

HYAK MINING CO.

IBLA 88-544

Decided March 15, 1991

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. AA-64747 through AA-64798.

Affirmed.

1. Alaska: Statehood Act--Mining Claims: Lands Subject to--Segregation--State Selections

BLM properly declared a group of unpatented mining claims null and void ab initio because official land status records of the Department noted that the land was, when the claims were located, encompassed by a State selection, valid on its face, which thereby segregated the land from mineral entry even though the selection was void or voidable, since the land was within a national forest.

APPEARANCES: E. Neil MacKinnon, Hyak Mining Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Hyak Mining Company (Hyak) has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 9, 1988, declaring the RDX Nos. 1 through 52 lode mining claims, AA-64747 through AA-64798, null and void ab initio because they were located on land which was not open to mineral entry.

The subject mining claims were located by Hyak on April 28, 1988, on land situated in unsurveyed secs. 20, 21, 27, 28, and 29, T. 42 S., R. 68 E., Copper River Meridian, Alaska, on Douglas Island within the Tongass National Forest. Notices of location of the claims were filed for recordation with BLM on May 4, 1988. The decision under review found the subject mining claims null and void ab initio because the official public land records revealed that, at the time the claims were located, the land was "not open to mineral entry." BLM explained that the land was not considered open to mineral entry where the records indicated that it either had been selected by or tentatively approved for conveyance to the State

of Alaska or was private land. ^{1/} Hyak appealed the June 9, 1988, decision by timely filing a notice of appeal with BLM on June 25, 1988.

In its statement of reasons for appeal, Hyak admits that the RDX No. 40 lode mining claim (AA-64786) was properly declared null and void ab initio because it was entirely located on land which had been tentatively approved for conveyance to the State. As to this claim, therefore, BLM's decision is not disputed. Hyak, however, challenges BLM's finding that the remainder of its RDX lode mining claims were null and void ab initio where they "lie entirely or in part on national forest lands open to mineral entry."

The record indicates that, on June 27, 1960, the State filed State selection application A-60997 under serial number Juneau 11950, pursuant to section 6(b) of the Act of July 7, 1958, P.L. 85-508, 72 Stat. 340 (1958). On October 5, 1984, the application was consolidated with State selection application AA-253, filed September 12, 1966, also pursuant to section 6(b) of the Act of July 7, 1958, for lands in the Tongass National Forest including the subject land. Section 6(b) of the Act of July 7, 1958, granted the State the right to select, within 25 years after Alaska's admission to the Union, lands "which are vacant, unappropriated, and unreserved at the time of their selection." 72 Stat. 340 (1958). There is nothing in the record to indicate that the State selection has ever been tentatively approved as to the land involved herein.

On July 19, 1978, the State filed State selection application AA-18006 in part for some of the subject land, pursuant to section 6(a) of the Act of July 7, 1958, P.L. 85-508, 72 Stat. 340 (1958). This selection application was tentatively approved by BLM on August 19, 1980. Unlike selections under section 6(b) of the Act of July 7, 1958, selections under section 6(a) of the Act of July 7, 1958, could be made from national forest lands. See B. J. Toohey, 88 IBLA 66, 76-77 n.9, 92 I.D. 317, 323-24 n.9 (1985), aff'd, Cavanagh v. Hodel, No. A86-041 (D. Alaska Mar. 18, 1988); 72 Stat. 340 (1958).

The map submitted by appellant on appeal indicates that, in addition to the RDX No. 40 lode mining claim, portions of the RDX Nos. 17, 18, 27 through 29, and 37 through 39 lode mining claims (AA-64763, AA-64764, AA-64773 through AA-64775, and AA-64783 through AA-64785) were located on land already tentatively approved for conveyance to the State pursuant to State selection AA-18006. This is confirmed by comparison of the map submitted with appellant's location notices, which depicts the situs of the

^{1/} BLM found that "[s]ome" of the subject mining claims "infringe upon private lands conveyed by Certificate 93 for Mineral Survey 724 and Patent 1232181 for U.S. Survey 3845." A map submitted by Hyak on appeal, however, as well as the map which accompanied its location notices, both show the location of the claims did not extend onto private land. Because Hyak does not challenge BLM's conclusion in this regard, and also because of the result reached by this opinion, we do not reach this aspect of the BLM decision.

