

JOHN T. SMEATON ET AL.

IBLA 81-1038 through
81-1060

Decided October 26, 1981

Appeals from decisions of Alaska State Office, Bureau of Land Management, declaring unpatented placer mining claims abandoned and recordation of the claims void. AA 41710 through AA 41732.

Affirmed.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of the recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

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

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with the authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: John T. Smeaton, pro se; Harold Samuelson, pro se; Anna Yohak, pro se; Pauline B. Nick, pro se; Katherine Yohak, pro se; Glela Nick, pro se; Wassillie Epchook, pro se; Nicolai A. Evon, pro se; Albert Olick, pro se; David N. Yohak, pro se; Peter Nick, pro se; Harry Yohak, pro se; Thomas Yohak, Sr., pro se; Victor Nick, pro se; Joseph Nick, pro se; Elena Yohak, pro se; Minnie Nick, pro se; Anna M. David, pro se; Elia Epchook, Sr., pro se; Elia Epchook, Jr., pro se; Jimmy Yohak, pro se; Job Yohak, pro se; Sally M. Strom, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeals have been taken from decisions dated July 16, 1981, by the Alaska State Office, Bureau of Land Management (BLM), deeming unpatented placer mining claims abandoned and declaring the recordation of the claims void. 1/

Each decision stated that the subject mining claim was located in September 1980 but that the copy of the notice of location for the claim was not filed with BLM within 90 days after the date of location as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b). The decision recited that failure to file an instrument required by FLPMA within the time period prescribed was conclusively deemed to constitute an abandonment of the claim by the owner and that the claim was void.

Essentially, the appellants state they were unaware of the recording requirements of FLPMA, but that they have done assessment work on the claims regularly. Throughout the appeals are that the claims were located many years ago by the grandfather or father of many of the appellants, and that maintenance of the claims has been a family enterprise each summer. Each appellant professes ownership of but a single claim which is referred to as "my land claim," and there is frequent expression of a desire to pass the claim to one of appellant's children in the future.

Examination of the notices of location shows that most of the claims were either located or recorded in 1958, except for one in 1972, and three in 1978, with apparent relocation in September 1980. Two claims were initially located in September 1980. Each of the location notices was recorded in the Bristol Bay Recording District on December 12, 1980, at the request of Peter Nick, and each was later presented to BLM on December 30, 1980, with all the service fees being paid by Sally Strom.

1/ For names of claims serial numbers, and names of respective appellants, see Appendix.

Section 314 of FLPMA, supra, requires the owner of an unpatented lode or placer mining claim located on or before October 21, 1976, to file a copy of the notice of location in the proper office of BLM within 3 years after the date of the Act (i.e., by October 22, 1979). The Act also requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the proper office of BLM within 90 days after the date of location. The Act also has requirements for filing of evidence of assessment work performed on the claim. The Act specifically provides that failure to file the required instruments within the time periods specified shall be deemed conclusively to constitute an abandonment of the claim by the owner.

The notices of location for the claims at issue appear to be relocations of old claims and each recites that the notice was posted on the claim in September 1980. There is no specific date indicated on any of the notices of location. Assuming the posting occurred on the last day of September, filing of the copies of the notices with BLM was required on or before December 29, 1980. Actually, the notices were tendered to BLM on December 30, 1980, after the 90th day had passed. If the posting of the notices of location on the claims took place earlier than the last day of September, the filing with BLM was that much later than the 90th day.

[1] The owner of a mining claim located after October 21, 1976, must file a copy of the notice of location of the claim with the proper office of BLM within 90 days after the date of location of the claim, failing which the claim is properly declared abandoned and void. James B. Pauley, 53 IBLA 1 (1981); John C. Buchanan, 52 IBLA 387 (1981); Jose G. Gonzales, 52 IBLA 270 (1981); Melart, Inc., 52 IBLA 5 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ No. 78-46 (D. Mont. June 19, 1979). As a matter of law, the conclusive presumption is also self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Thomas F. Byron, 52 IBLA 49 (1981).

Appellants may wish to consult with BLM about the possibility of relocating their claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

81-1060

APPENDIX

<u>Identifying Number</u>	<u>Appellant</u>	<u>Name of Claim</u>
IBLA 81-1038 AA 41710	John T. Smeaton	Discovery
IBLA 81-1039 AA 41711	Harold Samuelson	One above Discovery
IBLA 81-1040 AA 41712	Pauline B. Nick	Three above Discovery
IBLA 81-1041 AA 41713	Anna Yohak	Two above Discovery
IBLA 81-1042 AA 41714	Katherine Yohak	6 above Discovery
IBLA 81-1043 AA 41715	Glela Nick	4 above Discovery
IBLA 81-1044 AA 41716	Wassillie Ephook	5 above Discovery
IBLA 81-1045 AA 41717	Nicolai A. Evon	#2 on Little Creek, 4 below Discovery
IBLA 81-1046 AA 41718	Albert Olick	1 below Discovery
IBLA 81-1047 AA 41719	David N. Yohak	Two below Discovery
IBLA 81-1048 AA 41720	Peter Nick	Three below Discovery
IBLA 81-1049 AA 41721	Harry Yohak	Four below Discovery
IBLA 81-1050 AA 41722	Thomas Yohak, Sr.	5 below Discovery
IBLA 81-1051 AA 41723	Victor Nick	6 below Discovery
IBLA 81-1052 AA 41724	Joseph Nick	7 below Discovery
IBLA 81-1053 AA 41725	Elena Yohak	8 below Discovery
IBLA 81-1054 AA 41726	Minnie Nick	9 below Discovery
IBLA 81-1055 AA 41727	Anna M. David	11 below Discovery
IBLA 81-1056 AA 41728	Elia Ephook, Sr.	12 below Discovery
IBLA 81-1057 AA 41729	Elia Ephook, Jr.	13 below Discovery
IBLA 81-1058 AA 41730	Jimmy Yohak	14 below Discovery

