

JACK L. KETTLER

IBLA 83-61

Decided November 19, 1982

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 22177 through U MC 22180.

Reversed and remanded.

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

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation of 43 CFR 3833.2-1(a), is properly treated

as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

APPEARANCES: George A. Clarke, Esq., Luck, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jack L. Kettler appeals the Utah State Office, Bureau of Land Management (BLM), decision of October 5, 1982, which declared the unpatented Omar #1 through #4 lode mining claims, U MC 22177 through U MC 22180 abandoned and void because no notice of intention to hold the claims or evidence of assessment work was filed with BLM for the 1977-78 assessment year as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Section 314 of FLPMA provides pertinently:

Sec. 314.(a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter, 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 [sic] 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.

Examination of the case file disclosed that the Omar claims were located December 27, 1968. Copies of the location notices were filed with BLM September 21, 1977. Proofs of labor were filed with BLM August 30, 1979; August 28, 1980, August 21, 1981, and August 18, 1982:

[1] As the claims were located prior to October 21, 1976, the date of enactment of FLPMA, the proof of labor filed with BLM August 30, 1979, satisfied the statutory requirement. As the Board held in Harvey A. Clifton, 60 IBLA 29 (1981):

[1] After extensive consideration, this Board is now convinced that the requirement of filing evidence of assessment work or notice of intention to hold with BLM for claims located on or before October 21, 1976, must be met at some point during the 3-year period following enactment of the recordation statute, 43 U.S.C. § 1744 (1976), *i.e.*, by October 22, 1979, and by December 30 of each year following such initial filing of evidence of assessment work or notice of intention to hold. We do not challenge the authority of BLM, asserted in the decision below to adopt regulations pursuant to the provisions of the Mining Law of 1872, as amended, 30 U.S.C. §§ 22-24, 26-28, 29, 30, 33-35, 37, 39-42 (1976), requiring the owners of unpatented mining claims to file notice of intention to hold or evidence of assessment work with BLM by December 30 of each year following recordation with BLM of the certificate on location. However, we cannot affirm a decision conclusively presuming a claim to be abandoned and thus void in the face of evidence to the contrary where the statutory filing requirements imposed by section 314 of FLPMA have been complied with. This statute imposes a conclusive presumption of abandonment for failure to comply with the filing requirements established therein, notwithstanding evidence showing claimant did not intend to abandon the claim. Lynn Keith, 53 IBLA 192, 196-97, 88 I.D. 369, 372 (1981). With respect to filings that are deficient for failure to conform to the requirements of the regulation, but which meet the statutory requirements of section 314, the deficiency does not give rise to a conclusive presumption of abandonment but rather to a curable defect of which claimant should be given notice and an opportunity to rectify prior to any decision voiding the claim. Heidelberg Silver Mining Co., Inc., 58 IBLA 10, 12 (1981); Ted Dilday, 56 IBLA 337, 341, 88 I.D. 682, 684 (1981); Feldslite Corporation of America, 56 IBLA 78, 81-83, 88 I.D. 643, (1981). This principle was cited as significant by the Tenth Circuit Court of Appeals in a recent decision upholding the validity of the regulations:

We conclude that the Secretary has not ignored § 1744(c) which assumes that even defective filings put the Secretary on notice of a claim, and we hold that once on notice, the Secretary cannot deem a claim abandoned merely because the supplemental filings required by § 3833 -- and not by the statute -- are not made. This is also the Secretary's view: failure to file the supplemental information is treated by the Secretary as a curable defect. A claimant who fails to file the supplemental information is notified and given thirty days in which to cure the defect. If the defect is not cured, "the filing will be rejected by an appealable decision." [Footnote omitted, emphasis in original.]

Topaz Beryllium Co. v. United States, 649 F.2d 775, 778 (10th Cir. 1981). This is also consistent with the fundamental principle of

statutory construction that statutes which impose a forfeiture for noncompliance are construed strictly. See 3 Sutherland, Statutory Construction, §§ 59.02 and .03 (4th ed. 1974).

60 IBLA at 33-34.

We find no violation of any requirement of FLPMA in this case. The BLM decision must be reversed.

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 reversed, and the case remanded to BLM for appropriate action consistent with this opinion.

Douglas E. Henriques  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Bruce R. Harris  
Administrative Judge

