

Appeals from decisions of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. M MC 92259 through M MC 92264, and M MC 95699 through M MC 95709.

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: Abandonment

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recordation office where the notice of location is recorded and a copy thereof with the Bureau of Land Management prior to Dec. 31 of the year following the calendar year in which the claim was located pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

APPEARANCES: Robert C. Bishop, for appellants

OPINION BY ADMINISTRATIVE JUDGE GRANT

Robert C. Bishop, Betty J. Bishop, and Roderick A. Lewis have appealed from two decisions of the Montana State Office, Bureau of Land Management (BLM), dated April 23, 1985 (IBLA 85-627), and April 24, 1985 (IBLA 85-628). In its April 23, 1985, decision, BLM declared the R & R Mudd Isiah Nos. 1 through 4 and the Val-Desta Lacy Isiah Nos. 1 and 2 mining claims, M MC 92259 through M MC 92264, abandoned and void. Similarly, in its April 24, 1985, decision, BLM declared the following mining claims abandoned and void: B J & R No. 1 Lode, B J & R No. 2 Lode, Bishops' Bench No. 1, Bishops' Bench No. 2, Black Lion NE 1/4 Sec. 25 Ass'n Placer, Black Lion SE 1/4 Sec. 25 Ass'n Placer, Black Lion NE 1/4 sec. 36 Ass'n Placer, Black Lion SE 1/4 sec. 36 Ass'n Placer, Black Lion Ass'n Placer (Dual "2" Ass'n Placer), Black

Lion NW 1/4 Sec. 6 Ass'n Placer, and Mudd Ridge NE 1/4 Sec. 21 Ass'n Placer. These claims were recorded under serial numbers M MC 95699 through M MC 95709. The basis for both decisions was appellants' failure to file either evidence of annual assessment work or notice of intention to hold the claims with BLM on or before December 30, 1983, 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/}

Appellants' mining claims assigned BLM serial numbers M MC 92259 through M MC 92264 were located in August and September 1982, and filed for recordation with BLM on October 25, 1982, pursuant to section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1982). ⁿ² Appellants' mining claims assigned BLM serial numbers M MC 95699 through M MC 95709 were located in October and November 1982, and were filed for recordation with BLM on January 18, 1983. On November 27, 1984, appellants filed an affidavit of annual assessment work with respect to each group of mining claims with BLM. However, appellants filed no evidence of annual assessment work or notice of intention to hold these claims on or before December 30, 1983. Accordingly, BLM declared the claims abandoned and void pursuant to section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982).

Appellants make several contentions in their statement of reasons for appeal. With respect to those claims located after September 1, 1982, appellants note that no assessment work was required prior to December 31, 1983, since the first assessment year for which assessment work was required commenced on September 1, 1983, and ended September 1, 1984. Further, appellants contend abandonment puts in issue the intent of the locator and it is clear appellants did not intend to abandon the claims. Appellants also assert that mining claims are not subject to forfeiture for failure to perform assessment work where such work is performed prior to relocation of the claims under the terms of 30 U.S.C. § 28 (1982). In addition, appellants challenge the validity of the mining claim recordation provisions of section 314 of FLPMA, citing the opinion of the United States District Court in *Locke v. United States*, 573 F. Supp. 472 (D. Nev. 1983), rev'd, *United States v. Locke*, 105 S. Ct. 1785 (1985).

^{1/} Adjudication of these cases by BLM was stayed pending judicial review of the mining claim recordation provisions of sec. 314 of FLPMA. The constitutionality of these provisions was recently upheld by the Supreme Court. *United States v. Locke*, 105 S. Ct. 1785 (1985), rev'g, *Locke v. United States*, 573 F. Supp. 472 (D. Nev. 1983).

^{2/} BLM had previously declared the R & R Mudd Isiah Nos. 1 to 4 mining claims null and void ab initio on the ground the land was not open to mineral entry in a decision dated May 18, 1984. This decision was appealed. Subsequently, on June 19, 1984, appellants amended their certificates of location to correct a typographical error that had resulted in a misdescription of the claimed lands. On June 12, 1984, this Board vacated the decision upon BLM's request. By letter dated July 11, 1984, BLM informed appellants that its records had been changed to reflect the corrected location of these four claims.

[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 3/ either evidence of annual assessment work or a notice of intention to hold the claim with BLM "prior to December 31 of each year following the calendar year in which the said claim was located." Accordingly, appellants were required to file one of these two documents with BLM prior to December 31, 1983. It is well settled that the annual filing requirement applies even though the assessment year for performance of initial assessment work after location of the claim may not have expired yet. Gloria T. Bruce, 87 IBLA 338, 339 (1985); James Camp, 76 IBLA 96, 98 (1983); Ted Dilday, 56 IBLA 337, 343, 88 I.D. 682, 685 (1981). There is no evidence of such a filing. Section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), provides that failure to file the required instrument "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." In such circumstances, the claim is rendered void. 43 CFR 3833.4(a).

Accordingly, we conclude BLM properly declared appellants' mining claims abandoned and void. Klondex Gold & Silver Mining Co., 69 IBLA 247 (1982). As we said in Lynn Keith, 53 IBLA 192, 196-97, 88 I.D. 369, 371-72 (1982):

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 [(1982)] is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

* * * At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment.

3/ File is defined as "being received and date stamped by the proper BLM office," although with respect to annual filings of evidence of assessment work or notice of intention to hold "timely filed" includes documents received by Jan. 19 in an envelope clearly postmarked within the filing period. 43 CFR 3833.0-5(m).

Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. ^{4/} [Emphasis in original.]

The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This 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. Lynn Keith, supra at 196, 88 I.D. at 372. Those claims for which timely filings are not made are extinguished by operation of law; intent is irrelevant if the necessary filings are not made. United States v. Locke, 105 S.Ct. at 1795-1796.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Anita Vogt
Administrative Judge
Alternate Member

R. W. Mullen
Administrative Judge

^{4/} This construction of the statute was specifically upheld by the Supreme Court in United States v. Locke, 105 S. Ct. at 1795-96. Thus, the Court stated "[W]e find that Congress intended in section 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 a claim to be lost." Id.