

Appeal from the October 12, 1983, decision of the Anchorage District Office, Bureau of Land Management, declaring mining claims 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 BLM decision will be set aside and the case remanded.

APPEARANCES: Elsie May Staude, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Elsie May Staude appeals from a decision of the Anchorage District Office, Bureau of Land Management (BLM), of October 12, 1983, declaring Golden Bear and Tip Top lode mining claims located March 1, 1963, null and void ab initio. BLM found that at the time the claims were located, the lands encompassed by the claims situated in T. 19 N., R. 1 W., Seward meridian, were segregated from entry under the general mining laws by the filing of Alaska's state land selection applications A-058730, A-058957, and AA-2036, February 18, 1963, April 8, 1963, and August 17, 1967, respectively.

The BLM decision quoted from 43 CFR 2627.4(b) (1983) 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.

BLM determined that the subject lands have been segregated from mineral entry under the Federal mining laws since February 18, 1963, the date of the earliest state land selection application.

[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. Elizabeth S. Hjellen, 81 IBLA 341 (1984). The filing of a state selection segregates the land from all subsequent appropriation, including locations, pursuant to the Federal mining laws. Amoco Minerals Co., 81 IBLA 23 (1984); Fred Thompson, 74 IBLA 231 (1983); Joe D. Denson, 43 IBLA 136 (1979). An amendment to a preexisting state selection application is effective to segregate the land described in the amendment from the time the amendment is filed. Elizabeth S. Hjellen, *supra*; Dennis G. Quinn, 29 IBLA 307, 308 (1977).

It is not clear from the case record, whether the lands embraced by appellant's claims are properly described in the original state selection application filed February 18, 1963. It is possible one or both of appellant's claims are located on lands which were selected by the State April 8, 1963, or August 17, 1967, dates subsequent to the March 1, 1963, claim location. In the March 3, 1983, master title plat included in the case file, it appears the Alaska land selection applications A-058730, A-058957, and AA-2036 each segregated all of Township 19 from entry. The master title plat reflects no date for the state applications, however.

We are unable to affirm the BLM decision on the basis of the record before us. If, in its February 18, 1963, land selection application, Alaska properly described the lands on which the mining claims lie, then appellant's claims were properly declared null and void ab initio. However, if the lands embraced by the claims were not included until the applications of April 8, 1963, or August 17, 1967, then appellant's claims would predate the State selection, and BLM's action in declaring the claims null and void 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.

Edward W. Stuebing  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Will A. Irwin  
Administrative Judge.

