

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring mining claims null and void ab initio in whole and in part.

Affirmed.

1. Mining Claims: Withdrawn Land

Mining claims located on land previously withdrawn from entry under the mining laws are properly declared null and void ab initio.

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 Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

Where lands which have been withdrawn from entry and location under the general mining laws by a public land order, in determining the rights of a mining claimant who located claims subsequent to that withdrawal, it is immaterial that the land in question is covered by a prior withdrawal for a different purpose.

APPEARANCES: Joseph E. Vogler, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On October 26, 1977, and October 19, 1979, Joseph E. Vogler and Doris A. Vogler or Dwerl Vogler filed mining claim location notices with the Bureau of Land Management (BLM), for the placer mining claims listed on the attached appendices as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the recordation regulations in 43 CFR 3833. The location notices show that the claims were located on various dates in 1973, 1976, and 1977; the exact dates are shown on the attached appendices. The August 3, 1982, decision of the Alaska State Office, BLM, from which this appeal is taken, states in part:

Additional information supplied by the claimants indicates that the claims on Appendix A lie totally within T. 6 N., R. 21 E.,

Fairbanks Meridian, Alaska; the claims on Appendix B lie only partially within T. 6 N., R. 21 E., Fairbanks Meridian.

On March 15, 1972, Public Land Order (PLO) 5179, withdrew all the lands in T. 6 N., R. 21 E., Fairbanks Meridian from "all forms of appropriation under the public land laws and from location and entry under the mining laws, 30 U.S.C. Ch. 2 . . ." [Emphasis added]. This PLO was issued under the authority of Sec. 17(d)(2)(A) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA; 43 U.S.C. 1601), and withdrew specified lands "for study and for possible recommendations to the Congress as additions to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers, Systems . . ." T. 6 N., R. 21 E., Fairbanks Meridian, is now within the Yukon-Charley Rivers National Preserve, as designated by the Alaska National Interest Lands Conservation Act (ANILCA; PL 96-487) on December 2, 1980.

* * * * *

Because the lands in T. 6 N., R. 21 E., Fairbanks Meridian have been continuously segregated from the operation of the Federal mining laws since March 15, 1972, a mining claim located after that date is invalid from its inception. Therefore, the mining claims listed on Appendix A are declared null and void ab initio and the recordation filings are rejected in their entirety. The claims on Appendix B are declared null and void in part, and the filings are rejected in part, to the extent that the claims lie within T. 6 N., R. 21 E., Fairbanks Meridian.

Appellants argue for the reversal of the BLM decision. They assert in the notice of appeal that: (1) PLO 5179 is null and void on its face as to the mining claims area because it is inconsistent with a previous powersite withdrawal and (2) that section 17(d)(2) of ANCSA, 43 U.S.C. § 1616(d)(2) (1976), is null and void. Other assertions are made which we will address generally.

[1] It is well settled that mining claims which at the time of their location are situated on land withdrawn from entry and location under the mining laws confer no rights on the locator and are void ab initio. Clayton S. Hale, 62 IBLA 35 (1982); Beverly Trull, 25 IBLA 157 (1976); R. C. Townsend, 18 IBLA 100 (1974). Appellants have not shown that their rights antedated the March 15, 1972, withdrawal or that they possess an interest through which they can now claim a right. See George H. Fennimore, 50 IBLA 280, 281 (1980). The Secretary is charged with seeing that all valid claims are recognized, invalid ones eliminated, and the rights of the public preserved. Maurice Duval, 68 IBLA 1 (1982), and cases cited therein.

