

Editor's note: 95 I.D. 219; Appealed -- aff'd., Civ.No. 88-1886 PHX (D.Ariz. Apr. 30, 1990), aff'd., No. 90-15733 (9th Cir. June 18, 1991); (unpublished)

GORDON B. COPPLE
ESTATE OF JANET COPPLE
ESTATE OF GUST E. SVENSSON, JR.

IBLA 86-1118

Decided October 20, 1988

Appeal from the decision of the Arizona State Office, Bureau of Land Management, declaring the Betty Lee mining claim, A MC 72979, and the Frisco No. 20 mining claim, A MC 90517, abandoned and void.

Affirmed.

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

Under the provisions of 43 U.S.C. | 1744 (1982), an owner of an unpatented mining claim must file evidence of annual assessment work or a notice of intention to hold the claim prior to Dec. 31 of each year. Such filings must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30. Failure to file within the calendar year properly results in the claim being deemed abandoned and void.

2. Federal Land Policy and Management Act of 1976: Assessment Work--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

Congress assigned the owner of the mining claim the responsibility of making the filings required by 43 U.S.C. | 1744 (1982), and the owner must bear the consequence of filings not timely made.

3. Federal Land Policy and Management Act of 1976: Assessment Work--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

Under 43 CFR 3833.2-4, a mining claimant is excused from filing evidence of annual assessment work or a notice of intention to hold his claim only if a proper application for a mineral patent is filed and the final certificate has been issued. The pendency of contest or condemnation proceedings does not excuse a claim owner from the statutory filing requirements.

4. Federal Land Policy and Management Act of 1976: Assessment Work--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

BLM has no affirmative obligation to send a mining claim owner a reminder notice concerning the need to make annual filings required by 43 U.S.C. | 1744 (1982).

APPEARANCES: Stephen P. Shadle, Esq., Yuma, Arizona, for claimants.

OPINION BY ADMINISTRATIVE JUDGE LYNN

By decision dated April 1, 1986, the Arizona State Office, Bureau of Land Management (BLM), declared the Betty Lee mining claim, A MC 72979, and the Frisco No. 20 mining claim, A MC 90517, abandoned and void for failure to file an affidavit of assessment work or notice of intention to hold the claims for the 1984-1985 assessment year on or before December 30, 1985.

The owners of the claims (claimants) have appealed this decision. 1/

1/ The BLM decision listed the Estate of Janet Copple and Gust E. Svensson, Jr., as the owners of the claims. A notice of intention to hold the claims dated Apr. 15, 1986, identified the owners as Gordon B. Copple and the heirs of Gust E. Svensson, Fred Cooper, and Ed Cooper.

These two claims were part of a group of claims held by claimants that were included in an aerial gunnery and bombing range established on November 6, 1942, that is now associated with Luke Air Force Base, Arizona. The area in which the claims are located was withdrawn from all forms of entry and reserved for continued use as a gunnery and bombing range pursuant to the Act of August 24, 1962, P.L. 87-597, 76 Stat. 399 (1962). Since November 1943, claimants have essentially been barred from access to the claims because of military activities. The claims, with others similarly situated, are the subject of a condemnation action brought by the United States, and by order dated March 29, 1977, claimants were required to deliver possession of the claims to the United States. United States v. 1,739.13 Acres of Land, Civ. No. 77-242 (D. Ariz. Mar. 29, 1977).

2/ The United States has paid an annual rent to claimants since 1977.

[1] Under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), the owner of an unpatented mining claim is required to file evidence of annual assessment work or a notice of intention to hold the mining claim prior to December 31 of each year; i.e., on or after January 1, and on or before December 30. Failure to file within the prescribed period results in the claim being deemed abandoned and void. United States v. Locke, 471 U.S. 84 (1985).

2/ The Betty Lee claim was also the subject of a previous mining claim contest initiated on Sept. 30, 1980, by BLM at the request of the Corps of Engineers, Department of the Army. Although other mining claims were found invalid as a result of that contest, the contest against the Betty Lee claim was dismissed. United States v. Copple, 81 IBLA 109 (1984). As noted in United States v. Taylor, 19 IBLA 9, 25, 82 I.D. 68, 74 (1975), a dismissal of a mining claim contest does not constitute a finding that a claim is valid unless the contest proceeding results from a patent application. Such was not the case in the earlier proceeding against the Betty Lee claim.

Claimants do not allege that notices of intention to hold for the 1984-1985 assessment year were filed for the Betty Lee and Frisco No. 20 mining claims. ^{3/} Instead, they argue that the pendency of the contest and condemnation proceedings relieved them of the filing obligation for two distinct reasons: (1) these proceedings provided BLM with actual and constructive notice of their intention to hold the claims, and (2) they had no obligation to file because the United States Government held the possessory interest in the claims by virtue of the 1977 court order and thus assumed the obligation to maintain the claims.

[2] Claimants' second assertion provides no basis for reversal of BLM's decision. In Comstock Tunnel & Drainage Co., 87 IBLA 132, 134 (1985), we observed:

In section 314 of FLPMA, Congress assigned the owner of the claim the responsibility for making the required filings; the owner must bear the consequence of filings not timely made. Cf. United States v. Boyle, [469 U.S. 241], 105 S. Ct. 687 (1985) (penalty properly imposed on taxpayer whose attorney filed a late return on taxpayer's behalf).

^{3/} Claimants argue both that they were given conflicting advice about whether or not notices of intention to hold were required because of the pending condemnation proceeding and that they had good reason to believe such notices had been filed because notices were filed with the local county recorder's office and there was confusion over what documents had been filed with BLM in April 1985 because of a change in counsel representing claimants. Claimants further state they expected the condemnation proceeding to be tried in late 1985, and the outcome of that proceeding would have determined whether notices of intention to hold were required. Although the record clearly shows that claimants had time to file the notices on or before Dec. 30, 1985, and that there were questions about whether the notices were required and whether they had, in fact, been filed, claimants do not allege that notices were actually filed.

The filing obligation thus clearly rests with the mining claim owner, regardless of the status of any other property interests in the land at issue.

[3] Claimants' equitable argument that BLM had both actual and constructive notice of their intention to hold these claims by virtue of the contest and condemnation proceedings is not cognizable by the Board under the statute and regulations. Congress provided no relevant exceptions to the filing requirement in 43 U.S.C. | 1744 (1982). The regulations in 43 CFR 3833.2-4 excuse a mining claimant from filing evidence of annual assessment work or a notice of intention to hold the claim only if a proper application for a mineral patent was filed and the final certificate issued. In United States v. Ballas, 87 IBLA 88 (1985), the Board dismissed as moot an appeal involving a contest against certain mining claims because the claims had become abandoned and void as a result of the claimant's failure to file the required instruments during the pendency of the contest proceedings. ^{4/} In Robert C. LeFaivre, 95 IBLA 26 (1986), we noted that the submission of a plan of operations pursuant to 43 CFR 3809 does not satisfy the requirement of filing an affidavit of assessment work or notice of intention to hold a claim imposed by 43 U.S.C. | 1744 (1982). ^{5/}

^{4/} Once the claim has been declared invalid, however, there is no requirement to file an affidavit of assessment work or a notice of intention to hold the claim unless that decision has been suspended during subsequent proceedings. See J. L. Block, 98 IBLA 209 (1987).

^{5/} Claimants observe that the Government sought to introduce into evidence information concerning the loss of these claims in the court proceeding to determine just compensation for the Government's past use of the claims, but the Judge refused to admit this evidence. It is not clear why this ruling should affect our disposition of this appeal. The loss of the claims

Under the clear provisions of 43 U.S.C. | 1744(c) (1982), the automatic consequence of failure to file the required instruments is a finding that the claim has been abandoned and is null and void. See United States v. Locke, supra. As the Supreme Court made clear in the Locke decision, it is the failure to file the required notice that results in the abandonment of the claim; neither the mining claimant's subjective intent nor even the Government's general awareness of such intent is sufficient to avoid the effect of the statute.

[4] Finally, claimants contend that their failure to file was a result of excusable neglect by the contestees or their agents which should not result in the loss of the claims, and that BLM breached an affirmative duty to them because it failed to mail a reminder notice to the address furnished in prior years, but instead mailed the notice to an address of one of the deceased owners whose name was not listed on the 1984 notice. Contrary to claimants' assertion, BLM has no affirmative obligation to send a reminder notice. Although noting in Locke, supra at 109 n.18, that BLM had chosen "[i]n the exercise of its administrative discretion," to send reminder notices, the Court in no way suggested that such notices were required by the statute or that once BLM sent such notices, a right to

fn 5. (continued)

under 43 U.S.C. | 1744 (1982) does not occur until after the filing deadline expires without the required filing having been made. In this case, that date is Dec. 30, 1985, long after the initiation of occupancy by the

Government for which claimants claim a right to compensation. Claimants cite nothing in the Judge's ruling that purports to suspend the statutory filing requirement or the loss which results from their failure to file. Nor may we lightly infer any such intent by the court.

receive them in the future was created. The following observation from Locke, supra at 108, is equally pertinent to claimants' contentions:

In altering substantive rights through enactment of rules of general applicability, a legislature generally provides constitutionally adequate process simply by enacting the statute, publishing it, and, to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements. * * * [E]very claimant in appellees' position already has filed once before the annual filing obligations come due. That these claimants already have made one filing under the Act indicates that they know, or must be presumed to know, of the existence of the Act and of their need to inquire into its demands.

Thus, the loss resulting from claimants' failure to make the required filings cannot be attributed to the United States.

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.

Kathryn A. Lynn
Administrative Judge
Alternate Member

I concur:

Will A. Irwin
Administrative Judge