

HARVEY A. WOLCOTT ET AL.

IBLA 82-768, 82-769

Decided July 20, 1982

Appeals from decisions of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 14152, N MC 14284, N MC 14290, N MC 14291, N MC 14294, and N MC 14299.

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

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices are of record and in the proper office of BLM. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

APPEARANCES: L. H. Erickson, Esq., Las Vegas, Nevada, for appellants Wolcott, Reimer, Lefton, and Estabrook; Richard N. Berkshire, Esq., Omaha, Nebraska, for appellants Durham, Bekins, Nipp, Murray, and Krohn.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeals have been taken on behalf of Harvey A. Wolcott, Don R. Reimer, Howard Estabrook, Morris S. Lefton, C. W. Durham, Frederick M. Bekins, John H. Murray, Patrick G. Nipp, and Robert F. Krohn from decisions dated April 12 and 16, 1982, wherein the Nevada State Office, Bureau of Land Management (BLM), declared the unpatented Reveille #475, Golden Arrow #250, Golden Arrow #256, Golden Arrow #257, Golden Arrow #260, and Golden Arrow #265 lode mining claims, N MC 14152, N MC 14284, N MC 14290, N MC 14291, N MC 14294, and N MC 14299, abandoned and void because no proof of labor was filed with BLM during calendar year 1978 as required by 43 CFR 3833.2.

The claims were located in November and December 1977, and copies of the location notices were recorded with BLM on January 6 and 19, 1978.

Appellants Wolcott, Reimer, Lefton, and Estabrook state they interpret the Board's decision, James V. Joyce (On Reconsideration), 56 IBLA 327 (1981), as permitting the recordation of a proof of labor with BLM either in the year following the location of the claim or in the year following recordation of the claim with BLM. They assert they recorded their proof of labor in 1979, the year following the recordation of the claims with BLM, as well as in 1980 and 1981.

Appellants Durham, Bekins, Murray, Nipp, and Krohn assert they purchased their claims from John A. Wiebe in 1978, at which time new identification numbers were assigned by BLM. They allege, without proof, that they have receipted copies from BLM of proofs of labor for 1978 and all subsequent years. They suggest that BLM evidently failed to convert its records to reflect the new numbers.

A legal presumption of regularity supports the official acts of public officers and the proper discharge of their official duties. United States v. Chemical Foundation, 272 U.S. 1 (1926); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This rebuttable presumption that administrative officials have properly discharged their duties and not reassigned numbers to mining claims previously recorded, nor lost or misplaced documents filed with them, has arisen in numerous appeals decided by this Board in cases where the timely filing of a document or remittance of a payment was essential to appellant's establishment or maintenance of a right. James G. Robinson, 60 IBLA 134 (1981), and cases cited.

There is nothing in the record to indicate that the identification numbers of appellants' claims have been changed from those assigned when the location notices were filed with BLM January 9, 1978.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), provides in pertinent part:

Sec. 314. (a) * * * The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act

of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

* * * * *

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; * * *.

Thus the owner of an unpatented mining claim located in 1977 must file either a proof of labor or a notice of intent to hold the claim, both in the county recorder's office where the location notice is of record and in the proper office of BLM, prior to December 31, 1978. Where, as in these cases, no proof of labor or notice of intent to hold the claims was filed with BLM in 1978, the mining claims were properly deemed abandoned and void.

Appellants have misinterpreted Joyce, supra. The decision does not offer an option for the year of recordation of the initial proof of labor with BLM; rather, it states that FLPMA requires the filing of a notice of intent to hold or a proof of labor during the calendar year following the year in which the claim was located for a post-FLPMA location (i.e., a claim located after October 21, 1976), or in the year following the recordation with BLM of a pre-FLPMA claim, with the caveat that the initial recordation of a pre-FLPMA claim had to be accomplished no later than October 22, 1979.

The assessment year runs from noon September 1, until noon of the following September 1. 30 U.S.C. § 28 (1976). The first assessment year for a newly located mining claim commences on September 1 next following the date of location. Id. FLMPA imposed a requirement that the owner of an unpatented mining claim file either a notice of intent to hold or evidence of assessment work during the calendar year next following the year in which the claim was located. If the state laws or mining district regulations are in conflict with the Federal mining statutes, the Federal statutes control. Where there seems to be a conflict between the Federal statutory requirements for assessment work and the recordation requirements of FLPMA, the requirements of FLPMA may be complied with by recording a notice of intent to hold the claim in both the proper county recording office and in the proper BLM office. If the owner of the claim fails to file any instrument required by FLPMA during the specified time period named in the statute, the consequences set forth in 43 U.S.C. § 1744(c) (1976), are mandatory, i.e., the claims are conclusively deemed to be abandoned.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

