

Appeal from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring a mining claim null and void ab initio.

Set aside and remanded.

1. Mining Claims: Lands Subject to -- Segregation -- State Selections

A mining claim located on land segregated from such location by the filing of a state selection application is properly declared null and void ab initio; however, where the case record is unclear whether the land embraced by the claim was segregated by an application predating the location or whether the land was segregated by an amendment to the application filed subsequent to the location, the decision will be set aside and the case remanded.

APPEARANCES: Elizabeth S. Hjellen, Anna T. Short, and Marie Betts, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Elizabeth S. Hjellen, Anna T. Short, and Marie Betts, co-owners of the Buckeye #2 lode mining claim, have appealed from the October 12, 1983, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), declaring their mining claim null and void. BLM found that at the time the claim was located (March 1, 1963) the lands encompassed by the claim in T. 19 N., R. 1 W., Seward meridian, were segregated from entry under the general mining laws by State selection application A-058730, filed February 18, 1963.

The decision quoted from 43 CFR 2627.4(b) which states:

(b) Segregative effect of applications. Lands desired by the State under the regulations of this part will be segregated from all appropriations 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 as provided in § 2627.3(c)(1)(iii), (iv), and (v). Such segregation will automatically terminate unless the State publishes first

notice as provided by paragraph (c) of this section within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management. 1/

BLM relied on the language that segregation is effective from the date of filing the application.

On appeal appellants have provided a copy of the relevant case file abstract for State selection application A-058730. They argue that the date of the State's "true application is 12/26/1963 not 02/18/1963." The abstract shows the following entries:

1. 02/18/1963	APPLICATION RECEIVED
2. 12/26/1963	AMENDED/CRRCD APLN RCVD
3. 05/08/1964	PUBL DIRECTED NEWSPAPER
4. 06/26/1964	PROOF OF PUBL RECEIVED

In this case appellants are apparently arguing that because an amended and corrected application was not filed until December 26, 1983, the land embracing their claim was open to location in March 1963.

[1] The applicable regulations, 43 CFR 2091.6-4 and 43 CFR 2627.4(b), attribute a segregative effect to the filing of a state selection application. See John W. Eastland, 24 IBLA 240, 242 (1976). The filing of a state selection segregates the land from all subsequent appropriation, including locations under the mining laws. Joe B. Denson, 43 IBLA 136 (1979); Janelle R. Deeter, 34 IBLA 81 (1978). An amendment to a preexisting state selection application is effective to segregate the land described in the amendment from the time it is filed. Dennis G. Quinn, 29 IBLA 307, 308 (1977).

In this case it is not clear from the case record whether the lands embraced by appellants' claim were described in the original State selection application filed on February 18, 1963. It is possible that the amendment in December 1963 added these lands. The master title plat included in the case file and dated March 3, 1983, indicates that "A058730 SS" related to the entire township of T. 19 N., R. 1 E. It does not include any date for the application, however. As stated above, the case file abstract for A-058730 shows an original application in February 1963 and an amendment in December 1963.

We are unable to affirm the BLM decision on the basis of the record before us. If T. 19 N., R. 1 E. was described in the original State selection, appellants' claim was properly declared null and void ab initio. However, if that township was not included until the December 1963 amendment, appellants' claim would predate the State selection, and BLM's action in declaring the

1/ 43 CFR 2091.6-4 reads in pertinent part:

"Lands desired by the State under the regulations Subpart 2600 will be segregated from all appropriations 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 as provided in § 2627.3(c)."

claim null and void on the basis of the original State selection application would be improper.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for action consistent with this opinion.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

