

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 102069, N MC 102071 through N MC 102073, and N MC 102076.

Affirmed as modified.

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--Mining Claims: Recordation--Mining Claims: Patent

Failure to file in the proper Bureau of Land Management office either evidence of assessment work performed or notice of intention to hold as required by 43 U.S.C. § 1744 (1982) and 43 CFR 3833.2 within the time period prescribed results in a conclusive presumption of abandonment of the mining claim. Only where a patent application has been filed and a final certificate has been issued will a mining claimant be excused under 43 CFR 3833.2-4 from complying with the filing requirement.

APPEARANCES: Theresa M. Dowling, Esq., Las Vegas, Nevada, for appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

B. J. Londo, J. C. Lancaster, and Fern Lancaster appeal from a March 29, 1989, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring unpatented mining claims N MC 102069, N MC 102071 through N MC 102073, and N MC 102076 (the White Beauty Nos. 3, 5, 6, 7, and 10 Placer Mining Claims) abandoned and void for failure to file evidence of assessment work performed or notice of intention to hold the claims during the filing periods ending December 30, 1981 through 1983, and 1986 through 1988.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and Departmental regulation 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land prior to October 21, 1976, to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper

BLM office on or before October 22, 1979, and on or before December 30 of each year thereafter. After 1979, filings must be made within each calendar year, *i.e.*, on or after January 1 and on or before December 30. See Ronald Willden, 97 IBLA 40 (1987); Robert C. LeFaivre, 95 IBLA 26 (1986). Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4.

The case file for the subject mining claims does not reflect that evidence of assessment work performed or notice of intention to hold for the subject mining claims was received by BLM during any of the filing periods identified. ^{1/} Accordingly, BLM issued its determination that those claims are abandoned and void. Cf. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

On appeal, appellants argue that they were not obligated to comply with section 314 of FLPMA with respect to several of the filing periods in question as their claims were the subject of a pending patent application for which a final certificate had been issued.

Section 314 of FLPMA does not exempt any unpatented mining claim from the filing requirement. However, Departmental regulation 43 CFR 3833.2-4 provides just one exception: that evidence of annual assessment work performed or a notice of intention to hold a mining claim need not be filed for an unpatented claim "for which an application for a mineral patent which complies with 43 CFR Part 3860 has been filed and the final certificate has been issued." (Emphasis added.) Thus, unless a certificate has been issued, a mining claimant is not excused, under 43 CFR 3833.2-4, from the requirement to file annually with BLM. See U.A. Small, 108 IBLA 102 (1989).

On December 7, 1979, Londo and the Lancasters filed with BLM a patent application, serialized N-27611, for White Beauty Gypsum Placer Mining Claim Nos. 1 through 10 (N MC 102067 through N MC 102076.) By decision dated August 15, 1980, a final certificate for those 10 mining claims was issued by BLM. According to appellants, they were advised by BLM that, although a final certificate had been issued, they should withdraw from the patent application the mining claims at issue here. The record shows that letters signed by appellants in September 1983 withdrew White Beauty Nos. 3, 5, 6, 7, and 10, and portions of White Beauty Nos. 1, 2, 4, 8, and 9 from the patent application. The appellants also requested in those letters that the purchase monies be refunded for the claims and portions of claims withdrawn from the application. Land Patent No. 27-83-0058 was granted to appellants on September 15, 1983, for the remaining portions of White Beauty Nos. 1, 2, 4, 8, and 9.

^{1/} The record shows that appellants have successfully filed with BLM in other years. The notices of location for the White Beauty Nos. 1 through 10 were initially recorded with BLM on Oct. 3, 1979. A proof of labor for 1979, due on or before Oct. 22, 1979, was also received on Oct. 3, 1979. Copies of proofs of labor for subsequent years were filed with BLM on Dec. 15, 1980; Oct. 22, 1984; and Dec. 20, 1985.

By decision dated September 22, 1983, BLM acknowledged the withdrawal of the five claims at issue from patent application N-27611, along with the identified portions of the other five claims in the group, and canceled the final certificate in part as to the described claims. The decision informed the claimants that they were to resume annual labor on those claims withdrawn from the patent application for the assessment year ending September 1, 1984. The decision also stated that the claimants were not to be held responsible for filing evidence of assessment work performed or notice of intention to hold until the end of the next filing period, *i.e.*, December 30, 1984. The record does not reflect that the decision was challenged or that a new patent application for those claims excepted from the patent process has been filed with BLM.

There is no doubt, based on the record before us, that appellants, in accordance with 43 CFR 3833.2-4, were excused from complying with section 314 of FLPMA for 1980 through 1983. ^{2/} Accordingly, BLM's determination that annual filing documents were required for the mining claims at issue is incorrect with respect to the filing periods ending December 30, 1981, through 1983.

As for the remaining filing periods in question, calendar years 1986 through 1988, appellants argue that they have annually filed proofs of labors for the subject mining claims. They do not assert that they have a pending patent application and valid final certificate for those claims which would exempt them under 43 CFR 3833.2-4 from filing during these years.

With their appeal, appellants have submitted copies of proofs of labor recorded with the County Recorder, Clark County, Nevada, during each of the three years at issue. However, none of those documents evidence that copies were timely filed with BLM. It is well established that filing or recording the required documents with the local recording office alone does not constitute compliance with the requirement that they be filed with BLM. Fern L. Evans, 88 IBLA 45 (1985). Thus, a claimant challenging a determination of abandonment must show that the required document was received by BLM within the time period prescribed.

Congress mandated that failure to file the proper documents in the proper offices within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. Thus, a claim for which

^{2/} 43 CFR 3833.2-4 reads in part: "The filing of an application and issuance of the final certificate will be deemed full compliance with the requirements of section 314(a) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.2-1." Thus, the final certificate serves as a substitution for the documents required under section 314. As the final certificate was in effect for the five mining claims at issue here from its issuance in August 1980 through its rescission in part in September 1983, the filing requirements were satisfied for any filing period ending or arising within that time frame.

timely filings are not made is extinguished by operation of law regardless of the claimant's intent to hold the claim. See United States v. Locke, 471 U.S. 84 (1985). The fact that assessment work was done or that timely filings have been made in other years has no effect on the conclusive presumption of abandonment embodied in the statute. Since the statute is self-operative, a claim must be deemed abandoned when an annual filing is not timely received by BLM. See Ptarmigan Co., 91 IBLA 113 (1986).

The purpose of section 314 is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims are being maintained on Federal lands and which have been abandoned. Responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim with or without the benefit of notice from the Department. As Congress did not provide for waiver of this requirement, the Department is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA at 196, 88 I.D. at 372. The Board may not consider special facts or provide relief in view of mitigating circumstances. Where an annual filing is not timely received, for whatever reason, the consequences must be borne by the claimant.

As appellants have not submitted evidence that annual filings for the subject mining claims were received by BLM during those filing periods following rescission of the final certificate previously issued with respect to those claims, i.e., 1986, 1987, and 1988, those claims are properly deemed to be abandoned and void.

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 as modified.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge