

ESTATE OF VAN DOLAH

IBLA 85-398

Decided October 9, 1986

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, which rejected mining claims and declared mining claims null and void. AA-37070-37082, AA-37085, AA-37103, AA-37105, AA-37107, AA-37110-37111, AA-37113.

Set aside and remanded.

- 1. Federal Land Policy and Management Act of 1976:
 Generally--Federal Land Policy and Management Act of 1976:
 Recordation of Mining Claims and Abandonment-- Mining Claims:
 Generally--Mining Claims: Abandonment-- Mining Claims:
 Recordation

Where the Bureau of Land Management rejected filings by a mining claimant made on Oct. 22, 1979, of amended location notices for mining claims located in Alaska prior to 1913, which amended notices recited the loss of the original notices of location, rejection of the miner's filing documents was premature where no opportunity was afforded to the claimant to offer secondary proof to establish the asserted foundation of her claims.

APPEARANCES: Joseph J. Perkins, Jr., Esq., and Debra J. Brandwein, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The Estate of A. T. Van Dolah appeals from a decision issued on January 18, 1985, by the Anchorage District Office, Bureau of Land Management (BLM), which rejected mining claims n1 and which declared mining claim recordations to be null and void. The decision states that information concerning the subject mining claims was filed with BLM on October 22, 1979, as required

1/ The BLM decision lists the claims as follows:

| <u>BLM Serial</u> | <u>Claim Name</u> | <u>Date of</u> | <u>Amendment</u> |
|-------------------|---------------------------|-----------------|------------------|
| <u>Number</u> | | <u>Location</u> | <u>Posted</u> |
| AA-37070 | Discovery on Twin Creek | 1905 7/5/79 | |
| AA-37071 | Discovery 1 on Twin Creek | 1905 7/5/79 | |

by Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982) 2/ and the regulations in 43 CFR 3833 3/. Amended location notices were filed with BLM by appellant on October 22, 1979. The amended notices state that the subject mining claims were located "about 1905, 1906, and 1907." A map submitted with the filings indicates the claims lie within T. 26 N., R. 12 W., Seward Meridian, Alaska. The amended location notices show a posting date of July 5, 1979. Copies of the original location notices were not filed. The BLM decision of January 18, 1985, states that because the claimant did not file a copy of the "official location notice" with BLM by October 22, 1979, the subject placer mining claims "are rejected and declared null and void in accordance with 43 CFR 3833.4(a)" (Decision dated Jan. 18, 1985 at 2). The BLM decision also states at page 2 that "[a]lthough this decision does not address the issue of land status at the time of the claim location, it should be noted that the subject lands were

fn. 1 (continued)

| | | | |
|----------|--------------------------------|--------|--------|
| AA-37072 | Discovery 2 on Twin Creek 1905 | 7/5/79 | |
| AA-37073 | Discovery 3 on Twin Creek 1905 | 7/5/79 | |
| AA-37074 | Discovery 4 on Twin Creek 1905 | 7/5/79 | |
| AA-37075 | Discovery 5 on Twin Creek 1905 | 7/5/79 | |
| AA-37076 | Discovery 6 on Twin Creek 1905 | 7/5/79 | |
| AA-37077 | Discovery 7 on Twin Creek 1905 | 7/5/79 | |
| AA-37078 | Discovery 8 on Twin Creek 1905 | 7/5/79 | |
| AA-37079 | Discovery 9 on Twin Creek 1905 | 7/5/79 | |
| AA-37080 | Discovery 10 on Twin Creek | 1905 | 7/5/79 |
| AA-37081 | Discovery 11 on Twin Creek | 1905 | 7/5/79 |
| AA-37082 | Discovery 12 on Twin Creek | 1905 | 7/5/79 |
| AA-37085 | Above Discovery on Twin Creek | 1907 | 7/5/79 |
| AA-37103 | Wagner Creek No. 2 | 1907 | 7/5/79 |
| AA-37105 | Wagner Creek No. 2 Above | 1907 | 7/5/79 |
| AA-37107 | Wagner Pup No. 3 | 1907 | 7/5/79 |
| AA-37110 | Upper Mills Creek 1 | 1906 | 7/5/79 |
| AA-37111 | Upper Mills Creek 1 Above | 1906 | 7/5/79 |
| AA-37113 | Lower Mills Creek No. 2 Below | 1907 | 7/5/79 |

2/ 43 U.S.C. § 1744(b) (1982) provides in pertinent part:

"The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to October 21, 1976 shall, within the three-year period following October 21, 1976, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground."

3/ Departmental regulation 43 CFR 3833.1-2(a) (1979) states in pertinent part:

"The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law."

selected on January 21, 1972, as amended, by the State of Alaska in its application AA-6909." 4/ In the January 18, 1985, decision BLM explains the result reached:

An amended location notice generally relates back to the date of the original location notice, while a relocation, does not relate back to the date of the earlier claim, and is in effect adverse to the previous claim. [5/] In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation. Where a party states that a location notice is an amendment of an earlier location, as in the case for the claims listed on the appendix, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation. * * *.

Because the claimant did not file a copy of the official location notice 6/ with BLM by October 22, 1979, the placer

4/ As noted in the BLM decision, departmental regulations governing the segregative effect of State selection applications provide in pertinent part:

"Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the proper office properly describing the lands * * * (43 CFR 2627.4(b))."

5/ See generally R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979), overruled in part on other grounds, Hugh B. Fate, Jr., 86 IBLA 215 (1985), for a discussion of the effect of amendment of mining claims.

6/ Alaska Statutes 27.10.050 (1983) provides:

"The locator of a lode claim or placer claim shall within 90 days after the date of posting the notice of location on the claim have the claim recorded by filing a certificate of location with the recorder of the recording district in which the claim is located. The certificate of location shall contain:

"(1) the name or number of the claim;

"(2) the number of feet in length and width of the claim;

"(3) the date of discovering and of posting the notice of location;

"(4) the name of the locator or locators;

"(5) a description of the claim with such reference to some natural object or permanent monument so that an intelligent person with a knowledge of the prominent natural objects and permanent monuments in the vicinity can identify the claim. (§ 47-3-33 ACLA 1949)"

mining claims listed on the attached appendix are rejected and declared null and void in accordance with 43 CFR 3833.4(a). ^{7/}

Id. at 1, 2 (citations omitted).

In the statement of reasons for appeal, appellant states that each of the amended location notices filed with BLM for the claims lists, among other things, the name and number of the claim, the date of location, and a description of the claim sufficient to locate the claim on the ground. Contending that she has complied with the requirements of the Federal recording statute, appellant quotes from the amended location notices to support her argument. For example, the amended location notice for Discovery on Twin Creek states:

This claim was located by the undersigned or his predecessor in interest in about 1905, in the manner prescribed by Section 27.10.040 of Alaska Statutes. Thereafter, and within the time required by law, the locator had this claim recorded by filing a Certificate of Location with the Recorder of the recording district in which the claim is located, in full compliance with Section 27.10.050 of Alaska Statutes. The official record of said original recording is or may now be imperfect, incomplete, or nonexistent due to the failure of the then Recorder of the recording district in which the claim is located to perform his duty, or casualty destruction of said official record, or both such causes.

* * * * *

The name of the original locator or locators is unknown due to loss or destruction of official records. The undersigned is now the owner of the claim.
[signed] Anne T. Van Dolah [Emphasis in original.]

Appellant contends that given the unavailability of the original location notices for the claims, she substantially complied with section 314(b) of FLPMA by timely filing amended location notices and supplementary information for the claims which contained all of the information required by statute. Appellant further contends that because original location notices were not available for the claims, BLM should have either (1) accepted the timely filed amended location notices and supplementary information as secondary evidence sufficient to comply with FLPMA or (2) requested and allowed Van Dolah additional time to submit such additional secondary evidence as BLM

^{7/} 43 CFR 3833.4(a) provides:

"The failure to file an instrument required by §§ 3833.1-2(a), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

considered necessary. Appellant also contends that since section 314(b) of FLPMA and the regulations at 43 CFR 3833 (1979) failed to give adequate notice to mining claimants as to what evidence might be submitted to comply with the initial filing requirement of FLPMA when original location notices no longer exist, such failure must be construed in favor of the mining claimant. Appellant further contends that because appellant is entitled to prove a right by occupancy, BLM, prior to rejecting the filing, should have called for the type of evidence "it would have considered satisfactory to establish a right by occupancy." Finally, appellant argues that section 314 of FLPMA is unconstitutional as applied to her.

[1] Since 1913 the locator of a placer mining claim in Alaska has been required to record the mining claim with the recorder of the recording district in which the claim is located. 8/ See United States Smelting Refining & Mining Co. v. Lowe, 66 F.Supp. 897 (D. Alaska. 1946), rev'd on other grounds, 12 Alaska 423, 175 F.2d 486 (9th Cir.) reh'g denied, 176 F.2d 813, vacated and remanded, 338 U.S. 954 (1950). However, as the Judge observed in United States Smelting Refining & Mining Co. v. Lowe: "It was not, however, until the first legislature of the territory met in 1913 that Alaska had laws requiring the recording of the location certificate. Such law and those laws superseding it were not retroactive and did not control locations made before 1913." Id. at 298. As to the appellant's claims, therefore, there is no requirement in state law that the location notices for claims made prior to 1913 be recorded.

Departmental regulation 43 CFR 3833.1-2(a) provides that if state law does not require the recordation of a notice or certificate of location of a claim, a notice or certificate of location containing certain information shall be filed with BLM. And 43 CFR 3833.4(b) provides that:

The failure to file the information required in §§ 3833.1-2(b), 3833.2-1(c), 3833.2-2(a) and (b) or 3833.2-3(b) and (c) shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a decision from the authorized officer calling for such information. Failure to file such information within the time allowed by decision shall cause the filing to be rejected by a decision appealable under the procedures of Part 4 of this title. Final affirmance of such rejection for failure to file such information shall be deemed conclusive evidence of abandonment of the mining claim, mill or tunnel site and such mining claim, mill or tunnel site shall be void.

