

ERICKSON PLACERS, INC.

IBLA 82-473

Decided March 30, 1982

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring certain unpatented mining claims abandoned and void. F-64309 through F-64321.

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. Federal Land Policy and Management Act of 1976: Assessment Work--Mining Claims: Abandonment--Mining Claims: Assessment Work

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

APPEARANCES: Keith A. Christenson, Esq., Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of December 30, 1981, the Bureau of Land Management's Alaska State Office (BLM), declared certain mining claims, 1/ owned by Erickson Placers, Inc., abandoned and void for failure to file timely with BLM in 1980 either an affidavit of assessment work performed or a notice of intention to hold the claims. The claims were all located before the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA). Their owner appeals.

[1] Both section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a) require filing with BLM on or before October 22, 1979, and on or before December 30 of each calendar year thereafter, either a notice of intention to hold the mining claim or evidence of annual assessment work performed thereon. Harvey A. Clifton, 60 IBLA 29 (1981). A claim for which those necessary filings are not timely made is conclusively presumed abandoned (43 U.S.C. § 1744(c)) (1976) and "it shall be void" (43 CFR 3833.4(a)).

[2] Appellant asserts that labor affidavits were in fact timely filed for the assessment year ending at noon, September 1, 1980, for 10 of the 13 claims 2/ declared abandoned and void by BLM, and that BLM's decision respecting those 10 claims is without foundation. Appellant bases that assertion on the fact that two labor affidavits covering the 10 claims (appellant's exhibits C and D) were filed with BLM October 22, 1979, each indicating on its face that it was for the 1980 assessment year. However, appellant misapprehends the recordation requirement. As we explained in James V. Joyce (On Reconsideration), 56 IBLA 327 (1981):

Section 314 [of FLPMA] is not an assessment work statute; it is a recordation statute. Such assessment requirements as exist are found in 30 U.S.C. § 28 (1976). FLPMA neither changes nor enlarges the type of work which may be done to fulfill the assessment work requirements of the mining law.

The purpose of 30 U.S.C. § 28 (1976), as the Supreme Court of Utah has recently noted, is to assure diligent development of mining claims and to prevent thwarting of that purpose by the mere location of claims to tie up land and let it stay idle. Powell v. Atlas Corp. 615 P.2d 1225 (Utah 1980). The purpose of 43 U.S.C. § 1744 (1976), however, is to inform the Department of those claims existing on public lands and of the continued interest of the claimant in such claims.

1/ See appendix for claim names, BLM serial numbers, and location dates.

2/ From appellant's statement of reasons it is clear the BLM's disposition of three of the claims is not being appealed: Radionics No. 3 (a.k.a. Electronics No. 3) (F-64311); Butterfield Scheelite No. 1 (F-64313); Butterfield Scheelite No. 2 (F-64314). Therefore, as to these claims, BLM's decision is final without further comment.

Id. at 328. In that case, we held that either proof of labor or notice of intention to hold must be filed in each calendar year (according to the regulations, on or after January 1 and on or before December 30). Id. at 331; see also Nellie McLaughlin, 61 IBLA 347 (1982). Since no such filing was made with BLM during calendar year 1980, as required by section 314 of FLPMA, the statutory conclusive presumption of abandonment attaches, which the Department of the Interior is powerless to avert. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). The failure to file those documents is not a curable defect comprehended by Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), because that filing is required by the statute itself and is, therefore, not "supplemental information."

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

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

APPENDIX

<u>Claim Name</u>	<u>BLM Serial Number</u>	<u>Located</u>
Radionics No. 1	F-64309	August 16, 1952
Radionics No. 2	F-64310	August 16, 1952
Radionics No. 3	F-64311	August 16, 1952
Radionics No. 4	F-64312	August 16, 1952
Butterfield Scheelite No. 1	F-64313	August 15, 1952
Butterfield Scheelite No. 2	F-64314	August 15, 1952
Butterfield Scheelite No. 3	F-64315	August 15, 1952
Butterfield Scheelite No. 4	F-64316	August 15, 1952
The Turbojet	F-64317	June 27, 1955
Alberta No. 1	F-64318	August 16, 1952
Alberta No. 2	F-64319	August 16, 1952
Marjorie No. 1	F-64320	August 16, 1952
Marjorie No. 2	F-64321	August 16, 1952

