

GEORGE H. FENNIMORE ET AL.

IBLA 82-167

Decided April 12, 1982

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring mining claims null and void. AA 27313 through AA 27325.

Affirmed.

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 Mining Claims: Lands Subject to--Mining Claims: Withdrawn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

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

APPEARANCES: J. L. McCarrey, Jr., Esq., Anchorage, Alaska, for appellants; Dennis J. Hopewell, Esq., Office of the Solicitor, Anchorage, Alaska, for Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Appellants, 1/ through their attorney, appeal the November 4, 1981, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting recordation of some 13 claims, AA 27313 through AA 27325, 2/ as void ab initio because they were located on April 22, 1966, on land that had been segregated from appropriation because of its selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339-343). The claims were located in secs. 28, 29, 30, and 31, T. 21 S., R. 18 E., Copper River meridian.

1/ Appellants are George H. Fennimore, Nellie E. Fennimore, John Kubek, Hazel Kubek, William F. Fennimore, Mammie Fennimore, Samuel L. Fennimore, Paul P. Fennimore, and Mabel Fennimore.

2/ The names of the claims are: Anchor Fraction #1 through #3, Hope Fraction #1 through #7, and Sunrise #1 through #3.

The State had selected all of T. 21 S., R. 18 E., containing approximately 19,840 acres (excluding any prior valid rights, claims, or patented lands) on December 31, 1963, and had duly published notice of its selection in the Cordova Times from February 20, 1964, through March 19, 1964, in accordance with 43 CFR 2627.3 and 2627.4, the regulations governing State selections. ^{3/} Appellant George H. Fennimore responded to that notice, alleging ownership of certain existing mining claims located in the township; and his rights were affirmed by BLM in a decision dated October 23, 1964. Thus, he had full knowledge both of the State's selection and of the segregation of the township in question, some 18 months before the claims which are the subject of this appeal were purportedly located.

In their statement of reasons for appeal, appellants ignore the selection of the land by the State some 2 years previously, and argue that by virtue of the 14 years that have now elapsed since the claims were located, the Government "has acquiesced in the appellants' ability to work and file these claims." They further contend that BLM's November 4 decision is void as a matter of law and fact; that the decision takes or condemns property without just compensation; and that it is barred by application of the doctrines of estoppel, waiver, and laches, and by appellants' reliance on earlier and consistent actions or inactions by BLM. No proof or explanation is offered in support of these allegations.

[1] The answer by the Solicitor adequately responds to appellants' contentions, citing Gary Willis, 56 IBLA 217 (1981); and there is no need to deal further with these arguments here. It is well established that a mining claim located on land that has been segregated by a proposed withdrawal confers no rights on the locator and is properly declared null and void ab initio. Allen L. Brannon, Sr., 53 IBLA 251 (1981). See also John C. Thomas (On Reconsideration), 59 IBLA 364 (1981), and Northwest Explorations, Inc., 52 IBLA 87, 88 I.D. 31 (1981).

Even more apropos is the fact that appellants ought to be fully aware of this principle, since this is not their first appeal on the same grounds. See George H. Fennimore, 50 IBLA 280 (1980), in which similar unsupported assertions were made. What is freely asserted can, and in this case should, be freely denied. We find that appellants' arguments have no merit and that BLM's decision is correct.

^{3/} 43 CFR 2627.4(b), which is most relevant here, reads as follows:

"(b) Segregative effect of applications. Lands desired by the State under the regulations of this part 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 for selection in the proper office properly describing the lands as provided in § 2627.3(c)(1) (iii), (iv), and (v). Such segregation will automatically terminate unless the State publishes first notice as provided by paragraph (c) of this section within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management.

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.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

