

MARY LOU REDMOND

IBLA 85-547

Decided February 20, 1987

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, rejecting mining claim recordation filing and declaring placer mining claim AA 16627 null and void.

Affirmed in part, reversed 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

Lands tentatively approved for conveyance to the State of Alaska were legislatively conveyed to the State by sec. 906 of the Alaska National Interest Lands Conservation Act, and consequently the Department may no longer adjudicate unpatented mining claims located upon such lands. Since sec. 314 of the Federal Land Policy and Management Act of 1976 applies only to public lands of the United States, the filing and recording requirements of sec. 314 do not apply to such legislatively conveyed lands, and the statutory filing requirements may not be relied upon to invalidate or otherwise determine the status of unpatented mining claims located on such conveyed lands.

APPEARANCES: Robert H. Wagstaff, Esq., Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Mary Lou Redmond appeals from a decision dated April 5, 1985, by the Anchorage District Office, Bureau of Land Management (BLM), rejecting her mining claim recordation filing for the Indian Claim #1 placer mining claim, located in sec. 5, T. 10 N., R. 1 W., Seward Meridian, and declaring the claim null and void.

Appellant acquired the claim by quitclaim deed in January 1978. On February 14, 1978, a location notice was filed with BLM, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). According to the notice, the claim was located on July 4, 1949, by John Mackwiz.

The decision appealed from states that the land embracing the claim was selected on January 24, 1961, by the State of Alaska in its application A-053730 and tentative approval was granted on January 2, 1964. The decision explains that title was confirmed pursuant to section 906(c) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. § 1635(c) (1982). BLM held that, title having left the United States, the Department no longer had jurisdiction of the lands and hence could not accept recordation filings for the Indian Claim #1 placer mining claim.

Appellant argues that the claim is a valid existing right and that BLM's action deprived her of due process and of property without due compensation.

[1] For the reasons set forth below, we conclude BLM lacked jurisdiction to declare appellant's claim null and void, but properly rejected the recordation filing. As we stated in Ed Bilderback, 89 IBLA 263 (1985), BLM need not continue to accept filings required under section 314 of FLPMA, 43 U.S.C. § 1744 (1982), and an appellant is no longer required to comply with that provision where the lands are no longer subject to Departmental jurisdiction. Here, as in Bilderback, the Department no longer has authority to affect title to the land at issue, which was legislatively conveyed to Alaska by ANILCA, 43 U.S.C. § 1635(c) (1982). See Terry L. Wilson, 85 IBLA 206, 92 I.D. 109 (1985); State of Alaska v. Thorson (On Reconsideration), 83 IBLA 237, 91 I.D. 331 (1984).

The Thorson decision, which concerned later-filed Native allotment applications in conflict with State selections, rejected the argument that the phrase used by the statute "subject only to valid existing rights" operates to retain jurisdiction over conflicting claims for adjudication by the Department. Finding that Congress intended section 906(c)(1) of ANILCA to immediately convey all land tentatively approved for conveyance to the State, even though the land might be subject to "valid existing rights," the decision observes at 83 IBLA 246, 91 I.D. at 336: "As to the interests (i.e., valid existing rights) \* \* \* embraced by a tentative approval, Congress clearly intended to transfer all of the underlying right, title, and interest of the United States to the State." In Wilson, supra, the Board held that the Department does not retain jurisdiction to adjudicate the merits of a homestead entryman's claim that he had a valid existing right prior to that asserted by Alaska where the land sought by the entryman was tentatively approved for conveyance to the State of Alaska under section 906(c)(1) of ANILCA. The question of valid existing rights, argued by appellant herein, was addressed with ample citation of authority in Bilderback, supra at 266-67, as well as in Thorson and Wilson, supra, and appellant is referred to the discussions in those decisions.

Since the Department lacks jurisdiction to consider appellant's claim, it is unnecessary to consider her constitutional arguments.

The decision of the Anchorage District Office must be amended to hold that, while the mining claim recordation filing was properly rejected, the Department lacks authority to adjudicate the validity of the claim and may not, therefore, declare it null and void.

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 insofar as it rejected appellant's recordation filing and reversed insofar as it declared the claim null and void.

John H. Kelly  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Will A. Irwin  
Administrative Judge

