

DOYON, LIMITED

IBLA 82-1127
ANCAB RLS 79-14

Decided July 25, 1983

Appeal from decision of the Alaska State Office, Bureau of Land Management, approving conveyance of Native land selections under Alaska Native Claims Settlement Act without adjudication or identification of unpatented mining claims located upon the selected lands (Regional Land Selection F-19155-16).

Affirmed.

1. Alaska: Mining Claims -- Alaska Native Claims Settlement Act: Conveyances: Regional Conveyances -- Alaska Native Claims Settlement Act: Conveyances: Village Conveyances

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed, nor is it required to search state records to ascertain the existence of such claims.

APPEARANCES: James Q. Mery, Esq., for appellant Doyon, Limited; Bruce M. Landon, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On October 3, 1979, the Bureau of Land Management (BLM), issued a decision approving for conveyance to appellant Doyon, Limited (Doyon), the surface and subsurface estates in the land selected by appellant in regional land selection F-19155-16, for the Native village of Kaltag, pursuant to section 14 of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. § 1613 (1976). The decision does not identify or adjudicate any unpatented mining claims which may possibly be found within the selection.

The record does not indicate whether or not any unpatented mining claims are located upon the selected lands. ^{1/} On appeal Doyon has argued, first before the Alaska Native Claims Appeal Board (ANCAB) ^{2/} and now before this Board, that, under the circumstances described, the refusal to identify the existence of possible mining claims in conveyance instruments used by BLM to convey the selected land to Doyon is error. As a consequence, Doyon asserts, four issues are raised which should be decided in this appeal: (1) Whether BLM has a duty to identify in the conveyance instruments by location and Bureau file number all facially valid unpatented mining claims which encumber land being conveyed to Doyon; (2) whether BLM has a duty to exclude from conveyance to Doyon lands containing unpatented claims upon which BLM has suspended review pending reconsideration of the Montana District Court's decision in Rogers v. United States, CV-80-114-H (D. Mont. June 28, 1982) (petition for reconsideration denied June 15, 1983); (3) whether BLM has a duty to search state records for mining claim filings not recorded pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), Act of October 21, 1976, 43 U.S.C. § 1744 (1976), and to include findings based upon the search of state records in the conveyance documents furnished to Doyon; and (4) whether provision of 43 CFR 2650.3-2(c) which allows a miner to apply for patent to land within Native selections after December 18, 1976, under certain circumstances is invalid for lack of a statutory basis.

BLM contends it is not required to identify prior to conveyance any unpatented mining claims which may be found on the Doyon selection. BLM also takes the position which the Board adopts, that neither ANCSA nor FLPMA require the identification of unpatented mining claims sought by Doyon.

[1] This appeal is controlled by the Board's decision in Doyon, Limited, 74 IBLA 139, 90 I.D. (1983), a case in which identical legal arguments based upon a substantially similar factual background were advanced. Based upon analysis of the decision in Alaska Miners v. Andrus, 662 F.2d 577 (9th Cir. 1981), and the provisions of sections 14(g) and 22(c) of ANCSA, the Board held in Doyon, Limited, supra at 148, 90 I.D. at , that:

Since section 14(g) does not concern mining claims, it cannot serve as a basis for requiring the Department to identify mining claims. Even if section 14(g) were applicable, it would be improper to identify a mining claim whose validity had not been

^{1/} In a companion case involving selection F-19155-16, Doyon, Limited, IBLA 82-1128, Doyon alleged the existence of 18 unpatented mining claims upon the selected land. For purposes of decision, the existence here of possible claims is assumed.

^{2/} ANCAB was abolished by Secretary's Order No. 3078 dated Apr. 29, 1982, effective June 30, 1982, which transferred all responsibilities delegated to ANCAB to the Interior Board of Land Appeals (IBLA). An interim rule published June 18, 1982, enlarged IBLA's scope of authority to include jurisdiction to make final Departmental decision in appeals relating to land selections arising under ANCSA. 43 CFR 4.1(b)(3)(i), 43 FR 26,390 (June 18, 1982).

determined. In order for a mining claim to constitute a valid existing right, it must be established that a mining claim not only was located prior to the date of the withdrawal and maintained in accordance with the requirements of the mining laws, it must also be established that a valuable mineral deposit had been discovered on the claim prior to the withdrawal. See United States v. Beckley, 66 IBLA 357 (1982). It would be improper to identify a mining claim as a valid existing right unless the issue of discovery of a valuable mineral deposit is fully adjudicated. Since the court in Alaska Miners, *supra*, held that the Department is not required to adjudicate the validity of mining claims, it necessarily follows that the Department cannot be required to identify them as valid existing rights in the absence of proof of a discovery of a valuable mineral deposit.

Appellant's contention that section 22(c) requires identification of unpatented mining claims is incorrect for the same reasons. That section protects possessory rights arising only from valid mining claims initiated before August 31, 1971, so a claim cannot be identified as protected by section 22(c) without adjudication of its validity. Since the Department is not required to adjudicate the validity of mining claims on lands conveyed to a regional corporation, there is no basis for identifying them in a conveyance.

The only other argument appellant makes in support of such identification is the need to convey clear title. Appellant's concern about this is belied by appellant's failure to exclude claims from its selection application or seek adjudication of those claims by the procedures provided by Departmental regulations. We hold that BLM is not required to identify or adjudicate unpatented mining claims on the land conveyed since no contest has been filed.

Similarly, appellant's contention that the decision in Rogers, *supra*, can affect the disposition of this appeal is without basis, as is the claim BLM has a duty to search state records for mining claims unrecorded under section 314 of FLPMA. The ultimate resolution of the Rogers case can have no effect upon this appeal. If on appeal the Court affirms the district court decision and holds that the Department improperly declared the claims abandoned and void, the claims will have the same status as other unpatented claims and would be subject to exclusion from appellant's conveyance only if appellant had excluded the claims in its conveyance application or if a patent application had been filed. On the other hand, if the high Court finds such claims to be properly declared abandoned, there would be no basis for identifying or excluding such abandoned claims from appellant's conveyance.

Appellant's contention that BLM has a duty to search the State of Alaska records for mining claims affecting selection F-19155-16 is also without foundation. Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), provides that failure to record such a claim with BLM "shall be deemed conclusively to constitute an

abandonment" of the claim. A principal purpose of this statute was to obviate the need for BLM to make the search appellant would require of it.

Finally, appellant's argument that 43 CFR 2650.3-2(c) unlawfully extends the period within which a miner may apply for patent is not properly raised in this appeal. Assuming that there are unpatented claims upon the land conveyed to appellant, there is nothing in the record to establish that any claim was or would be affected by the provisions of 43 CFR 2650.3-2(c) in this case. See Doyon, Limited, supra at 151, 90 I.D. at .

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

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

