

INTERIOR BOARD OF LAND APPEALS

William H. and Claudene Nordeen

129 IBLA 369 (June 7, 1994)

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Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring mining claims null and void ab initio. F 52561 through F 52563.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

Publication of notice of proposed classification of lands for multiple use management pursuant to the Act of Sept. 19, 1964, in the Federal Register on Jan. 1, 1970, segregated those lands from operation of the General Mining Laws. Mining claims located on lands at a time when the lands are so segregated are properly declared null and void ab initio. A subsequent modification of the classification order did not retroactively validate locations made while the lands were segregated from mineral entry.

2. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

An amended mining claim location is a location made in furtherance of an earlier valid location and relates back to the date of the original location as long as no adverse rights have intervened. The burden is on the claimant to establish that a mining claim location on land segregated from mineral entry, made after the segregation, is actually an amendment of a prior location made while the land was open to mineral location. To satisfy the burden, the claimant must show that the original location was properly made, that the amended location embraces lands included in the original location, and that the claimant has an unbroken chain of title from the original location. Where claimants fail to meet that burden, BLM's decision invalidating their claims is properly affirmed.

APPEARANCES: William H. Nordeen, pro se and for Claudene Nordeen.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

William H. and Claudene Nordeen have appealed from a decision by the Alaska State Office, Bureau of Land Management (BLM), dated October 14, 1992, declaring the Monogram, Kokomo, and Oro Grande placer mining claims (F 52561 through F 52563) null and void ab initio, that is, null and void from the beginning.

BLM's decision recites that, on January 1, 1970, the lands in T. 29 N., R. 12 W., Fairbanks Meridian, Alaska (the township), were segregated from operation of the General Mining Laws by Public Land Order No. (PLO) F 12423. That PLO states as follows:

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18) and the regulations in 43 CFR Parts 2410 and 2411, it is proposed to classify for multiple use management, the public lands described in paragraph 2. As used herein, "public lands" means any lands not withdrawn or reserved for a Federal use or purpose.

Publication of this notice will not affect valid and existing rights or the determination and protection of the rights of Native Aleuts, Eskimos, and Indians of Alaska.

Publication of this notice has the effect of segregating the public lands described from appropriation under * * * the General Mining Laws (30 U.S.C. Ch. 2).

Paragraph 2 of the PLO described the township. 35 FR 16-17 (Jan. 1, 1970).

BLM's decision noted that the proposal to classify the public lands for multiple use management remained effective until December 31, 1971, when PLO 5150 withdrew the some of the lands in the township for a utility corridor, while opening the balance to location for metalliferous minerals under the mining laws. 36 FR 25410, 25413 (Dec. 31, 1971). ^{1/} The Nordeens' claims were located on September 10, 1971, prior to issuance of PLO 5150, in secs. 20 and 21 of the township. BLM held that the Nordeens' claims were null and void ab initio because they were located on lands at a time when the lands were withdrawn from mineral entry and could not be validated by the subsequent modification or revocation of the order of withdrawal to open the lands to mineral entry.

[1] It is established by the terms of the Classification and Multiple Use Act of 1964 that publication in the Federal Register of a notice of proposed classification of public lands segregates those lands from

^{1/} The following lands in the township remained closed to mineral entry: secs. 1 and 2; secs. 11 to 14, inclusive; secs. 22 to 27, inclusive; secs. 34, 35, and 36. 36 FR 25413 (Dec. 31, 1971).

appropriation under the mining laws. 43 U.S.C. § 1414 (1970); Rudolph Chase, 8 IBLA 351 (1972); H. E. Baldwin, 3 IBLA 71, 75-76 (1971), appeal dismissed, Baldwin v. Morton, Civ. No. 74-3122 (9th Cir., Jan. 16, 1976); see also 43 CFR 2461.1(a) (1971). Mining claims located on land which has been segregated from appropriation under the mining laws by notice of classification are properly declared null and void ab initio. Mike & Sandra Sprunger, 123 IBLA 330, 332 (1992); Pluess-Staufer (California), Inc., 106 IBLA 198, 200 (1988); H. E. Baldwin, supra.

The situation is not altered because PLO 5150 evidently subsequently opened the lands in question to location of metalliferous mining claims. A subsequent modification or revocation of the classification order will not retroactively validate locations made while the lands were segregated from mineral entry. Pluess-Staufer (California), Inc., supra at 200; see Harold E. De Roux, 94 IBLA 350, 351 (1986); Kelly R. Healy, 60 IBLA 115, 116 (1981) (mining claims located on land withdrawn from operation of the mining laws are null and void ab initio and will not be validated by modification or revocation of the order of withdrawal thereafter).

Appellants allude to the difficulty of ascertaining the status of the lands before locating claims, due to the extreme remoteness of the area. Although the consequences of locating mining claims on lands not open to mineral entry may be harsh, a mining claimant is responsible for learning the true status of the land on which his mining claims are located. Edgar Sebastian Roberts, 127 IBLA 217, 219 (1993).

[2] Appellants refer in their statement of reasons to copies of recorded locations for three older mining claims (named No. 6 Above Discovery, Old Crow, and Monogram), which they believe established valid existing rights prior to the withdrawal. They state that they "assume that since these claims did exist at the time of filing on October 26, 1971, [their] locations would be regarded as 'Amendments' to the prior locations changing only the ownership and names." Although they are not specific, appellants acknowledge that "a lapse did occur" as to the "existing claims."

An amended mining claim location is a location made in furtherance of an earlier valid location and relates back to the date of the original location as long as no adverse rights have intervened. The burden is on the claimant to establish that a mining claim location on land segregated from mineral entry, made after the segregation, is actually an amendment of a prior location made while the land was open to mineral location. To satisfy the burden, the claimant must show that the original location was properly made, that the amended location embraces lands included in original location, and that the claimant has an unbroken chain of title from the original location. Gary Hoefler, 127 IBLA 211, 215 (1993); Patsy A. Brings, 119 IBLA 319, 325 (1991); Jack T. Kelly, 113 IBLA 280, 283 (1990); Russell Hoffman (On Reconsideration), 87 IBLA 146, 148 (1985); Grace P. Crocker, 73 IBLA 78, 80 (1983), and cases cited therein. Appellants have failed to meet that burden here.

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.

David L. Hughes
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge