

JENNIE A. WASEY
HAROLD E. McNALLY

IBLA 85-62

Decided June 24, 1986

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, rejecting recordation of the Four Above placer mining claim. AA-38936.

Reversed.

1. Alaska National Interest Lands Conservation Act: Valid Existing Rights -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

It was error for BLM to reject the recordation of a mining claim, tendered in 1976, upon the subsequent (1983) tentative approval of the lands described therein. Although sec. 906(c) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1635(c) (1982), caused all right, title, and interest to the lands to be vested in the State of Alaska upon tentative approval, subject to valid existing rights, that vesting followed the tender of recordation and will not sanction rejection of the tender. Upon the vesting of all right, title, and interest in the State, BLM could no longer adjudicate the validity of a claim located on such lands.

APPEARANCES: Jennie A. Wasey and Harold E. McNally, pro sese; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Jennie A. Wasey and Harold E. McNally appeal from a decision of the Anchorage District Office, Bureau of Land Management (BLM), dated September 5, 1984, rejecting in part the recordation of a notice of location of the Four Above placer mining claim. This claim was originally located in 1938 and was apparently sold to appellant Wasey in April 1975. 1/ The location notice

1/ Appellant Harold E. McNally is the lessee from Jennie A. Wasey of seven mining claims in the Chitina Recording District, including the claim at issue.

at issue was tendered to BLM on December 17, 1976, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982), requiring the owner of an unpatented placer claim located prior to the date of approval of FLPMA (Oct. 21, 1976) to file a copy of the official record of the notice of location within 3 years of that date. In its September 5, 1984, decision BLM rejected the recordation in part, because a portion of the claim was no longer on Federal land.

The decision notes that a portion of the land occupied by the Four Above claim had been selected by the State of Alaska on November 14, 1978, pursuant to the Alaska Statehood Act, P.L. 85-508, 72 Stat. 339 (1958). ^{2/} Tentative approval of this selection was granted on September 23, 1983. Applying section 906(c) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1635(c) (1982), BLM held that title to those lands occupied by a portion of the Four Above claim was no longer in the United States. There being no jurisdiction over such lands in the United States, BLM proceeded to reject in part the recordation of this claim and also rejected the claim itself in part.

Section 906(c)(4) of ANILCA, 43 U.S.C. § 1635(c)(4) (1982), was enacted on December 2, 1980, almost 3 years before tentative approval of the State selection. That section provides that future tentative approvals of State land selections, when issued, shall have the same force and effect as existing tentative approvals and shall be processed for patent by the same administrative procedures. Existing tentative approvals were confirmed by section 906(c)(1), subject to valid existing rights. Subsection (c)(1) also confirmed that all right, title, and interest of the United States was deemed to have vested in the State of Alaska as of the date of tentative approval.

[1] At the time appellant tendered her notice of location to BLM, tentative approval of the lands at issue had not occurred. Thus, when ANILCA's section 906(c) caused these lands to be vested in the State in 1983, subject to valid existing rights, almost 7 years had elapsed from the date of tender and recordation of the claim. Under these circumstances, it was error for BLM to subsequently reject this filing. The present facts are distinguishable from an earlier decision of this Board, Ed Bilderback, 89 IBLA 263 (1985), because in that case tentative approval preceded the tendered filing. When, in Bilderback, section 906(c) operated to vest all right, title, and interest in the State, this vesting occurred by operation of law prior to the date of tender. To apply Bilderback to cases like the present one would sanction BLM's after-the-fact rejection of FLPMA filings years after tender on the basis of a subsequent tentative approval of the conveyance of lands containing the claims. Though such instances of tentative approval following a succession of filings should be rare, a misdescription of the claim, as occurred here, could cause additional instances. BLM's rejection of appellant's recordation filing was error. Donald R. Rowley, 89 IBLA 248 (1985).

Upon issuance of the tentative approval on September 23, 1983, all right, title, and interest in those lands occupied by a portion of the Four

^{2/} The Four Above claim and State selection AA-21170 overlap in sec. 25, T. 12 N., R. 7 E., Copper River Meridian.

Above claim left the United States. When title to these tentatively approved lands left the United States, the basis for BLM's jurisdiction over such lands also left. Germania Iron Co. v. United States, 165 U.S. 379 (1897). Having lost jurisdiction in 1983 over the tentatively approved lands at issue, BLM could not in 1984 determine the validity of a mining claim thereon. Ed Bilderback, supra at 265. BLM's decision in this regard must be reversed. 3/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Anchorage District Office is reversed.

Will A. Irwin
Administrative Judge

We concur:

James L. Burski
Administrative Judge

R. W. Mullen
Administrative Judge.

3/ The decision heading would also lead to the conclusion that BLM intended to declare the claim null and void in part because of subsequent tentative approval. This determination should not have been made.

