

COMINCO AMERICAN, INC.

IBLA 84-434

Decided December 27, 1984

Appeal from decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring mining claims null and void in part. F-23956 and F-23966.

Dismissed in part; reversed in part.

1. Mining Claims: Generally -- Mining Claims: Extralateral Rights -- Mining Claims: Lands Subject to -- Mining Claims: Lode Claims -- Mining Claims: Withdrawn Lands -- Public Lands: Classification -- Segregation

Where a lode mining claim is located partially on withdrawn land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands opened to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

APPEARANCES: Daniel P. Samson, Senior Surveyor, Cominco Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Cominco American, Inc. (Cominco), has appealed from the March 14, 1984, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), declaring the NOA No. 4261 (F-23956) and NOA No. 4361 (F-23966) lode mining claims null and void in part. These are two of a group of claims located by appellant in sec. 36, T. 32 N., R. 19 W., Kateel River Meridian, Alaska. BLM determined, however, that the two claims that are the subject of this appeal lie partially within sec. 31, T. 32 N., R. 18 W., which was withdrawn from mineral entry pursuant to 43 U.S.C. § 1616(d)(2) (1982) by Public Land Order No. (PLO) 5250, 37 FR 18730 (Sept. 15, 1972), which added that township to land withdrawn by PLO 5179, 37 FR 5579 (Mar. 16, 1972).

On November 9, 1984, Cominco filed a notice informing BLM that it had abandoned 16 claims in this group, including NOA No. 4261 (F-23956). Accordingly, this appeal is dismissed with respect to that claim. Appellant, however, did not abandon NOA No. 4361 (F-23966), so we will consider the merits of appellant's appeal with respect to that claim.

Appellant believes that the actual boundaries of the claims, as indicated by their monuments on the ground, may be located entirely within

T. 32 N., R. 19 W., which was not withdrawn from the location of metalliferous minerals. ^{1/} Appellant stated that it planned to perform a resurvey of the claims in question to determine their actual location. More than 7 months have passed since appellant filed this appeal, but no additional information concerning the boundary of the claims has been submitted. All that appellant filed was the notice abandoning one of these two claims. Therefore, for purposes of this appeal, we assume that some portion of the remaining claim does, in fact, overlap withdrawn land.

[1] Nevertheless, it was not proper for BLM to declare appellant's claims null and void in part. Recently a number of the Board's decisions have held that where a lode mining claim is located partially on withdrawn or patented land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claims across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim, although he obtains no rights to the surface or mineral in the withdrawn land. Western Nuclear, Inc., 82 IBLA 67 (1984), and cases cited therein. In Santa Fe Mining, Inc., 79 IBLA 48, 52 (1984), the Board stated: "BLM should simply discontinue its practice of attempting to adjudicate the validity of lode claims which lie partly on patented or withdrawn land on the sole basis of a notice of location filed for record pursuant to 43 U.S.C. § 1744 (1976)." The proper course of action to determine the validity of claims located in part on withdrawn or patented land is for BLM to initiate contest proceedings. Moise & Leon Berger, 82 IBLA 253 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed with respect to F-23956 and the decision below is reversed with respect to F-23966.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

^{1/} The land was withdrawn from location of claims for nonmetalliferous minerals by PLO 5418, 39 FR 11547 (Mar. 25, 1974), which added the township to land withdrawn by PLO 5180, 37 FR 5583 (Mar. 16, 1972), pursuant to the Pickett Act of June 25, 1910, as amended by the Act of August 24, 1912, ch. 369, 37 Stat. 497, repealed, section 704(a), P.L. 94-579, 90 Stat. 2792 (1976).

