

NANCY HOLLINGSWORTH

IBLA 85-224

Decided June 30, 1986

Appeal from a decision of the Anchorage District Office, Alaska, Bureau of Land Management, declaring placer mining claims AA-24604 through AA-24608 null and void ab initio.

Set aside and remanded.

1. 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 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, the case may be remanded for a determination of the statutory basis for the selection.

2. Alaska Native Claims Settlement Act: Native Land Selections: Regional Selections: Generally -- Mining Claims: Lands Subject to -- 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 of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1611 (1982), thereby rendering mining claims located thereafter null and void ab initio, where neither the Act nor the implementing regulations of the Department provide that the filing of such a selection application segregates the land from other appropriation.

3. Alaska Native Claims Settlement Act: Native Land Selections: Regional Selections: Generally -- Mining Claims: Lands Subject to -- 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. 14 of

the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613 (1982), thereby rendering mining claims located thereafter null and void ab initio, in the absence of a master title plat or other land use record entry depicting that the application was filed under that statutory authority.

APPEARANCES: Nancy Hollingsworth, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Nancy Hollingsworth appeals from a November 21, 1984, decision of the Anchorage District Office, Alaska, Bureau of Land Management (BLM), declaring the Colorado Nos. 1 through 5 placer mining claims, AA-24604 through AA-24608, null and void ab initio.

The Colorado Nos. 1 through 5 placer mining claims were located November 4 and 5, 1978, and filed for recordation with BLM on January 23, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). ^{1/} The claims are situated in protracted secs. 35 and 36, T. 7 N., R. 2 W., Seward Meridian, Alaska. BLM declared appellant's mining claims null and void ab initio because at the time the claims were located, they were on land segregated from mineral entry by land selection application AA-8098-36 filed by Cook Inlet Region, Inc. (CIRI).

In her statement of reasons for appeal, appellant contends BLM should have notified her at the time she filed her mining claims for recordation that the land was closed to mineral entry in 1975.

The record contains an undated master title plat (MTP) for T. 7 N., R. 2 W., Seward Meridian, Alaska, which indicates the entire township was at one time subject to CIRI selection applications AA-8098-36 and AA-11153-21. The actual notations are: "AA-8098-36 REG/SEL APLN ENTIRE TP" and "AA-11153-21 REG/SEL APLN ENTIRE TP." In its November 21, 1984, decision, BLM states selection application AA-8098-36 was filed on December 16, 1975, and relinquished on February 13, 1981. Selection application AA-11153-21 was filed on December 18, 1975, and by decision dated December 27, 1978, the Alaska Native Claims Appeal Board affirmed BLM's rejection of the application. AN CAB #RLS 78-2. Thus, both applications were pending when appellant located her mining claims on November 4 and 5, 1978.

We first determine whether the filing of either application served to segregate the land from subsequent mineral entry. In David Cavanagh, 89 IBLA 285, 302 n.10, 92 I.D. 564, 574 n.10 (1985), we determined CIRI selection application AA-8098-36 was filed pursuant to section 12 of the Alaska Native

^{1/} The mining claim location notices list appellant as co-locator of the claims. The other co-locators are Richard Hollingsworth, Ronald Hollingsworth, and James A. Hollingsworth.

Claims Settlement Act (ANCSA), as amended, 43 U.S.C. § 1611 (1982), and considered the effect of the filing of this application: "[T]he regulations governing regional corporation selections under section 12 of ANCSA (43 CFR Part 2650, Subpart 2652) do not attribute a segregative effect to the filing of such an application. Nor does the Act. See 43 U.S.C. § 1611(a)(1) and (c)(3) (1982)." David Cavanagh, supra at 303, 92 I.D. at 574 (emphasis in original).

[1] On the other hand, we determined in Basil S. Bolstridge, 90 IBLA 54, 57 (1985), CIRI application AA-11153-21 was filed pursuant to sections 12 and 14 of ANCSA, as amended, 43 U.S.C. §§ 1611, 1613 (1982). See Basil S. Bolstridge, supra. In Bolstridge we considered the effect of filing CIRI selection application AA-11153-21: "[T]he mere filing of CIRI selection AA-11153-21 independently served to segregate the lands affected thereby from any other appropriation to the extent said application entailed selections filed under section 14 of ANCSA and 43 CFR Subpart 2653. See 43 CFR 2653.2(d)." Basil S. Bolstridge, supra at 58. Thus, a mining claim located at a time when an application filed under section 14 of ANCSA was still outstanding would be rendered null and void ab initio. Id. Recently, however, in Maurice E. DeBoer, 91 IBLA 317, 322 (1986), we noted the discrepancy between the record in DeBoer and Bolstridge as to whether application AA-11153-21 was filed under authority of section 14 of ANCSA and remanded the case to BLM "for a correct determination of the statutory authority for that selection." The record in the case now before us contains no evidence indicating under which statutory authority this application was filed. We therefore conclude that because it is not clear whether the selection was made under authority of section 12 of ANCSA or under authority of both section 12 and 14 of that Act, the case should be remanded to BLM to determine the statutory basis for selection application AA-11153-21. If BLM establishes that this selection application was filed in whole or in part under section 14 of ANCSA, the mere filing of the application would have segregated the land from mineral entry until the application was rejected. 43 CFR 2653.2(d).

We next determine whether the mere notation of either CIRI selection application on the MTP for the township renders appellant's mining claims null and void ab initio. In its November 1984 decision, BLM stated that CIRI selection application AA-8098-36 was "invalid," but that BLM could invoke the "notation rule," in declaring appellant's mining claims null and void ab initio. That rule attributes a segregative effect to the notation of a selection application on the public land records even where the notation was posted to the records in error, or where the selection so noted is void or voidable. B. J. Toohey, 88 IBLA 66, 92 I.D. 317 (1985); John C. and Martha W. Thomas (On Reconsideration), 59 IBLA 364 (1981).

[2] The question of whether the notation rule operates to invalidate a mining claim located when the MTP indicated the land was subject to a regional corporation selection application, filed pursuant to section 12 of ANCSA, was addressed in David Cavanagh, supra. We concluded in Cavanagh that the notation rule does not apply, as the public is deemed to know that no segregative effect attaches to land on the filing of a section 12 regional

corporation selection application. Accordingly, in Cavanagh we set aside a BLM decision to the extent it declared mining claims in conflict with CIRI selection application AA-8098-36 null and void ab initio due to the notation of the CIRI selection application. See also David D. Beal, 90 IBLA 91 (1985). That is the situation here. Therefore, we conclude the notation rule does not apply to selection application AA-8098-36 and set aside BLM's decision of November 21, 1984.

[3] The question of whether the notation rule operates to invalidate a mining claim located when the MTP indicated the land was still subject to a regional corporation selection application, filed in part pursuant to section 14 of ANCSA was answered in Basil S. Bolstridge, supra. We concluded in Bolstridge that the notation rule does not apply where the public is unable to determine from the mere notation of a regional corporation selection application that the application segregates the land since, as Judge Burski said in his concurring opinion in David Cavanagh, supra at 310, 92 I.D. at 578, "it may or may not." Thus, we held that "in the absence of an MTP or other land use record entry depicting that AA-11153-21 was filed under authority of section 14 of the Act or 43 CFR Subpart 2653, it was improper for BLM to invoke the notation rule as a bar to appellants' claims." Basil S. Bolstridge, supra at 58. That is the situation here. Accordingly, we will not invoke the notation rule in respect to selection application AA-11153-21.

Finally, we address appellant's contention that BLM should have notified her at the time she recorded her mining claims that the land was closed to mineral entry in 1975. This contention is without merit. 43 CFR 3833.5(f) expressly provides the failure to so notify a claim owner "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." 2/

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 set aside and the case is remanded to BLM for further action consistent herewith.

John H. Kelly,
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge

2/ We note that by Instruction Memorandum No. 86-447 dated May 12, 1986, all BLM offices were directed to determine land status on all mining claims at the time of recordation. This policy, however, was not in effect at the time appellant recorded her claims and therefore has no bearing on this case.

