

DONALD R. ROWLEY
MOHAWK OIL & GAS INC.

IBLA 84-892

Decided October 29, 1985

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, declaring eight lode mining claims null and void in part. F-59848, et al.

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Claims: Extralateral Rights--Mining Claims: Lands Subject to--Mining Claims: Lode Claims--Mining Claims: Withdrawn Land--Public Lands: Classification--Segregation

Where the exterior boundaries of a lode mining claim extend onto withdrawn land, that portion of the claim on withdrawn land is not null and void ab initio. A locator of a lode mining claim whose discovery is on land open to location may extend the end lines and side lines of his claim onto withdrawn land in order to define the extralateral rights to lodes and veins which apex within the claim.

APPEARANCES: Robert A. Bassett, Esq., Anchorage, Alaska, for appellants.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Donald R. Rowley and Mohawk Oil and Gas, Inc., appeal the August 1, 1984, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring eight mining claims 1/ null and void ab initio in part because the claims were located partly on land segregated from location and entry by

<u>1/ BLM Serial Number</u>	<u>Claim Name</u>	<u>Location Date</u>
F-59848	ARCTIC #2	July 24, 1963
F-59849	ARCTIC #3	July 24, 1963
F-59853	SILVERSMITH # 1	March 17, 1964
F-59854	SILVERSMITH # 2	March 17, 1964
F-59855	SILVERSMITH # 3	March 17, 1964
F-59856	LILLIAN B. #1	June 22, 1965
F-59857	LILLIAN B. #2	June 22, 1965
F-59860	Shumeff & Rowley (S. & R. #2)	June 18, 1965

Alaska state land selection F-024507. The decision also purported to reject the mining claim recordation documents in part.

On November 30, 1959, and December 21, 1960, the State of Alaska selected land in secs. 9 and 10, T. 2 N., R. 1 E., Fairbanks Meridian, pursuant to section 6(b) of the Act of July 7, 1958, 72 Stat. 340. The subject mining claims were located at various dates between July 1963 and June 1965.

BLM declared the claims null and void ab initio in part because "portions of the subject lands have been closed to mineral entry under Federal law since December 21, 1960." BLM cited 43 CFR 2627.4(b) which states that land selected by the State will be segregated from all subsequent appropriations based upon application or settlement and location, including locations under the mining laws.

Appellants admit the mining claims in question are located in a manner that the exterior boundaries of the claims are partly within lands described by the State selection. However, appellants state BLM failed to identify or describe the location of the "portions of the subject lands" which are null and void ab initio. Since appellants cannot determine from the BLM decision which portions of their claims are null and void ab initio, they request the Board set aside the BLM decision and remand the case to BLM for clarification. 2/

[1] Mining claims lying entirely within lands segregated and closed to entry under the general mining laws are null and void ab initio. Thomas C. Bay, 87 IBLA 194 (1985). However, the validity of a lode mining claim located partially on withdrawn land depends on whether the claim is supported by a discovery on land open to mineral location. Timberline Mining Co., 87 IBLA 264 (1985). The end lines and side lines of a claim whose discovery is on land open to location may be extended onto withdrawn land in order to define the extralateral rights to lodes or veins which apex within the claim. Notwithstanding this right, a claimant will not have any rights to the surface of the previously appropriated or withdrawn lands, and, except for previously located mining claims, will not acquire mineral rights in the subsurface of such land by reason of the location. Santa Fe Mining, Inc., 79 IBLA 48, 52 (1984).

The claim remains valid in its entirety as long as there is an actual discovery somewhere on that portion of the claim open to mineral entry, even if the discovery-point described in the location notice is on withdrawn land. Western Nuclear, Inc., 82 IBLA 67 (1984). The location of a discovery is a matter of fact that cannot be determined by reference to a "discovery point" described on a notice of location filed in accordance with 43 U.S.C. § 1744 (1982).

2/ The owner of a mining claim has the burden of determining the location of the claim as it relates to other property rights. Therefore, the burden of establishing the location of that portion of the claims not within the withdrawn lands, which are described by legal subdivision, is on the claimant.

Where lode mining claims are situated in part on withdrawn land BLM should not attempt to adjudicate the validity of any part of those claims except in a mining claim contest. Amoco Minerals Co., 81 IBLA 23 (1984). For this reason we reverse BLM's decision declaring portions of the subject claims located on withdrawn land null and void ab initio. See Western Nuclear Inc., supra and cases cited therein. We further find that, since the mining claims should not have been declared null and void ab initio in part, it was also improper for BLM to have rejected the mining claim recordation filings in part. 3/ If necessary, appellants may resubmit the requisite filings previously rejected. Filings for 1985 should also be filed on or before December 30, 1985. See United States v. Locke, 105 S. Ct. 1785 (1985).

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.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

3/ It is difficult to imagine how a mining claim recordation document can be rejected in part.