Curiously, the casefile contains a copy of an order issued by BLM in AA-37156 on February 5, 1985, to show cause why certain mining claims, not the subject of this appeal, should not be declared null and void. Although it has no apparent connection to this appeal, the order in AA-37156 is interesting because it recites that mining claim location notices had been filed

8/ See note 6.

with BLM but that further information is needed to entitle the notices to filing. The notices apparently stated that the claims had been located between 1958 and 1962 in Alaska. The order explains:

In order for BLM to determine whether or not the placer mining claims * * * were located at a time when the lands were open to location and entry under the Federal mining laws, the claimant must present further evidence that the claims relate back to the original dates of location by submitting evidence that he has title to the claims without gaps in ownership from the original dates of location or submit evidence of possessory right under 30 U.S.C. Sec. 38.

When an applicant desires to make his proof of possessory right in accordance with 30 U.S.C. Sec. 38, he should submit proof of labor for the 10 years (1962 through 1978) (sic) before the land was segregated and submit three (3) witness statements of any disinterested persons of credibility who may be cognizant of the facts of his possession.

This order in AA-37156 allowed the claimant 45 days in which to submit the required evidence. Whether or not it was used, its presence in the casefile indicates that in a proper case, as required by the regulation at 43 CFR Subpart 3833, BLM does solicit further proofs from a mining claimant whose title to a mining claim is questioned.

Section 314 of FLPMA was enacted to establish a Federal recording system for mining claims to facilitate Federal land use planning and management. Failure to comply with the mandatory filing requirements of section 314 constitutes abandonment of the claims. See 43 U.S.C. § 1744(c) (1982); United States v. Locke, 105 S. Ct. 1785 (1985). In appellant's situation it is clear that even if the materials filed by her on October 22, 1979, were acceptable to record the mining claims, unless they can be made to relate back to the date of original location or at least to a date prior to January 21, 1972, the mining claims would be declared null and void because of the segregative effect of state selection application AA-6909. To be ultimately successful, she must therefore establish the validity of her claims prior to January 21, 1972.

Citing a decision by this Board, Philip Sayer, 42 IBLA 296 (1979), appellant contends that where local records do not reveal an original filing but there is reason to believe that a recording may have been made, secondary evidence will be accepted, and alternatively, where secondary evidence establishing an original filing cannot be made, proof of a right obtained by occupancy should be accepted. The Philip Sayer opinion explained that 30 U.S.C. § 38 (1982) is generally relevant to patent applications. However, it was observed that in other cases this provision of the mining law could be relied upon to show the validity of a claim located before some segregative action affecting the land status took place. The Sayer decision's analysis of this situation was:

Although it was appropriate for BLM to give notice that mining claims located after the segregation of the lands by the State selection would be null and void, as it was clear appellant was claiming under claims located prior to that date, he should have been afforded the opportunity first to supply the information deemed essential to meet requirements for recording before adverse action was taken on the claims in any respect. Also, in view of the gap in the regulations, we do not believe appellant should be subjected with the necessity for paying additional filing fees to make new recordings, but that he should have been called upon to make any supplemental showings of information as required by BLM. Therefore, instead of rejecting the notices, BLM should first have called upon the claimant for the type of evidence it would have considered satisfactory.

* * * * *

As indicated, supra, the purpose of the recording provisions in FLPMA is essentially to give notice to BLM of the existence of mining claims on Federal lands so that this information may be considered in the land use planning and management of those lands. To serve this purpose then, there is some essential information that would be necessary where a claimant cannot show proof that a notice of location was recorded. This would include the following: (1) the name under which the claim is presently identified and all other names by which it may have been known to the extent possible; (2) the name and address of the present claimants; (3) an adequate description of the claim; (4) type of claim; (5) information concerning the time of the state's statute of limitations and a statement by the claimant as to how long the claim has been held and worked, giving, if possible, the date (or at least the year) of the origin of the claimant's title and facts as to continuation of possession of the claim; and (6) any other information the claimant would have showing the chain of title to him and bearing upon the possession and occupancy of the claim for mining purposes. Other information which BLM deems essential to meet its purposes may also be required. * * * [Footnote omitted.]

Id. at 302-303. See generally 2 American Law of Mining § 33.08 [1] [b] (2d ed. 1984).

Appellant asserts an ability to gather such information as BLM may require in this case, and has submitted supplemental proofs, including deeds showing the acquisition of some of the claims, and affidavits of annual labor. The reasoning which was applied in Sayer applies here: BLM should have afforded appellant the opportunity to supply the information deemed essential to meet requirements for recording, and to furnish any supplemental information required by BLM, prior to rejecting the filings for the mining claims

and declaring the claims to be null and void. Since there was no requirement in Alaska law that these claims be recorded at the time of their location, other evidence showing the basis for appellants title to the claims should be considered.

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 appropriate action consistent with this decision.

Franklin D. Arness
Administrative Judge

We concur:

Anita Vogt
Administrative Judge
Alternate Member

C. Randall Grant, Jr.
Administrative Judge

