

RODNEY D. JACKSON
VERNON E. GRIFFIN

IBLA 85-193
85-194

Decided May 28, 1986

Appeals from decisions of the Anchorage District Office, Alaska, Bureau of Land Management, declaring placer mining claims null and void ab initio. AA-29661 et al.

Affirmed.

1. Alaska: Land Grants and Selections -- Mining Claims: Lands Subject to -- Withdrawals and Reservations: State Selections

BLM may properly declare a mining claim null and void ab initio where it was located at a time when the land was segregated from mineral entry pursuant to 43 CFR 2627.4(b) by virtue of the filing of a state selection application, and there is no evidence that the claim is an amendment of a location which predates that filing.

APPEARANCES: Rodney D. Jackson, pro se, and Vernon E. Griffin, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Rodney D. Jackson has appealed from a decision of the Anchorage District Office, Alaska, Bureau of Land Management (BLM), dated November 14, 1984, declaring the Gold Queen Nos. 24, 25, and 28 through 30 placer mining claims, AA-29670, AA-29671, and AA-29674 through AA-29676, null and void ab initio. Jackson's appeal is docketed IBLA 85-193. Vernon E. Griffin appeals from a similar decision issued November 14, 1984, by BLM declaring his Gold Queen Nos. 15 and 26 placer mining claims, AA-29661 and AA-29672, null and void ab initio. Griffin's appeal is docketed IBLA 85-194.

Appellants' mining claims were located on December 2, 1973, and March 26, 1974, by Earle C. and Rhea L. Foster and filed for recordation with BLM on September 26, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). The claims are situated in secs. 16 and 21, T. 29 N., R. 8 W., Seward Meridian, Alaska. By quitclaim deeds dated November 12, 1982, and July 6, 1983, Earle C. Foster transferred ownership of the Gold Queen Nos. 24, 25, 28, 29, and 30 placer mining claims to Rodney D. Jackson. By quitclaim deed dated February 3, 1983, Donald and Sandra Keech, successors-in-interest to Earle C. Foster with respect to the

Gold Queen Nos. 15 and 26 placer mining claims, transferred ownership of those claims to Vernon E. Griffin.

In the November 1984 decisions, BLM declared appellants' mining claims null and void ab initio because they were located at a time when the land was segregated from mineral entry pursuant to 43 CFR 2627.4(b) by virtue of the filing of State selection application AA-6912 on January 21, 1972.

The record indicates that State selection application AA-6912 when filed encompassed all of T. 29 N., R. 8 W., Seward Meridian, Alaska. At the time the selection application was filed that land was withdrawn "from all forms of appropriation under the public land laws, including the mining (except locations for metalliferous minerals) and the mineral leasing laws," by virtue of section 17(d)(1) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1616(d)(1) (1982). That withdrawal was for a period of 90 days after December 18, 1971. Thereafter, the land continued to be withdrawn, subject to valid existing rights, "from all forms of appropriation under the public land laws, including selection by the State of Alaska * * * and from location and entry under the mining laws, 30 U.S.C. Ch. 2," by virtue of Public Land Order No. (PLO) 5179, dated March 9, 1972. 37 FR 5579 (Mar. 16, 1972). However, in PLO 5254, dated September 12, 1972, the Secretary removed the land from the withdrawal effected by PLO 5179 and included it within the withdrawal effected by PLO 5186, dated March 15, 1972, in order to make the land available for State selection. See 37 FR 18914 (Sept. 16, 1972). PLO 5186 withdrew the affected land, subject to valid existing rights, "from all forms of appropriation under the public land laws, including location and entry under the mining laws (except for locations for metalliferous minerals) 30 U.S.C. ch. 2 * * * but not from selection by the State of Alaska." 37 FR 5589 (Mar. 16, 1972). Following the inclusion of the land involved herein within the withdrawal effected by PLO 5186 on September 12, 1972, the State reaffirmed and amended its selection application on December 29, 1972, to include all available lands within the selected townships. BLM considered the selection application to have been filed on that latter date, in accordance with State of Alaska, 73 I.D. 1 (1966), rev'd sub nom., Kalerak v. Udall, Civ. No. A-35-66 (D. Alaska Oct. 20, 1966), rev'd, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969). By decision dated November 4, 1981, BLM tentatively approved State selection application AA-6912 in part with respect to the lands in T. 29 N., R. 8 W., Seward Meridian, Alaska, with the partial exception of the lands within appellants' mining claims. BLM suspended the selection application to the extent of a conflict with the mining claims "until the mining claim recordations have been adjudicated." The November 1984 BLM decision constitutes that adjudication. Appellants have appealed therefrom.

Appellants submitted identical statements of reasons in which they contend that their mining claims were purchased after examination of the mining claim case files which failed to disclose the State "withdrawal" of the land and after assurances were given by a BLM employee that "all paperwork was legal and in order and that they were legal claims." Appellants also argue that PLO 5186 is not applicable because it withdrew the lands from location under the mining laws with the exception of locations for metalliferous minerals and that the mineral for which the claims are located is a metalliferous mineral. Finally, appellants suggest that they have a right to a patent under

30 U.S.C. § 38 (1982) (commonly referred to as R.S. 2332) by virtue of having held and worked their claims for the requisite period of time.

[1] It is well established that BLM properly declares a mining claim null and void ab initio where it was located at a time when the land was segregated from mineral entry pursuant to 43 CFR 2627.4(b) by virtue of the filing of a State selection application. Thomas C. Bay, 87 IBLA 194 (1985), and cases cited therein. Accordingly, since appellants' mining claims were located at a time when the land was segregated from mineral entry by virtue of State selection application AA-6912, BLM properly declared the mining claims null and void ab initio. 1/

Appellants state that they were not aware that the land included within their mining claims had been segregated from mineral entry at the time they purchased the claims. However, each of the mining claim case files involved herein contains a copy of the November 1981 BLM decision tentatively approving the State selection application with respect to T. 29 N., R. 8 W., Seward Meridian, Alaska, but specifically suspending the application in part as to the mining claims involved herein pending adjudication of the claims. BLM has also submitted the case file for the Gold Queen No. 1 placer mining claim, located on December 2, 1973, by Earle C. and Rhea L. Foster, which case file appellants admit they have "examined." That case file contains a master title plat, dated April 2, 1979, for T. 29 N., R. 8 W., Seward Meridian, Alaska, which indicates that the township was subject to "AA 6912 SS." 2/ Appellants must be charged with knowledge that a State selection application covered the lands embraced by claims in question. Also, appellants are deemed to have knowledge of the segregative effect occasioned by the filing of a State selection application pursuant to 43 CFR 2627.4(b). 44 U.S.C. §§ 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Thus, when appellants purchased their mining claims, they were clearly on notice that the claims had been located at a time when the land was segregated from mineral entry, and, thus, were null and void ab initio. When Foster located the Gold Queen claims, the land was segregated. Consequently, even if appellants were not deemed to be aware that the land was segregated from mineral entry, the mining claims would still be null and void ab initio. The segregation effected by 43 CFR 2627.4(b) is occasioned on the mere filing of a State selection application. John C. and Martha W. Thomas (On Reconsideration), 59 IBLA 364 (1981). Any erroneous assurances given by a BLM employee that the claims were in fact "legal" cannot operate to vest a right to the claims, which is clearly "not authorized by law." 43 CFR 1810.4.

1/ The segregation effected by 43 CFR 2627.4(b) applied generally to "locations under the mining laws." See also 43 CFR 2091.6-4. That segregation, therefore, precludes locations for metalliferous and non-metalliferous minerals. It is, therefore, irrelevant that PLO 5186 only applies to locations for non-metalliferous minerals.

2/ Appellants have submitted a copy of a Nov. 20, 1975, letter to BLM, signed by, among others, Earle C. Foster, which protested in part State selection application AA-6912 with respect to secs. 16 and 21, T. 29 N., R. 8 W., Seward Meridian, Alaska. This letter indicates that Foster was aware of the State selection application at the time he sold the mining claims involved herein to appellants or their predecessors-in-interest.

Appellants also suggest that they have a right to a patent under 30 U.S.C. § 38 (1982). This statutory provision dispenses with some of the proof necessary to establish that a mining claim is a valid location and may proceed to patent, where the claimant has "held and worked" the claim for a requisite time period. 30 U.S.C. § 38 (1982). However, 30 U.S.C. § 38 (1982) will not operate to validate a claim where it was located on land closed to mineral entry. United States v. Midway Northern Oil Co., 232 F. 619 (S.D. Cal. 1916). Thus, regardless of whether appellants have held and worked their mining claims pursuant to 30 U.S.C. § 38 (1982), the claims were null and void on the original date of mineral entry.

We note that the record does contain an "[a]mended" certificate of location for the Gold Queen Nos. 1 through 32 placer mining claims, "also known as Inlet Mining Federal Claims," filed for recordation with BLM by Earle C. and Rhea L. Foster, identified as owners of the claims, apparently on September 26, 1979. The date of location of the claims is given as September 25, 1971, prior to the original filing of State selection application AA-6912. The locators are identified as "Inlet Mining, Jerry Bruton and Glen Daniels." This amended certificate of location obviously prompted BLM's initial inquiries. If the Gold Queen claims, including those involved herein, were amended locations of claims which predate the filing of the State selection application, appellants' mining claims would not be null and void ab initio on the basis of the segregative affect of the State selection because they would relate back to the original location date, prior to the State selection. Tibbetts v. BLM, 62 IBLA 124 (1982). However, a prerequisite to treating appellants' mining claims as amended locations is that appellants must be shown to be successors-in-interest by an unbroken chain of title to locations which predate the State selection. Id.

By notice dated July 31, 1984, BLM required Jackson to verify the prior names of the Gold Queen claims transferred by Earle C. Foster to appellant, specifically the numerical designation of the prior "Inlet Mining Association" claims. Appellant was granted 30 days from receipt of the notice to reply, which was subsequently extended to September 28, 1984. Appellant filed no response.

By notice dated May 18, 1984, BLM required Griffin to submit evidence of an unbroken chain of title from the original locators of the Gold Queen Nos. 15 and 26 mining claims, i.e., "Inlet Mining," to appellant, in order to establish that these claims related back to the original location dates "when the land was open to location and entry under the Federal mining laws." Appellant was granted 30 days from receipt of the notice to reply, which was subsequently extended to September 28, 1984. Appellant filed no response.

While the initial BLM notices did not explain the nature of the apparent conflict between appellants' claims and the State selection application, it did request appellants to provide specific information needed to resolve the conflict, i.e., identify the names of the mining claims which purportedly predated the filing of State selection application AA-6912 and to which they may be the successors-in-interest. Appellants were obviously unable to provide this information. Indeed, there is no evidence in the record before us which establishes that there ever was a prior location of the Gold Queen

claims involved herein, let alone an unbroken chain of title from the original locators to appellants. The amended certificate of location noted above specifically refers to "Inlet Federal Mining Claims, Section 22, T. 29 N., R. 8 W., S.M." Appellants' mining claims are located in secs. 16 and 21 of that township. ^{3/} Accordingly, we conclude that BLM properly declared the claims null and void ab initio. ^{4/} See Thomas C. Bay, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris,
Administrative Judge.

^{3/} The record contains an amended certificate of location for the Inlet Mining Association Nos. 1 through 42 placer mining claims, located by Jerry Bruton and Glen Daniels d.b.a. the Inlet Mining Association and owned by U.S. Westin, Inc. (one of whose authorized agents was Earle C. Foster). These claims were purportedly located Sept. 25 and 29, 1971. However, a quitclaim deed from Bruton and Daniels to U.S. Western, Inc., dated Apr. 24, 1975, apparently with respect to these 42 "State" claims, indicates that the claims are not situated in either secs. 16 or 21, T. 29 N., R. 8 W., Seward Meridian, Alaska. The record also indicates the existence of the Inlet Mining Association "Federal" placer mining claims (Nos. 101 through 340), but those claims are also not situated in either of those sections. We note that in the November 1975 letter protesting the State selection application, the signatories thereto, *i.e.*, Lynwood R. Marshall, Charles E. Spencer, Earle C. Foster, and Estill DeWitt, Jr., state that "[w]e have active mining claims in the above areas," including secs. 16 and 21, T. 29 N., R. 8 W., Seward Meridian, Alaska. However, the signatories purport to represent various parties, including U.S. Western, Inc. The letter does not indicate which party then owned claims located on the land involved herein.

^{4/} On May 15, 1986, Jackson submitted supplemental filings which indicate that he has located certain mining claims under State law. Our decision herein adjudicates only appellants' Federal mining claims located under the mining law of 1872 and is not intended to adjudicate any rights obtained under State law.

