

NELS SWANBERG
MARGARET SWANBERG

IBLA 83-433

Decided July 22, 1983

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting in part mineral patent application. F-23150.

Affirmed.

1. Mining Claims: Lands Subject to -- Patents of Public Lands: Effect

BLM may properly reject a mineral patent application to the extent it includes land embraced in a patent without a mineral reservation to the United States.

APPEARANCES: Nels and Margaret Swanberg, pro sese; Dennis J. Hopewell, Esq., Office of the Solicitor, United States Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Nels and Margaret Swanberg have appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated February 1, 1983, rejecting in part their mineral patent application, F-23150.

On August 3, 1982, appellants filed a mineral patent application, F-23150, for four placer mining claims: Chilberg, Dagney, Tundra Beach, and Sliver Fraction, located "east of Nome." The Claims, situated in unsurveyed sec. 36, T. 11 S., R. 34 W., Kateel River meridian, Alaska, were located October 12, 1967, and surveyed under mineral survey No. 2318, completed October 1, 1977. Both the field notes of the mineral survey, approved June 18, 1981, and the plat of mineral survey No. 2318 indicate that portions of the Chilberg and Dagney mining claims are included in U.S. survey No. 451. That land was patented to the Trustee of the Townsite of Nome, District of Alaska, on January 16, 1906 (certificate No. 14) without a reservation of minerals to the United States. In its February 1983 decision, BLM rejected appellants' mineral patent application in part, stating:

Because the placer mining claims (Dagney and Chilberg) in mineral patent application F-23150 were located in 1967 and do not pre-date the patent certificate No. 14, that portion of application

F-23150 which indicates the two claims are in conflict with the patent certificate No. 14 (M.S. 451) must be and is hereby rejected. [Emphasis in original.]

BLM relied on section 16 of the Act of March 3, 1891, 26 Stat. 1101 (1891), which provides in part that a mineral entry will not be allowed where "possession" of the land by the owner or occupier within a patented townsite predates the entry.

In their statement of reasons for appeal, appellants state that the appeal is directed at the February 1983 BLM decision to the extent it "excludes the mining claims, Dagney and Chilberg, from our application for patent #F-23150." They explain that when the claims were located "no one was sure" where the limits of the city of Nome extended and that when the claims were found to be partially within those limits, they quitclaimed the portion of those claims "within" the limits. Appellants further state that:

At that time the City of Nome stated they would not question either of these claims when we went to patent because of giving them the quit claim deed for the portion they requested.

The only other alternative we had was to shorten up these claims to the City limits but the City was satisfied with the quit claim deed.

The quitclaim deed, dated September 9, 1980, quitclaimed "all interest" which appellants have in "[a]ny and all of those portions of the claim of the Grantors known as Chilberg and Dagney Placers * * * situated within U.S. Survey 451 of the Townsite of Nome, Alaska."

The Office of the Regional Solicitor, on behalf of BLM, argues in its answer that BLM correctly rejected appellants' mineral patent application to the extent it overlaps land previously patented to the city of Nome. The Solicitor states that "[o]nly the portion of the Dagney and Chilberg claims actually in conflict is rejected" (Answer at 3). The Solicitor also asserts that there is apparently "no real dispute" between appellants and BLM because appellants seek only that portion of the mining claims outside the patented area, which was not rejected in the February 1983 BLM decision. Id. at 5. The Solicitor states that appellants "may have simply misconstrued the BLM decision to reject the Dagney and Chilberg claims in their entirety." Id. at 4.

[1] It is well established that the Department has no jurisdiction over mining claims located on land patented without a reservation of minerals to the United States. Harry J. Pike, 67 IBLA 100 (1982), and cases cited therein. Such claims or portions thereof are "null and void ab initio." Silver Spot Metals, Inc., 51 IBLA 212, 214 (1980). Accordingly, to the extent that appellants' mineral patent application embraces land patented to the city of Nome (the successor in interest of the Trustee of the Townsite of Nome), without a mineral reservation, it was properly rejected. Although the February 1983 BLM decision is admittedly unclear, we believe that it rejected appellants' application only to the extent of any "conflict" and

that the record clearly establishes that only portions of the Dagney and Chilberg mining claims are affected. In any case, our affirmance of the BLM decision is limited to BLM's rejection of appellants' application as to that portion of the Dagney and Chilberg mining claims embraced in U.S. survey No. 451.

Therefore, pursuant to the authority delegated to the Bureau of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge
Alternate Member

Bruce R. Harris
Administrative Judge