At the time of location, sec. 13 was open to mineral entry. These claims cannot be declared null and void ab initio to the extent of their inclusion of segregated lands. Santa Fe Mining Inc., 79 IBLA 48 (1984).

2/ Shepherd sought a stay pending appeal. This decision on the merits renders the petition moot, and it is denied for that reason.

3/ Shepard filed a NA/SOR's for BLM's March 2001 decision on Apr. 15, 2001, and a virtually identical NA/SOR on May 11, 2001, for BLM's April 2001 decision.

1988, Pub. L. No. 100-409, 102 Stat. 1086, 1087, and codified, in pertinent part, at 43 U.S.C. § 1716(i) (1994), establishes the segregative effect of proposed land exchanges. It provides, in relevant part:

Upon receipt of an offer to exchange lands or interests in lands pursuant to this Act or other applicable laws, at the request of the head of the department or agency having jurisdiction over the lands involved, the Secretary of the Interior may temporarily segregate the Federal lands under consideration for exchange from appropriation under the mining laws. Such temporary segregation may only be made for a period of not to exceed five years. * * * Any segregation pursuant to this paragraph shall be subject to valid existing rights as of the date of such segregation. [Emphasis added.]

43 U.S.C. § 1716(i)(1) (1994). The Department promulgated 43 CFR 2201.1-2(a) to implement the above statute. This regulation provides that segregation shall be effected, subject to valid existing rights, "by a notation on the public land records," and that segregation will terminate automatically upon conveyance of the lands, on the date specified in an opening order if the decision is to not go forward with the exchange or to delete the land from the proposal, or automatically after not more than five years. 43 CFR 2201.1-2(c).

When BLM notes on the public land records that Federal lands are subject to an exchange application, those lands are segregated from entry under the general mining laws, and mining claims located on the segregated lands while such segregation remains in effect are properly declared null and void ab initio. Tri-Star Holdings, Ltd., 153 IBLA 201, 203 (2000); Lucian B. Vandegrift, 137 IBLA 308, 309 (1997); Washington Prospectors Mining Association, 136 IBLA 128, 129-30 (1996). 4/ The effect of this longstanding rule is to avoid having the Federal lands subject to the exchange offer becoming encumbered with mining claims while the exchange is being considered and acted upon. See, e.g., Thomas Daubert, 143 IBLA 186, 187 (1998).

The record contains a September 5, 1997, memorandum to the State Director, Nevada, BLM, from the District Manager, Las Vegas District, Nevada, BLM. In the memorandum the District Manager asks the State Office

4/ Vandegrift and Washington Prospectors involved exchange applications for Federal lands within national forests. However, they are applicable in the case of exchange applications filed for other Federal lands. The authority to effect a temporary segregation upon the filing of exchange applications was granted by section 206(i)(1) of FLPMA in both instances. The specific regulation applicable in those cases, 43 CFR 2202.1 (1997), was removed in favor of amending 43 CFR 2201.1-2 to encompass proposed exchanges of Federal lands within national forests. See 63 FR 23680-81 (Apr. 30, 1998).

to segregate 126,189.62 acres of land, including all of sec. 14, T. 26 S., R. 64 E., Mount Diablo Meridian, Clark County, Nevada "from appropriation under the General Mining Law of May 10, 1872, as amended * * * for a period not to exceed five years as provided in 43 CFR 2201.1-2." (Memorandum dated Sept. 5, 1997.) The memorandum has an imprinted stamp, captioned "Record Posted," which states that the "MT Plat" was "[p]osted" on "10/1/97." Id. This stamp confirms the October 1, 1997, notation of exchange application N-61968 on the MTP. See Ronald C. Daugherty, 143 IBLA 41, 43-44 (1998). In addition, the serial register page for the exchange application states that the public land records were noted on October 1, 1997.

The Nevada State Office has submitted printed and microfiche copies of the MTP and Historical Index (HI) for T. 26 S., R. 64 E., Mount Diablo Meridian, Clark County, Nevada. These documents clearly indicate that the BLM's public land records reflect the fact that sec. 14 was and remains subject to a pending exchange application. 5/ The evidence clearly shows notation of the segregation of the Federal lands in sec. 14, T. 26 S., R. 64 E., Mount Diablo Meridian, Clark County, Nevada, by proposed land exchange N-61968. This notation was entered on October 1, 1997, and was in effect in September and December, 2000, when Shepherd located the Blue Gold Nos. 1 through 4 and 7 through 9 lode mining claims (NMC-819216 through NMC-819219 and NMC-822005 through NMC-822007).

Shepherd states that the MTP which Fry "looked" at on April 3, 2001, "did not show that this particular section of land was withdrawn." (NA/SOR at 1.) We have no explanation of this statement, other than that she may have misread the MTP. 6/ Shepherd obtained a microfiche copy of the MTP from BLM which he filed as Ex. 3 to his NA/SOR. Exhibit 3 agrees with the microfiche copy of the MTP submitted by BLM. Both copies of the MTP plainly reflect the notation of exchange application N-61968 in sec. 14.

Shepherd asserts that he located his mining claims in reliance upon an oral representation by BLM that the "area was clear for filing." NA/SOR at 2. In this allegation he raises a claim of estoppel. 7/ However, an

5/ Both the MTP and HI identify all of the Federal land in sec. 14 as being subject to the pending exchange application (a small parcel in sec. 14 is a part of mineral patent No. 258727). The MTP, which was last updated on November 17, 1999, contains the notation "N 61968 PX Apln" within sec. 14. This is a private exchange application. The HI also shows that sec. 14 is subject to a "PX Segr," numbered "NVN61968" and "posted" on "10/01/97."

6/ The official public land records for the State of Nevada are not kept at BLM's Field Office in Las Vegas, Nevada. They are kept in BLM's State Office in Reno, Nevada. See 43 CFR 2201.1-2(a).

7/ Shepherd also asks the Board to restore "all monies I expended through misinformation." (NA/SOR at 2.) This matter was not adjudicated by BLM, and thus is not now before the Board. BLM has authority under 43 CFR 3833.1-1(c) to refund location and maintenance fees and Shepherd may desire to seek a refund.

oral statement made by a BLM employee cannot estop BLM's finding his mining claims null and void ab initio. Dean Staton, 136 IBLA 161, 162-64 (1996). Estoppel cannot result in affording appellant rights to which he is not entitled by law. Section 14 had been segregated from mineral entry when he located his claims, and neither BLM nor this Board can retroactively rescind the segregation, which had been noted on the MTP, closing the land to mineral entry when he located the claims. Washington Prospectors Mining Association, 136 IBLA at 130; John Watson, 113 IBLA 235, 237-38 (1990).

The State Office properly declared the Blue Gold Nos. 1 through 4 and 7 through 9 lode mining claims (NMC-819216 through NMC-819219 and NMC-822005 through NMC-822007) null and void ab initio, in their entirety. Those claims were located on public lands segregated from mineral entry. Tri-Star Holdings, Ltd., 153 IBLA at 203.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's March 21, and April 5, 2001, decisions are affirmed.

R.W. Mullen
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge