

ERNEST M. CUZZOCREO

IBLA 81-35

Decided April 15, 1981

Appeal from decision of Alaska State Office, Bureau of Land Management, declaring mining claims null and void. AA-18912, AA-18913, and AA-18914.

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 abandonment of the mining claim by the owner.

2. Mining Claims: Abandonment--Mining Claims: Assessment Work

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void.

Neither FLPMA nor the regulations provide for any leeway in the application of the penalty for failure to file the required information.

APPEARANCES: Ernest M. Cuzzocreo, pro se.

OPINION BY ACTING ADMINISTRATIVE JUDGE GRANT

Ernest M. Cuzzocreo appeals on behalf of himself and L. Cuzzocreo, his colocator, from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated September 11, 1980, declaring mining claims E/L #1, E/L #2, and E/L #3 (AA-18912, AA-18913, and AA-18914 respectively), abandoned and void for failure to file evidence of assessment work or a notice of intention to hold the claims by December 30, 1979.

In his statement of reasons appellant says "[p]lain and simple we made a mistake." Appellant submitted a copy of the affidavit of labor to show that they were not trying to circumvent the law.

[1, 2] Under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located after October 21, 1976, is required to file either evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim, on or before December 30 of each calendar year following the calendar year in which the claim was located. Failure to file such instruments within the prescribed time period is conclusively presumed to constitute abandonment of the claim by the owner and the claim is void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4; Cleatus Sypult, 53 IBLA 171 (1981); Robert F. Wilkinson, 53 IBLA 106 (1981); Silvertip Exploration & Mining, 43 IBLA 250 (1979); Juan Munoz, 39 IBLA 72 (1979); Donald H. Little, 37 IBLA 1 (1978). The conclusive presumption of abandonment is a matter of law imposed by statute. Lynn Keith, 53 IBLA 192, 196, 88 I.D. __ (1981).

Appellant's claims were located on August 21, 1978. Therefore, appellant was required to file either evidence of assessment work or a notice of intention to hold the claims on or before December 30, 1979, the calendar year following the calendar year in which the claims were located. While we appreciate the fact that appellant was not trying to circumvent the law, we are constrained by the fact that FLPMA does not give the Department authority to waive noncompliance with the statute or to afford relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. at __.

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:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

