

THORVALD W. HANSEN

IBLA 84-302

Decided December 30, 1985

Appeal from a decision of the Anchorage District Office, Alaska, Bureau of Land Management, declaring placer mining claims abandoned and void for failure to file annual proofs of labor or notice of intent to hold the claims. F-23488 through F-23490.

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

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), requires the owner of a mining claim located on or before Oct. 21, 1976, to file either a notice of intention to hold or evidence of performance of annual assessment work on the claim with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year after the initial filing. For a claim located after Oct. 21, 1976, the statute requires the owner to file either of the instruments prior to Dec. 31 of each year following the calendar year the claim was located. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Thorvald W. Hansen, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Thorvald W. Hansen has appealed from a decision of the Anchorage District Office, Alaska, Bureau of Land Management (BLM), dated January 10, 1984, which declared the Hansen Nos. 1 through 3 placer mining claims, F-23488 through F-23490, abandoned and void for failure to file either evidence of annual assessment work or a notice of intention to hold the claims for calendar years 1980 and 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2-1.

Appellant's mining claim location notices were filed for recordation with the Fairbanks District Office, Alaska, BLM, on April 6, 1977, pursuant to 43 U.S.C. § 1744(b) (1982). None of the notices indicate the dates of location of the claims. ^{1/} BLM records in the Anchorage District Office establish that affidavits of assessment work for the claims were filed in 1978 and 1979, and that a notice of intention to hold the claims was filed in 1982; but there is no record of the filing of either instrument for the claims during calendar years 1980 and 1981. Accordingly, in its January 1984 decision, BLM declared the claims to be abandoned and void.

On appeal, appellant challenges the BLM decision, contending that: "Yearly intentions to hold have been filed with the State Recorder's Office in Fairbanks and District Office at Fort Wainwright in Fairbanks." Appellant enclosed copies of his 1983 notice of intention to hold the claims, which was filed with BLM on December 28, 1983.

On May 8, 1984, this Board suspended consideration of mining claim recordation cases, including this case, pending determination of an appeal of Locke v. United States, 573 F. Supp. 472 (D. Nev. 1982), by the United States Supreme Court. On April 1, 1985, the Supreme Court issued a decision, United States v. Locke, 105 S. Ct. 1785 (1985), in which the Court found section 314 of FLPMA, supra, to be constitutional, within the affirmative powers of Congress, and not violative of a mining claimant's due process rights.

[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. With respect to claims located after October 21, 1976, either of these instruments must be filed "prior to December 31" of each year following the calendar year in which the claim was located. 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).

We have long held that the statute is self-operative and that Congress did not invest the Secretary of the Interior with authority to waive or _____
^{1/} The record indicates that appellant's mining claims were located on land withdrawn from entry under the mining laws in 1972. By letter dated Dec. 8, 1978, BLM requested appellant to supply the dates of location of his claims. That letter was deemed undeliverable and returned to BLM by the postal service. BLM made no further inquiries concerning the dates of location of the claims. Whether the claims were located prior to or after the withdrawal, appellant was required to file a notice of intention to hold the claims or evidence of annual assessment work with BLM in 1980 and 1981. We note, however, that if the claims were located after the 1972 withdrawal, the claims were null and void ab initio. See Ronald R. Kotowski, 82 IBLA 317 (1984).

excuse noncompliance with the statute or to afford claimants any relief from the statutory consequences. Homestake Mining Co., 77 IBLA 235 (1983), and cases cited therein. Moreover, in Homestake, we reiterated the holding that because the statute provides for a conclusive presumption of abandonment upon the failure to comply with the statutory filing requirement, the Department does not have the authority to consider whether a claimant in fact intended to abandon the affected claim under the common law rules of abandonment, since these rules are not relevant to the operation of the statute. This holding was affirmed in United States v. Locke, supra at 1795-96.

While appellant maintains that annual filings of notices of intention to hold his claims were made, the case files for the Anchorage District Office do not contain the required filing for either 1980 or 1981.

However, on appeal appellant states that he did not file his notices of intention to hold the claims with the Anchorage District Office, but rather with the Fairbanks District Office. Accordingly, by memorandum dated October 10, 1985, with a copy to appellant, we instructed the Fairbanks District Office to "check your records and determine whether Mr. Hansen did, indeed, file his notices of intent to hold with your office in calendar years 1980 and 1981." The Fairbanks District Office has responded to our request by memorandum dated October 23, 1985, stating:

A thorough search of both the hold file and the copies of all 1981 Affidavits of Labor and Notices of Intent to Hold filed with this office, has failed to find either. This office has no records of annual filings for 1980 as copies were not kept until 1981. [Emphasis in original.]

A legal presumption of regularity supports the official acts of public officers in the proper discharge of their duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Phillips Petroleum Co., 38 IBLA 344 (1978). Thus, it is presumed that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing. John R. Wellborn, 87 IBLA 20 (1985). Consequently, when an appellant claims he filed a document with BLM, but BLM has no record of receiving it, this presumption of regularity weighs against a finding that BLM received the document and subsequently lost it through mishandling. Glenn W. Gallagher, 66 IBLA 49, 51 (1982). The presumption is not overcome by an unsupported statement that annual filings were made. Glenn W. Gallagher, supra at 52.

Accordingly, we must conclude that appellant has, at least, failed to file either evidence of annual assessment work or a notice of intention to hold his claims with either the Fairbanks District Office or the Anchorage District Office in 1981. Appellant has simply failed to overcome the presumption of regularity with any evidence supporting the assertion that he filed his notice of intention to hold the claims with the Fairbanks District Office in 1981. In such circumstances, BLM properly declared appellant's mining claims abandoned and void. Karl Peterson, 89 IBLA 141 (1985).

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.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

R. W. Mullen
Administrative Judge

90 IBLA 162

