

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, declaring four placer mining claims null and void ab initio and rejecting recordation filings. AA 16682, AA 24355 through AA 24357.

Set aside and remanded.

1. Alaska: Alaska Native Claims Settlement Act--Alaska Native Claims Settlement Act: Native Land Selections: Regional Selections: Generally--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Regional Corporation Selections

The "notation" or "tract book" rule may not be invoked to attribute a segregative effect to a regional corporation selection filed under authority of sec. 12(a)(1) or 12(c)(3) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611(a)(1), (c)(3) (1982), and utilized as a basis for declaring mining claims null and void ab initio, where the implementing regulations of the Department do not provide that the filing of such a selection application segregates the land from other appropriation.

2. Alaska Native Claims Settlement Act: Native Land Selections: Regional Selections: Generally--Mining Claims: Lands Subject to--Regional Corporation Selections

Pursuant to 43 CFR 2653.2(d), the filing of a Native regional corporation selection under sec. 14 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613 (1982), segregates the selected land from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws. The segregative effect of such an application terminates upon final rejection of the application.

3. Alaska Native Claims Settlement Act: Native Land Selections: Regional Selections: Generally--Mining Claims: Lands Subject to--Regional Corporation Selections

When it is not clear whether a regional corporation selection was made only under sec. 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611 (1982), or under the authority of both sec. 12 and sec. 14, 43 U.S.C. § 1613 (1982) of that Act, a BLM decision declaring certain mining claims null and void ab initio because notation of the selection on the public land records had segregated the land from mining location may be set aside and the case remanded for a determination of the statutory basis for the selection.

APPEARANCES: Maurice E. DeBoer, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Maurice E. DeBoer appeals the January 11, 1985, decision of the Anchorage District Office, Bureau of Land Management (BLM), declaring four placer mining claims null and void ab initio. The claims are the Timberline #1 (AA 24355), Timberline #2 (AA 24356), and the Old Channel #1 (AA 24357), each located on September 29, 1978, and the Stetson #1 (AA 16682), located on February 27, 1978. Location notices for all four claims were filed with BLM for recordation in 1978, pursuant to section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982). The claims are located within an area encompassed by protracted T. 4 N., R. 3 W., Seward Meridian, Alaska. BLM declared the claims null and void ab initio because they were located on land segregated from location under the mining laws by land selection applications filed by Cook Inlet Region, Inc. (CIRI), a Native regional corporation created pursuant to section 7(a) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1606(a) (1982).

According to BLM, regional selection applications AA 8098-36 and AA 11153-21 were filed by CIRI on December 16 and 18, 1975, respectively. The record contains a Master Title Plat (MTP), dated March 27, 1978, noting applications AA 8098-36 and AA 11153-21. Each application covers all of protracted T. 4 N., R. 3 W., Seward Meridian, Alaska.

BLM stated application AA 11153-21 was rejected on July 5, 1978, and AA 8098-36 was relinquished on February 13, 1981. BLM concluded that although both selection applications were invalid, at the time the claims were located the land described in the applications was segregated, pursuant to the "notation rule," from location under the mining laws. BLM stated in the January 11, 1985, decision:

[U]nder the "notation rule" when the official records of the BLM have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible right in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that

the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious. Paiute Oil and Mining Corporation, 67 IBLA 17 (1982), John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration) 59 IBLA 364 (1981). [1/]

BLM correctly recites the notation rule. However, in cases issued following the BLM decision appealed herein, we have held not all Native regional corporation selections segregate the applied for land. Basil S. Bolstridge, 90 IBLA 54, 55 (1985); David Cavanagh, 89 IBLA 285, 302-03, 92 I.D. 564, 574 (1985). See also David D. Beal, 90 IBLA 87, 89 (1985).

