

Editor's note: Reconsideration denied by Order dated June 6, 1983

ALLAN KAISER

IBLA 83-212

Decided May 5, 1983

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, rejecting recordation filings and declaring various mining claims null and void ab initio. F-79284, etc.

Affirmed as modified.

1. Alaska Native Claims Settlement Act: Withdrawals and Reservations: Generally--Mining Claims: Determination of Validity--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d)(1) of the Alaska Native Claims Settlement Act is null and void ab initio.

APPEARANCES: Allan Kaiser, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Allan Kaiser has appealed the decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated November 2, 1982, rejecting his mining claim recordation filings for the Pebbles #1 through Pebbles #28 placer mining claims 1/ and declaring the claims null and void ab initio.

On December 11, 1981, and December 15, 1981, appellant submitted location notices for these mining claims to BLM in compliance with the recordation provisions of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. @ 1744 (1976). The claims were located over the period of September 15 to 17, 1981, in T. 1 N., R. 30 E., Fairbanks meridian.

BLM found that the township had been withdrawn from mineral entry since March 13, 1972, and, because the claims were located after that date, they were null and void ab initio. BLM stated specifically:

1/ BLM serial Nos. F-79284 through F-79298, and F-79325 through F-79337.

On March 13, 1972, T. 1 N., R. 30 E., Fairbanks Meridian, among others, was withdrawn by Public Land Order 5173 as regional deficiency land for Doyon, Limited under the authority of Section 11(a)(3) of the Alaska Native Claims Settlement Act. The withdrawal segregated the lands from all forms of appropriation under the public land laws, including the mining laws.

T. 1 N., R. 30 E., Fairbanks Meridian, was also selected by the State of Alaska on February 19, 1982 in its application F-79687. This application also segregates the land from subsequent location under the mining laws.

In his statement of reasons, appellant asserts that under section 22(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1621(h)(1) (1976 & Supp. IV 1980), all withdrawals under ANCSA, except as otherwise provided, terminated 4 years following enactment of ANCSA. In addition, he points out that although the township was withdrawn for the purpose of the village of Eagle's land selections, the village never selected it. Therefore, appellant concludes, the land was open for mineral entry when he located his claims.

Review of Public Land Order (PLO) No. 5173, dated March 9, 1972, 37 FR 5575 (Mar. 16, 1972), reveals that the PLO had several purposes. Among them, as BLM stated in its decision, was the withdrawal of various lands, including the township at issue identified in paragraph 2, of the order under the authority of section 11(a)(3) of ANCSA, 43 U.S.C. § 1610 (1976), for selection by regional corporations. PLO 5173 also made the following withdrawal, however:

5. By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), and by virtue of the authority vested in the Secretary of the Interior in section 17(d)(1) of said Act, it is ordered as follows:

Subject to valid existing rights, the lands described in paragraph 1 and paragraph 2 of this order are hereby withdrawn from all forms of appropriation under the public land laws, including selections by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location and entry under the mining laws, 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181-237 (1970), but not from selection pursuant to section 12 of said Act by corporations formed pursuant to section 7 or section 8 of said Act, and are hereby reserved for study and review by the Secretary of the Interior for the purpose of classification or reclassification of any lands not conveyed pursuant to section 14 of said Act. [Emphasis added.]

Appellant is correct in his assertion, that with certain exceptions ANCSA withdrawals terminated 4 years after the enactment of ANCSA or on December 18, 1975, under section 22(h)(1). Indeed that termination date is

applicable to the section 11(a)(3) withdrawals of PLO 5173. William Thomas Woolard, 2 ANCAB 150, 84 I.D. 891 (1977). Section 22(h)(3) provides, however, "[t]he provisions of this section shall not apply to any withdrawals that made under section 17 [43 U.S.C. § 1616] of this Act." Accordingly, in the absence absence of other express revocation the withdrawal of the township at issue from location and entry under the mining laws by paragraph 5 of PLO 5173 remains in effect. 2/

[1] A mining claim located on land previously withdrawn from appropriation is null and void ab initio. J. Pat Kaufman, 71 IBLA 183 (1983); Floyd E. Benton, 62 IBLA 243 (1982); Sally Lester, 31 IBLA 43 (1977). BLM's decision rejecting the recordation filings and declaring appellant's claims null and void ab initio must be affirmed because of the section 17(d)(1) withdrawal, not because of the section 11(a)(3) withdrawal, of PLO 5173.

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 Fairbanks District Office is affirmed as modified.

Will A. Irwin
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

2/ PLO 5173 was modified by PLO 6092, effective Nov. 20, 1981, to permit selection of the withdrawn land by the State of Alaska. As noted in the BLM decision, the State's selection of the township further segregates it from location under the mining laws. 43 CFR 2627.4(b).

