

ARLA NEWMAN

IBLA 84-262

Decided July 31, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. CA MC 93562.

Affirmed.

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

Failure to file instruments required by 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2, in the proper BLM office within the time prescribed conclusively constitutes abandonment of the mining claim.

APPEARANCES: Arla Newman, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Arla Newman has appealed from a January 6, 1984, decision of the California State Office, Bureau of Land Management (BLM), which found the Bonanza 2 placer mining claim, CA MC 93562, to be abandoned and void. The BLM decision stated as the basis for its finding that evidence of assessment work was not filed for the period September 1, 1981, through September 1, 1982. An affidavit of assessment work or a notice of intent to hold the claim is required to be filed in the proper BLM office on or before December 30 of each year, pursuant to section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982). Failure to file one of these documents conclusively constitutes abandonment of the claim. 43 U.S.C. § 1744(c); 43 CFR 3833.4. The record establishes BLM did not receive evidence of assessment work for the 1982 assessment year prior to December 31, 1982.

The BLM case file also contains a copy of an undated notice of placer mining claim location, filed with BLM on August 4, 1981. On August 17, 1981, BLM requested that appellant file an amended notice stating the location date. Appellant's next filing was an undated proof of labor and a tax receipt, both filed with BLM on December 29, 1983.

Appellant submitted several documents with her notice of appeal on January 18, 1984, including a copy of the undated location notice filed with BLM as well as location notices dated February 20, 1980, March 10, 1981, and June 15, 1981. The dated location notices apparently were not filed with BLM, although the March 10, 1981 and June 15, 1981, notices were recorded with Siskiyou County, California. In a letter to appellant dated January 19, 1984, BLM stated that a search of its records had not revealed a filing of any evidence of assessment work or notice of intent to hold the claim attributable to the 1981-82 assessment year.

Appellant explains on appeal she believed filing the notice of location was sufficient to satisfy requirements of law to enable her to continue to hold the claim. Attached to her statement of reasons is a receipt from BLM dated August 10, 1981, which acknowledges receipt of \$ 5 for recordation of the Bonanza 2 claim. Appellant also states she paid taxes in 1982 and performed annual labor in 1981, 1982 and 1983. She states she wants to retain the claim and proposes to relocate it, if necessary. The Board stayed this appeal pending a U.S. Supreme Court ruling on the constitutionality of the recording provisions of section 314(a) and (c) of FLPMA, 43 U.S.C. § 1744(a) and (c) (1982). On April 1, 1985, the Supreme Court upheld the validity of the recording statute in United States v. Locke, 105 S. Ct. 1785 (1985).

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), requires the owner of an unpatented mining claim located after October 21, 1976, to file with BLM either evidence of annual assessment work or notice of intention to hold the claim "prior to December 31 of each year following the calendar year in which the said claim was located." See 43 CFR 3833.2-1(b). The failure to file any of the required documents with BLM conclusively constitutes abandonment of the claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4; United States v. Locke, supra.

Appellant first filed notice of location of the Bonanza 2 claim with BLM on August 4, 1981. This filing triggered the annual assessment work filing requirement which formed the basis of the BLM decision. 43 U.S.C. § 1744(a) (1982); 43 CFR 3833.2-1. Appellant was required to file with BLM evidence of assessment work for 1982 on or before December 30, 1982. There is no evidence of the required 1982 filing in the case record. The only evidence of assessment work filed by appellant was received by BLM on December 29, 1983. The recordation receipt for appellant's notice of location does not constitute evidence assessment work was done on the claim. Pursuant to section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), failure to file the required evidence of assessment work for 1982 conclusively constituted an abandonment of the Bonanza 2 mining claim. 43 CFR 3833.4(a). Actual intent to retain a claim is irrelevant if the necessary filing with BLM is not made. See United States v. Locke, supra at 1796.

The notice of location appellant filed with BLM presents what appears to be an additional recordation defect. Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982), requires the owner of a mining claim located after October 21, 1976, to file with BLM a copy of the location notice and a description of the claim within 90 days of location. See also 43 CFR 3833.1-2. The location notice appellant filed with BLM on August 4, 1981,

was undated. Following inquiry by BLM concerning this omission, on appeal appellant submitted a copy of a location notice dated June 15, 1981, which bears the date stamp of the Siskiyou County records showing recording on June 16, 1981. However, this document, which indicates location took place within 90 days of filing of notice with BLM does not duplicate the location notice filed with BLM on August 4, 1981. Appellant has not explained the significance of the June 16, 1981, location notice, but has submitted two additional location notices for the Bonanza 2 placer claim dated February 20, 1980, and March 10, 1981. She has not explained when the location of this claim was in fact made. On the present state of the record it cannot therefore be determined whether her notice was filed with BLM within 90 days of location as required by 43 U.S.C. § 1744(b) (1982), since it is not clear whether the claim was located in fact on June 15, 1981, March 10, 1981, or February 20, 1980.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

