

TIMBERLINE MINING CO.

IBLA 84-642

Decided June 24, 1985

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring a lode mining claim null and void ab initio in part. AA 34108

Reversed.

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Mining Claims: Extralateral Rights -- Mining Claims: Lands Subject to -- Mining Claims: Lode Claims -- Mining Claims: Withdrawn Land -- Public Lands: Classification -- Segregation

Where a lode mining claim is located partially on withdrawn or patented land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extra-lateral rights to lodes or veins which apex within the claim.

APPEARANCES: Dan K. Coffey, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Timberline Mining Co., Inc. (Timberline), appeals from the April 19, 1984, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring appellant's Iris Lode No. 1 mining claim null and void ab initio, in part, because it was located on land segregated from mineral entry.

The mining claim was shown by claimant to be located in part in protracted sec. 18, T. 20 S., R. 2 E., Fairbanks Meridian, on October 16, 1976, and filed for recordation with BLM on October 19, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). In its April 1984 decision, BLM declared appellant's mining claim null and void ab initio in part, stating:

On December 18, 1975, Sections 7 and 18, T. 20 S., R. 2 E., Fairbanks Meridian were selected by AA-11127 (Historical Place) of the Alaska Native Claims Settlement Act [ANCSA; 43 U.S.C. 1613(h)]. The selection segregated the lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws.

In its statement of reasons for appeal, Timberline asserts that the Iris Lode No. 1 does not lie within sec. 18, T. 20 S., R. 2 E., Fairbanks Meridian, nor, appellant contends, does it lie within any other areas selected under the Alaska Native Claims Settlement Act. Appellant however has not submitted any documentation which would establish that the Iris Lode No. 1 does not in fact lie in part within sec. 18 as stated by BLM. The case file includes a map filed with BLM for recordation in 1979, which indicates that a portion of the claim does lie within sec. 18. The applicable BLM status plat shows that secs. 7 and 18 were included in historical place application AA 11127.

[1] It is well established that mining claims wholly located on lands which were segregated and closed to entry under the general mining laws are properly null and void ab initio. O. Glenn Oliver, 69 IBLA 73 (1982). We have indicated recently, however, that the validity of a lode mining claim located partially on withdrawn or patented lands depends on whether the claim is supported by a discovery on lands open to mineral location. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across patented or withdrawn land to define the extra-lateral rights to lodes or veins which apex within the claim, although he will not have any rights to the surface of these lands, and, depending on the circumstances, may or may not have any mineral rights in the subsurface of such land. Santa Fe Mining, Inc., 79 IBLA 48, 52 (1984). ^{1/} Because the location of a discovery is a matter of fact that cannot be determined by reference to the "discovery point" on a notice of location filed in accordance with 43 U.S.C. § 1744 (1982), we have suggested that BLM not attempt to adjudicate the validity of such lode claims except in the context of a mining claim contest, and have reversed the BLM decisions declaring portions of lode claims located on withdrawn or patented lands null and void ab initio. Amoco Minerals Co., 81 IBLA 23 (1984); Anthony Juskiewicz, 79 IBLA 267 (1984); Marilyn Dutton Hansen, 79 IBLA 214 (1984); Santa Fe Mining, Inc., *supra*. Accordingly, to the extent that a portion of the Iris Lode No. 1 claim lies within an area closed to mineral entry BLM improperly declared the claim null and void ab initio in part.

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 reversed.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge.

^{1/} This is so even if the discovery point described in the location notice is on withdrawn land. As long as there is an actual discovery somewhere on the portion of the claim open to mineral entry, it does not matter where the discovery point described in the location notice is. See generally Lindley on Mines § 338 (3d ed. 1914). Cf. Morrison's Mining Rights (16th ed. 1936) 32.