[2] The lands in question were withdrawn pursuant to section 24 of the Federal Power Act, 16 U.S.C. § 818 (1976), for powersite classification. PLO 3520, 30 FR 271 (Jan. 9, 1965). The Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976), opened to mineral entry public lands "heretofore, now or hereafter" withdrawn for power development or as powersites, with certain exceptions. A. L. Snyder, 75 I.D. 33 (1968). Thus, even though these lands may have been open to mineral entry prior to 1972, PLO 5179

clearly foreclosed location and entry under the mining laws. Appellants assert that PLO 5179 is null and void on its face as to the area which is also subject to the powersite classification because the purposes of the two withdrawals are inconsistent. Appellants have not explained, however, why two withdrawals on the same area make the later one null and void. Appellants identify no precedents, statutes, or regulations which support their assertion. In addition, given the nature of the withdrawals in question, it appears that only the 1972 withdrawal prohibited mineral entry. In determining appellants' rights, it is the legal effect to be given to the withdrawals, vis-a-vis the date of location, that is determinative of the question of availability of land for entry and location. See Sam Rosetti, 15 IBLA 288, 81 I.D. 251 (1974). The lands which were withdrawn under PLO 5179 remained withdrawn during the time the appellants were locating the claims which are the subject of this appeal.

Appellants assert that ANCSA, which is one of the authorities for PLO 5179, did not properly include the section 17(d)(2) provision in the "legislation process", and that, therefore, that section is null and void. Appellants provide no further explanation of this allegation. We note only that to decide whether a provision of ANCSA is null and void is in effect to decide whether or not a statute enacted by Congress is constitutional. As we have stated numerous times, the Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional. Madison D. Locke, 65 IBLA 122 (1982); Tesoro Petroleum Corp., 65 IBLA 99 (1982); David and Roirdon Doremus, 61 IBLA 367 (1982).

Appellants make numerous other assertions in their notice of appeal. However, none of their assertions point out affirmatively in what respect the decision appealed from is in error. See Duncan Miller, 26 IBLA 37 (1976), and cases cited therein. They do not contain legal arguments or allegations of facts which meet their burden of addressing specific errors of law or fact in the decision below. See L. J. Cornelius, 61 IBLA 279 (1982); Sierra Club, 53 IBLA 159 (1981). More than mere disagreement with BLM's conclusion is required to reverse its decision or place a factual matter at issue. L. J. Cornelius, supra.

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

Bruce R. Harris
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Edward W. Stuebing
Administrative Judge.

APPENDIX A

Claims Rejected in Whole:

<u>Serial Number</u>	<u>Claim Name</u>	<u>Location</u>	<u>Date</u>
F-26931	Slate Creek		September 9, 1977
	September 2, 1973 F-63520	Yukon No. 1	
Yukon No. 2		September 2, 1973 F-63522	
September 2, 1973 F-63528		Yukon No. 9	
Yukon No. 10		September 4, 1973 F-63530	
September 4, 1973 F-63531		Yukon No. 12	
Yukon No. 13		September 5, 1973 F-63534	
September 6, 1973 F-63563		Woodchopper Left Limit - No. 1	September 2, 1976
Woodchopper Left Limit - No. 2		September 2, 1976	
F-63519	Yukon		September 2, 1973
	September 2, 1973 F-63521	Yukon No. 3	
Yukon No. 3		September 4, 1973 F-63529	
September 4, 1973 F-63529		Yukon No. 11	
Yukon No. 11		September 4, 1973 F-63432	
September 4, 1973 F-63432		Upper Woodchopper No. 1 Left Limit	
Upper Woodchopper No. 1 Left Limit		September 2, 1976 F-63564	
September 2, 1976 F-63564			

APPENDIX B

Claims Rejected in Part:

<u>Serial Number</u>	<u>Claim Number</u>	<u>Location</u>	<u>Date</u>
F-63533	Upper Woodchopper No. 1 Rt. Limit		September 6, 1973
	September 6, 1973 F-63536	Upper Woodchopper No. 3 Left	
Upper Woodchopper No. 2 Left Limit		September 6, 1973 F-63538	
September 6, 1973 F-63540		Upper Woodchopper No. 4 Left Limit	September 6, 1973

