

RESOURCE ASSOCIATES OF ALASKA

IBLA 88-470

Decided April 25, 1990

Appeal of a decision of the Fairbanks Support Center, Bureau of Land Management, declaring mining claims null and void. F-85835 through F-85873.

Appeal dismissed.

1. Appeals: Generally--Practice Before the Department: Persons Qualified to Practice--Rules of Practice: Appeals: Dismissal

An appeal brought by a person who does not qualify to practice under 43 CFR 1.3 is subject to dismissal. A person filing an appeal has the responsibility of showing that he is qualified under the regulation to represent the appellant.

2. Rules of Practice: Appeals: Standing to Appeal

Standing to appeal requires that an appellant not only have been a party to the decision appealed from but also be adversely affected by the decision. When the record before the Board does not show that the party filing an appeal has a legally cognizable interest in the matter at issue, the appeal is properly dismissed for lack of standing to appeal.

3. Federal Land Policy and Management Act of 1976: Land-Use Planning--Federal Land Policy and Management Act of 1976: Withdrawals--Withdrawals and Reservations: Generally--Withdrawals and Reservations: Revocation and Restoration

Congress has limited the exercise of the authority to make, modify, extend, or revoke withdrawals to the Secretary and individuals in the Office of the Secretary, appointed by the President by and with the advice and consent of the Senate, to whom he has delegated his authority. Unless the order making a withdrawal specifies when it terminates, lands remain withdrawn until the Secretary or his properly authorized delegate issues a formal order published in the Federal Register. A resource management plan is properly distinguished from an order revoking a withdrawal.

APPEARANCES: Jennifer McCarter, Lands Analyst, Nerco Minerals Company, Vancouver, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

By a decision dated May 9, 1988, the Fairbanks Support Center, Bureau of Land Management (BLM), declared null and void 39 lode mining claims located by Resource Associates of Alaska, Inc. (RAA). For the purpose of the decision, BLM divided the claims into two groups which it identified in appendices. 1/ BLM declared the claims listed in Appendix I null and void because it determined they were located on land which had been withdrawn and made part of the Steese National Conservation Area (SNCA) by sections 401(a) and 402(b) of the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, 94 Stat. 2371, 2396 (1980), codified at 16 U.S.C. § 460mm(a), 460mm-1(b) (1982). BLM declared the claims listed in Appendix II null and void because it found they were located partially on land within the SNCA and partially on lands selected by the State of Alaska and tentatively approved on April 19, 1982.

A combined notice of appeal and statement of reasons was received by BLM on June 1, 1988, and forwarded to the Board along with the case file for the claims. The statement of reasons acknowledges that the claims are within the SNCA and that the area was withdrawn by Congress, but notes that, in requiring the Department to establish a land-use plan for the area, Congress also authorized the Secretary in section 402(b) of ANILCA to "classify lands within national conservation areas as suitable for locatable mineral exploration and development and open such lands to entry, location, and patent under the United States mining laws." 16 U.S.C. § 460mm-1(b) (1982). The statement of reasons further asserts:

In February, 1986, the BLM produced the Record of Decision [ROD], Resource Management Plan for the Steese National Conservation Area. RAA believes that the ROD fulfills the requirements of Section 402(a) of the Act, for the development of a land use plan for the area. The ROD classifies the SNCA into a number of

1/ APPENDIX I CLAIMS WHOLLY WITHIN STEESE NATIONAL CONSERVATION AREA

<u>SERIAL NUMBER</u>	<u>CLAIM NAME</u>	<u>TOWNSHIP/RANGE/MERIDIAN</u>
F-85835 - F-85846	MK-514 through MK-525	7 N., 9 E., Fairbanks
F-85852 - F-85861	MK-614 through MK-623	7 N., 9 E., Fairbanks
F-85865 - F-85871	MK-714 through MK-720	7 N., 9 E., Fairbanks

