

Editor's note: Reconsideration denied by Order dated June 15, 1983

ARTHUR R. FIELDS, SR.

IBLA 82-1084

Decided May 12, 1983

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring placer mining claims null and void. F-59392 through F-59397.

Affirmed as modified.

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: Assessment Work

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the required filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and local office of the state where the notices of location were filed.

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

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, had to file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of a notice of intention to hold the mining claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where the copy of the notice of intention to hold or evidence of assessment work was not timely filed, the claim is properly declared abandoned.

APPEARANCES: Arthur R. Fields, Sr., pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Arthur R. Fields, Sr., has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 17, 1982, declaring the Wiseman #1 through #6 placer mining claims 1/ null and void ab initio because the claims were located on land withdrawn from mineral location. In addition, the claims were declared null and void for failure to file affidavits of assessment work for 1980 and 1981.

In his statement of reasons appellant states: (1) that he has continually worked the claims since 1964; (2) that the BLM office in Kotzebue did not have the proper forms for filing evidence of assessment work, and therefore he used a copy of the location notice in its place.

The lands at issue were withdrawn from all forms of appropriation under the public land laws, including location and entry under the mining laws, subject to valid existing rights, by Public Land Order (PLO) No. 5179, 37 FR 5579, 5580 (Mar. 15, 1972). The notices of location filed with BLM on September 28, 1979, indicate the date of "discovery" to be January 23, 1964, and the date of posting of the notice as September 21, 1979. Based on the posting date, BLM concluded the claims were located after the land was withdrawn and were therefore null and void ab initio. 2/ Attached to appellant's notice of appeal are copies of location notices for claims that were filed in the Noatak-Kobuk Alaska recording district. The location notices reflect a January 23, 1964, discovery and posting date. Although the claims are identified as the Wise claims Nos. 1 through 6, appellant asserts they are the same claims as those involved herein. Based on the location notices filed with the notice of appeal, it appears that the claims in question actually were located before the land was withdrawn. However, even assuming appellant's locations predate the withdrawal, there are other grounds for considering the claims null and void.

1/ Wiseman claims #1 through #6, F-59392 through F-59397, are situated in protracted secs. 29 and 30, T. 23 N., R. 7 W., and protracted secs. 24 and 25, T. 23 N., R. 8 W., Kateel River meridian, Alaska.

2/ We note that until 1966 there was no Federal requirement of compliance with State location laws. See United States v. Zweifel, 11 IBLA 53, 77, 80 I.D. 323, 333 (1973), aff'd sub nom. Roberts v. Morton, 549 F.2d 158, 161-62 (10th Cir.), cert. denied, 434 U.S. 834 (1977); see also United States v. Haskins, 59 IBLA 1, 49-50, 88 I.D. 925, 949 (1981). While there was a statutory requirement that the boundaries of a lode claim be marked on the ground, 30 U.S.C. § 28 (1976), there is no Federal statutory requirement that a placer claim be marked or a notice of location posted. See Book v. Justice Mineral Co., 58 F. 106 (C.C.D. Nev. 1893); Reins v. Murray, 22 L.D. 409 (1896). Therefore, since appellant's recorded notice alleged a pre-1966 discovery, it is questionable whether the statement that the claims were not "posted" until 1979 would support invalidating these claims.

[1] Section 314(a) of Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744, requires that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of every calendar year thereafter.

The Board explained in Martin Slisco, 62 IBLA 260, 261-62 (1982):

this statute required that between October 21, 1976, when the Act was approved, and October 21, 1979 (and prior to December 31, of each subsequent year), holders of pre-FLPMA mining claims must file (1) Evidence of assessment work or notice of intention to hold these claims in the local recording office of the State, and (2) a copy of that same document in the proper BLM office. In other words, the 3-year time period of section 314(a) applies both to filing in the local office as well as filing with BLM. The appellants did not submit to BLM any document which was filed in the Fairbanks Recorder's Office within the 3-year statutory time limit. Therefore, for this reason, appellants failed to comply with the terms of FLPMA, 43 U.S.C. § 1744(a) (1976).

In this case appellant apparently intended the notices of location filed October 29, 1980, and September 15, 1981, to serve as either evidence of assessment or notices of intent to hold. ^{3/} Even assuming the notices could be considered as such, there is no evidence that these documents were ever filed in the local recording office of the State. Thus, appellant failed to comply with 43 U.S.C. § 1744 (1976) and the claims, therefore, are conclusively deemed to be abandoned and void.

[2] In addition, appellant's claims are also abandoned and void for failure to file evidence of assessment work or a notice of intent to hold the claims on or before October 22, 1979. See Junerwanda J. Papaeliou, 60 IBLA 128 (1981). Where, as in this case, there was no proof of labor or notice of intention to hold the claims filed with BLM on or before October 22, 1979, or in 1980, or 1981, the claims are conclusively presumed to be abandoned. J & B Mining Co., Inc., 65 IBLA 335 (1982). Although appellant's failure to file may have been inadvertent, neither BLM nor this Board has any authority to excuse lack of compliance with the statutory requirements of FLPMA, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). As the Board stated in Lynn Keith:

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, and would operate even without regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is

^{3/} The regulations 43 CFR 3833.2-2 and 3833-.2-3 set forth the specific requirements for the contents of evidence of assessment work and the notice of intention to hold, respectively. Appellant's notices of location filed in 1980 and 1981 did not meet the requirements of either of these regulations.

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 of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981). 53 IBLA at 196, 88 I.D. at 371-72.

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 as modified.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

