

GOOD HOPE DEVELOPMENT CO.

IBLA 82-972

Decided June 26, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims CA MC 54747 through CA MC 54753 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Recordation

Under the provisions of 43 U.S.C. § 1744 (1982), a mining claimant must file evidence of annual assessment work or a notice of intention to hold each year in a timely manner. Failure to file results in the claim being extinguished, and therefore abandoned and void.

APPEARANCES: James L. Meeder, Esq., San Francisco, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Good Hope Development Company has appealed from a decision of the California State Office, Bureau of Land Management (BLM), declaring appellant's mining claims abandoned and void for failure to file a copy of the proof of annual labor or notice of intention to hold the claims on or before December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). ^{1/} Appellant does not deny its failure to make the required filing, but asserts the claims should not be deemed abandoned and void because it was never made aware of the requirement.

^{1/} This appeal involves the following claims:

| <u>Claim Name</u> | <u>Location</u> | <u>CA MC No.</u> |
|-------------------|--------------------|------------------|
| Oro Plata | September 10, 1967 | 54747 |
| Oro Plata South | July 17, 1968 | 54748 |
| Oro Plata East | September 18, 1968 | 54749 |
| Patsy | September 19, 1968 | 54750 |
| Nancy | September 19, 1968 | 54751 |
| Christy | September 19, 1968 | 54752 |
| Margie | September 19, 1968 | 54753 |

[1] Under section 314 of FLPMA, 43 U.S.C. § 1744 (1982), since 1979, the owner of an unpatented mining claim has been required to file evidence of annual assessment work or notice of intention to hold the mining claim each year. Failure to make a yearly filing in a timely manner properly results in the claim being extinguished and therefore abandoned and void. United States v. Locke, 105 S. Ct. 1785 (1985). ^{2/}

Appellant asserts that its relocation of these claims renders BLM's decision voiding the claims moot. This contention is not totally correct. Although the relocated claims are not before us in this proceeding, appellant should note that the relocated claims are essentially new claims. Rights acquired under a relocation of a mining claim extinguished pursuant to 43 U.S.C. § 1744 (1982) will not relate back to the date of location of the original claim but only to the date of relocation. Florian L. Glineski, 87 IBLA 266 (1985).

Appellant contends the decision should be reversed because the regulation setting forth the filing requirement in effect at the time appellant's filing was due, 43 CFR 3833.2-1(a) (1980), is unintelligible. Appellant states:

The BLM has already acknowledged that Section 3833.2-1(a) cited above is "susceptible to more than one construction." (Preamble, 47 Fed. Reg. 19298, May 4, 1982.) In recognition of the unintelligibility of the subsection, the BLM has proposed rules which would strike the subsection in its entirety. 47 Fed. Reg. 19300, May 4, 1982. There could be no better testimony to its incomprehensibility. Furthermore, to satisfy due process requirements, the proposed regulation would treat a failure to file as a curable defect rather than as the trigger for a conclusive presumption that a claim is void.

This contention errs in several respects. Neither the proposed nor final rulemaking deleted the requirement for annual filing of the affidavit of assessment work or notice of intention to hold the claim. The requirement was moved from subsection (a) to 43 CFR 3833.2-1(b) (1984). Indeed, the Department lacks authority to waive a requirement imposed by Congress. Appellant also errs in assuming the regulation would have treated the failure to file as a curable defect. The "curable defects" discussed in the proposed regulation cited by appellant referred to defects in the document actually filed with BLM. The failure to file the document itself, however, could never be cured. In United States v. Locke, supra at 1797 n.14, the Court noted that the change in the regulations did not warrant a different result in that case. Moreover, the regulation contains the same text considered by the Court in United States v. Locke, supra. The Court stated, "BLM regulations made quite clear that claimants were required to make the annual filings in the proper BLM office 'on or before December 30 of each calendar

^{2/} Action by this Board regarding appeals involving mining claim recordation was suspended pending determination by the Supreme Court in United States v. Locke, supra, which was decided Apr. 1, 1985. Therein, the Court upheld the constitutionality of section 314 of FLPMA.

year." Id. at 1790. Regardless of whatever ambiguity appellant may perceive in the regulation, the statute itself makes it quite clear that claimants must make annual filings. 43 U.S.C. § 1744(a) (1982). Accord, United States v. Locke, supra. The Locke decision reinforces our prior rejection of these same arguments in another appeal, brought by an officer of Good Hope Development Company. Ronald M. Guntert, 60 IBLA 200 (1981), appeal filed Guntert v. Watt, No. 82-508 (E.D. Calif. June 24, 1982).

Appellant states it never abandoned its mining claims, and expended in excess of \$ 10,000 in labor and improvements on the claims in 1980. This latter fact provides no basis for reversal of BLM's decision. As the Supreme Court determined:

[W]e find that Congress intended in § 314(c) to extinguish those claims for which timely filings were not made. Specific evidence of intent to abandon is simply made irrelevant by section 314(c); the failure to file on time, in and of itself, causes the claim to be lost.

United States v. Locke, supra at 1795-96. In Locke, the claims were abandoned because the claimants were one day late in making the required filings, resulting in the loss of claims being actively mined at a profit. In the instant appeal, the required document has never been tendered.

Appellant contends BLM's decision violates due process because valuable property rights are being taken from their owners without notice, through misinformation, and without an opportunity to be heard. In United States v. Locke, supra at 1799-1800, the Court answered a similar contention as follows:

[T]he Act provides [claim owners] with all the process that is their constitutional due. In altering substantive rights through enactment of rules of general applicability, a legislature generally provides constitutionally adequate process simply by enacting the statute, publishing it, and, to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements.

Although BLM may not have provided appellant with personal notice of the annual filing obligation, in Locke the Court expressly overruled a determination by the lower court that individualized notice of the filing deadlines was constitutionally required. Id. at 1800. The text of the statute itself provided appellant with effective notice of the annual filing requirements, and such notice is not vitiated by perceived defects in the regulations or other material. 3/

3/ In addition to its argument that the regulation is unintelligible, appellant also has submitted a copy of a circular which sets forth the requirements for making the initial filing of the notice of location and proof of labor but which does not set forth the annual filing requirement.

Finally, appellant contends BLM is estopped from declaring the claims abandoned and void because of its failure to provide individual notice of the annual filing requirement. As pointed out above, however, such individualized notice was not required. Moreover, such failure would not constitute "affirmative misconduct" necessary to establish an estoppel against the Government. See Schweiker v. Hansen, 450 U.S. 785 (1981). Appellant was not affirmatively told that the filing could be omitted. Cf. United States v. Locke, supra at 1790 n.7 (concerning evidence that a BLM employee told claimant's employee that timely filing could be made on or before December 31, 1980, in contravention of regulatory requirement that filing be made on or before December 30).

Appellant has raised no issue of fact that requires resolution through the introduction of oral testimony. Accordingly, appellant's request for an evidentiary hearing is denied.

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.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Franklin D. Arness
Administrative Judge