APPENDIX II CLAIMS PARTIALLY ON STATE TENTATIVELY APPROVED LAND AND PARTIALLY ON STEESE NATIONAL CONSERVATION AREA LANDS

<u>SERIAL NUMBER</u>	<u>CLAIM NAME</u>	<u>TOWNSHIP/RANGE/MERIDIAN</u>
F-85847 - F-85851	MK-526 Frac. through MK-530 Frac.	7 N., 9 E., Fairbanks
F-85862 - F-85864	MK-624 Frac. through MK-626 Frac.	7 N., 9 E., Fairbanks
F-85872 - F-85873	MK-721 Frac. through MK-722 Frac.	7 N., 9 E., Fairbanks

Management Units. The minerals management direction for the Semi-Primitive Motorized Special Management Unit reads that this unit"will be opened under the 1872 Mining Law to mineral entry (43 CFR 3800)...."

RAA believes that under the ROD for the Conservation Area, the Semi-Primitive Motorized Special Management unit is open to mineral location under the 1872 Mining Law. RAA's claims (F 85835-85873) are located within the Semi-Primitive Motorized Special Management Unit. Using the ROD as a management guideline, RAA properly staked and timely filed Notices of Location for 39 claims. RAA believes these claims are valid, and requests that the Bureau reverse its decision of 9 May 1988, and find these claims valid.

(Statement of Reasons at 2).

As to the portions of the claims BLM determined to be on lands selected by the State of Alaska, the statement of reasons explains that "some of the claims located within the SNCA fall, in part, on state-selected lands" due to the irregular boundary between the SNCA and the state-selected lands and that, for this reason, the claims were intentionally located as "fractions." 2/ Id. The statement of reasons does not challenge BLM's determination that the portions of the claims which occupy the state-selected lands are invalid. 3/

A threshold concern in this case is the fact that the appeal has been prosecuted by an employee of a company which is a stranger to the record. Practice before the Board of Land Appeals is controlled by the regulations at 43 CFR 1.3. See 43 CFR 4.3(a), 1812.1-1. In addition to representation by an attorney, 43 CFR 1.3(b) lists a number of circumstances in which individuals who are not attorneys may appear before the Board. For example, an individual may appear in a matter in which he represents himself, a member of his family, or a partnership of which he is a member. 43 CFR 1.3(b)(3). An individual also may appear on behalf of "[a] corporation, business trust, or an association, if such individual is an officer or full-time employee." 43 CFR 1.3(b)(3)(iii).

[1] An appeal brought by a person who does not qualify to practice under one of the circumstances set forth in the regulation is subject to dismissal. Leonard J. Olheiser, 106 IBLA 214, 215 (1988); Robert G. Young, 87 IBLA 249, 250 (1985); Ganawas Corp., 85 IBLA 250 (1985). The person

2/ The location notices for the claims state that their dimensions are 600 by 1500 feet. Thus, the claims are not "fractions" in the sense that they were located with irregular dimensions. Rather, the term appears to have been used because it was known at the time of location that portions overlapped state-selected land.

3/ Under sec. 906(c) of ANILCA, P.L. 96-487, 94 Stat. 2371, 2438 (1980), tentative approval of a state selection is deemed to vest title in the state as of the date of tentative approval.

filing an appeal has the responsibility of showing that he is qualified under the regulation. See Robert G. Young, supra; David D. Beal, 90 IBLA 87, 89 (1985). Enforcement of the regulation is necessary to protect those who do business with the Department from the risk of inadequate or false representation. Ganawas Corp., supra at 251.

The location notices for the mining claims at issue state that they were located by RAA. BLM's decision was by sent certified mail to RAA at the address in Fairbanks, Alaska, shown on the location notices. Although the combined notice of appeal and statement of reasons states that the appeal is brought by RAA, it is written on the letterhead of the Nerco Minerals Company (Nerco) of Vancouver, Washington, and is signed by Jennifer McCarter as a lands analyst for the company. While McCarter is apparently an employee authorized to appear on behalf of Nerco, the appellant herein is RAA and not Nerco. Neither the case file for the mining claims nor the statement of reasons indicates that she is an officer or full-time employee of RAA or has any relationship to RAA. Accordingly, this appeal is subject to dismissal.

