

PAUL R. SCOTT  
BETTY F. SCOTT

IBLA 80-833

Decided March 2, 1981

Appeal from the decision of the Oregon State Office, Bureau of Land Management, declaring the Ophir No. 2 placer mining claim abandoned and void and rejecting a verified statement on surface rights, OR 17316-A.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

2. Mining Claims: Surface Uses -- Surface Resources Act: Verified Statement

A verified statement filed under sec. 5 of the Surface Resources Act of 1955, 30 U.S.C. § 613 (1976), is properly rejected when the mining claim in connection with which it is filed has been declared abandoned and void for failure to comply with the recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Paul R. Scott and Betty F. Scott, pro sese.

OPINION BY ACTING ADMINISTRATIVE JUDGE GRANT

Paul R. Scott and Betty F. Scott appeal the decision of the Oregon State Office, Bureau of Land Management (BLM), dated July 8, 1980, declaring the Ophir No. 2 placer mining claim 1/ abandoned and void for failure to comply with the recordation requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The decision also rejected their verified statement with respect to the claim filed pursuant to section 5 of the Surface Resources Act of 1955, 30 U.S.C. § 613 (1976).

In June of 1977 BLM, seeking to establish rights to manage surface resources in certain public lands which were subject to unpatented mining claims, notified appellants of the procedures to be followed to claim existing surface rights related to unpatented mining claims in accordance with section 5 of the Surface Resources Act of 1955, 30 U.S.C. § 613 (1976). 2/ Appellants responded that the property involved was "deeded property" and that they understood the mining claim to have been patented. By letter dated June 24, 1977, BLM informed appellants that the land was public land open to location and entry under the mining laws, that their mining claim was unpatented, and that, while ownership of the claim may have been transferred by quitclaim deed, it would not have passed any rights the transferor did not possess. The letter reiterated the procedures for filing a verified statement claiming surface rights and notified appellants of the recordation requirements of FLPMA.

Appellants returned a verified statement properly executed with a covering letter asserting their belief that the land in question was privately owned by them. They enclosed a quitclaim deed from one John Dyke to Scott Lumber Company executed in 1952 which purports to transfer grantor's interest in the land embracing the mining claim. Appellants reveal that they were given this deed in 1960 and that local property taxes have been paid on the land since 1952.

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1/ The Ophir No. 2 placer mining claim is identified in appellants' verified statement as being located in the E 1/2 NE 1/4 NE 1/4 sec. 22, T. 11 S., R. 39 E., Willamette meridian, Baker County, Oregon.

2/ Section 4 of the Surface Resources Act of 1955, 30 U.S.C. § 612 (1976), provided that mining claims located on public lands after the date of the Act would be subject (prior to patent) to the right of the United States to manage and dispose of surface resources. Section 5 of the Act set forth the procedure to be followed with respect to previously located claims to establish claimant's rights to surface resources. The verified statement filed by appellants constituted their claim to surface rights in an unpatented mining claim located prior to the statute under section 5 of the Act. 30 U.S.C. § 613 (1976).

BLM then notified appellants that an examination would be made with respect to their right to the surface resources on the Ophir No. 2 placer mining claim. The notice reiterated the fact that the land was public land.

The master title plat in the case file shows the land as public domain. The BLM mineral report prepared in response to the verified statement discloses that the Ophir No. 2 placer mining claim had been located twice. Originally, Eugene Way located the claim on November 1, 1902, in the NW 1/4 NE 1/4 NE 1/4, S 1/2 NE 1/4 NE 1/4, NE 1/4, and N 1/2 SE 1/4 NE 1/4 NE 1/4 sec 22, T. 11 S., R. 39 E., Willamette meridian. It appears from documents in the case file that application for patent of the entire N 1/2 NE 1/4 of sec. 22 was filed in the United States Land Office on November 8, 1906, by Frances E. Reynolds. This application was contested by two parties including the mining claimant, Eugene Way, who had initially located the Ophir No. 2 mining claim. In a decision dated June 6, 1908, in contest 2812, the Reynolds' application was rejected as to the E 1/4 NE 1/4 NE 1/4 of sec. 22. Subsequently, patent number 358418 issued October 4, 1913, to Frances E. Reynolds for the NW 1/4 NE 1/4 and W 1/2 NE 1/4 NE 1/4 of sec. 22.

Subsequently, John Dyke located the claim on August 27, 1948, in the E 1/2 NE 1/4 NE 1/4 sec. 22, T. 11 S., R. 39 E. There is no apparent chain of title from Eugene Way to John Dyke. Appellants' claim to the land arose as described above from a quitclaim deed executed by John Dyke.

The BLM report concluded by noting that the mining claim had not been recorded pursuant to FLPMA and was therefore void. The report recommended that the verified statement case be closed. The examiner also recommended that appellants be assisted in seeking to obtain the land through color of title if they qualify.

In their statement of reasons, appellants make various arguments to support their assertion that the land in the E 1/2 NE 1/4 NE 1/4 sec. 22, T. 11 S., R. 39 E., Willamette meridian, is privately owned by them rather than public domain as reflected in BLM records.

Appellants have not refuted the evidence in the case record that the E 1/2 NE 1/4 NE 1/4 of sec. 22 is in fact unpatented public domain on which a mining claim has been located. Their assertion of legal title to the subject land is not supported by the evidence. Appellants' allegations also fail to establish any error in the BLM decision that the mining claim is abandoned and void under section 314 of FLPMA, 43 U.S.C. § 1744 (1976), because no copy of the notice of location and no evidence of assessment work was filed for record with BLM within 3 years of enactment of the statute.

[1, 2] Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file with the appropriate office of BLM a copy of the official record of the

notice of location for the claim and evidence of assessment work or notice of intention to hold the claim within the 3-year period following October 21, 1976. Failure to file the required documents within the time allowed by statute is conclusively deemed by statute to constitute abandonment of the mining claim by the owner and the claim is rendered void. 43 U.S.C. § 1744 (1976); 43 CFR 3833.1-2, 3833.2-1, 3833.4; A. J. Grady, 48 IBLA 218 (1980). It is well established that a verified statement filed under section 5 of the Surface Resources Act of 1955, 30 U.S.C. § 613 (1976), is properly rejected when the mining claim in connection with which it is filed is declared to be null and void. Roy R. Cummins, 26 IBLA 223 (1976); Estate of Thomas S. Williams, 10 IBLA 138 (1973); Evelyn M. Kiggins, 6 IBLA 235 (1972); United States v. Devenny, 3 IBLA 186 (1971). We find that BLM has properly declared the Ophir No. 2 placer mining claim abandoned and void and rejected appellants' verified statement.

This decision is based on the rights of appellants to the unpatented mining claim. No finding is made as to any rights appellants might be able to assert under color or claim of title.

Therefore, 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.

C. Randall Grant, Jr.  
Acting Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