[1] Regional corporation selections filed pursuant to section 12(a)(1) of ANCSA, 43 U.S.C. § 1611(a)(1), or section 12(c)(3), 43 U.S.C. § 1611(c)(3) (1982), do not segregate the land. Basil S. Bolstridge, 90 IBLA at 56. We described section 12 regional corporation selections in Bolstridge:

ANCSA provides for the selection and conveyance of lands to Native regional corporations in three separate ways. Section 12(a)(1) * * * entitles regional corporations to select the subsurface estate of certain lands withdrawn for selection by section 11(a) of the Act (43 U.S.C. § 1610(a) (1982)) when a village corporation within the region selects the surface estate to lands within the National Wildlife Refuge System or Naval Petroleum Reserve Number 4. Section 12(c)(3) * * * is the principal selection authority for regional corporations. It provides:

(3) Before the end of the fourth year after the date of enactment of this Act, each Regional Corporation shall select the acreage allocated to it from the lands within the region withdrawn pursuant to subsection 11(a)(1), and from the lands within the region withdrawn pursuant to subsection 11(a)(3) to the extent lands withdrawn pursuant to subsection 11(a)(1) are not sufficient to satisfy its allocation: Provided, That within the lands withdrawn by subsection 11(a)(1) the Regional Corporation may select only even numbered townships in even numbered ranges, and only odd numbered townships in odd numbered ranges.

90 IBLA at 55-56.

1/ We assume because BLM made no mention of ANCSA withdrawals in this case that the regional selection applications described lands other than those withdrawn pursuant to section 11(a) of ANCSA, 43 U.S.C. § 1610 (1982).

Neither section 12 of ANCSA nor its implementing regulations at 43 CFR Subpart 2652 provide that regional corporation applications thereunder segregate the land. Thus, the filing of a section 12 application does not segregate the land. In addition, noting the selection on the public land records does not segregate the land because there is no basis for the notation rule to operate. David Cavanagh, 89 IBLA at 303, 92 I.D. at 574.

[2] However, a regional corporation selection filed under section 14(h) of ANCSA, 43 U.S.C. § 1613(h) (1982), does segregate the land. Section 14(h) authorizes Native regional corporations, among others,

to obtain title to lands withdrawn by the Secretary from 2 million acres of unreserved and unappropriated lands located outside the areas withdrawn by sections 11 and 16 of the Act. Thus, section 14(h)(1) authorizes the Secretary to withdraw and convey to regional corporations fee title to existing cemetery sites and historical places. Under section 14(h)(2)(3) and (5), regional corporations are eligible to receive the subsurface estate to lands withdrawn and conveyed by the Secretary to Native groups and to individual Natives as primary places of residence. And, under section 14(h)(8), regional corporations are entitled to portions of the 2 million acres withdrawn by the Secretary under section 14 that remain unconveyed under other subsections. The Department's implementing regulations for the above are set forth at 43 CFR Part 2650, Subpart 2653, entitled Miscellaneous Selections. These regulations contain a provision expressly segregating the lands applied for under section 14(h) "from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws." 43 CFR 2653.2(d). [Emphasis in original.]

Basil S. Bolstridge, 90 IBLA at 56. The segregative effect of such an application would terminate upon its final rejection.

[3] In Bolstridge we held the notation rule cannot operate independently to segregate the land, when it is impossible to discern from the public land status records which section of ANCSA, section 12(a)(1), 12(c), or 14(h), constitutes authority for a regional selection. 90 IBLA at 57. If, however, the public land records do not disclose the authority for the regional selection, but the selection was, in fact, made under section 14(h), the land would be segregated pursuant to 43 CFR 2653.2(d), but not under the notation rule. Id. at 58. Our holding in Bolstridge is based upon Judge Burski's separate concurring opinion in Cavanagh, wherein he analyzed the notation rule vis-a-vis public land records which do not reflect the statutory basis for regional selections. Judge Burski stated:

To my knowledge, the regulations promulgated for regional selections are the first that have ever treated some selections as segregating the land and others of the same type as not resulting in a segregation. The problem that arises is that in the

absence of a notation on the status entries relating to the statutory basis for the regional selection it becomes impossible to determine whether or not the selection segregates the land from subsequent appropriation. In my view, the notation rule simply cannot apply in such circumstances.