[2] The fact Nerco has filed an appeal suggests that it may own an interest in either RAA or the mining claims addressed by BLM's decision. If so, Nerco would be a party adversely affected by the decision declaring the mining claims null and void and, under the terms of 43 CFR 4.410(a), would be entitled to appeal the decision. Under 43 CFR 1.3 McCarter could represent Nerco in bringing such an appeal. Nothing in the record before us, however, shows that Nerco in fact holds an interest in either RAA or the mining claims. Standing to appeal requires that an appellant not only have been a party to the decision appealed from but also be adversely affected by the decision. In re Pacific Coast Molybdenum Co., 68 IBLA 325, 331 (1982). To be adversely affected, an appellant must have a legally cognizable interest in the land at issue. Scott Burnham, 100 IBLA 94, 119-20, 94 I.D. 429, 443 (1987), On Reconsideration, 102 IBLA 363 (1988). BLM's decision did not name Nerco as a party and the record before the Board does not show that the company has any interest in the mining claims or land at issue. Accordingly, we conclude on the basis of the record before us that Nerco lacks standing to appeal the decision.

Because the record fails to establish that Nerco is a proper party and the statement of reasons cannot be regarded as having been filed by RAA, the appeal must be dismissed. See Leonard J. Olheiser, supra at 216. However, it should be noted that, even if we were to review the merits of this appeal, we would have to affirm BLM's decision.

[3] As acknowledged in the statement of reasons, the SNCA was withdrawn by Congress. 16 U.S.C. § 460mm-1(b) (1982). Although that same statute explicitly allows the Secretary to open areas of the SNCA to the location of mining claims, Congress has elsewhere specified the manner in which withdrawals are to be made, modified, extended, or revoked. See 43 U.S.C. § 1714(a) (1982). In particular, Congress has limited the exercise of the authority to the Secretary or individuals in the Office of the Secretary, appointed by the President by and with the advice and consent of the Senate, to whom he has delegated the authority. Id.; see Clayton W. Williams, Jr.,

103 IBLA 192, 205-08, 95 I.D. 102, 109-111 (1988); Vincent Bernard, 66 IBLA 100, 105 (1982). Unless the order making a withdrawal specifies when it terminates, lands remain withdrawn until the Secretary or his properly authorized delegate issues a formal order published in the Federal Register. James N. McDaniel, 105 IBLA 40, 42 (1988); Harry J. Ayala, 99 IBLA 19 (1987); Vincent Bernard, *supra* at 104; F. M. Tully, 39 IBLA 137, 139 (1979). ^{4/}

A copy of the resource management plan (RMP) referred to in the statement of reasons is not before the Board, but by its nature an RMP cannot be an order revoking a withdrawal. An RMP is "designed to guide and control future management decisions and the development of subsequent, more detailed and limited scope plans for resources and uses." 43 CFR 1601.0-2 (emphasis supplied). An RMP "is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations." 43 CFR 1601.0-5(k) (emphasis supplied). As stated above, a modification or revocation of a withdrawal requires action in accord with 43 U.S.C. § 1714 (1982). Even the portion of the RMP quoted in the statement of reasons uses the verb "will" rather than "is" in apparent recognition that the RMP cannot itself modify the withdrawal.

Because the land within the SNCA was withdrawn at the time the mining claims were located, BLM properly declared them null and void ab initio to that extent. Harry J. Ayala, *supra*; George E. Krier, 92 IBLA 101 (1986). The fact a partial revocation of the withdrawal was contemplated, as apparently was indicated in the RMP, is irrelevant; a valid claim cannot be located until the withdrawal is modified or revoked, and when such action is taken prior invalid locations are not retroactively validated. Kathryn J. Story, 104 IBLA 313, 315 (1988); Samuel P. Speerstra, 78 IBLA 343, 344 (1984).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal from the decision of the Fairbanks Support Center is dismissed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge

^{4/} The requirement to publish in the Federal Register is found at 43 CFR 2091.6. Prior to 1976, publication was required by Exec. Order No. 10355, 17 FR 4831 (May 28, 1952). See Alaska Pipeline Co., 38 IBLA 1, 17 (1978). When the order effecting the modification or revocation does not specify an effective date, a contemporaneous opening order establishes the date. 43 CFR 2091.5-6.