

Editor's note: Reconsideration denied by Order dated July 1, 1983

IMCO SERVICES

IBLA 82-1204

Decided June 15, 1983

Appeal from determination by the Nevada State Office, Bureau of Land Management, declining to declare mining claims abandoned and void. NMC-18025 and NMC-18026.

Dismissed.

1. Contests and Protests: Generally -- Mining Claims: Abandonment -- Mining Claims: Contests -- Mining Claims: Recordation -- Rules of Practice: Private Contests

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: S. A. Hoelscher, Battle Mountain, Nevada, for appellant; Robert G. Pruitt, Jr., Esq., for intervenor, Milchem Corporation.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

By letter dated June 30, 1982, Steve Hoelscher, geologist for IMCO Services (appellant), requested that the Nevada State Office, Bureau of Land Management (BLM), issue a letter of cancellation for the Revelation and Revelation #1 unpatented lode mining claims (NMC 18025 and NMC 18026) situated in Lander County, Nevada. The file contains copies of location certificates in the name of Milchem, Inc. (intervenor herein), indicating that the Revelation and Revelation #1 claims were located by Milchem on March 17, 1978.

In his June 30 letter, Hoelscher asserted that Milchem, Inc. (Milchem), had failed to comply with mandatory recordation requirements under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), when it neglected to file proof of assessment work or a

notice of intention to hold the claims for calendar year 1981. 1/ The letter further stated that "the claims became open ground at the end of December 30, 1981 and were relocated by IMCO Services * * * on June 7, 1982 as the Revenge 1 and Revenge 2 claims (N MC 243014, 243015)."

On August 10, 1982, BLM responded to Hoelscher's letter stating that "this office will take no action on your request." 2/ The BLM refusal is the basis for the appeal to this Board.

[1] In its June 30, 1982, letter Hoelscher asked BLM to "assist in quieting the title to these claims by issuing a cancellation letter for Milchem's Revelation and Revelation 1 claims (N MC 18025, 18026) with a copy to me at IMCO Services." This case is essentially a dispute between two adverse claimants with respect to the validity of two groups of mining claims, based upon the provisions of 43 U.S.C. § 1744 (1976).

The 43 U.S.C. § 1744 (1976) requirement that an owner of a mining claim file notice of intent to hold the claim, or evidence of performance of assessment work prior to December 30 each year is mandatory, not discretionary. Failure to comply with this requirement is deemed conclusively to constitute abandonment of the claim. Jack DeVault, 72 IBLA 324 (1983); Joe Karren, Sr., 65 IBLA 387 (1982); Carl B. Anderson, 61 IBLA 4 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). The conclusive presumption of abandonment which attends failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. As a matter of law, it is self-operating and does not depend upon the act or decision of an administrative official. White Rose Corp., 72 IBLA 80 (1983); Lynn Keith, *supra*.

The presumed abandonment for failure to file can be determined on the BLM records. If this were a contest it would be expressly precluded by the requirements of the Departmental regulation concerning private contests, 43 CFR 4.450-1. Under that regulation a person may initiate a contest to have "the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management." Because compliance with section 314 of FLPMA can only be resolved by the records of BLM, no private contest based on that issue can be maintained under that regulation. While the requirement limiting private contests to matters not of record was initially provided to prevent rival homestead entrymen from claiming a preference right based on information already available to the Government, 3/ it applies to all similar contests. This is appropriate

1/ Under section 314 of FLPMA, the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the claim, evidence of assessment work performed on the claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), prior to Dec. 31 of each year following the calendar year in which the claim was located.

2/ The BLM determination was in reliance upon an opinion of the Regional Solicitor based upon proposed regulations. While this Board reaches a conclusion that BLM properly refused to take action on appellant's request, it does not do so for the same reason relied upon by BLM. In fact, the reliance on proposed regulations is, at the best, questionable.

3/ See generally Christie v. O'Glesbee, 23 IBLA 155 (1973).

because a contest proceeding consists of a formal evidentiary hearing. No such hearing is required where the claim is void as a matter of law and its invalidity can be determined on the basis of a record without a hearing. Gold Depository and Loan Co. v. Mary Brock, 69 IBLA 194 (1982). The Department is without authority to determine the question of right of possession to claims as between rival claimants. A suit filed in a court of competent jurisdiction is the proper method of resolving such disputes. Gold Depository and Loan Co., *supra* at 196; W. W. Allstead, 58 IBLA 46 (1981); John R. Meadows, 43 IBLA 35 (1979). Looking now to the action sought by appellant, we see no reason for this Board to direct BLM to make a determination. Milchem's right of possession can be determined from the record, and a "cancellation letter" by BLM will not serve to "quiet title" to appellant's claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

R. W. Mullen
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Will A. Irwin
Administrative Judge

