

RAY L. VIRG-IN

IBLA 77-577

Decided January 18, 1978

Appeal from decision of Alaska State Office, Bureau of Land Management, declaring placer mining claims null and void. (AA-12606.)

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Location -- Mining Claims: Withdrawn Land -- Rules of Practice: Evidence -- Withdrawals and Reservations: Effect of

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. Where a mining claimant states in his notice of location that his mining claims were located on dates subsequent to a withdrawal which included the land encompassed by the mining claim, but indicates in his application for survey that the claims were located prior to the withdrawal, it is proper for the State Office to declare the mining claims null and void on the basis of the information in the notice of location where the claimant failed to submit evidence that the claims were in fact located prior to the withdrawal.

2. Mining Claims: Generally -- Mining Claims: Location -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

The purpose of an amended location is to cure imperfections and correct errors, which in the absence of intervening rights relates back to the date of original location. An amended location made while land is withdrawn from mineral entry is ineffectual.

APPEARANCES: Ray L. Virg-in, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Ray L. Virg-in appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated August 4, 1977, declaring his Virg-in I and II placer mining claims null and void ab initio because the land on which the claims were located had been withdrawn from mineral entry at the time of location by P.L. 92-203, the Alaska Native Claims Settlement Act, 85 Stat. 688, 43 U.S.C. § 1601 et seq (Supp. III, 1973).

Appellant's notices of location were recorded on April 19, 1972, and each gave February 13, 1972, as the date of posting the notice of location for both claims. On March 25, 1977, appellant filed his application for survey of the mining claims in which he stated that the Virg-in I claim was located on October 18, 1971, and the Virg-in II claim on October 19, 1971.

The record shows that the lands included in these claims were withdrawn and reserved for selection by the Village of Marshall by the Alaska Native Claims Settlement Act, supra, on December 18, 1971. Since the land was withdrawn from entry under the mining laws at the time the claims were located, according to the notices of location, the State Office declared the mining claims null and void ab initio.

In his statement of reasons, appellant explains the situation as follows:

Location of the claims and prospecting began on or about October 18 & 19, 1971. This continued for a month and on or about November 26, 1971 I had completed cutting out the corners and putting in corner posts, etc and at that time posted on each claim"s [sic] corner a location and claim notice. As required by state law, within 90 days, I made up location notice copies to be recorded. This was done on February 13, 1972 and unwittingly I put that date on the notices to be recorded at the land office. The notices were mailed to the Bethel Districe [sic] Recorder on Feb. 16, 1972 by certified mail, and signed for on Feb. 22. However, they did not get around to recording the notices until 4-19-72 according to my receipts. Copy of this is enclosed for your reference.

It is my understanding that I should file amended [sic] location notices showing the correct date at which the location notices were posted on the claims, which is before the land was withdrawn. I would like to do this and continue with my application for survey.

[1] The facts of record in this case show that the land in issue was withdrawn on December 18, 1971, and that the notice of location of the claims was filed on April 19, 1972, in which appellant stated that he posted the notice of location for both claims on February 13, 1972. Under 43 CFR 3831.1, a claim is not fully located until there has been compliance with State law regarding recording. 1/

A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception. W. R. C. Croley, 32 IBLA 5 (1977); Sally Lester, 31 IBLA 43 (1977); Cajen Minerals, 31 IBLA 188 (1977); Charles R. Nielsen, 30 IBLA 235 (1977); Rod Knight, 30 IBLA 224 (1977); Robert L. Beery, 83 I.D. 249, 25 IBLA 287 (1976); Leo J. Kottas, 73 I.D. 123, 127-128 (1966), aff'd sub nom. Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970). Since the State Office ruling was applicable to appellant's rights to the land under the February 13, 1972, location, the holding that the claims were null and void was proper. R. C. Jim Townsend, 18 IBLA 100, 102 (1974). This holding does not affect the validity or status of any mining claim located for the same land prior to the withdrawal. Townsend, supra at 101; James M. Wells, A-28549 (February 10, 1961).

1/ 43 CFR 3831.1, which sets forth the procedure for locating a mining claim, reads as follows:

"Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of minerals, by locating the lands upon which such discovery has been made. A location is made by (a) staking the corners of the claim, except placer claims described by legal subdivision where State law permits locations without marking the boundaries of the claims on the ground, (b) posting notice of location thereon, and (c) complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc." (emphasis added).

Alaska State law provides:

"The locator of a lode claim or placer claim shall within 90 days after the date of posting the notice of location on the claim have the claim recorded by filing a certificate of location with the recording district in which the claim is located." ALASKA STAT. § 27.10.050 (Michie 1962).

"Failure to file the certificate of location for record within the required 90 days constitutes an abandonment of the claim and the ground is open to location. However, recordation after the 90-day period but before the ground is located by another renews the location and saves the rights of the original locator." ALASKA STAT. § 27.10.60 (Michie 1962).

In his application for survey, appellant indicates that the claims were located in October 1971, prior to the withdrawal. However, for the appellant to be considered as having possessory rights against the United States with respect to an earlier location, he must submit evidence that the claims were in fact located prior to the withdrawal of the land from mining locations. J. Everett Nelson, A-29174 (February 4, 1963). Appellant has offered no proof to substantiate his assertion that the claims were located in October 1971.

[2] Appellant expresses his intention to file an amended notice of location showing October 1971, as the date on which the location notices were posted. The purpose of an amended location is to cure imperfections and correct errors, which in the absence of intervening rights relates back to the date of location. United States v. Kincanon, 13 IBLA 165 (1973); Fred B. Ortman, 52 L.D. 467, 471 (1928). An amended location made while the land is withdrawn is ineffectual. James M. Wells, *supra*.

Appellant should have shown that the claims were, in fact, located prior to the withdrawal. In addition, he should have shown that a discovery existed on each claim on the date of the withdrawal. United States v. Rodgers, 32 IBLA 77 (1977); J. Everett Nelson, *supra*. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal. United States v. Rodgers, *supra*; United States v. Arcand, 23 IBLA 226 (1976); United States v. Fleming, 20 IBLA 83 (1975).

Therefore, 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.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

