

WILLIAM J. SMITH

IBLA 85-887

Decided September 30, 1986

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, declaring placer mining claims null and void and rejecting mining claim recordation filings. F-62084 and F-62085.

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--Mining Claims: Lands Subject to

The Bureau of Land Management lacks jurisdiction to adjudicate the status of unpatented mining claims located on lands subsequently selected by the State of Alaska and tentatively approved by BLM which lands were thereafter conveyed to the State by sec. 906(c)(1) of the Alaska National Interest Lands Conservation Act. Hence, a decision declaring such claims null and void will be reversed. Since such lands are no longer Federal lands, a decision refusing to accept assessment work filings for such claims will be affirmed.

APPEARANCES: Doris Loennig, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

William J. Smith appeals from a July 26, 1985, decision of the Fairbanks District Office, Bureau of Land Management (BLM), declaring his two unpatented placer mining claims null and void. Appellant's claims were located on August 21, 1971, within protracted sec. 3, T. 12 S., R. 3 E., Fairbanks Meridian, Alaska. Subsequently, on January 21, 1972, the State of Alaska filed a selection application for land which included appellant's mining claims. Tentative approval for State selection was given by BLM on August 29, 1974. Pursuant to section 906(c)(1) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 43 U.S.C. § 1635(c)(1) (1982), all tentative approvals of Alaska State selections were confirmed by Congress.

On October 15, 1979, appellant filed location notices for his claims with BLM in compliance with section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). Appellant also filed affidavits of assessment work for 1979 and subsequent years.

In response to appellant's request for mineral surveys, BLM, upon learning that his claims were on land conveyed to the State, issued the decision under appeal rejecting appellant's recordation filings and declaring the claims null and void. A letter from BLM accompanying the decision explained:

The land was tentatively approved for conveyance to the State August 29, 1974, without mineral reservation or exclusion of the mining claims. The land is pending survey prior to patent to the State. The Bureau, therefore, has no jurisdiction over the above land and is without authority to act upon the survey application. Your survey application is therefore being returned and the case file closed. The mining claim recordation files (F-62084 and F-62085) will also be closed by decision and no further affidavits of annual assessment will be accepted by the Bureau of Land Management.

Appellant contends the decision to declare his mining claims null and void was improper because it deprived him of a valuable property right without due process of law. Since his claims were located before the State selected the lands, appellant argues they should be considered valid existing rights.

The issue of what actions BLM should take with respect to unpatented mining claims located on lands later selected by the State of Alaska was recently addressed by the Board in Ed Bilderback, 89 IBLA 263 (1985). Bilderback presented a factual setting and legal issues essentially similar to the present case. The appellants in Bilderback had located mining claims on lands subsequently selected by the State and had made all the proper filings in compliance with the provisions of FLPMA. In 1984, BLM rejected the filings and declared the claims null and void. 89 IBLA at 264.

[1] In Bilderback, the Board held that BLM was correct in rejecting the appellant's filings, but lacked authority to declare the mining claims null and void. Because the land had been conveyed out of Federal ownership by section 906(c)(1) of ANILCA, the Board found the Department had no authority to affect title to the land. The Board stated:

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 [(On Reconsideration) 83 IBLA 237, 91 I.D. 331 (1984)], 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 * * *. [T]he provisions of FLPMA requiring the recording of mining claims affect public lands only. Because this is 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.

Ed Bilderback, *supra* at 265-66.

The holding in Bilderback is applicable to the present case. The conveyance of the land out of Federal ownership also terminates the jurisdiction of BLM to adjudicate claims to the land and to declare mining claims null and void. Hence the conveyance of the lands has divested BLM of its jurisdiction to make decisions affecting the validity of appellant's mining claims. As stated in Ed Bilderback, *supra*:

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, * * * 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.\

Id. at 267 (citations omitted).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is reversed to the extent it purported to declare appellant's claims null and void and affirmed to the extent it rejected appellant's recordation filings.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

