

TILDEN HOLLOWAY
ROLAND WRIGHT

IBLA 79-24

Decided September 28, 1979

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring the HMF lode mining claim null and void ab initio. AA-1809.

Affirmed.

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 Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

2. Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous information provided by employees of BLM cannot create any rights not authorized by law.

APPEARANCES: Robert C. Blackford, Esq., Fairbanks, Alaska, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Tilden Holloway and Roland Wright have appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated August 28, 1978, which rejected their mining claim recordation filing for the HMF lode mining claim and declared the claim to be null and void because it had been located at a time when the land was not open to mineral entry.

The claim notice filed with BLM July 5, 1978, indicated the claim was located in sec. 5, T. 22 S., R. 12 E., Fairbanks meridian, Alaska. The official land status records of BLM show that all the lands in sec. 5, T. 22 S., R. 12 E., were withdrawn December 30, 1971, for a utility and transportation corridor by Public Land Order No.

(PLO) 5150, and were withdrawn from prospecting, location and purchase under the mining laws. That order was amended by PLO 5151, January 5, 1972, and subsequently modified and corrected by PLO 5190, March 23, 1972, which left the lands in sec. 5, T. 22 S., R. 12 E., in the same status, i.e., withdrawn from mineral entry as originally set forth in PLO 5150.

[1] Therefore, as of the date of appellant's filing of the HMF lode claim, July 5, 1978, the lands were not available for mining claims. Where a mining claim is located on land previously withdrawn from appropriation under the mining laws, an attempt to locate a mining claim on such land is a nullity and the claim is properly declared null and void ab initio. Gerald Byron Bannon, 40 IBLA 162 (1979); Harry R. Wilson, 35 IBLA 349 (1978).

Appellants state on appeal that on June 26, 1978, they checked with the Fairbanks Office, BLM, and were told the land was available for location for metalliferous minerals. They assert that they began working the claim July 7, 1978, and again checked with the Anchorage Office, BLM, and were informed the land was available. They contend they have spent \$10,000 in working the claim based on the misinformation they received from BLM.

[2] Unfortunately, appellants have located their claim in an area not open to mineral entry and any misinformation they may have received from BLM personnel cannot alter the sequence of events that closed the lands to mining location prior to their filing. Reliance upon erroneous information or opinion given by any officer or employee of BLM cannot operate to create any right not authorized by law. 43 CFR 1810.3(c); John C. Schandelmeier, 42 IBLA 240 (1979); Island Creek Coal Co., 35 IBLA 247, 85 I.D. 161 (1978).

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

