

DENNIS G. QUINN

IBLA 76-727

Decided March 30, 1977

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring appellant's mining claim (F-22445) null and void ab initio.

Affirmed as modified.

1. Alaska: Land Grants and Selections: Generally--Mining Claims:
Lands Subject to--State Selections

Lands described in a State selection application under section 6(b) of the Alaska Statehood Act are segregated from all forms of appropriation including location under the mining laws from the time the application is filed in the proper office of the BLM. An amendment to a pre-existing application is effective to segregate the land described in the amendment from the time it is filed.

2. Mining Claims: Lands Subject to

Mining locations made on land segregated from operation of the mining laws are null and void ab initio.

APPEARANCES: Dennis G. Quinn, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Dennis G. Quinn has brought this appeal from a decision of the Alaska State Office, Bureau of Land Management (BLM), declaring his lode mining claim (F-22445), known as "Quinn Enterprises #2," null

and void ab initio. The ground for the decision below was that the land embraced in the mining claim was segregated from mineral entry by a State selection filed on November 30, 1961, prior to appellant's alleged discovery, the posting of a notice of location of the claim by the appellant on August 6, 1975, and the recording of such notice on September 5, 1975.

Appellant contends in his statement of reasons for appeal that a prior Recreation and Public Purposes Classification Order dated April 24, 1961, segregated the subject land from all forms of appropriation including State selection. Therefore, appellant reasons, the filing of the State selection had no segregative effect and the location of the mining claim was not barred.

The land embraced in the mining claim is located in the NE 1/4 NW 1/4 of section 31, T. 1 N., R. 2 W., Fairbanks Mer., Alaska. The subject tract was part of a larger area of land classified as suitable for lease or sale for recreation purposes under Recreation and Public Purposes Classification Order No. 50, dated April 24, 1961. The classification order expressly segregated the subject land from "all forms of appropriation, including locations under the mining laws."

Subsequently, on November 30, 1961, the State of Alaska filed a State selection application (F-028735) under section 6(b) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 340, 48 U.S.C. prec. § 21 note (1970). Although some land in T. 1 N., R. 2 W., Fairbanks Mer., was included, no land in section 31 was initially involved in the selection. On April 15, 1965, Recreation and Public Purposes Classification Order No. 50 was amended to delete section 31 therefrom.

The State of Alaska filed an amendment to its State selection application (F-028735) with the BLM on June 16, 1972, causing the selection to include all available lands in T. 1 N., R. 2 W., Fairbanks Mer. Later, the appellant located his mining claim on a portion of section 31 in 1975.

[1] Lands described in a State selection application are segregated from all forms of appropriation including location under the mining laws from the time the application is filed in the proper office of the BLM. 43 CFR 2627.4(b); Margaret L. Klatt, 23 IBLA 59, 61 (1975). An amendment to a pre-existing State selection application is effective to segregate the land described in the amendment from the time it is filed. Margaret L. Klatt, *supra* at 61; see Udall v. Kalerak, 396 F.2d 746, 748 (9th Cir. 1968), *cert. denied*, 393 U.S. 1118 (1969).

It is true that land selections by the State of Alaska are restricted to lands which are "vacant, unappropriated, and unreserved at the time of their selection." Section 6(b), Alaska Statehood Act of July 7, 1958, 72 Stat. 340, 43 U.S.C. prec. section 21 note (1970). Assuming arguendo, the land was reserved when the State selection application was first filed, the subject land was not segregated or reserved for the reason stated by appellant at the time the State selection was amended to include it. Thus, the legal effect of the amended State selection filed with the BLM on June 16, 1972, was to segregate the land from further appropriation, including location under the mining laws.

[2] Mining locations made on land segregated from operation of the mining laws are null and void ab initio. Richard B. Jarrett, 19 IBLA 78, 80 (1975). Therefore, appellant's mining claim, located on the land at a time when the land was not subject to location under the mining laws, is invalid.

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 as modified.

Anne Poindexter Lewis

Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

