

LLOYD J. OSBORN
P.G.C.S., LTD.

IBLA 81-603, 81-604

Decided November 5, 1981

Appeals from decisions of the California State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. CA MC 49367 through CA MC 49369 and CA MC 21656 through CA MC 21662.

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: Assessment Work

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Lloyd J. Osborn, pro se, and for appellant P.G.C.S., Ltd.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lloyd J. Osborn and P.G.C.S., Ltd., have appealed from decisions of the California State Office, Bureau of Land Management (BLM), dated April 8, 1981, declaring the Devil's Hole #1 through #3 and Tungsten Lode #3 through #9 mining claims, CA MC 49367 through CA MC 49369

and CA MC 21656 through CA MC 21662, respectively, 1/ abandoned and void for failure to file timely evidence of annual assessment work or notices of intention to hold the claims on or before December 3, 1980, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

The Devil's Hole #1 through #3 mining claims were located between November 24, 1974, and January 15, 1975, and filed for recordation with BLM on October 9, 1979. The Tungsten Lode #3 through #9 mining claims were located on November 20, 1978, and filed for recordation with BLM on February 14 and 15, 1979. Evidence of annual assessment work for all the claims was filed in 1979. There is no evidence that appellants filed evidence of annual assessment work or notices of intention to hold the claims during calendar year 1980, i.e., on or before December 30, 1980.

In their statements of reasons for appeal, appellants contend that their affidavits of assessment work were duly recorded with the Kern County recorder in August 1980 and sent to BLM, and that they must have been "lost in the mail." Appellants enclosed copies of the 1980 proofs of labor.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and the pertinent regulation, 43 CFR 3833.2-1(c), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work or a notice of intention to hold the claim.

Section 314(a) of FLPMA, supra, and the pertinent regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located prior to October 21, 1976, shall, within the 3-year period following October 21, 1976, and prior to December 31 of each year thereafter, file with BLM evidence of annual assessment work or a notice of intention to hold the claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

[2] The deadline for filing for 1980 was December 30, 1980, as to all of the subject claims. The statute requires that one or the other of the required instruments be filed "in the office where the location notice or certificate is recorded" and "in the office of the Bureau designated by the Secretary." 43 U.S.C. § 1744(a) (1976). Filing

1/ The BLM decision dealing with the Tungsten Lode mining claims refers to the Tungsten Lode #4 through #9 mining claims. The decision inadvertently failed to include the Tungsten Lode #3, although it refers to it by serial number (CA MC 21656).

in the county recording office does not relieve a claimant from filing with BLM under the requirements of the statute or the regulations. Dave R. Newman, 57 IBLA 23 (1981).

When appellants failed to file timely either an affidavit of assessment work or notice of intention to hold, BLM properly held the claims to have been abandoned and declared them void. See, e.g., Melvin Darby, 56 IBLA 41 (1981); Robert R. Eisenman, 50 IBLA 145 (1980). 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).

Therefore, 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.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

