

Editor's note: Erratum -- dated Oct. 9, 1987 -- corrected in text.

OLIVER B. KILROY

IBLA 86-1170

Decided August 31, 1987

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring certain lode mining claims abandoned and void for failure to file annual proof of labor or notice of intention to hold. A MC 232482, etc.

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

The owner of a mining claim located after Oct. 21, 1976, is required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), to file a notice of intention to hold the claim or evidence of assessment work performed on the claim, in the county where the location notice is of record and in the proper office of BLM prior to Dec. 31 of each year following the calendar year in which the claim is located. Failure to file the instrument required by the statute constitutes an abandonment of the claim.

2. 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 an unpatented mining claim 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 a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

APPEARANCES: Oliver B. Kilroy, pro se, and for Kilroy Enterprises, Inc.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Oliver B. Kilroy appeals from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated April 17, 1986, declaring certain lode mining claims abandoned and void because no proof of labor or notice of intention to hold was filed with BLM for the 1985 calendar year 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/

1/ The notice of appeal is signed by Oliver B. Kilroy, Sr., individually and as president of Kilroy Enterprises, Inc. Therein appellant states that the claims have been transferred from their original locators Alice W. Kilroy and Oliver B. Kilroy, Sr., to Kilroy Enterprises Inc. The case file, however, does not contain a notice of transfer required by 43 CFR 3833.3. The claims involved and the dates of location of those claims located by Alice W. Kilroy are as follows:

BLM Serial Number	Claim Name	Location Date
AMC	AWK #13	12-11-84
AMC	AWK #2	12-11-84
AMC	AWK #4	12-11-84
AMC	AWK #6	12-11-84
AMC	AWK #8	12-11-84
AMC	AWK #10	12-11-84
AMC	AWK #12	12-15-84
AMC	AWK #14	12-15-84
AMC	AWK #19	12-12-84
AMC	AWK #24	12-12-84
AMC	AWK #3	12-11-84
AMC	AWK #5	12-11-84
AMC	AWK #7	12-11-84
AMC	AWK #9	12-11-84
AMC	AWK #11	12-15-84
AMC	AWK #13	12-15-84
AMC	AWK #18	12-12-84
AMC	AWK #23	12-12-84

The claims involved and the dates of location of those claims located by Oliver B. Kilroy are as follows:

AMC	NK #104	12-15-84
AMC	NK #106	12-11-84
AMC	NK #166	12-12-84
AMC	NK #168	12-12-84
AMC	NK #170	12-12-84
AMC	NK #172	12-12-84
AMC	NK #174	12-12-84
AMC	NK #176	12-12-84
AMC	NK #178	12-12-84
AMC	NK #180	12-14-84

On appeal to this Board appellant states:

It has been my understanding that the location of federal mining claims in effect serves as an affidavit of labor since work was done in doing said location work and, therefore, no other notice should be required during the Sept. 1 - Sept. 1 assessment year; that in which the location was done. This has been historically the situation, as I understand it, and should not be modified by state law relative to federal claims, in my opinion.

* * * * *

I staked new claims on or about December 28, 1984 and assumed the location work held the claims for the assessment year ending September 1, 1985 and that i did not have to do any more assessment work until September 1, 1986, this year. [Emphasis in original.]

Appellant's reference in the statement of reasons is to that part of 30 U.S.C. § 28 (1982) which requires the performance of assessment work on unpatented mining claims, and defines the assessment year. It provides in relevant part: "The period within which the work required to be done annually on all unpatented mineral claims located since May 10, 1872, including such claims in the Territory of Alaska, shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of such claim." Appellant argues that since the next assessment year commenced September 1, 1985, he was not obligated to file any notice in the 1985 calendar year. The record shows that the various AWK and NK lode claims were located in December 1984, and were recorded with BLM on January 25, 1985, and that no evidence of assessment work or notice of intention to hold for these claims was filed with BLM prior to December 31, 1985.

Appellant's argument on appeal fails to consider section 314 of FLPMA, which imposes additional filing requirements on mining claimants.

fn. 1 (Continued)

BLM Serial Number	Claim Name	Location Date
AMC 232507	NK #105	12-15-84
AMC 232509	NK #165	12-12-84
AMC 232511	NK #167	12-12-84
AMC 232513	NK #169	12-12-84
AMC 232515	NK #171	12-12-84
AMC 232517	NK #173	12-12-84
AMC 232519	NK #175	12-12-84
AMC 232521	NK #177	12-12-84
AMC 232523	NK #179	12-12-84
AMC 232525	NK #181	12-14-84

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the recorded location notice in the proper office of BLM within 90 days after the location. In addition, prior to December 31 of each year following the calendar year in which the claim was located, the owner must file in the county office where the notice of location is of record and in the proper office of BLM evidence of assessment work performed or a notice of intention to hold the claims. Failure to make the recordations required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claims. Ronald Willden, 97 IBLA 40 (1987); Golden Triangle Exploration Co., 87 IBLA 191 (1985). 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. A matter of law, it 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. Francis Skaw, 63 IBLA 235 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). The Supreme Court upheld the validity of the recording requirements of FLPMA in United States v. Locke, 471 U.S. 84 (1985).

As the claims herein were located in December 1984, a proof of labor or a notice of intention to hold the claims was required to be recorded both with county records and with BLM prior to December 31, 1985. Since no filing has been shown to have been made either in the county or with BLM, the claims were properly deemed to be abandoned and void.

[2] The mining law does not require performance of assessment work until the assessment year commencing at noon of September 1, first succeeding the date of location of the claim, 30 U.S.C. § 28 (1982), so appellant was not required to perform assessment work until sometime during the year running from September 1, 1985, to September 1, 1986. However, this did not obviate the necessity for compliance with section 314 of FLPMA which required either an affidavit of assessment work or a notice of intention to hold the claims to be filed both with the local recording office and with BLM prior to December 31, 1985. since 1985 was the year following the calendar year in which the claims were located. Robert Willden, *supra*; Robert C. LeFavre, 95 IBLA 26 (1986).

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. Fraizer
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

John H. Kelly
Administrative Judge

