

FRED THOMPSON

IBLA 83-533

Decided July 19, 1983

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring mining claims null and void ab initio. F 72406 and F 72407.

Affirmed.

1. Alaska: Land Grants and Selections: Generally -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: State Selections

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

APPEARANCES: Fred Thompson, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Fred Thompson has appealed the decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 28, 1983, rejecting recordation filings for the Crooked #19 Assoc. and Crooked #20 Assoc. placer mining claims, F 72406 and F 72407, and declaring the claims null and void ab initio.

The two claims were located by Wayne Gibson and Frank Furtado who timely submitted notices of location for the claims on October 27, 1980, to BLM in accordance with section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The notices state that the claims were located on September 4, 1980, within protracted T. 5 N., R. 8 E., Fairbanks meridian. Gibson and Furtado quitclaimed both claims to Fred and Laurall A. Thompson on July 21, 1981, according to a copy of a quitclaim deed found in the case files.

BLM found that all the lands in T. 5 N., R. 8 E., Fairbanks meridian, were included in State of Alaska selection application F-15152, filed with BLM on January 21, 1972, and that the filing of the application segregated the lands from all forms of appropriation including locations under the mining laws. Accordingly, BLM held that the mining claims were null and void ab initio because at the time of location the lands were not open to mineral entry. BLM also found that no evidence of annual assessment work or notices of intention to hold the claims were filed for the 1981 calendar year and thus the claims must be considered abandoned and void as well.

In his statement of reasons, appellant states only that the work which is required to be done was done by Wayne Gibson and that he could get a copy of the proof and mail it in.

[1] The BLM status plat contained in the case files shows that all of T. 5 N., R. 8 E., Fairbanks meridian, is included within tentatively approved State selection application F-15152. Departmental regulations, 43 CFR 2091.6-4 and 2627.4(b), provide that land desired by the State of Alaska will be segregated from all appropriation 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. Tentative approval of a State selection application represents BLM's determination that there is no bar to passing legal title to the lands to the State other than the need for a survey of the lands or for the issuance of a patent or both. 43 CFR 2627.3(d). Appellant has presented no evidence or arguments showing that the land was open to location at the time these claims were located.

Where lands have been segregated from location and entry under the mining laws as a result of a State selection application and the application has been noted to the official records of BLM, an attempt to locate a mining claim on such segregated land is a nullity and the claim is properly declared null and void ab initio. John C. Schandelmeier, 42 IBLA 240 (1979).

Under section 314 of FLPMA, a mining claimant is required to file with the local recording office where the notice of location is recorded either a notice of intention to hold the claim or an affidavit of assessment work and, further, to file in the proper BLM office a copy of the instrument filed in the local recording office prior to December 31 of the year following the calendar year in which the claim was located. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

In 1981 the regulations provided that the notice of intention to hold filed with BLM must be an exact legible reproduction or duplicate of the instrument filed for record in the local jurisdiction of the state where the claim was located and recorded. 43 CFR 3833.2-3 (1980-81); Pacific Coast Mines, Inc., 53 IBLA 200 (1981). <sup>1/</sup> On October 30, 1981, BLM received a

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<sup>1/</sup> The current regulations require a claimant to file "the same documents which have been or will be recorded with the county or local office of recordation." 43 CFR 3833.2-3 (47 FR 56306 (Dec. 15, 1982)).

letter from Mrs. Fred Thompson referring to the two claims at issue stating in part, "I intend to do extensive work as soon as the snow melts in 82. The people I got the land from filed an annual labor report." There is no indication on the letter whether the claim owners filed it in the local recording office as a notice of intention to hold the claims as required by section 314 of FLPMA, nor is there a copy in the file of any proof of labor for the claims filed by Gibson and Furtado in 1981. Since the claims are void ab initio, there is no need to inquire further as to the alleged 1981 proof of labor filing, but we note nevertheless that it is a claim owner's responsibility to comply with section 314 of FLPMA. 2/ Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981).

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.

Will A. Irwin  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Gail M. Frazier  
Administrative Judge

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2/ We note that for 1982 appellant submitted a brief letter stating their intention to hold the claims and that some annual labor was done by Wayne Gibson. There is no indication that this document was recorded in the local recording office. An affidavit of annual labor for 1982 performed by Gibson also appears in the file. It identifies the serial numbers for 35 claims including F 72406 and F 72407, but does not include the Crooked #19 Assoc. and Crooked #20 Assoc. in the list of 33 claim names.

