

HERSCHEL KNAPP

IBLA 82-690

Decided July 14, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. N MC 10311.

Affirmed.

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

Where a mining claim was located in September 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute abandonment of the claim.

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

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof with the proper BLM office,

prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Herschel Knapp, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Herschel Knapp appeals the decision of March 8, 1982, wherein the Nevada State Office, Bureau of Land Management (BLM), declared the unpatented Strawberry Bitch placer mining claim, N MC 10311, abandoned and void because no notice of intent to hold the claim or evidence of assessment work was filed with BLM in 1978 as required by 43 CFR 3833.2.

The claim was located September 29, 1977, and was recorded with BLM November 3, 1977. It is situated in sec. 21, T. 6 S., R. 39 E., Mount Diablo meridian, Esmeralda County, Nevada. Copies of the proofs of labor, as recorded in Esmeralda County, Nevada, were filed with BLM September 17, 1979, December 18, 1980, and October 20, 1981.

Appellant contends the Federal Land Policy and Management Act of 1976 (FLPMA) did not amend the 1872 mining law or impair claims or rights of location except as provided in 43 U.S.C. § 1744, which he quotes in pertinent part. He argues that under 30 U.S.C. § 28 (1976) and Nevada law, the first assessment work year runs from noon September 1 following the date of location to noon September 1 of the following year, so that for his claim located September 29, 1977, the first assessment work year commenced at noon September 1, 1978, and accordingly no forfeiture of his claim could occur in less than 1 year thereafter. He submits a copy of a proof of labor recorded January 15, 1979, in Esmeralda County, Nevada, for work done on the Strawberry Bitch claim between "9-77 and 9-78" for the year ending September 1, 1978. He contends that the county recorder would not have recorded a proof of labor prior to September 1, 1978, because appellant was not required to perform assessment work before that date on his claim located September 29, 1977. He argues that the regulations are not set forth in crystal clear unambiguous language that anyone can understand.

[1] Section 314 of (FLPMA) 43 U.S.C. § 1744 (1976), requires that the owner of an unpatented mining claim located on public land after October 21, 1976, must file a copy of the recorded location notice in the proper office of BLM within 90 days after location, and that prior to December 31 of each year following the calendar year in which the claim was located, he must file or record in the office where the notice of location is recorded and in the proper office of BLM evidence of assessment work performed or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Francis Skaw, 63 IBLA 235 (1982); Charles A. Behney III, 63 IBLA 231 (1982); Tako Mining, 63 IBLA 206 (1982). The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute

itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Francis Skaw, supra; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

As the claim herein was located September 29, 1977, a proof of labor or a notice of intent to hold the claim was required to be recorded both in the records of Esmeralda County, Nevada, and with BLM prior to December 31, 1978. As no such filings were made, the claim was properly deemed to be abandoned.

[2] It is true, as appellant states, that the mining law does not require performance of assessment work until the assessment year commencing at noon of September 1 first succeeding the date of location of the claim. 30 U.S.C. § 28 (1976). Thus, appellant was not required to perform assessment work until sometime during the year running from September 1, 1978, to September 1, 1979. However, this does not obviate the necessity for compliance with section 314 of FLPMA, requiring either an affidavit of assessment work or a notice of intention to hold the claim to be filed with both the local recording office and with BLM on or before December 30, 1978, since 1978 is the year following the calendar year in which the claim was located. Ronald Willden, 60 IBLA 173 (1981); Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981).

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

C. Randall Grant, Jr.
Administrative Judge