subject mining claims, with the master title plats (MTP) for T. 42 S., R. 68 E., Copper River Meridian, Alaska, which show the land encompassed by tentatively approved State selection AA-18006. 2/

Hyak does not challenge BLM's conclusion that portions of the subject mining claims fall within the area tentatively approved for conveyance to the State pursuant to State selection AA-18006. Nor does appellant contend that this land was open to mineral entry at the time of the location of these claims. 3/ Therefore, the present appeal concerns only whether BLM properly regarded the land already selected by the State pursuant to selection application A-60997 not to be open to mineral entry at the time of the location of the subject mining claims because the land was not available for State selection owing to the fact it was in a national forest. In deciding that question, we will also necessarily decide whether BLM properly declared the claims null and void ab initio in their entirety, where they were wholly located on land affected by both State selections AA-18006 and A-60997.

It is clear that, when the subject claims were located, the land encompassed by all or part of the claims had already been selected by the State pursuant to selection application A-60997. Further, it is clear that, at the time of the selection, this land was included in the Tongass National Forest and, thus, had not been available for selection by the State pursuant to section 6(b) of the Act of July 7, 1958. See David Cavanagh, 89 IBLA 285, 293, 92 I.D. 564, 568 (1985), aff'd, Cavanagh v. Hodel, supra. Nevertheless, in Cavanagh, we concluded that, while the land encompassed by the mining claims involved therein was not available for selection by the State because it was within a national forest and, thus, the filing of the State selection applications pursuant to section 6(b) of the Act of July 7, 1958, could have no segregative effect under 43 CFR 2627.4(b) (see David Cavanagh, supra at 293, 92 I.D. at 568), the notation of the applications on the relevant MTP segregated the land from mineral entry where nothing in the official land status records of the Department established that the "[n]ational [f]orest lands were excluded from * * * [the] State Selections or that such selections were rejected * * * to the extent national forest lands were included in the applications." 4/ Id. at 299, 92 I.D. at 572. Accordingly,

2/ The remaining portions of the RDX Nos. 17, 18, 27 through 29, and 37 through 39 lode mining claims, which were not located on land tentatively approved for conveyance to the State pursuant to State selection AA-18006, were located on land selected by the State pursuant to State selection A-60997.

3/ On a map of its mining claims submitted on appeal, Hyak has outlined in yellow portions of the claims believed to be valid, in the sense of whether they were located on land open to mineral entry. In so doing, it has indicated that it does not regard the claims as "valid" to the extent that they were located on land tentatively approved for conveyance to the State pursuant to State selection AA-18006.

4/ This holding was based in part on an earlier ruling in John C. & Martha W. Thomas (On Reconsideration), 59 IBLA 364, 366 (1981), to the

we upheld BLM's decision declaring the mining claims null and void ab initio.

In the present case, we find that the applicable MTP's, current on the date of location of the subject mining claims, noted that the State had filed selection application A-60997 with respect to all unpatented lands, thus encompassing the subject land. ^{5/} Also, there was nothing on the face of the MTP's to indicate that the State had sought to exclude national forest lands from its selection. Indeed, the State has now formally relinquished its selection as to those lands, indicating that such lands were originally encompassed by its selection. Furthermore, we have obtained the historical index and use plats with respect to the relevant township and find nothing there to indicate that the State selection application did not include national forest lands or that the application had been rejected as to those lands prior to the location of the subject mining claims.

We therefore must conclude that the notation rule applies to the present case. Where relevant MTP's noted, at the time of the location of appellant's mining claims, that the land encompassed by those claims was segregated from mineral entry to the extent that it was subject to a prior State selection (A-60997), valid on its face, and this was not contradicted by any of the official land status records of the Department, BLM properly held that this land was not then open to mineral entry. Accordingly, we conclude that BLM properly declared the claims null and void ab initio where they were located on land wholly segregated from mineral entry by State selection applications AA-18006 and A-60997. See Maple Leaf Gold, Inc., 101 IBLA 158, 161 (1988).

Recognizing the unavailability of national forest lands for selection pursuant to section 6(b) of the Act of July 7, 1958, the State, by letter dated September 11, 1988, following the present appeal, relinquished these lands, including those encompassed by the subject mining claims, in the case of selection application A-60997. The State, commenting that BLM had declared the claims null and void ab initio, stated that "[i]t was not the intent of the State of Alaska to file a general purposes grant selection within the Tongass National Forest" and concluded, therefore, that it would "relinquish that portion of state selection A-060997 to expedite the clearing of the federal records." ^{6/} By letter dated October 19, 1988, BLM

fn. 4 (continued)

effect that notation of filing a State selection application will be considered to segregate affected land from mineral entry even where the selection is otherwise "void or voidable." See David C. Cavanagh, *supra* at 295, 92 I.D. at 570.

^{5/} The record contains an MTP, dated Apr. 1, 1988, for the relevant township (T. 42 S., R. 68 E., Copper River Meridian, Alaska), and two supplemental MTP's, dated Apr. 14, 1986, for secs. 20 and 21 of that township,

all of which bear the notation "A060997 SS All Unpat lands Inc US [&] Min surveys. Islands, Islets, pinnacles, rocks & submerged lands."

^{6/} In a Sept. 23, 1988, memorandum to the Chief, Branch of KCS Adjudication, Alaska State Office, BLM, the Chief, Branch of Mineral Adjudication,

officially accepted the State's relinquishment of selection application A-60997 to the extent that the application had encompassed land within the Tongass National Forest.

The relinquishment of State selection application A-60997 as to lands in the national forest, however, does not alter the fact that this land had been selected by the State and, thus, where this fact was noted on the MTP, under the notation rule, the land was segregated from mineral entry at the time of location of the subject mining claims. Accordingly, relinquishment does not change our conclusion that BLM properly declared the claims null and void ab initio. See Boyad Tanner, 113 IBLA 387, 390 (1990).

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

fn. 6 (continued)

Alaska State Office, BLM, stated that appellant had requested the State to "remove the erroneous State Selection notation from [BLM's] plats so they can relocate their Federal mining claims" and that the State had "promptly responded by filing a formal relinquishment with BLM of those lands in the forest on which Hyak's null and void claims are located." The record before us does not indicate whether Hyak has relocated the subject mining claims.

CHIEF ADMINISTRATIVE JUDGE HORTON CONCURRING IN THE RESULT:

I agree with the result reached in this case but I would hold against appellant on the basis that its appeal was not accompanied by a statement of reasons. The single filing made by appellant in this case reads:

Hyak Mining Company wishes to appeal the rejection of the entire RDX group of claims located within Township 42 South 68 East, Copper River Meridian. Your decision is correct in the case of claim RDX #40, AA064786 as it lies wholly within lands tentatively approved to the State of Alaska. However the rest of the claim group RDX #1 thru #52 AA 064747-AA064785 AA064787-AA064798 lie entirely or in part on National Forest lands open to mineral entry. Enclosed you will find a map of the RDX group of claims with the claims we believe to be valid outlined in yellow to illustrate our case.

A map with various claim numbers outlined in yellow is appended to the above statement. Neither the above statement nor the accompanying map explains or illustrates why the claims cited by appellant were open to mineral entry contrary to the position taken by the decision appealed from.

Failure on appeal to point out affirmatively why the decision appealed from is in error may be treated in the same manner as an appeal in which no statement of reasons has been filed and the appeal may be dismissed. 43 CFR 4.402(a); Andre C. Capella, 94 IBLA 181 (1986); Don G. Carpenter, 94 IBLA 7 (1986); United States v. Fletcher De Fisher, 92 IBLA 226 (1986). Conclusory allegations of error, standing alone, do not suffice. B. H. Northcutt, 75 IBLA 305 (1983).

In the light most favorable to appellant and construing its notice of appeal as containing a statement of reasons in support thereof, I concur fully with the lead opinion on the issues discussed.

Wm. Philip Horton
Chief Administrative Judge