

RAY L. VIRG-IN

IBLA 83-814

Decided January 17, 1985

Appeal from decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring null and void ab initio Virg-in I and Virg-in II placer mining claims, AA 30764 and AA 30765.

Reversed.

1. Mining Claims: Determination of Validity -- Mining Claims: Location  
-- Mining Claims: Withdrawn Land

A decision declaring a mining claim null and void ab initio will be reversed on appeal where convincing evidence in the record supports a finding that the claim was in fact located prior to withdrawal of the land from mining.

APPEARANCES: Ray L. Virg-in, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ray L. Virg-in appeals from a June 20, 1983, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), declaring his Virg-in I and Virg-in II placer mining claims, AA 30764 and AA 30765, respectively, null and void ab initio because the land embraced by the claims was not open to mineral entry on the date of location.

Virg-in's same mining claims were the subject of prior review by the Board of Land Appeals in Ray L. Virg-in, 33 IBLA 354 (1978). The BLM decision appealed from in that case followed an application for survey of the mining claims filed by Virg-in with BLM on March 25, 1977. The original certificates of location for the claims reviewed by BLM at that time were officially stamped by the local recording district as having been recorded on April 19, 1972. 1/ Both certificates expressly declared February 13, 1972, as the date of posting the notice of location. The claims are situated upon land withdrawn from mineral entry on December 18, 1971, by section 11 of the

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1/ Appellant contends in his statement of reasons for appeal that the certificate of location was mailed to the recording office on Feb. 16, 1972, and received by that office on Feb. 22, 1972. Although the date stamp indicates the certificate was not recorded until Apr. 19, 1972, the date stamp contains a dual marking for date of recording and date of filing with the latter crossed out to indicate Apr. 19 was not the date of filing. Appellant asserts that this long delay between filing and recording was not an uncommon practice at the time.

Alaska Native Claims Settlement Act, 43 U.S.C. § 1610 (1982). <sup>2/</sup> Because the specified date of location postdated the withdrawal, BLM declared the claims null and void. The Board affirmed that decision.

The present case was initiated by Virg-in when he filed copies of the recorded evidence of mining claim location for Virg-in I and Virg-in II with BLM on October 4, 1979, in an effort to comply with section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982). <sup>3/</sup> Included with each original certificate of location was an amended certificate which provides that the date of posting notice of location was November 26, 1971. Both amended certificates were stamped to reflect recording in the local recording office on October 3, 1979. Disregarding the amended certificates, BLM declared the claims null and void ab initio in its June 20, 1983, decision because "[t]he notices [certificates] state that the claims were located on February 13, 1972."

The principle of res judicata and its administrative counterpart, the doctrine of administrative finality, would, in the absence of compelling legal and equitable reasons, preclude further consideration of the status of the claims. Ida Mae Rose, 73 IBLA 97 (1983). However, the subsequent filing of the amended location certificates to correct the alleged error in the date of location raises the issue of whether amended location certificates, which purport to establish a location date prior to that reflected on the original location certificates and prior to the withdrawal, may preclude a finding that the claims are null and void from their inception. We think the issue is properly considered at this time.

Appellant asserts in his statement of reasons for appeal that the date for "posting" notice of location shown in the original certificates of location was in error. He alleges that he mistakenly assumed that "posting" the notice meant preparation of the certificate for recording, rather than the date of posting notice of location on the claims. <sup>4/</sup> Appellant contends that he filed the amended notices of location for the claims to show the correct date of location in November 1971. Sworn statements from various people who state that they were aware that appellant located the subject claims in the fall of 1971 have been submitted.

The "date of location" of a mining claim on public land is determined by reference to the law of the state in which the claim is located. 43 CFR 3833.0-5(h); Thomas Stoelting, 70 IBLA 231 (1983). Under Alaska law, the locator of a placer mining claim on the public domain is required to "post" on one of the posts or monuments marking the boundaries of the claim a sign or notice containing the name of the claim, the name of the locator(s), the date of location, and the number of feet in length and width claimed. Alaska Stat. § 27.10.040 (1962). In addition, the locator of a placer claim shall,

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<sup>2/</sup> The land is situated on Elephant Creek within an area described by protracted survey as SE 1/4 sec. 35, T. 21 N., R. 69 W., Seward Meridian. <sup>3/</sup> Under section 314 of the Act, 43 U.S.C. § 1744 (1982), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, was required to file with the proper BLM office on or before Oct. 22, 1979, a copy of the recorded notice or certificate of location.

<sup>4/</sup> The form location notice recorded by Virg-in contained the following sentence to be completed by the locator: "THE DATE OF POSTING THIS NOTICE IS \_\_\_\_\_."

within 90 days after "posting the notice of location on the claim," have the claim recorded by filing with the recorder of the recording district in which the claim is located a "certificate of location" containing, among other things, the date of discovery and of "posting the notice of location." Alaska Stat. § 27.10.050 (1962).

[1] Appellant has asserted that "on or about November 26, 1971, I had completed \* \* \* putting in corner posts \* \* \* and at that time posted on each claim's corner a location and claim notice" (Attachment H to statement of reasons). Based on this assertion and the supporting evidence, we find that the notice of location was in fact posted on the claims in November of 1971, contrary to the date reflected on the original recorded certificates of location. Under provision of statute in Alaska, where an error is made in the notice or certificate of location, an amended certificate of location may be filed for record in the same manner and with the same effect as the original certificate. Alaska Stat. § 27.10.070 (1962). This is what appellant did by filing amended location certificates reflecting the posting of location notices on the claims on November 26, 1971. An amended certificate of location made to cure obvious defects in the original certificate without including any new ground will relate back to the original location. See R. Gail Tibbetts, 43 IBLA 210, 217-18, 86 I.D. 538, 542 (1979); G. Reeves, Amendment v. Relocation, 14 Rocky Mtn. Min. Law Inst. 207, 212-13 (1968). Where an appellant presents convincing evidence that the acts required to effect a location of a mining claim were accomplished prior to the date shown on the original certificate of location and files an amended location certificate to reflect the correct date of location, which date precedes withdrawal of the land from entry under the mining law, a decision declaring the claim null and void ab initio will be reversed.

This case is properly distinguished from Thomas Stoelting, supra, where claimants failed to perform those acts necessary to locate a mining claim under state law, specifically, filing for recordation within the statutory time period for recordation. The record indicates appellant's claims were filed for recordation within 90 days of the November 26, 1971, date of posting location notices. While we are not unmindful of the risk of fraud by a locator filing an amended location certificate to establish location prior to a withdrawal, where convincing evidence is presented that a location was consummated prior to withdrawal, a decision declaring such a claim null and void ab initio is properly reversed. See United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971).

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 reversed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

R. W. Mullen

Administrative Judge.

