

KIVALINA RIVER MINING ASSOCIATION

IBLA 82-666

Decided June 29, 1982

Appeal from decision of Alaska State Office, Bureau of Land Management, declaring an unpatented lode mining claim abandoned and void. F 63455.

Affirmed.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Mining Claims: Location -- Mining Claims: Relocation

An amended location notice of a mining claim generally relates back to the date of the original location, but a location notice cannot be considered an amended location where the original location did not comport with the statutory requirements.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, failed to file a copy of the official record of the location notice with the Bureau of Land Management, on or before Oct. 22, 1979, the claim must be considered to be abandoned by the owner, and it is void.

APPEARANCES: Joel A. Rothberg, Esq., Kotzebue, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Kivalina River Mining Association appeals the Alaska State Office, Bureau of Land Management (BLM), decision of March 3, 1982, which declared the unpatented Kivalina River Mining Association lode mining claim, F 63455, abandoned and void because of noncompliance with the requirements of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833. The decision declared that claim abandoned and void because no copy of the original location notice of April 15, 1970, as well as no affidavit of annual assessment work performed on the claims, was submitted to BLM on or before October 22, 1979.

A copy of an unrecorded "amended" mining claim location notice for the Kivalina River Mining Association lode claim was filed in the Fairbanks District Office of BLM October 18, 1979. The notice stated it was for a lode claim embracing 160 acres, and named eight locators. <sup>1/</sup> The letter accompanying the location notice stated the claim had been first located April 15, 1970. No copy of the original location notice was submitted.

Appellant argues the amended location made October 15, 1979, did not require any evidence of assessment work until during calendar year 1980, and that affidavits of such labor were filed January 22, 1980, September 15, 1980, and December 24, 1980. Copies of the instruments referred to were attached.

Appellant is laboring under a number of misconceptions regarding the recordation requirements of FLPMA. First, an amended mining location is one

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<sup>1/</sup> The applicable statute, 30 U.S.C. § 23 (1976), provides that a lode claim, whether located by one or more persons, shall not exceed 1,500 feet in length along a vein or lode, and shall extend no more than 300 feet on each side of the middle of the vein at the surface. If the amended location described in the notice filed with BLM Oct. 18, 1979, is considered to be a lode claim as the notice states, it does not comport with the statutory requirements and must be considered invalid. The dimensions set forth in the notice, 2, 640 feet by 2, 640 feet, greatly exceed the statutory limitations for a lode claim.



made in furtherance of an earlier valid location, while a relocation is one which is adverse to a prior location. Where the claimant filed an amended location notice together with a statement that the claim had been located in 1970, the amended location notice related back to the original date of location. Larry D. Brookshire, 56 IBLA 73 (1981); R. Gail Tibbetts, 43 IBLA 210, 86 I. D. 538 (1979). FLPMA requires that a copy of the official record of the location notice for a mining claim located before October 21, 1976, must be filed by the owner of the claim with the proper office of BLM on or before October 22, 1979, or the claim would be deemed conclusively to be abandoned by the owner. Josephine M. Buchen, 46 IBLA 298 (1980). Second, FLPMA also required that evidence of assessment work or a notice of intention to hold the claim likewise be filed with BLM on or before October 22, 1979, for mining claims located prior to October 21, 1976, failing in which the claim would be conclusively deemed to be abandoned. Stanley Bishop, 50 IBLA 371 (1980). Third, appellant seems to think that recording of assessment work with BLM is required only in the year following that in which the work was done on the claim. FLPMA requires recordation with BLM each year prior to December 31 of assessment work done on the claim. 43 U.S.C. § 1744(a) (1976).

Looking at the submission by appellant, we observe some discrepancies. The amended location notice describes the Kivalina River Mining Association lode claim; the two copies of affidavits of annual labor submitted with the appeal refer to placer claims named, Discovery, #1 above Discovery, and #2 above Discovery. The third affidavit refers to Kivalina River Mining Association placer claim. The affidavits bear only the recording stamp of the Kotzebue Recording District, State of Alaska. We are unable to see any connection between the placer claims and the Kivalina River Mining Association lode claim.

Furthermore, FLPMA requires recordation of the annual assessment work affidavit in both the state office where the location notice is of record and in the proper BLM office. These are separate and distinct recording requirements, and compliance with one is not compliance with the other. Major G. Atkins, 60 IBLA 284 (1981).

From our review of the record, we find no error in the BLM decision. 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 from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

James L. Burski  
Administrative Judge



