

ROBERT C. LeFAIVRE

IBLA 81-245

Decided October 28, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, declaring placer mining claims abandoned and void. W MC 16844 through W MC 16846.

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.

APPEARANCES: Robert C. LeFaivre, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Robert C. LeFaivre has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 28, 1980, declaring the placer mining claims Green River Nos. 1 through 3, W MC 16844 through W MC 16846, abandoned and void. The basis for the decision was appellant's failure to file evidence of annual assessment work performed or a notice of intention to hold the claims on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulations 43 CFR 3833.2-1(a) and 43 CFR 3833.4(a)

Prior to receipt of the BLM decision, appellant mailed a letter described as a notice of intention to hold the subject claims which was received by BLM on December 1, 1980. In response, BLM sent appellant a follow up letter of December 8, 1980, reaffirming the decision holding

the claims abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claims by October 22, 1979. The letter further informed appellant that examination of BLM land status records disclosed that the United States does not own the minerals in the land embraced in the claims. Finally, BLM noted that the subject land was withdrawn from operation of the mining laws of the United States pursuant to the oil shale withdrawal implemented by Exec. Order No. 5327 (Apr. 15, 1930) and Public Land Order No. 4522, 33 FR 14349 (Sept. 24, 1968), prior to location of appellant's claims.

In his statement of reasons for appeal, appellant alleges that notice of intention to hold the claims was given, referring to his October 15, 1979, letter which accompanied his filing with BLM of the notice of location for subject claims. Appellant further disputes the contention that the lands are not subject to operation of the Federal mining law although he offers no basis for this contention other than referring to an asserted "abandonment of mineral values" by the State of Wyoming from which the United States received title by exchange.

The location notices filed with BLM pursuant to section 314 of FLPMA, 43 U.S.C. § 1744 (1976), on October 16, 1979, indicate that the claims were located August 18, 1970, in sec. 16, T. 18 N., R. 107 W., sixth principal meridian, Wyoming. Reference to the master title plat discloses that the land in appellant's claims was patented and subsequently reconveyed to the United States with no minerals. The order of October 24, 1958, 23 FR 8400 (Oct. 30, 1958), reopening said land to applications and selections under the nonmineral public land laws recited that the land was reconveyed to the United States in an exchange (C-072087) in which "all minerals, both leasable and locatable have been reserved by the grantor."

[1] It is well settled that under the terms of section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and the implementing regulation at 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located prior to October 21, 1976, must file either evidence of performance of assessment work or notice of intention to hold the claim in the proper BLM office on or before October 22, 1979, and prior to December 31 of each year thereafter. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Section 314(c) of FLPMA creates a conclusive presumption of abandonment where the required instrument is not filed. 43 U.S.C. § 1744(c) (1976); Lynn Keith, *supra*. Although appellant recorded his notice of location for the subject claims with BLM on October 16, 1979, no evidence of assessment work or notice of intention to hold the claims filed with BLM by October 22, 1979, appears in the files. Further, appellant's letter of October 15, 1979, submitting the notice of location makes no reference to submission of any such instruments. The filing with BLM of a copy of the location notice cannot suffice as a notice of intention to hold the claim. Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981); Don Sagmoen, 50 IBLA 84 (1980). Accordingly, in the absence of evidence that either evidence of assessment work or notice of intention

to hold with respect to the subject claims was received by BLM on or before October 22, 1979, the claims were properly declared abandoned and void.

It further appears from the record that the subject claims were null and void ab initio, having been located on land not subject to entry for locatable minerals at the time of the location. The master title plat indicates that the subject lands were patented and subsequently reconveyed to the United States with a reservation of all minerals to the grantor reconveying the land. Further, the order of October 24, 1958, reopening the subject land, 23 FR 8400 (Oct. 30, 1958), opened the land only to applications under the nonmineral public land laws and expressly recited that all leasable and locatable minerals had been reserved by the grantor. As a general rule, lands patented without a reservation of minerals to the United States are not available for location of mining claims and mining claims located on such land after patent are null and void ab initio. Cole V. Mullen, 43 IBLA 102 (1979). Although the land in this case has been reconveyed to the United States by exchange, the minerals were not reconveyed and the land has not been opened to location under the mining laws. Therefore, appellant's mining claims were located on the land at a time it was not open to such location and are thus null and void from their inception. See, e.g., Ray C. Virgin, 33 IBLA 354 (1978).

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.
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge

