

HAROLD E. DE ROUX

IBLA 85-645

Decided November 28, 1986

Appeal from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring the Mansfield Asbestos Claim Nos. 1, 2, 3, and 4 lode mining claims null and void ab initio. AA-37649 through AA-37652.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

A mining claim is properly declared null and void if, at the time of location, the land is withdrawn or segregated from appropriation under the mining laws. Where, following location of the claim, the segregative effect of a proposed withdrawal terminates, such termination does not operate to validate retroactively the location made while the lands were segregated from mineral entry.

APPEARANCES: Harold E. De Roux, Valdez, Alaska, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Harold E. De Roux has appealed from an April 9, 1985, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), declaring the Mansfield Asbestos Claim Nos. 1, 2, 3, and 4 lode mining claims null and void and rejecting the mining claim recordation filings for those claims. (AA-37649 through AA-37652).

Appellant's mining claims were located on September 22, 1979, in secs. 4 and 5, T. 42 S., R. 65 E., Copper River Meridian, Admiralty Island Area, Alaska, and filed for recordation with BLM on October 22, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1982). In its April 9, 1985, decision, BLM declared appellant's mining claims null and void ab initio because the land was not open to mineral entry at the time the claims were located, by virtue of U.S. Forest Service withdrawal application AA-23139, which segregated from location and entry under the general mining laws a total of 11,206,000 acres, including the land where appellant's claims are located. Notice of this withdrawal application was published in the Federal Register on December 5, 1978. 43 FR 57134-37. Subsequently, notice was published in the Federal Register that the segregative effect of the proposed withdrawal had terminated with the passage of the Alaska National Interest Lands Conservation

Act (ANILCA) P.L. 96-487, 94 Stat. 2371, on December 2, 1980. 47 FR 11113 (Mar. 3, 1982).

In his statement of reasons, appellant recognizes that the portion of Admiralty Island whereon his claims are located was withdrawn from mineral entry by withdrawal application AA-23139, but believes that since the segregative effect of that withdrawal terminated with the passage of ANILCA on December 2, 1980, his claims should "be considered legal and binding and effective from that date of filing * * *." He adverts to the cost involved were he required to "travel and restake the claims," and requests that if the claims cannot be recorded as filed, they should be deemed valid from the date the land was reopened to mineral entry.

[1] BLM properly declared the claims null and void ab initio. It is well established that a mining claim located on land previously withdrawn or segregated from location is null and void ab initio. Raymond D. Dilley, 87 IBLA 150 (1986); John L. Grassmeier, 77 IBLA 156 (1983). Once land has been withdrawn from mineral entry, it remains withdrawn until the withdrawal is formally revoked. It is immaterial whether the lands are or have been used for the purpose for which they are withdrawn. Samuel P. Speerstra, 78 IBLA 343 (1984). These general principles were explained in Vincent Barnard, 66 IBLA 100, 104-05 (1982):

Even where the purpose of a withdrawal cannot be met, it generally bars disposal of the land while it remains in effect. See Robert A. Adams, 57 IBLA 370 (1981); Roy Leonard Wilbur, 61 I.D. 157 (1953). Restoration of land from withdrawal does not operate to validate retroactively applications or entries made during the withdrawal. See Paul D. Tony, 43 IBLA 245 (1979); J. P. Hinds, 25 IBLA 67, 83 I.D. 275 (1976); Roy Leonard Wilbur, *supra*. To hold otherwise would make withdrawals an ineffective land management tool since those seeking entries barred by the withdrawal would be encouraged to enter the land anyway if they believed that their entries could be validated by the future revocation of the withdrawal.

Therefore, 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 affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

