

ED BILDERBACK ET AL.

IBLA 84-839

Decided November 6, 1985

Appeal from decision by Anchorage District Office, Alaska, Bureau of Land Management, declaring placer mining claims null and void and rejecting mining claim assessment affidavits for filing. AA-18452 through AA-18467.

Reversed in part, affirmed in part.

1. Alaska National Interest Lands Conservation Act: Generally--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Unpatented mining claims located upon land tentatively approved for conveyance to the State of Alaska were legislatively conveyed to the State by sec. 906 of the Alaska National Interest Lands Conservation Act, and consequently the Department may no longer adjudicate the claims. Since sec. 314 of the Federal Land Policy and Management Act of 1976 applies only to public lands of the United States, the filing and recording requirements of sec. 314 do not apply to such legislatively conveyed lands, and the statutory filing requirements may not be relied upon to invalidate or otherwise determine the status of unpatented mining claims located on such conveyed lands.

APPEARANCES: Neil T. O'Donnell, Esq., Anchorage, Alaska, for appellants; Dennis J. Hopewell, Esq., Office of Alaska Regional Solicitor, U.S. Department of the Interior, for appellee.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Ed Bilderback, Bob Dettinger, Ethel Johnson, and Knute Johnson appeal from a July 25, 1984, decision of the Anchorage District Office, Bureau of Land Management (BLM), declaring null and void 16 unpatented placer mining claims. 1/ These claims were located between May 2, 1954, and

1/ The 16 claims are described as follows:

<u>BLM Serial No.</u>	<u>Claim</u>	<u>Location Date</u>	<u>Locator</u>
AA-18452	White River Placer's No. 1	9/16/60	C. R. Bilderback
AA-18453	B. B. Association No. 5	7/21/57	C. R. Bilderback
	A. B. Bilderback		
AA-18454	Salmon River No. 2	7/14/57	C. R. Bilderback
AA-18455	Salmon River No. 1	5/20/57	C. R. Bilderback

September 16, 1960, along the White River in protracted T. 21 S., R. 19 E., Copper River Meridian, Alaska. On December 31, 1963, the State of Alaska selected the land for conveyance to the State under provision of the Alaska Statehood Act. Tentative approval of this State selection was granted by BLM on September 18, 1964. Appellants filed mining claim assessment affidavits with BLM on July 21, 1978, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, (FLPMA) 43 U.S.C. § 1744(b) (1982). On July 25, 1984, BLM rejected appellants' affidavits and declared all 16 claims invalid because they were not located upon lands of the United States. The decision explains:

Title left the United States with the granting of tentative approval, as confirmed by Sec. 906(c) of ANILCA, and this Department no longer has any jurisdiction or authority over the lands, Harry J. Pike, 67 IBLA 100 (1982); Silver Spot Metals, Inc., 51 IBLA 212 (1980); Everett E. Tibbetts, 61 ID 397 (1954). Therefore, due to lack of Federal jurisdiction of the lands, the placer mining claims are hereby rejected. The BLM case files will be closed when this decision becomes final.

BLM Decision dated July 25, 1984, at 1.

On appeal, the mining claimants contend they nonetheless are entitled to the protection of the Federal mining laws, having made the filings required by FLPMA section 314. They argue the uncertainty which the BLM decision creates concerning the status of their claims encourages other miners to jump their claims. Appellants therefore seek a declaration they are entitled to retain their claims of priority and their rights under the Federal mining law.

fn. 1 (continued)

AA-18456	B. B. Association Claim No. 3	6/11/57	Ed Bilderback C. R. Bilderback
AA-18457	B. B. Association Claim No. 2	4/30/57	Ed Bilderback C. R. Bilderback
AA-18458	B. B. Association Claim No. 1	4/29/57	Ed Bilderback C. R. Bilderback
AA-18459	P. D. Association Claim No. 1	4/29/57	Bob Dettinger Harold Pernula
AA-18460	B. J. Associaton Claim No. 1	5/2/54	C. R. Bilderback Knut A. Johnson
AA-18461	D. B. Association Claim No. 1	5/3/54	Ed Bilderback Bob Dettinger
AA-18462	Windy No. 2	8/18/57	C. R. Bilderback
AA-18463	Windy No. 1	5/18/57	C. R. Bilderback
AA-18464	Maiden Creek No. 1	8/18/57	C. R. Bilderback
AA-18465	D. B. Association Claim No. 2	5/3/57	Ed Bilderback Bob Dettinger
AA-18466	B. B. Association Claim No. 4	6/12/57	Ed Bilderback C. R. Bilderback
AA-18467	Glacier No. 1	9/21/57	C. R. Bilderback

[1] While it is apparent BLM lacked jurisdiction to declare appellants' mining claims void, it does not follow that the agency may not reject appellants' documents. BLM need not continue to accept annual assessment documents from appellants since appellants are no longer required to comply with provisions of section 314 of FLPMA, 43 U.S.C. § 1744 (1982). The Department no longer has authority to affect title to the land at issue in this appeal, which was legislatively conveyed to Alaska by the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1635(c) (1982). See, Terry L. Wilson, 85 IBLA 206, 92 I.D. 109 (1985); State of Alaska v. Thorson, (On Reconsideration), 83 IBLA 237, 91 I.D. 331 (1984). Consequently, the decision of the Anchorage District Office should be modified to show that, while the mining claim assessment affidavits offered for filing with BLM by appellants were properly rejected, the Department lacks authority to adjudicate the validity of their claims and may not, therefore, declare them void.

Since the land sought to be claimed by appellants is located upon land which was conveyed to the State of Alaska including, according to State of Alaska v. Thorson, supra, whatever valid existing rights may have been claimed by appellants in the land, the land is no longer part of the public lands of the United States. The concept of "public lands" is important when considering applications required by FLPMA provisions since the statute, by its own definitions, is limited to operation upon the "public lands." See 43 U.S.C. § 1701 (1982). "Public lands," as defined by the Act, means "any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management" 43 U.S.C. § 1702(e). Although the provision of FLPMA dealing with mining claim recordation, section 314 of the Act, 43 U.S.C. § 1744 (1982), does not repeat the limitation stated by section 102, to the effect that the Act applies to public lands only, the legislative history of FLPMA leaves little doubt that this is, in fact, what is intended by the law. Thus, the Senate Report of S. 507, the Senate bill later enacted into law as FLPMA, declares the purpose of the bill's recordation provision, substantially similar to the section finally enacted, is to "advise the Federal land managing agency, as proprietor, of the existence of mining claims." S. Rep. No. 583, 94th Cong. 1st Sess. 65. The report precedes this conclusion with the observation that a Federal recordation provision is needed precisely because of the failure of the 1872 mining law to provide for recording of mining claims with the Federal agency having responsibility for land management, and that "[c]onsequently, Federal land managers do not have an easy way of discovering which Federal lands are subject to either valid or invalid mining claim locations." Id. at 65. 2/ Certainly, therefore, the provisions of FLPMA requiring the recording of mining claims affect public lands only. Because this is

2/ Cf. United States v. Locke, 105 S. Ct. 1785 (1985), where the Court's opinion observes, concerning FLPMA, that the purpose of the filing provision is "to rid federal lands of stale mining claims and to provide for centralized collection by federal land managers of comprehensive and up-to-date information on the status of recorded but unpatented mining claims." Id. at 1798. Cf. also the dissenting opinion of Justice Stevens, at 1806, to the effect the Act is designed to enable Federal planners "to cope with the problem of stale claims."

so, there is no need, nor any basis in law, for extending the operation of the statute to claimants of mining claims located on public lands which have subsequently passed out of Federal control.

The question of the duty owed by the Department to retain some degree of jurisdiction over mining claim locations upon lands in Alaska which were to be conveyed out of public ownership was considered, in a different context, in two prior decisions of this Board; Doyon, Limited, 74 IBLA 139, 90 I.D. 289 (1983), and Doyon, Limited, 75 IBLA 65 (1983). The Doyon decisions were the result of a claim by Doyon, a Native corporation, that the Department owed the corporation a duty to identify and adjudicate unpatented mining claims located upon lands selected by the corporation for conveyance pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613 (1982). The Board rejected this contention which was predicated upon the theory that "valid existing rights" were required to be identified pursuant to section 14(g) of ANCSA, 43 U.S.C. § 1613(g) (1982), stating:

In order for a mining claim to constitute a valid existing right, it must be established that a mining claim not only was located prior to the date of the withdrawal and maintained in accordance with the requirements of the mining laws, it must also be established that a valuable mineral deposit had been discovered on the claim prior to the withdrawal. See United States v. Beckley, 66 IBLA 357 (1982). It would be improper to identify a mining claim as a valid existing right unless the issue of discovery of a valuable mineral deposit is fully adjudicated. Since the court in Alaska Miners, *supra*, held that the Department is not required to adjudicate the validity of mining claims, it necessarily follows that the Department cannot be required to identify them as valid existing rights in the absence of proof of a discovery of a valuable mineral deposit.

Appellant's contention that section 22(c) [of ANCSA] requires identification of unpatented mining claims is incorrect for the same reasons. That section protects possessory rights arising only from valid mining claims initiated before August 31, 1971, so a claim cannot be identified as protected by section 22(c) without adjudication of its validity. Since the Department is not required to adjudicate the validity of mining claims on lands conveyed to a regional corporation, there is no basis for identifying them in a conveyance.

Doyon, Limited, 74 IBLA at 148, 149, 90 I.D. 294, 295.

The Alaska Miners opinion, referred to by the Doyon decision quoted, Alaska Miners v. Andrus, 662 F.2d 577 (9th Cir. 1981), had already established that the Department was not empowered, under ANCSA, to retain, for purposes of adjudication, unpatented mining claims located upon lands selected for conveyance. Id. at 579. In so holding, the court rejected as "unsound" the argument "that a valid location of a mining claim segregates that area of the claim from the public domain." Id. at 579.

Conveyances in Alaska made pursuant to ANCSA and ANILCA permit the conveyance of lands out of Federal ownership with whatever "valid existing rights" may have attached to the land prior to conveyance. The Department is no longer required by these two Acts of Congress to adjudicate unpatented mining claims located upon Native selections for purposes of preparation of patent documents (the two Doyon cases). Further, it cannot adjudicate the validity of Native allotment applications located upon lands legislatively conveyed to Alaska under ANILCA (Thorson, supra). Nor can it adjudicate homestead entries which conflict with ANILCA conveyances (Wilson, supra). It is, therefore, logically impossible in this case to find a legal basis which will permit BLM to accept filings for these unpatented mining claims to protect rights acquired under the mining law with a view to eventual issuance of a Federal patent. These lands have now passed out of Federal ownership and control.

The Department has not, in cases involving conveyances in Alaska, taken the position that claims of valid existing rights which conflict with conveyances under ANCSA and ANILCA are extinguished; rather, it takes no position concerning such claims once the land is conveyed. While there may be exceptions to the Departmental position generally, as pointed out by both the Thorson and Wilson decisions, the approach taken by current policy is that, following conveyance, the Department does not act to retain any vestige of jurisdiction over claims of valid existing rights, and will not afford a forum in which such claims may be decided. See Wilson, supra at 215, 92 I.D. at 115.

This should work no hardship on claimants. While they cannot claim any benefit from the recordation and filing provisions of FLPMA section 314, it also follows they are not subject to any detriment as a result of the legislative conveyance of their unpatented claims. Noncompliance with section 314 cannot, therefore, be used to invalidate these claims if later it should be made to appear, for example, that through administrative error the land in Township 21 South was not approved in 1964 and was, as a result, not legislatively conveyed.

Should others attempt to usurp appellants claims, it might be properly observed that where the land claimed is no longer public land, in cases involving private contests between mining claimants, rival claimants may not use BLM records to invalidate one another's claims. Moreover, where there are disputes between claimants over possession of a claim, such disputes are properly brought for adjudication on their merits before a court rather than before the Department.

Whether that rule should have any application here, however, need not concern the Board. Because the Department no longer may provide a forum for the resolution of these issues in this case, it is not necessary to speculate upon what form the resolution of the arguments raised by appellants may take. Current Departmental policy clearly requires that, because the land with which this appeal is concerned has been conveyed out of public ownership, there can be no further Federal adjudication or action taken with respect to the land. Specifically, this means the claims' validity may not be determined and the

miners' annual assessment work affidavits cannot be accepted for filing under section 314 of FLPMA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, that part of the July 25, 1984 decision which declared appellants' claims invalid is reversed; the rejection of appellants' affidavits by BLM is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

ADMINISTRATIVE JUDGE MULLEN CONCURRING:

Although I have little problem with the rationale expressed in the majority opinion, I do find it necessary to comment further regarding the nature of the "valid existing rights" a mining claimant may possess as a result of owning a valid mining claim on lands conveyed to the state. These valid existing rights exist by reason of the ownership of a valid mining claim located and maintained under the general mining laws, commonly referred to as the 1872 mining laws (30 U.S.C. § 21 (1982)). As such, the rights include the right to apply for a patent under the provisions of the 1872 mining laws and, if the statutory requirements are met, receive a patent from the Federal Government.

The recognition of the existence of the unique rights afforded under the 1872 mining laws is important. The conveyance to the state in this case was specifically subject to these rights which continue, even though the Federal Government has not retained jurisdiction over the lands. Certain of the rights resulting from ownership of a valid claim cannot be obtained from the state (such as the right of a lode mining claimant to follow a vein apexing within the boundaries of his claim outside the vertical boundaries, commonly referred to as extralateral rights) and, unless there is some means by which these unique rights can be retained and exercised, the specific reference to the conveyance to the state being subject to valid existing rights is meaningless. ^{1/} In order to retain and exercise the rights peculiar to mining claims located under the 1872 mining laws, it may be necessary to acquire title to the land through Federal action. In light of the cases relied upon in the majority opinion it is logical to ask how might this be done?

An indication of the means for accomplishing this task is found in early cases. It is clearly recognized that, if the government has an obligation to an individual which cannot be fulfilled unless the individual recovers title, it is appropriate to set aside a patent or other conveyance. See United States v. Minnesota, 181 U.S. 175 (1926); Cramer et al. v. United States, 261 U.S. 219 (1923); United States v. Beebe, 127 U.S. 338 (1888); United States v. San Jacinto Tin Co., 125 U.S. 373 (1877); East Omaha Land Co., 21 L.D. 179 (1895); Santa Fe Pacific R.R. Co. v. Northern Pacific R.R. Co., 37 L.D. 673; Heirs of C. H. Creciat, 40 I.D. 623 (1912). Thus, for example, a claimant, after obtaining a judicial determination that the claim is a valid existing right contemplated by the Act, could apply for a patent to the claim. If the Department were to then reject the application because the lands were no longer owned by the Federal Government, a claimant could properly seek a court order directing the Government to set aside the conveyance to the state to the extent the conveyance conflicts with the claim.

R. W. Mullen
Administrative Judge

^{1/} I know of no way extralateral rights could be retained if a claimant were merely to get a deed to the lands covered by a claim from the state.

