

W. VERNE KIGHT  
EVA M. KIGHT  
(ON RECONSIDERATION)

IBLA 79-359

Decided January 28, 1982

Petition for reconsideration of a Board decision insofar as it affirms a decision of the Oregon State Office, Bureau of Land Management, declaring two mining claims void for failure to file evidence of annual assessment work. (OR MC 3130 and OR MC 3131).

Petition for reconsideration granted; W. Verne Kight, 47 IBLA 351 (1980) and decision appealed from reversed in part; case remanded.

1. Mining Claims: Assessment Work

If the owner of a mining claim located on or before Oct. 21, 1976, recorded his claim with BLM in 1977, he was required under 43 CFR 3833.2-1(a) to file a copy of evidence of annual assessment work or a notice of intention to hold the claim on or before Dec. 30, 1978.

Because this particular filing is not required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), a decision declaring such a claim abandoned and void for failure to file the required document will be reversed where the owner of the claim complied with the statutory filing requirements and subsequently filed the document required by the regulation.

APPEARANCES: Jeanette Marshall, Esq., Medford, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

W. Verne Kight and Eva M. Kight have petitioned for reconsideration of our decision dated May 21, 1980, insofar as it affirms a decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Huckleberry and Jensen mining claims abandoned and void (OR MC 3130, OR MC 3131). The claims were located prior to October 21, 1976, the date

of enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1976). Section 314 of that statute, 43 U.S.C. § 1744 (1976), requires owners of claims to file copies of their location notices and evidence of assessment work or notice of intention to hold the claims. In our prior decision, we held that the claims were recorded with BLM on October 28, 1977, and that appellants were required to file either evidence of annual assessment work performed or a notice of intention to hold the claims on or before December 30, 1978, pursuant to 43 CFR 3833.2-1(a). We further found that no such documents had been filed at that time, and therefore the claims were abandoned and void pursuant to 43 CFR 3833.4.

The initial BLM decision held seven claims to be abandoned and void for failure to file evidence of assessment work in 1978. We held that this requirement applied only if all of the claims were considered to have been recorded in 1977. Although appellants had submitted copies of location notices for all seven claims, they submitted only \$10 in filing fees, enough to record only two claims. Accordingly, we held that only the Huckleberry and Jensen claims were recorded in 1977. Since the requirement to file evidence of annual assessment work on or before December 30, 1978, applied only to those claims, we held that only those two claims became void for failure to file the required documents. While their original appeal was pending, appellants filed new notices of location and evidence of assessment work for all seven claims on October 18, 1979. <sup>1/</sup>

Appellants contend that when we declared the Huckleberry and Jensen claims invalid, we failed to take into account that all seven of the claims were refiled on October 18, 1979. Nothing in our prior decision, however, indicates that these filings were considered to effect a new recordation of any of the seven claims. Nor did we consider these filings as satisfying the requirement that appellants file evidence of assessment work in 1978 for the claims recorded in 1977. We reversed BLM's determination that all seven claims were invalid because this particular requirement applied only to the two claims which were recorded in 1977. We viewed the filings made on October 18, 1979, only as satisfying the requirement for annually submitting evidence of assessment work for the claims recorded in 1978.

Appellants also claim it was error for us to consider any of the claims to have been recorded in 1977, since a map depicting the location of the claims had not been filed until 1978. Appellants note that if the claims were not recorded in 1977, there was no requirement to file evidence of annual assessment work in 1978. In H. L. Smith, 46 IBLA 62 (1980), we rejected the argument that recordation does not occur until maps have been filed. Thus, absence of a map does not forestall recordation of a claim where the other requirements are met. The concurring

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<sup>1/</sup> When BLM received these filings, it assigned each of the seven claims another serial number, OR MC 26093 through OR MC 26099.

opinion of Administrative Judge Burski, in Smith, *supra* at 65-69, fully explains the reasons for so holding.

[1] Nevertheless, favorable action on appellants' petition for reconsideration should be granted for another reason. In Harvey A. Clifton, 60 IBLA 29 (1981), we recently examined the requirement for an owner to file evidence of assessment work by December 30, 1978, if his claim was recorded in 1977. Section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before October 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by October 22, 1979, and by December 30 of each year thereafter. Pursuant to subsection (c) of that section, a mining claim is conclusively presumed to be abandoned if the owner fails to file the required documents. Under the statute, the requirement of filing evidence of assessment work by December 30 of each year "thereafter" is initiated not by recording the claim but only by the first filing with BLM of such evidence of assessment work or notice of intention to hold the claim. With respect to the claims at issue here, evidence of assessment work was first filed on October 18, 1979. Therefore, under the statute, no filing was required by December 30, 1978. We noted, however, that the claim owner must still comply with the regulatory requirement for this filing, but that failure to file timely should be treated as a curable deficiency. We held that the owner is entitled to notice of such deficiency and an opportunity to rectify it prior to a decision finding the claim abandoned and void. Appellants have already cured these deficiencies by including the prior annual statements in their 1979 filings.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' petition for reconsideration is granted; our prior decision and the BLM decision appealed from are reversed as to the Huckleberry and Jensen mining claims.

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Anne Poindexter Lewis  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING, CONCURRING:

The result in this case conforms to the interpretation of the law adopted by the majority of this Board, en banc, in Harvey A. Clifton, 60 IBLA 29 (1981), which interpretation was criticized in my dissenting opinion at 60 IBLA 41-43. Being bound, however, by the precedential decisions of this Board, I must concur in the result in this case, notwithstanding my personal dissatisfaction with the majority's application of the law.

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Edward W. Stuebing  
Administrative Judge

61 IBLA 219

