

ESTATE OF VAN DOLAH

IBLA 85-397

Decided January 7, 1987

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, which rejected and declared mining Claim AA-37086, null and void in part and which rejected and declared mining claim AA-37088, null and void.

Affirmed in part; set aside and remanded in part.

1. Mining Claims: Generally -- Mining Claims: Relocation -- Mining Claims: Withdrawn Land

Where appellant provides support for a contention that the refiling of a mining claim location made subsequent to a withdrawal of the land upon which the claim was located was an amended location of a prior claim embracing the same land rather than a new relocation, a decision declaring the claim null and void will be remanded for further review. In determining the sufficiency of an amended claim, the original location notice and the amended notice must be construed together, and if sufficient when so construed, the location will be valid.

APPEARANCES: Joseph J. Perkins, Jr., Esq., and Debra B. 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 21, 1985, by the Anchorage District Office, Bureau of Land Management (BLM), which rejected and declared the Discovery 1 on Notobac Creek, mining claim AA-37086, null and void in part and which rejected and declared the Discovery 2 on Notobac Creek, mining claim AA-37088, null and void in its entirety. Since the claims are located within lands selected by the State of Alaska and withdrawn from the operation of the mining laws pursuant to provisions of the Alaska Statehood Act, to the extent the claims are invalidated they cannot be relocated. See 43 CFR 2627.4(b).

On October 22, 1979, location notices and amended location notices were filed for placer mining claims AA-37086 and AA-37088, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and Departmental regulation, 43 CFR Subpart 3833. The notices

recite the claims were originally located on September 2, 1955, and January 14, 1956, and were amended on July 5, 1979. ^{1/} The BLM decision states that the amended location notice for Discovery 2 entirely describes land not included on the original notice and that the amended location notice for Discovery 1 describes "some new land not included on the original notice." The record contains no plat of the claims to support the BLM decision in terms of the land embraced in the original as opposed to the amended locations. We note that the BLM decision did not challenge that the amended location was made by either the original locator or a successor-in-interest, a prerequisite of an amended location which "relates back" to an earlier location. The original location notices recite that they were made by A. T. Van Dolah, as locator, while the amended locations were made by Anne T. Van Dolah.

The description of the Discovery 1 claim appearing in the 1979 amended location does not close, and the last call leaves no clue how to return to the point of beginning. Discovery 1 is also described in the 1955 location. The 1955 description does close, but, is inferably 300 feet south of the description in the amended claim. As to the Discovery 2 claim, the amended notice filed in 1979 is vague as to the beginning point describing the claim boundary. The notice does, however, recite that the southern boundary of Discovery 2 lies adjacent to the northern boundary of Discovery 1. The effect of the amendments appears to be, as appellant claims, to move both claims 300 feet to the north of the original locations.

Appellant concedes that Discovery 1 was properly invalidated to the extent the 1979 amendment included land not previously included in the claim. Appellant contends, however, that BLM misread the location documents provided for Discovery 2, and should also have invalidated only so much of Discovery 2 as included land not previously in the claim. Thus, appellant argues:

Attached hereto are copies of sketches prepared by [appellant] showing [appellant's] analysis of the relevant location documents for both claims. [Appellant] believes that its sketches are a correct depiction of the facts as set forth in the relevant location documents. The sketches were prepared in reliance upon the relevant location documents for the claims and the relevant U.S.G.S. map filed with the BLM in 1979 and also attached hereto. In preparing the attached sketches [appellant] relied in particular upon the statements in both the original and amended location notices for the Discovery 2 on Notobac Creek claim [AA-37088] which specifically describe the Discovery 2 on Notobac Creek claim, both as originally located and as amended, as adjoining the northern end of the Discovery 1 on Notobac Creek claim [AA-37086]. This precise statement of contiguity should be controlling in resolving any ambiguity in the location of the Discovery 2 on Notobac Creek claim. See Alaska Stat. § 09.25.040(1) (1983) (applicable rule for construing real estate descriptions in Alaska).

^{1/} The decision states that "information supplied by the claimant indicates that the claims lie within an area encompassed by T. 26 N., R. 12 W., Seward Meridian, Alaska."

(Statement of Reasons at 2.)

[1] Under Alaska law, where there are inconsistencies relating to the description and boundaries of the claims, little weight is given to such variances, because, where there are inconsistencies in the description of the claims or boundaries, the marks on the ground govern. Flynn v. Vevelstad, 119 F. Supp. 93, 97 (D. Alaska 1954), affd, 230 F.2d 695 (9th Cir. 1956), cert. denied, 352 U.S. 827 (1956). Although questions concerning the sufficiency of descriptions is an objection available only to a subsequent locator, when sufficiency of description is an available objection and location certificates are found insufficient to comply with provisions of Alaska Statutes § 27.10.050 (1983), the certificates of location are invalid. Vevelstad v. Flynn, 230 F.2d at 701. In Vevelstad, the certificates of location for some disputed claims discussed by the Court contained courses which, when projected in the line of direction stated, would not intersect anywhere near defendant's alleged mining claims. Those locations were found to be invalid. But as to other claims which contained at least one permanent monument as a reference point, the circuit court in Vevelstad found the location certificates to be valid. Id.

An amended mining location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to a prior location. See R. Gail Tibbets, 43 IBLA 210, 86 I.D. 538 (1979). Where a claimant files an amended location notice together with a statement that the claim had been previously located, the amended notice generally relates back to the original date of location. Id. The filer of an amended location notice receives rights associated with the earlier location including its superiority to subsequent withdrawals. But this right is conferred only to the extent the amended location furthers rights acquired by a prior location, and does not include any new land. American Resources, Ltd., 44 IBLA 220, 223 (1979). A location notice cannot be considered an amended location so as to relate back to a location which predates a withdrawal to the extent new land not contained in the original location is described. Fairfield Mining Co., 66 IBLA 115 (1982).

Concerning changes in locations and amended notices, Alaska Statutes § 27.10.070 (1983) provides that notices may be amended at any time and monuments changed to correspond with the amended location but no change may be made which interferes with the rights of others. Whenever monuments are changed or an error is made in the notice or in the certificate of location, an amended certificate of location must be filed for record in the same manner and with the same effect as the original certificate. In determining the sufficiency of an amendment, the original and amended certificate of location must be construed together, and if sufficient when so construed, the location record will be valid, even though neither standing alone would be sufficient. See generally 58 C.J.S. Minerals § 53 (1969).

Thus, appellant correctly contends in this case, as to the Discovery 2 claim, that both the original and amended location notices can be relied upon in resolving an ambiguity in the location of a mining claim. Since there is at least one definite point of reference to Discovery 2 in the fact that it

shares a common boundary with Discovery 1, 2/ there is a description which seems to indicate that both claims occupy some of the ground on which the original claims were located.

Because appellant has provided a showing which indicates the location certificates for Discovery 2, construed together, overlaps the original Discovery 2 claim, the case should be reviewed by BLM to establish whether its decision was correct as to the Discovery 2 mining claim, AA-37088. See Charles Degitz, 69 IBLA 145 (1982). To the extent Discovery 2 is found to embrace lands not included in the original location, it is invalid as to that excess land.

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 affirmed as regards mining claim AA-37086 and set aside and remanded for action consistent with this decision as concerns mining claim AA-37088.

Franklin D. Arness
Administrative Judge

We concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

C. Randall Grant, Jr.
Administrative Judge

2/ The location of Discovery 1 is tied to a specific landmark, the confluence of Notobac and Twin Creeks.