I have already noted my agreement with the majority that a conflict in notations removes the basis for the application of the notation rule, which is that the public has a right to rely on the status records of the Department, even when they are erroneous. Thus, when the records conflict, the notation rule cannot operate to independently foreclose an appropriation not substantively foreclosed, since the factual premise of the rule, viz., that the records put people on clear notice, cannot be shown to exist. Similarly, with respect to regional selections, where the status records fail to note the statutory basis of the selection there is no reason to impute knowledge to all subsequent appropriators that the application segregates since it may or may not. Thus, I would hold that absent identification of the statutory basis for the regional selection on the status records, there is no basis for invoking the notation rule.

It may be that the application was, in fact, made under section 14(h) of ANCSA. In such a case, the land might well be deemed not to be available, but this would result from the substantive segregation effected by 43 CFR 2653.2(d), not the notation rule. An individual who proceeds to initiate an appropriation of land in the face of conflicting notations runs the risk that the attempted appropriation may be defeated if, in fact, the land is actually withdrawn or segregated. So, too, an individual who attempts to initiate rights in lands embraced on a regional selection faces the prospect that, should it be ultimately determined that the land was sought under section 14(h) of ANCSA and that such applications do, indeed, segregate the land, all of his efforts will avail him nothing. But it is the actual segregation effected by the selection which will defeat him and not its notation on the status records. [Emphasis in original.]

David Cavanagh, 89 IBLA at 309-10, 92 I.D. at 577-78.

The statutory basis for the regional corporation selections determines whether the filing of such an application segregates the land and, therefore, determines whether or not mining claims located during the pendency of the applications are null and void ab initio. In this case the notation on the MTP does not reveal the authority for CIRI's applications, however, the case file abstract classifies both selections as "265200 Regional Selections." Applications filed pursuant to 43 CFR Subpart 2652 are section 12 selections under ANCSA. See 43 U.S.C. § 1611 (1982). Therefore, based on the record

before us, it would appear both regional corporation selections were made exclusively pursuant to section 12 of ANCSA, resulting in no segregation of the land embraced by the subject mining claims.

However, in Bolstridge, which also involved CIRI applications AA 8098-36 and AA 11153-21, we determined AA 8098-36 was filed under section 12 of the Act and AA 11153-21 was filed under both sections 12 and 14 of ANCSA. Basil S. Bolstridge, 90 IBLA at 56, 57. We stated therein:

Based on documents of record in Cavanagh, we found the foregoing CIRI selection [AA 8098-36] to have been filed under section 12 of the Act. We take official notice of that fact in this adjudication. Selection application AA-11153-21 has also been the subject of prior adjudication. By decision dated December 27, 1978, the Alaska Native Claims Appeals Board affirmed BLM's rejection of this CIRI selection, which the decision explains was filed under both section 12 and 14 of ANCSA. AN CAB # RLS 78-2.

90 IBLA at 56, 57.

Each of CIRI's applications affects all the land on which the four mining claims in question are located. Therefore, if AA 11153-21 were filed under both sections 12 and 14 of ANCSA, pursuant to 43 CFR 2653.2(d) all the land embraced by these mining claims would have been segregated until the application was finally rejected by the Alaska Native Claims Appeals Board on December 27, 1978. Accordingly, the mining claims herein, which were all located prior to that date, would be null and void ab initio.

Nevertheless, in light of the discrepancy between this record and the records referenced in Bolstridge, with respect to which section or sections of ANCSA constitute authority for regional corporation selection AA 11153-21, we set aside BLM's decision and remand the case file for a correct determination of the statutory authority for that selection and action consistent with the law set forth herein. 2/

2/ We note DeBoer argued BLM should be estopped from declaring the claims null and void ab initio because BLM failed to notify him within a reasonable time of the segregation and the status of the claims. That argument is without basis. 43 CFR 3833.5(f) expressly provides that:

"Failure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law." BLM has no duty immediately to determine the legal status of every claim filed for recordation and to notify claimants of its conclusions. Hugh B. Fate, 86 IBLA 215, 227 (1985); Mac A. Stevens, 84 IBLA 124, 126 (1984).

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 set aside and remanded.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

