

J. G. WOMACK

IBLA 81-797

Decided September 22, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims and millsites abandoned and void. CA MC 52862 through CA MC 52872.

Affirmed as modified.

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

Notices of locations for various mining claims and millsites filed for recordation under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), must be rejected where the claims and millsites were previously held null and void following Departmental contest proceedings.

2. 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.

APPEARANCES: J. G. Womack, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of June 3, 1981, the California State Office, Bureau of Land Management (BLM), declared the unpatented Gold Bug #1, Gold

Bug #2, Gold Bug #3, and Gold Bug #4 lode mining claims, the Canyon View placer mining claim, the Flouncey Flossie lode mining claim, the Flouncey Flossie placer mining claim, the Flouncey Flossie millsite, the Three Bugs millsite, and the Gold Bug #2 and #3 placer mining claims, CA MC 52862 through CA MC 52872, abandoned and void because no evidence of assessment work or notice of intent to hold the claims had been filed with BLM on or before December 30, 1980, as required by 43 CFR 3833.2-1, implementing section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The claims were located in 1960, and are owned by J. G. Womack, Louise D. Womack, John Cooper, and Claudine Cooper, who recorded the claims with BLM October 19, 1979, by filing copies of the notices of location and an affidavit of labor for 1979.

J. G. Womack, on behalf of the owners, filed a notice of appeal from the BLM decision, alleging that the area occupied by the mining claims has been patented to the City of San Bernardino by the Forest Service, and that the claimants have been prevented from entering upon the land to do the required assessment work. The appellants allege that the patent to the city of San Bernardino occurred in 1974, following a forest exchange.

When the claims were recorded with BLM in October 1979, it was indicated that the claims are situated in the NW 1/4 sec. 19, T. 1 N., R. 3 W., San Bernardino meridian. Information from BLM confirms that the NW 1/4 sec. 19, T. 1 N., R. 3 W., was patented to the city of San Bernardino on February 15, 1974, by patent No. 04-74-0061. The patent was issued without a reservation of minerals to the United States and therefore is subject only to valid preexisting claims.

[1] Examination of the case file of the exchange which led to the patent to the city of San Bernardino discloses that, following a hearing held November 27, 1962, in contest Riverside 0616, styled United States v. John L. Cooper, Claudine E. Cooper, Jesse G. Womack and Louise D. Womack, the hearing examiner declared the Gold Bug #1, Gold Bug #2, Gold Bug #3, and Flouncey Flossie lode mining claims, Canyon View placer mining claim, Flouncey Flossie and Three Bugs millsites null and void. This decision was upheld after appeal to the Director, Bureau of Land Management, in a decision of January 30, 1964. A further appeal to the Secretary of the Interior also brought affirmation of the hearing examiner's decision, in United States v. Cooper, et al., A-30267 (May 11, 1965). Because as this decision was final for the Department, claimants' notices of location filed for recordation in 1979 for these claims must be rejected on the ground that the claims based on those locations are null and void.

As no reference was made to the Gold Bug #4 lode mining claim and the Flouncey Flossie, Gold Bug #2, and Gold Bug #3 placer mining claims in the above noted contest decisions, we will proceed to consider the BLM decision with respect to those claims.

[2] Section 314 of FLPMA, supra, and 43 CFR 3833.4 impose a conclusive presumption of mining claim abandonment for any failure to file the required instruments in the proper BLM office by the date on which they are due. Since claimants did not file evidence of assessment work or, assuming they were prevented from doing assessment work, a notice of intention to hold these claims, on or before December 30, 1980, BLM properly declared the four remaining claims abandoned and void. The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Although 43 CFR 3833.2-1 requires the owner of an unpatented millsite claim to file a notice of intention to hold the claim on or before December 30 each year, section 314 of FLPMA, supra, does not require the filing of more than the notice of location for a millsite claim. In Mrs. Otis Teaford, 56 IBLA 367 (1981), we held that the failure of a holder of a millsite claim, which has been properly recorded under FLPMA, to file an annual notice of intention to hold the millsite is a curable defect, and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of the deficiency, citing Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981). So, in this case it would have been error for BLM to have declared the Flouncey Flossie and Three Bugs millsites abandoned and void if they had been properly recorded. However, as we held the millsite claim recordings must be rejected inasmuch as the claims were declared null and void in United States v. Cooper, supra.

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 as modified.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

