

Appeal from decision of Anchorage District Office, Bureau of Land Management, declaring a placer mining claim null and void. AA-32655.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

A mining claim is null and void ab initio when it is located on land withdrawn from entry and location under the mining laws, even though the claimant located the claim in good faith and had no actual knowledge that the land was closed to appropriation.

2. Estoppel -- Mining Claims: Lands Subject to

Where there is an interval of several years between the filing of a mining claim location notice with BLM and BLM's decision that such claim was void from its inception, having been located on land that was closed to mineral entry, laches or estoppel will not bar BLM's decision that the claim is invalid, notwithstanding the claimant's good faith expenditure of labor and money for the benefit of the claim during the intervening years. BLM has no affirmative duty to mineral locators to promptly check the legal status of every claim filed by them and to apprise such claimants of its findings.

APPEARANCES: Mac A. Stevens, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Mac A. Stevens appeals from a May 3, 1984, decision of Anchorage District Office, Alaska, Bureau of Land Management (BLM), declaring placer mining claim AA-32655, Black Jack #3, null and void ab initio.

Appellant and one Nancy Trump filed their association placer mining claim notice of location for the Black Jack #3 with BLM on October 16, 1979, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). 1/ The notice states that the claim, which

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1/ Nancy Trump did not join in this appeal.

embraces lands in T. 20 S., R. 2 E., Fairbanks Meridian, Alaska, was located on October 6, 1979.

On November 16 and 17, 1978, the Secretary of the Interior withdrew all the lands in T. 20 S., R. 2 E., Fairbanks Meridian, Alaska, from location and entry under the mining laws, pursuant to Public Land Order Nos. (PLO's) 5653 and 5654, 2/ 43 FR 59756 (Dec. 21, 1978). The withdrawal was exercised by the Secretary under his emergency withdrawal authority, pursuant to section 204(e) of FLPMA, 43 U.S.C. § 1714(e) (1982). In PLO 5654 the Secretary stated:

I hereby determine that an emergency situation exists with respect to the national interest lands in Alaska and that extraordinary measures must be taken to preserve values that would otherwise be lost.

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Therefore, by virtue of the authority vested in me by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714(e), it is ordered as follows:

1. Subject to valid existing rights, the following described lands or interests in lands, including submerged lands, and waters owned or controlled by the United States within the boundaries depicted in this Order, are withdrawn from settlement, except lands excluded in sale, location, entry or selection under the operation of the public land laws, including but not limited to the mining laws (30 U.S.C. Chap. 2) and Section 6 of the Alaska Statehood Act, (72 Stat. 339) and are reserved and appropriated for the public purpose of preserving, protecting, and maintaining the resource values of said lands which would otherwise be lost . . . [Emphasis added.]

BLM, in its May 3, 1984, decision, stated "[b]ecause the subject lands have been closed to mineral entry since November 16, 1978, mining claims located since that date were invalid from their inception. Therefore, the BLACK JACK #3 placer mining claim is hereby declared to be null and void ab initio, and the recordation filing is rejected."

2/ This PLO remained in effect until Dec. 2, 1980, when it was rescinded by section 1322 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3209 (1982); 46 FR 19860 (Apr. 1, 1981). ANILCA reservations and withdrawals superseded prior reservations and withdrawals as to lands within the boundaries established by that Act or any conservation system unit, national conservation area, national recreation area, or national forest addition. 16 U.S.C. § 3209(a) (1982). On Sept. 13, 1982, the Secretary opened and classified certain lands including secs. 1 to 6 and secs. 8 to 17 and secs. 19 to 36 of T. 20 S., R. 2 E., Fairbanks Meridian to appropriation under the general mining laws, so long as the lands described were otherwise available. PLO 6329, 47 FR 39495 (Sept. 8, 1982). While this would apparently restore to entry the lands embraced by the BLACK JACK #3, this does not serve to validate the location. See David W. Harper, 74 I.D. 141 (1967).

In his May 22, 1984, statement of reasons for appeal, Stevens states that he has "filed in good faith and had no idea that the land was closed at the time of staking." In addition he says, "I could find no evidence that the ground was closed to mineral entry. I checked with the BLM office in Anchorage and with the State of Alaska."

[1] We affirm BLM's decision. A mining claim located on lands withdrawn from location is null and void ab initio, *i.e.*, without legal effect from the beginning. Howard J. Hunt, 80 IBLA 396, 398 (1984); Rick and Linda Anderson, 76 IBLA 212, 213 (1983); Thomas Stoelting, 70 IBLA 231, 234 (1983). On the date of the location of Black Jack #3, on October 6, 1979, the land embraced by that claim was withdrawn from entry and location under the mining laws, pursuant to the Secretary's November 16 and 17, 1978, emergency withdrawal orders. Consequently, BLM's decision to declare the claim null and void ab initio was proper, even though appellant located the claim in good faith.

[2] Appellant states that he has performed "assessment work each year at considerable expense." It appears Stevens is raising an estoppel defense to BLM's decision to declare the claim null and void -- *i.e.*, that he has reasonably relied to his detriment on the asserted failure of the Anchorage District Office, BLM, to note that the subject land was withdrawn by PLO's 5653 and 5654. Even if such is the case, there is no basis for an estoppel defense. Hallenbeck v. Kleppe, 590 F.2d 852, 855 (10th Cir. 1979). Estoppel does not lie because Stevens had constructive knowledge of the November 16 and 17 withdrawal orders, in that they were published in the Federal Register, and were, therefore, a matter of public record. 44 U.S.C. § 1507 (1982). Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947); Ronald R. Graham, 77 IBLA 174, 180 n.8 (1983); Barbara Payne, 73 IBLA 381, 382 (1983). Further, BLM is under no affirmative duty to mineral locators to promptly check the legal status of every claim filed by them and apprise such claimants of its conclusions. See 43 CFR 3833.5(f). Moreover, as a general rule, the Government holds the public lands in trust for all people, and is not to be deprived of this property by such defenses as laches and estoppel. Hallenbeck v. Kleppe, 590 F.2d at 855, citing United States v. California, 332 U.S. 19, 40 (1946); United States v. Weber Oil Co., 68 IBLA 37, 58, 89 I.D. 538, 549 (1982).

Therefore, 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.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Franklin D. Arness  
Administrative Judge

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James L. Burski  
Administrative Judge

