Editor's note: Reconsideration granted; decision vacated -- See 87 IBLA 146 (June 11, 1985)

RUSSELL HOFFMAN

IBLA 84-508 Decided October 25, 1984

Appeal from decision of the Anchorage District Office, Alaska, Bureau of Land Management, declaring mining claim AA-22584 null and void.

Affirmed.

1. Mining Claims: Withdrawn Land

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

APPEARANCES: Russell Hoffman, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Russell Hoffman appeals from a decision dated March 28, 1984, of the Anchorage District Office, Bureau of Land Management (BLM), declaring the Rockpile mining claim, AA-22584, null and void ab initio. Appellant's location notice establishes his claim was located on December 14, 1973, in the Valdez Mining District, sec. 24, T. 5 S., R. 2 W., Copper River Meridian, Alaska. The BLM decision of March 28, 1984, explains, referring to 43 CFR 2627.4(b), that the land upon which the Rockpile claim was located was segregated from location under the mining laws on January 21, 1972, pursuant to a land selection by the State of Alaska, number AA-6794. A case file abstract included in the record on appeal establishes a State application for patent to all of T. 5 S. was received by BLM on January 21, 1972, and remained pending on the date of appellant's mining claim location. The State application was made pursuant to section 6 of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, 340, which entitles the State to select public lands for transfer to the State incident to admission of Alaska to the Union.

In his statement of reasons, appellant avers BLM did not have necessary information "on file to make a just decision." He does not, however, specify how the administrative file is inadequate to support the March 28 decision to reject his location notice and to declare his claim invalid. There is no dispute concerning the date of his location nor the filing of the State selection application. Appellant does not challenge the validity of the State's claim.

[1] The prior State land selection application filed by Alaska with the Department pursuant to an Act of Congress permitting such claims requires that subsequent attempts at appropriation, including locations under the

mining law, be rejected. See 43 CFR 2091.6-4 and 2627.4(b). The effect of the State application was to segregate the land in T. 5 S. from appropriation. See 43 CFR 2627.4(b). That regulation provides: "Lands desired by the State * * * will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the state files its application * * *." Mining claims located on lands segregated or withdrawn from entry and location under the mining laws are invalid. Hanson Properties, Inc., 74 IBLA 364 (1983); Joseph E. Vogler, 72 IBLA 48 (1983). Appellant has not shown that his claim was located prior to the 1972 State selection or that the State selection was defective. The decision to reject his location notice and declare invalid the Rockpile claim is therefore adequately supported by the administrative record, which establishes without contradiction that there was no land open to location under the mining laws in T. 5 S., R. 2 W., Copper River Meridian, on December 14, 1973, the date of appellant's location. See Joseph E. Vogler, supra.

Further, subsequent to the State application, on March 15, 1972, Public Land Order 5178 was issued under authority of section 11(a)(3) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1610(a)(3) (1982). This order declared certain lands in Alaska to be withdrawn from "all forms of appropriation under the public land laws and from location and entry under the mining laws." Among the lands affected by the order was all of T. 5 S., R. 2 W., Copper River Meridian. The factual situation in this case was, therefore, the reverse of that considered in Udall v. Kalerak, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969), where the state had selected lands previously withdrawn from appropriation under a prior public land order. For a discussion of the Kalerak and related cases, see John C. Thomas, 53 IBLA 182 (1981), vacated on reconsideration, 59 IBLA 364 (1981). In this case, however, while the record indicates that conflicts may exist between State and Native claims to T. 5 S., public land records indicated, on the date of appellant's location that the township was not open to mineral entry in 1973, having been segregated from the public domain by previous entry. The result, therefore, so far as concerns appellant, is that his location could not attach, and was void ab initio. See, e.g., State of Alaska, 6 IBLA 58, 79 I.D. 391 (1972). No opinion is expressed concerning the merits of any pending conflicting claims between the State and Native organizations concerning T. 5 S., since these matters are not before the Board for decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

ADMINISTRATIVE JUDGE IRWIN CONCURRING IN THE RESULT:

Appellant's only statement on appeal of the Bureau of Land Management's March 28, 1984, decision was: "I wish to appeal the decision regarding said Rockpile claim AA 22584 and believe you did not have all the information on file to make a just decision."

43 CFR 4.402(a) provides that an appeal is subject to summary dismissal "if a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required." We have held that an appellant's failure on appeal to point out affirmatively why the decision appealed from is in error may be treated in the same manner as an appeal in which no statement of reasons was filed and the appeal dismissed. United States v. Reaveley, 53 IBLA 320 (1981); Glen Gould, 52 IBLA 305 (1981). Cf. B. H. Northcutt, 75 IBLA 305, 308 (1983).

I think this appeal should be summarily dismissed. I therefore offer no opinion on the discussion affirming BLM's decision, but simply concur in that result.

Will A. Irwin
Administrative Judge