

R. GAIL TIBBETTS

IBLA 81-915

Decided March 15, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 81649 through U MC 81927.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment -- National Park Service

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: R. Gail Tibbetts, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of June 29, 1981, the Utah State Office, Bureau of Land Management (BLM), declared the unpatented Copperspur Nos. 1 through 42 and Copperspur Nos. 61 through 118; Tiffany Nos. 1 through 6; RG Nos. 101 through

126, RG Nos. 131 through 166, and RG Nos. 183 through 200; Jean Nos. 1 through 4, Jean Nos. 7 through 26, Jean Nos. 28 through 48, Jean Nos. 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, Jean Nos. 81 through 100; and Jean Nos. 103 through 120 lode mining claims, U MC 81649 through U MC 81927, abandoned and void because no notice of intention to hold the claims had been filed with BLM on or before December 30, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). ^{1/} The claims are situated within the Glen Canyon National Recreation Area. They were located in September 1970, and copies of the notices of location were properly recorded with the National Park Service (NPS) prior to September 28, 1977, as required by section 8 of the Mining in the Parks Act (MPA), 16 U.S.C. § 1907 (1976).

R. Gail Tibbetts has appealed the decision insofar as it relates to the Tiffany Nos. 1 through 6, and Jean Nos. 1 through 4 mining claims, U MC 81749 through U MC 81754 and U MC 81835 through U MC 81838.

[1] Section 314 of FLPMA requires the owners of unpatented mining claims located on public land on or before October 21, 1976, to file either a notice of intention to hold the unpatented claim or proof of assessment work performed on or for the benefit of the claim, on or before October 22, 1979, and on or before December 30 of each calendar year thereafter, with the office in which the notice of location is recorded, and to file a copy of the official record with the proper office of BLM, also on or before December 30 of each year. As the claims had been recorded with NPS pursuant to MPA the claimants were excused from the performance of annual assessment work, but they were not excused from the requirement of filing a notice of intention to hold the claims each year, under section 314 of FLPMA.

There is no record in the case files that such notice of intention to hold the claims was filed either with BLM or NPS on or before October 22, 1979, or at any time for the year 1979. BLM therefore properly deemed the claims to be abandoned and void. 43 U.S.C. § 1744(c) (1976); 36 CFR 9.5(d); 43 CFR 3833.4; Riter Ekker, 58 IBLA 251 (1981); W. Leroy Ewell, 58 IBLA 121 (1981). The responsibility for complying with the recordation requirements of the pertinent statutes and regulations rested with appellant. This Board has no authority to excuse lack of compliance or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

^{1/} Copperspur Nos. 1 through 42, Copperspur Nos. 61 through 118; Jean Nos. 7 through 26, Jean Nos. 28 through 48, Jean Nos. 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, and Jean Nos. 81 through 100, Jean Nos. 103 through 120; RG Nos. 101 through 126, RG Nos. 131 through 166, RG Nos. 183 through 200 were declared null and void, following a hearing, by Administrative Law Judge Robert W. Mesch, in his decision of Oct. 30, 1980. That decision was affirmed by this Board in R. Gail Tibbetts v. Bureau of Land Management, 62 IBLA 124 (1982).

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

