

MARGARET L. MESPELT AND THEODORE J. ALMASY

IBLA 90-313

Decided February 21, 1991

Appeal from a decision of the Alaska State Office, Bureau of Land Management, notifying mining claimants that Federal administration ceased when lands on which unpatented mining claims were located were conveyed to Doyon, Ltd. AA-33652 et al.

Affirmed.

1. Alaska Native Claims Settlement Act: Generally--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Unpatented mining claims located on land conveyed to Doyon, Ltd., an Alaska Native corporation, pursuant to provision of sec. 22 of the Alaska Native Claims Settlement Act, may no longer be administered by the Department, because the filing and recording provisions of sec. 314 of the Federal Land Policy and Management Act apply only to public lands of the United States and do not permit continued administration of lands conveyed out of Federal ownership.

APPEARANCES: Margaret L. Mespelt and Theodore J. Almasy, McGrath, Alaska, pro sese; James Q. Mery, Esq., Fairbanks, Alaska, for Doyon, Ltd.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Margaret L. Mespelt and Theodore J. Almasy have appealed from a decision dated March 19, 1990, notifying them that the Alaska State Office, Bureau of Land Management (BLM), would no longer accept for filing notices of intention to hold or affidavits of annual assessment work for unpatented mining claims located within T. 26 S., R. 22 E., Kateel River Meridian, Alaska. 1/ Appellants were informed that all of Township 26 South, Range 22 East was conveyed to Doyon, Ltd., an Alaska Native corporation, by patent No. 50-89-0095, on December 20, 1988. The decision explained that: "This conveyance does not affect your possessory rights to your mining claims under Federal law. The right of possession is

1/ Thirty-two mining claims are affected by this decision: they are, by BLM number, AA-33652-53, 33657, 33662, 33666, 33678-80, 33687-89, 33691-99, and 33700-11.

exclusive and remains with the mining claimant so long as the claims are perfected under the General Mining Law of 1872" (Decision at 1).

Appellants argue that provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601 and 1613(e) (1988), relied on by the Department to patent the lands on which their mining claims are located, were misapplied in this case, and that the statute is unconstitutional if applied to enable patenting of the land where their claims were located to Doyon, Ltd. ^{2/} They argue that the effect of this decision to stop administration will be to cause them to lose their claims.

[1] After conveyance of Township 26 South, Range 22 East out of Federal ownership, BLM no longer had authority to administer the land because Federal control ended with issuance of a patent. Ed Bilderback, 89 IBLA 263 (1985). This finding is unavoidable in cases where land has been transferred from Federal control, because operation of the statute providing for mining claim recordation, the Federal Land Policy Management Act (FLPMA), 43 U.S.C. §§ 1702(e) and 1714 (1988), is limited to public lands, as was explained in Bilderback:

The concept of "public lands" is important when considering applications required by FLPMA provisions since the statute, by its own definitions, is limited to operation upon the "public lands." See 43 U.S.C. § 1701 (1982). "Public lands," as defined by the Act, means "any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management" 43 U.S.C. § 1702(e). Although the provision of FLPMA dealing with mining claim recordation, section 314 * * *, does not repeat the limitation stated by section 102, to the effect that the Act applies to public lands only, the legislative history of FLPMA leaves little doubt that this is, in fact, what is intended by the law.

Id. at 265. The rule that BLM will not continue to administer mining claim recordation, after land has passed from Federal ownership, is firmly established in Departmental practice. Melvin N. Barry, 97 IBLA 359 (1987); Mary Lou Redmond, 95 IBLA 379 (1987); William J. Smith, 94 IBLA 75 (1986); Elizabeth S. Hjellen, 93 IBLA 203 (1986); Alamin Mining Corp., 90 IBLA 179

^{2/} Constitutional arguments are not properly addressed to this Board, whose authority is limited to an exercise of the Secretary's review authority under 43 CFR 4.1. See James C. Mackey, 96 IBLA 356, 94 I.D. 132 (1989). In this case, it does not appear that appellants applied for patents to their claims prior to issuance of the patent to Doyon, Ltd., and even if they had, such applications would not have operated to segregate the mining claims from acquisition by competing rights. See Scott Burnham, 100 IBLA 94, 94 I.D. 429 (1989). On the record before us, there is no indication that the patent to Doyon, Ltd. was defective in any way, nor have appellants pointed to any error in the patent.

(1986); cf. Lynn M. Sheppard, 90 IBLA 23 (1985) (finding that the Department lacked authority to adjudicate a mining claim located in 1912 on land patented to Arizona in 1940).

Although appellants argue that their possessory rights in the claims are endangered by the patent to Doyon, Ltd., that grant was made subject to valid existing rights (Patent No. 50-89-0095 at 1). This provision of the patent protects whatever rights appellants may have possessed at the time of patent. Bilderback, supra at 267. Because the lands conveyed to Doyon, Ltd., are no longer public lands of the United States, BLM may no longer administer the recording of annual assessment work affidavits or notices of intention to hold for those of appellants' claims located within the patented tract. Bilderback, supra at 266.

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.

Franklin D. Arness
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge