

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, declaring the Last Chance #1 and Upper Last Chance Creek Fork Claim #1 lode claims abandoned and void. F 52416 and F 52417.

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 a mining claimant apparently inadvertently omits the serial number of two claims from the affidavit of annual labor and there is no other means of identifying the claims on the document, BLM properly declares the claims abandoned and void for failure to comply with 43 CFR 3833.2.

APPEARANCES: Arley R. Taylor, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Arley R. Taylor has appealed from a decision of the Anchorage District Office, Bureau of Land Management (BLM), dated October 3, 1983, which held the Last Chance #1 and the Upper Last Chance Creek Fork Claim #1 lode mining claims abandoned and void for failure to file evidence of assessment work or a notice of intention to hold the two claims within calendar year 1980, as required by 43 U.S.C. § 1744(a) (1982) and 43 CFR 3833.2.

The instant claims are among a number of claims, located prior to October 21, 1976, which were recorded on June 8, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982). The two subject claims were serialized as F 52416 and F 52417. On June 13, 1979, appellant filed a notice of his intention to hold a number of claims, including the instant two, alleging that it was impossible to gain access to the claims through National Park Service land. This filing represented compliance with the initial filing requirements of 43 U.S.C. § 1744(a)(2) (1982). Thereafter, appellant was required to file annually either proof of assessment work performed or a notice of intention to hold each of the recorded claims.

On August 20, 1980, appellant filed a copy of his proof of labor. This proof of labor covered numerous claims, but did not name the individual claims by name. Rather, the claims were identified by groups. One group was identified as the "Last Chance Load [sic] Claims." Following this identification, appellant included BLM assigned serial numbers F 52418 through F 52421. Thus, the two claims involved in this appeal (F 52416 and F 52417) were, apparently, inadvertently omitted.

[1] The applicable regulation, 43 CFR 3833.2-2(a)(1), provides that the evidence of assessment work must contain "[t]he Bureau of Land Management serial number assigned to each claim upon filing of the \* \* \* certificate of location in the proper BLM office." As the regulation noted, such identification number would serve to comply with the statutory requirement that each annual filing submitted to BLM include "a description of the location of the mining claim sufficient to locate the claimed lands on the ground." 43 U.S.C. § 1744(a)(2) (1982).

In Philip Brandl, 54 IBLA 343 (1981) the Board, in effect, expanded the types of filings that would be acceptable by including "the proper identification of the claim by name" as an alternative to the submission of the correct recordation number given by BLM.

However, in Philip Brandl the claimant had failed to identify the claim either by name or serial number. <sup>1/</sup> Nor had he provided a description of the claim sufficient to identify it. The Board held that he had failed to fulfill the statutorily imposed requirement that he include "a description of the claims sufficient to locate the claimed lands on the ground," in each annual filing. 43 U.S.C. § 1744(a)(2) (1982). Thus, the claim in Brandl was deemed abandoned and void. A similar result occurred in Peter Laczay, 65 IBLA 291 (1982), where a claimant omitted four claims on his evidence of assessment work.

The same conclusion must follow in the instant case. Herein, appellant failed to identify the individual claims by name. Rather, he relied solely on the BLM assigned serial numbers. By mis-entering the numbers on the evidence of assessment work, appellant made it impossible for BLM to apply that filing to the two claims at issue.

We recognize that, after appellant entered the serial numbers "F 52418 thru F 52421," he added a notation "6 claims." We need not decide whether, in certain circumstances, such additional information might be deemed to cure the deficiency because, at least insofar as the instant case is concerned, no reliance on the claim totals would be justified.

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<sup>1/</sup> In Brandl, the claimant did not submit any serial numbers and had misidentified the No. 2 Below Discovery claim as the No. 2 Above Discovery claim.

Appellant submitted similar entries for his other claim groups and, save for single claims, the total number of claims as shown by the serial numbers listed is, without exception, different than the number appellant entered. Thus, after the Eureka Creek Placer claims, appellant identifies the serial numbers as F 52407 and F 52398 through F 52404. While this would describe 8 claims, appellant entered the total as 10. For the Flat Creek lode claims appellant provided serial numbers "F 52408 thru F 52415" thereby aggregating eight claims. Yet, appellant stated the total claims in this group as six. In light of this consistent pattern of error, BLM could not have a reasonable basis for relying on any of the claim totals provided by appellant. 2/

While it is unfortunate that the 1980 omission was not discovered until 1983, it must be recognized that not only was the error difficult to discern, but also that the incredible volume of filings associated with the recordation provisions of FLPMA has served to put a considerable strain on BLM's adjudications. In any event, as we have noted many times, the statute is self-operating and is not dependent upon any act or decision of an administrative official. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). This view of the law was recently upheld by the United States Supreme Court in United States v. Locke, 105 S. Ct. 1785 (1985).

Accordingly, 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.

James L. Burski  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Wm. Philip Horton  
Chief Administrative Judge.

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2/ Indeed, this problem was not confined to the 1980 filing, but existed on every subsequent filing as well. Thus, in later years, appellant entered the serial numbers of the two claims involved herein so that the Last Chance group was shown to be "F 52416 - F 52421," i.e., six claims. Yet, in every year the total number of claims involved was shown on the proof of labor as seven.

