

WALTER E. AND RUTH ROMAN

IBLA 84-361

Decided August 1, 1985

Appeal from a decision of the Fairbanks District Office, Bureau of Land Management, declaring mining claim F-61862 abandoned and void for failure to file proof of labor or notice of intention to hold the claim.

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: Recordation

BLM may properly declare an unpatented mining claim filed for recordation in 1979 abandoned and void under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), where the owner fails to file with BLM either evidence of annual assessment work or a notice of intention to hold the claim on or before December 31 of calendar years 1980, 1981, and 1982.

APPEARANCES: Walter E. Roman, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Walter E. and Ruth Roman appeal from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated February 6, 1984, declaring the #6 Below placer mining claim F-61862 abandoned and void for failure to file either evidence of assessment work or a notice of intention to hold the claim as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). 1/

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 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.

Appellants located the claim on August 28, 1971. On October 12, 1979, they filed with BLM a copy of the official record of the notice of location and an affidavit of assessment work for 1979. Review of the record indicates that appellants did not file evidence of assessment work for the years 1980, 1981, and 1982.

In its decision declaring the claim abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claim for 1980, 1981, and 1982, BLM noted that the State of Alaska filed selection application F-15149 on January 21, 1972, under the provisions of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339-343), in which it requested all of the lands within T. 2 N., R. 3 E., Fairbanks Meridian, including the lands within appellants' claim. BLM stated that because appellants' claim is void, and the State has selected the lands, they are no longer open to entry under the mining laws under 43 CFR 2627.4(b).

On appeal appellants explain that they do not understand how they missed filing their evidence of assessment work with BLM. They mention that Ruth Roman was ill and that it was necessary to take her out of Alaska for the winter. Appellants say that they will bring to the hearing all the records showing the work performed on the claim.

[1] Under section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), the owner of an unpatented mining claim located prior to October 21, 1976, must "file" with BLM either evidence of annual assessment work or a notice of intention to hold the claim by October 22, 1979, and "prior to December 31" of each calendar year thereafter. Failure to file the required instrument in accordance with the statute "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." 43 U.S.C. § 1744(c) (1982). In such circumstances, the claim is thereby rendered "void." 43 CFR 3833.4(a). As no proof of labor was received within the calendar years 1980, 1981, and 1982, BLM properly deemed the claim to be abandoned and void. See Myron Cherry, 87 IBLA 165 (1985); Cascade Energy & Metals Corp., 87 IBLA 113 (1985). The Board has no authority to excuse lack of compliance, or to extend the time for compliance or to afford any relief from the statutory consequences. Charlene and Robert Schilling, 87 IBLA 52 (1985); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellants mention a hearing. Section 314 of FLPMA does not provide for an opportunity for hearing. In United States v. Locke, 105 S. Ct. 1785 (1985), the Supreme Court considered the question of whether the failure of section 314 of FLPMA to provide for notice and an opportunity for hearing prior to a determination that claims were abandoned and void violated fundamental procedural due process. The Supreme Court noted that "Congress has made it unnecessary to ascertain whether the individual in fact intends to abandon the claim, and there is no room to inquire whether substantial compliance is indicative of the claimant's intent -- intent is simply irrelevant if the required filings are not made." Id. at 1796. The failure to file, in and of itself, constituted abandonment of the claim under the statute. That appellants may have actually performed the assessment work is not controlling. Appellants have not been deprived of any due process rights. Id.

The land in issue is included in a State selection application filed by the State of Alaska on January 21, 1972. When appellants did not file their affidavit of assessment work by December 30, 1980, the selection application attached to the land in issue on December 31, 1980. It is well established that under Departmental regulations 43 CFR 2091.6-4 and 2627.4(b), a filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including appropriation under the mining law. Thomas C. Bay, 87 IBLA 194 (1985); Fred Thompson, 74 IBLA 231 (1983); W. Ted Hackett, 39 IBLA 28 (1979). A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio. Ronald R. Kotowski, 82 IBLA 317 (1984). Assuming this land remains under selection, it is unavailable for mining location.

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:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

