

RONALD R. KOTOWSKI

IBLA 84-325

Decided September 6, 1984

Appeal from decision by the Fairbanks, Alaska, District Office, Bureau of Land Management declaring a placer mining claim null and void ab initio. F-57081.

Affirmed.

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.

APPEARANCES: John A. Masog, Esq., Park Rapids, Minnesota, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Ronald R. Kotowski has appealed the January 17, 1984, decision of the Fairbanks, Alaska, District Office, Bureau of Land Management (BLM), declaring the Father and Son #1 placer mining claim null and void ab initio.

The Father and Son #1 claim was located on August 14, 1979, in secs. 31 and 32, T. 7 N., R. 11 E., Fairbanks Meridian. BLM found that at the time of its location the Father and Son #1 claim embraced land which was segregated from mineral location by State selection application F-43761 filed on November 14, 1978, and that for that reason the claim was null and void ab initio. 1/

1/ BLM also found that no proof of labor was filed with it for 1982 or 1983, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), thereby providing another basis for declaring the claim void. Appellant disputes this finding on appeal, providing a copy of a notice of intent to hold the claim date stamped by the Fairbanks recording district on November 24, 1982, and a copy of an affidavit of assessment work for the claim date stamped by the Fairbanks recording district on October 31, 1983. The evidence presented by appellant establishes that filings were made with the State recording office where the certificate of location was recorded in the years noted by BLM. However, the proof of labor or notice of intention to hold the claim must be filed the proof of labor or notice of intention to hold the claim must be filed annually with the proper office of BLM as well to establish compliance with section 314. Lynn Day, 63 IBLA 70 (1982).

[1] We find that BLM properly found the claim null and void ab initio because it was located on segregated land. 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 * * *.

This regulation attributes 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). Appellant's only argument directed to this finding by BLM was that "the decision is defective in that it indicated two different dates of the State of Alaska's State Selection Application F-43761." It is true that the decision provides two separate dates for the filing of the application -- November 14, 1978, and November 14, 1979. However, it is clear from the record that the 1979 date is merely a typographical error and that the proper year is 1978. 2/

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 affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

James L. Burski
Administrative Judge

2/ The record contains a copy of the master title plat for T. 7 N., R. 11 E., current to Jan. 9, 1979, which shows the following entry: "F 43761 SS Apln entire Tp."

