

GLENN AND BARBARA KROSHUS

IBLA 83-995 Decided June 18, 1985

Appeal from decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring certain placer mining claims abandoned and void for failure to file timely affidavits of assessment work. F-55378 through F-55385.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of assessment Work or Notice of Intent to Hold Mining Claim

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file evidence of annual assessment work or notice of intention to hold with the Bureau of Land Management on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter. This requirement is mandatory and the failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and render the claim void.

APPEARANCES: Winston S. Burbank, Esq., Fairbanks, Alaska, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Glenn and Barbara Kroshus have appealed from a decision of the Anchorage District Office, Bureau of Land Management (BLM), dated August 18, 1983, declaring certain placer mining claims abandoned and void because an affidavit of assessment work was not timely filed on or before October 22, 1979, as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). ^{1/} The decision stated that the claims were filed for recordation with BLM on August 8, 1979, but that the affidavit of assessment work was not filed until December 28, 1979, after the October 22, 1979, deadline.

^{1/} On Oct. 21, 1983, the United States District Court for the District of Nevada issued a decision declaring section 314(a) and (c) FLPMA, 43 U.S.C. § 1744(a) and (c) (1982), unconstitutional insofar as they provide for a

On appeal appellants state that they took title to the claims in September 1980 pursuant to a quitclaim deed from one Earnest Mauer. Appellants admit that the affidavit of assessment work had not been filed until December 28, 1979, but they stated they believed the matter was cured "in that there were no subsequent filings on these claims by others and there have indeed been subsequent filings of annual labor by Mr. Mauer as well as Mr. and Mrs. Kroshus" (Statement of Reasons at 2). Further, appellants assert that the late filing was cured when they restaked the claims in March 1981.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of annual assessment work or notice of intention to hold with BLM on or before October 22, 1979, and on or before December 30 of each year thereafter. This requirement is mandatory and the failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and render the claim void. See, e.g., Dan Walker, 74 IBLA 153 (1983); Philip W. Lyttle, 61 IBLA 161 (1982).

Appellants admit their predecessor in interest failed to timely file in 1979. Therefore, the claims recorded in 1979 must be considered abandoned and void. See 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4(a). The fact that subsequent timely filings may have been made in later years is of no moment. The conclusive presumption of abandonment embodied in the statute is self-operative and does not depend on any act or decision of an administrative official. In enacting the statute, Congress did not vest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 196, 88 I.D. 369, 371-72 (1981).

Appellants allege that they relocated the claims in 1981. By memorandum dated October 27, 1983, the Board made inquiry of BLM seeking to learn whether 1981 location notices for the claims had been timely recorded with BLM. On November 21, 1983, the Board received a memorandum from BLM stating that it had completed a thorough search of case files and computer data and failed to find any location notices for the claims bearing a 1981 location date. Appellants have provided no evidence to establish that their 1981 locations were recorded with BLM. We must conclude that such notices were not recorded.

fn. 1 (continued)

conclusive presumption of abandonment of mining claims for a failure to provide timely annual filings with BLM. Locke v. United States, 573 F. Supp. 472 (D. Nev. 1983). The United States appealed that decision to the United States Supreme Court.

During the pendency of that case before the Supreme Court, the Board suspended consideration of mining claim recordation appeals. On Apr. 1, 1985, the Supreme Court issued its decision in United States v. Locke, 105 S. Ct. 1785 (1985), reversing the decision of the district court and upholding the constitutionality of the recordation provisions of FLPMA.

Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982), requires that a mining claim located after October 21, 1976, must be filed for recordation with BLM within 90 days after the date of location of such a claim. See 43 CFR 3833.1-2(a). If appellants actually relocated the claims in 1981, such locations also are deemed abandoned and void in accordance with 43 CFR 3833.4(a) for failure to timely record such claims in accordance with 43 CFR 3833.1-2(a).

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.

Bruce R. Harris
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge

