



CRIPPLED HORSE INVESTMENTS, L.P.  
ESTATE OF FREDERICK H. LARSON

161 IBLA 264

Decided May 10, 2004

**Editor's Note: Appeal Filed, Civil Action No. 04-791 (RCL) (D. D. C.), rev'd sub nom., *Orion Reserves Limited Partnership v. Kempthorne*, 516 F. Supp 2d 8 (June 28, 2007), appealed No. 07-5281 (D.C. Cir.) rev'd D.Ct. (aff'd IBLA) (Jan. 23, 2009), 553 F.3d 697, petition for cert filed No. 08-1469 (S. Ct. May 27, 2009), cert denied (Oct. 5, 2009)**



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

CRIPPLED HORSE INVESTMENTS, L.P.  
ESTATE OF FREDERICK H. LARSON

IBLA 2000-10

Decided May 10, 2004

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring 156 oil shale placer mining claims under applications for patent abandoned and void. UTU 63241, 65591-65598.

Affirmed.

1. Mining Claims: Assessment Work--Mining Claims:  
Determination of Validity--Mining Claims: Patent

Pursuant to the Mining Law of 1872, oil shale mining claimants were required to meet an “assessment work requirement” of “not less than \$100 worth of labor or improvements annually for the benefit of each mining claim until patent was issued.” 30 U.S.C. § 28 (2000).

2. Mining Claims: Assessment Work--Mining Claims:  
Determination of Validity--Mineral Leasing Act: Generally

Oil shale deposits were withdrawn from location under the Mining Law of 1872 by the Mineral Leasing Act of 1920 (MLA), and thereafter became subject to disposition only by leasing. 30 U.S.C. §§ 193, 241(a) (2000). Section 37 of the MLA preserved valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated. 30 U.S.C. § 193 (2000).

3. Mining Claims: Assessment Work--Mining Claims:  
Determination of Validity

Token assessment work, or assessment work that does not “substantially satisfy” the requirements of 30 U.S.C. § 28 (2000) is not adequate to maintain oil shale claims. Pursuant to Section 37 of the MLA, 30 U.S.C. § 193 (2000), the United States is the beneficiary of oil shale mining claims which become invalid for failure to substantially satisfy the assessment work requirements of 30 U.S.C. § 28 (2000).

4. Mining Claims: Assessment Work--Mining Claims:  
Determination of Validity

In determining whether oil shale mining claimants have substantially satisfied assessment work requirements, the Board will consider the quantum of the assessment work actually performed and the length of time the claimant failed to meet the annual assessment work required by the Mining Law of 1872.

5. Evidence: Sufficiency--Mining Claims: Assessment Work--  
Mining Claims: Determination of Validity

Where State law requires the annual filing of affidavits of assessment work performed and further provides that such affidavits shall constitute prima facie evidence of the facts asserted therein, BLM properly considers whether assessment work affidavits were filed with the county recorder in the county where the claims are located to determine whether the assessment work requirements of 30 U.S.C. § 28 (2000) were substantially satisfied. The absence of annual assessment work affidavits in the county recorder’s office establishes a prima facie case that no assessment work was performed, thus shifting the burden of proof to appellants.

6. Evidence: Sufficiency--Mining Claims: Assessment Work--  
Mining Claims: Determination of Validity

Where appellants failed to file affidavits of assessment work for 156 unpatented oil shale claims for decades, with and without brief interludes when such affidavits were filed, such patterns constitute token assessment work and fail to substantially satisfy the requirements of 30 U.S.C. § 28 (2000). In such cases, the oil shale claims are properly declared abandoned and void.

7. Administrative Procedure: Hearings--Evidence:  
Sufficiency--Hearings--Rules of Practice: Hearings

The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim. 43 CFR 4.451-1. No contest pursuant to 43 CFR 4.451-1 or hearing pursuant to 43 CFR 4.415 is necessary when the material facts are undisputed.

APPEARANCES: Donald L. Morgan, Esq., Washington, D.C., for appellants; David K. Grayson, Esq., Office of the Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Crippled Horse Investments and the Estate of Frederick Larson (appellants, CHI) have appealed from a September 2, 1999, decision of the Utah State Office, Bureau of Land Management (BLM), declaring 156 oil shale mining claims abandoned and void for failure to maintain the claims in accordance with the assessment work requirements of the Mining Law of 1872 (mining law), 30 U.S.C. § 28 (2000),<sup>1/</sup> and Section 37 of the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. § 193 (2000).

The 156 claims were located in 1917, 1918, or 1919. Frederick H. Larson filed a patent application for the claims with the Utah State Office on March 17, 1988. That application was subsequently divided into nine separate patent

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<sup>1/</sup> At the time the decision was issued, the 1994 U.S. Code was in effect. The statutes cited are unchanged in the 2000 codification.

applications.<sup>2/</sup> First Half Final Certificates (FHFC's) were issued for the patent applications on October 9, 1992. All of the rights, title, and interest in the 156 claims were conveyed by quitclaim deed from Frederick H. Larson to CHI on March 4, 1994.

As the decision notes, oil shale was initially subject to location under the mining law, 30 U.S.C. § 28 (2000). It was later made subject to disposition only through leasing pursuant to Section 21 of the MLA, 30 U.S.C. § 241 (2000). (Decision at 1-2.) The decision acknowledged that Section 37 of the MLA, 30 U.S.C. § 193 (2000), contains a savings provision for oil shale claims located prior to February 25, 1920, which are thereafter maintained "in compliance with the laws under which initiated." The decision further noted that, pursuant to 30 U.S.C. § 28 (2000), oil shale mining claimants were required to meet an "assessment work requirement" of "not less than \$100 worth of labor or improvements annually for the benefit of each mining claim until patent was issued." *Id.* at 2. The decision stated that if assessment work requirements were not met, oil shale mining claims become void, and "subject to disposition only" by leasing to [sic] the United States." *Id.*

BLM's decision then considered the assessment work history for the 156 claims at issue. Noting that Utah Code § 40-1-6 (1996) requires "holders of mining claims filed pursuant to 30 U.S.C. § 28 to file annual assessment work filings within thirty days after completing work or improvements on the oil shale claim with the county recorder to avoid forfeiting the claim," the decision indicated that the assessment work records on file in the Uintah County Recorder's office pertaining to the 156 mining claims had been reviewed. BLM reviewers found that annual filings had not

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<sup>2/</sup> The patent application serial numbers and corresponding mining claim numbers are denominated in Attachment A to the decision as follows:

*Patent Application UTU 63241:* UMC Nos. 65858-65875, 65893, 65902-65921, 65924-65926, 65931-65932, 65952-65954, 66003-66004, 66009-66016, 66019-66020, and 66024-66030.

*Patent Application UTU 65591:* UMC Nos. 65962, 66017, 66031-66041, 66043, 66046-66049, 66054-66055, 66062-66068, 66073-66074, 66077-66079, and 66081.

*Patent Application UTU 65592:* UMC Nos. 66080 and 66082.

*Patent Application UTU 65593:* UMC Nos. 65950-65951.

*Patent Application UTU 65594:* UMC No. 66083.

*Patent Application UTU 65595:* UMC No. 66018.

*Patent Application UTU 65596:* UMC Nos. 65969-65980, 65994-65996, 65981-65993, and 65997-66002.

*Patent Application UTU 65597:* UMC Nos. 65876-65883 and 65885-65892.

*Patent Application UTU 65598:* UMC No. 65884.

been made “for substantial periods of time.” (Decision at 3.) The decision stated that, as the claims were located between 1917 and 1919,

in order to have been properly maintained, the claimant should have done assessment work on the claims for each year for a period of seventy-two to seventy-four years. \* \* \* In fact, the claimant did not conduct assessment work for numerous years, as evidenced by the claimant’s failure to file assessment work filings with the county for periods ranging in length from twelve to thirty-eight years.

Id. at 2-3. BLM noted that the period from July 1, 1931, to July 1, 1932, was not considered “for purposes of determining the total number of nonperformance years,” because by statute that period was “the only time period for which no physical assessment work and assessment work filings were required.” Id. at 3.

BLM prepared a 21-page table listing each of the claims covered by Patent Applications UTU No. 63241 and UTU Nos. 65591-65598. Among other things, the table details the years in which no assessment work certifications were filed with the Uintah County Recorder.<sup>3/</sup> According to that table, no assessment work filings had been made for 18 to 20 years out of a total of 73 assessment years for UMC Nos. 65902-65915, 65921, 65924-65926, and 65931-65932. With regard to the other 136 claims, BLM concluded that the total number of years for which no evidence of assessment work was filed was 39 to 51 years, out of a possible 72 to 74 assessment years. Relying on the decisions in Hickel v. Oil Shale Corp., 400 U.S. 48, 57 (1970), and John J. Herr, 130 IBLA 349, 367, 101 I.D. 113, 122 (1994), BLM held that the

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<sup>3/</sup> The tabulation, appended to BLM’s decision as Attachment A, identifies the patent application to which the particular claim relates (column a); the name and serial number of the claim (column b); the total number of assessment years (column c); the number of years work was excused by Congress (column d); the total number of years for which, pursuant to the provisions of the Federal Land Management and Policy Act of 1976, 43 U.S.C. § 1744(a) (2000), notices of intention to hold the claim (NOI’s) were filed (column e); the total number of years affidavits were filed (column f); the grand total of years for which either an NOI or an affidavit of annual labor performed were filed (column g); the years in which there was no NOI or annual labor filing (column h); the years when there was no filing and the number of consecutive years in non-compliance (column i); the number of entries attached to support the information thus reflected (column j); and a comment section (column k). The table is presented in descending tiers, so that the claims for which the single longest consecutive period(s) of non-compliance appear first.

“resumption doctrine”<sup>4/</sup> would not apply to CHI’s claims, because the claimants had failed to “substantially comply” with the assessment work requirements of the general mining law. (Decision at 2-3.)

### Legal Framework

[1] Placer claims are subject to entry and patent in the same manner as lode claims. 30 U.S.C. § 35 (2000). Oil shale was made subject to location and entry as a placer claim by the Act of February 11, 1897, 29 Stat. 526. The mining law called for the annual expenditure of \$100 worth of labor or improvements, also referred to as “assessment work,” on or for the benefit of a mining claim each year until patent issues. 30 U.S.C. § 28 (2000). Specifically, the mining law provides, in pertinent part, that “[o]n each claim located after the 10th day of May 1872, and until a patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year.” 30 U.S.C. § 28 (2000). The purpose of the assessment work requirement was “to assure the claimant’s good faith and diligence, to encourage development of the west’s mineral resources, and to prevent a claimant from locating numerous mining claims and holding the claims without working them, thus preventing others from occupying and developing the property.” 2 American Law of Mining § 45.02 (2d ed. 2002).

However, the mining law also provided that failure to comply with assessment work and other conditions would open the claim to relocation, assuming the claim holder had not resumed work on the claim before the relocation occurred. 30 U.S.C. § 28 (2000). Thus, failure to perform assessment work did not result in automatic forfeiture and restoration to the public domain, or even subject it to invalidation by the United States; it merely opened the claim to relocation before work resumed. Only abandonment restored the claim to the public domain, and only a relocation by an adverse claimant caused forfeiture, a matter that could be raised only in the courts by rival claimants. 2 American Law of Mining § 45.08[2][a] (2d ed. 2002) and cases cited.

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<sup>4/</sup> The “resumption doctrine” arises from the mining law, which established the conditions under which a mining claimant preserved his possessory right to a mining claim, including the obligation to perform annual assessment work: “[U]pon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location.” 30 U.S.C. § 28 (2000).

[2] Oil shale deposits were withdrawn from location and became subject to disposition only by leasing pursuant to the Mineral Leasing Act of 1920 (MLA). 30 U.S.C. § 193 (2000); see also 30 U.S.C. § 241(a) (2000). Section 37 of the MLA preserved “valid [oil shale] claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.” 30 U.S.C. § 193 (2000) (emphasis added). Since oil shale no longer was a locatable mineral, such claims were no longer vulnerable to relocation by rival claimants. Wilbur v. Krushnic, 280 U.S. 306, 317-18 (1930), and Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639, 646-47 (1935), established that failure to perform annual assessment work did not *ipso facto* result in forfeiture to the United States, and that the United States lacked the authority to challenge oil shale claims on that basis.

[3] In 1970, the Supreme Court confined and substantially retreated from the construction set forth in Wilbur and Ickes. In Hickel v. Oil Shale Corp., 400 U.S. at 48, the Supreme Court examined the legislative history of the mining law and the MLA’s savings clause and concluded that “token assessment work, or assessment work that does not substantially satisfy the requirements of 30 U.S.C. § 28, is not adequate to ‘maintain’ the claims within the meaning of § 37 of the [MLA].” Id. at 57. Confining Krushnic and Ickes to situations in which the claim holders had substantially complied with the assessment work requirement, the Court held that “§ 37 of the MLA makes the United States the beneficiary of all claims invalid for lack of assessment work or otherwise,” and that the Department has subject matter jurisdiction to determine whether such claims have been maintained by performance of annual labor. Id.; see also 2 American Law of Mining (2d ed.) §§ 45.08[2][a] - 45.09[4]. In 1972, the Department promulgated 43 CFR 3851.3(a) and (b) to adopt the principles established by Hickel, and since then, the Department’s view that an unpatented mining claim could be declared void for failure to perform annual assessment work has been firmly rooted. Jerry D. Grover d.b.a. Kingston Rust Development (Grover III), 160 IBLA 234, 247-48 (2003); U.S. v. TOSCO Corp., 153 IBLA 205, 213 (2000), aff’d, Exxon Mobil Corp. v. Norton, 206 F.Supp. 2d 1085, 1090-91 (D. Colo. 2002).

On October 24, 1992, the Energy Policy Act of 1992 (EPA), 30 U.S.C. § 242 (2000), was enacted. The EPA radically altered the mining law as it pertained to oil shale claims. Among other things, the EPA recognizes three classes of oil shale mining claimants, based on whether patent applications have been filed, whether they were filed on or before October 24, 1992, whether a first half final certificate (FHFC) has been issued, and whether claimants holding unpatented claims wish to proceed and

receive a limited patent.<sup>5/</sup> As a result of the EPA, only claimants who had filed a patent application and received an FHFC on or before October 24, 1992, can now receive a full patent, upon payment of \$5 per acre, as provided by 30 U.S.C. § 29 (2000). 30 U.S.C. § 242(b) (2000).<sup>6/</sup> As appellants' claims are subject to the provisions of subsection (b) of the EPA, however, as BLM observed in its decision, the question presented is whether they maintained them within the meaning of the savings clause of Section 37 of the MLA by substantially complying with the assessment work requirements set forth in the mining law, 30 U.S.C. § 28 (2000).

### The Parties' Arguments

In its Statement of Reasons on appeal (SOR), CHI has advanced a number of arguments, which may be broadly summarized as follows: (1) CHI has been denied "notice and opportunity to be heard," because BLM invalidated its claims without first

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<sup>5/</sup> Those who had filed a patent application on or before Oct. 24, 1992, but who had not received an FHFC can receive only a patent limited to "oil shale and associated minerals," upon payment of \$2.50 per acre, and they must maintain their claims "in accordance with the requirements of applicable law prior to enactment of [the EPA]." 30 U.S.C. § 242(c)(1) (2000). All others who had not filed an application were required to elect a course of action and file an application within the periods specified by the EPA, and can receive only "oil shale associated minerals" [sic], upon payment of the fair market value per acre. 30 U.S.C. § 242(d) (2000). In addition, persons subject to the provisions of subsections (c)(3) and (d) of the EPA, 30 U.S.C. § 242(c)(3 and (d) (2000), must maintain possession of their oil shale claims as against the United States by paying \$550 per claim per year in lieu of performing assessment work, as provided in subsection (e) of the EPA, 30 U.S.C. § 242(e) (2000), failing in which the claims may be declared null and void. For a complete analysis of the EPA, see Grover III, 160 IBLA 250-52, 254-56.

<sup>6/</sup> Performance of assessment work is not required after the date that FHFC is issued: "The assessment year in which the mineral entry is allowed is the first assessment year for which the assessment work is no longer required, and assessment work is not required in any assessment year thereafter if a mineral patent issues." 43 CFR 3851.5 (1993). The regulation currently provides: "The assessment year in which the mineral entry is allowed is the first assessment year for which the assessment work is no longer required, and assessment work is not required in any assessment year thereafter until a mineral patent issues." (Emphasis added.) See also Silver Crystal Mines, Inc., 147 IBLA 146 (1999); Hugh D. Guthrie, 145 IBLA 149 (1998). The 1993 assessment year commenced at noon on Sept. 1, 1992. Appellants received their FHFC on Oct. 4, 1992.

proceeding to a contest hearing (SOR ¶¶ 1-3, at 17-18); (2) appellants have substantially complied with the requirements of the mining law, as they resumed assessment work and have therefore cured any prior default (SOR ¶¶ 4-5, at 12); (3) the fact that assessment work filings were not made by claimants does not merit a conclusion that no assessment work was performed for those periods of time (SOR ¶ 8 at 3-4); and (4) BLM's decision to the contrary deviates from longstanding judicial and Departmental interpretation of federal and state laws pertaining to the maintenance of oil shale claims, and therefore the Department should be barred by laches and estoppel from declaring the claims invalid. (SOR ¶¶ 6-11 at 13-16).

BLM responds by arguing that (1) appellants are not entitled to a contest hearing as the issue of whether a discovery of a valuable mineral deposit has been made is irrelevant to the issues on appeal (Answer at 4-5); (2) the Supreme Court has repudiated the resumption doctrine, and appellants therefore may not rely on it to excuse their failure to substantially comply with the assessment work requirements of the mining law (Answer at 3-4); (3) evidence of assessment work filed in the county recorder's office is the "best evidence" that such work was actually performed, and appellants may not rely on the resumption doctrine to excuse it from establishing that the assessment work was completed as required (Answer at 5-7); and (4) BLM relied on solid legal precedent in declaring the claims abandoned and void, and appellants have not cited any Departmental rule which historically served to prohibit BLM from invalidating mining claims for failure to comply with the assessment work requirements of the mining law; therefore, the Department is not estopped from declaring the claims abandoned and void (Answer at 7-8).

#### Analysis

In arguing that it has substantially complied with the mining law by resuming assessment work prior to relocation by another locator, CHI relies primarily on the decisions in Krushnic, 280 U.S. at 306, Virginia-Colorado Development Corp., 295 U.S. at 639, and Cliffs Synfuel Corp. v Babbitt, 147 F.Supp. 2d 1118 (D. Utah 2001), rev'g United States v. Cliffs Synfuel Corp., 146 IBLA 353 (1998). As in the present case, Cliffs Synfuel held FHFC's which had been issued prior to October 24, 1992, thus qualifying the claims for full patent under the EPA, assuming they were otherwise valid. Cliffs Synfuel's claims had been located in 1917. After a 46-year hiatus, assessment work was resumed in 1977. Cliffs Synfuel Corp. v. Norton, 291 F.3d 1250, 1255 (10th Cir. 2002). The Department contested the claims, alleging lack of substantial compliance with the assessment work requirement. The Administrative Law Judge determined that the owners had made a valid discovery of a valuable mineral deposit, but ruled that the claims were invalid for failure to comply with the assessment work requirement. This Board affirmed, relying on our prior

decision in United States v. Herr, 130 IBLA at 367, 101 I.D. at 122, in which we held that “the resumption doctrine is no longer applicable to oil shale claims.” United States v. Cliffs Synfuel Corp., 146 IBLA at 360.

On appeal, the District Court reversed, holding that “nothing in the Hickel opinion suggests that the Supreme Court intended to abrogate the resumption doctrine,” concluding that the Board had misinterpreted Hickel in both Herr and in Cliffs Synfuel. Cliffs Synfuel Corp. v. Babbitt, 174 F.Supp. 2d at 1123-25.

However, the District Court decision was reversed in Cliffs Synfuel Corp. v. Norton, 291 F.3d 1250 (10th Cir. 2002), cert. denied, 123 S.Ct. 884 (2003), in which appellants appeared as amici curiae. While it did not embrace the Board’s broad assertion that the resumption doctrine no longer applied to oil shale claims, the Tenth Circuit nonetheless squarely rejected the assertion that Cliffs Synfuel’s oil shale claims had been maintained under the mining law and therefore came within the savings clause of Section 37 of the MLA. Cliffs Synfuel Corp. v. Norton, 291 F.3d at 1259 n.4. Indeed, the Tenth Circuit held that the District Court’s reliance upon the Supreme Court’s ruling in Krushnic was error, because in the Hickel decision the Supreme Court had retreated from Krushnic. Thus, the Tenth Circuit determined that the District Court had erred by holding that the United States was barred from invalidating Cliffs Synfuel’s claims after it resumed work following substantial lapses in performing the obligation, observing:

In its more precise approach in Hickel that limited the sweep of Krushnic and Virginia-Colorado, the Court validated the ability of the government, as the “beneficiary of all claims invalid for lack of assessment work,” sua sponte to challenge pre-1920 oil shale claims. The Court referred to the legislative history of the Mining Law of 1872 and emphasized that “[w]hile the objective of the 1872 Act was to open the lands ‘to a beneficial use by some other party,’ once the original claimant defaulted, the defeasance inevitably accrued to the United States, owner of the fee.” Id. at 55, 91 S.Ct. 196. The Court declared that “we are of the view that § 37 of the 1920 [Mineral Leasing] Act makes the United States the beneficiary of all claims invalid for lack of assessment work or otherwise.” Id. at 57, 91 S.Ct. 196.

Cliffs Synfuel Corp. v. Norton, 291 F.3d at 1260-61, citing Hickel, 400 U.S. at 57.

[4] Moreover, the Hickel Court confined Krushnic and Virginia-Colorado to their facts. In Krushnic, oil shale claims were located on October 1, 1919; the owners defaulted in annual assessment work for a single year; they resumed work for the

succeeding assessment year and filed a patent application in the year that followed. Wilbur v. Krushnic, 280 U.S. at 315. In Virginia-Colorado, the claims were located in 1917 and assessment work was performed annually until 1931. Work was not performed during the assessment year that then ended on July 31, 1931, but the claimant had made arrangements to resume work and would have performed it, had the Department not challenged the claims on September 4, 1931. Thus, the claimant had only a one-year lapse in performance of assessment work over a 14-year period. Ickes v. Virginia-Colorado Development Corp., 295 U.S. at 643. Those facts led the Court to conclude that “every default in assessment does not cause the claim to be lost. Defaults, however, might be the equivalent of abandonment.” Hickel v. Oil Shale Corp., 400 U.S. at 57 (emphasis supplied). On the other hand, “token assessment work,” or assessment work that does not “substantially satisfy” the requirements of 30 U.S.C. § 28, is not adequate to maintain the claims. Id. Accordingly, we agree with the Tenth Circuit that “it logically follows that in each case we must consider the quantum of the actual assessment work performed and the length of time the claimant failed to meet the annual assessment work required by the Mining Act of 1872.” Cliffs Synfuel Corp. v. Norton, 291 F.3d at 1259. We now undertake that task with respect to appellants’ claims.

[5] Before examining the information provided by BLM in Attachment A, we first address appellants’ argument that the absence of assessment work affidavits in the county recorder’s office fails to establish that assessment work was not performed on the claims. We agree, at least in the abstract. More to the point, however, the absence of assessment work affidavits in the county recorder’s office is more properly a question of the parties’ respective burdens of proof.

As BLM notes, State law is pertinent. It requires, “if assessment work was required to be performed under 30 U.S.C. Sec. 28 or other federal law to maintain the claim,” the filing of a “statement that the annual assessment work required to maintain the claim was performed.” Utah Code § 40-1-6(2)(c).<sup>27</sup> Such statement must be filed within 30 days of the end of the annual period specified in 30 U.S.C. § 28 (2000). Utah Code § 40-1-6(2). State law further provides: “The affidavit, or a certified copy, shall be prima facie evidence of the facts stated in the affidavit.” Utah Code § 40-1-6(3). Having assembled and presented evidence that no affidavits of annual labor were filed for certain years, BLM made a prima facie case that none were filed because the work was not performed. The burden then shifted to appellants to demonstrate otherwise, by a preponderance of the evidence. United States v. Haskins,

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<sup>27</sup> It appears that a version of the basic filing requirement has been in place in Utah since 1898. In any event, however, appellants do not claim that there was no such State filing obligation in any of the years here at issue.

59 IBLA 1, 102, 88 I.D. 925, 976 (1981), aff'd, No. 82-2112 (C.D. Cal. Oct. 30, 1984); United States v. Bohme, 48 IBLA 267, 303-05, 87 I.D. 248, 264-65 (1980,) appealed sub nom, Tosco v. Watt, rev'd, 611 F. Supp 1130 (D. Colo. May 1, 1985), dismissed as moot, 826 F.2d 948 (10th Cir. Aug. 12, 1987).

While they contend that “the Utah statute provides no support for the conclusion that failure to file affidavits establishes that the work was not done” (SOR at 3, emphasis in original), appellants have had ample opportunity to produce countervailing evidence of assessment work performed, if it exists, and have not done so.<sup>8/</sup> BLM has provided copies of all assessment work documents reviewed, and appellants do not object to the authenticity of those records. They do not contest the accuracy of BLM’s review of the records as reported in Attachment A. Moreover, as will be shown below, there were years in which affidavits were filed, which buttresses the inference that, in fact, no annual labor was performed in the years when no affidavits were filed. See also United States v. Hix, 136 IBLA 377, 380 (1996). We therefore conclude that Attachment A and the documentation supporting it are properly considered probative evidence of the nature and extent of appellants’ compliance with the assessment work requirement. Accordingly, in the absence of evidence to the contrary, the absence of proofs of annual labor or other certification in the county recorder’s office attesting to assessment work performed properly establishes that no such filings were made because no work was performed for the years in question. See Cliffs Synfuel Corp. v. Norton, 291 F.3d at 1260.

[6] We now turn to the information recorded on Attachment A to determine whether the assessment work documented in the Uintah County Recorder’s office for the 156 claims at issue substantially satisfies the requirements of 30 U.S.C. § 28 (2000). Attachment A analyzes the claims from inception through the 1991-92 assessment year, which was the final year claimants holding more than 10 unpatented mining claims could satisfy the requirements of the mining law by performing assessment work.<sup>9/</sup> Thus, the years at issue are those between 1917, 1918, or 1919,

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<sup>8/</sup> In that regard, it is actual performance of annual labor that is dispositive, not merely the filing of a statement that it was done. United States v. Haskins, 59 IBLA at 54, n. 37, 88 I.D. at 952, n. 37..

<sup>9/</sup> On Oct. 5, 1992, Congress passed the Interior Department and Related Agencies Appropriations Act of 1993 (Rental Fee Act), Pub. L. 102-381, 106 Stat. 1378-79 (1992). In lieu of the annual assessment work obligation imposed by the mining law, Congress substituted the requirement to pay an annual rental fee of \$100 for every unpatented claim, mill site, or tunnel site for each of the 1992-93 and 1993-94  
(continued...)

and the 1970-71 assessment year, when it is apparent that appellants began to comply with applicable law on a consistent basis.

In particular, we looked at four columns: the total number of years since the claim was located (column c); the number of years for which an NOI was filed (column e); <sup>10/</sup> the number of years in which proofs of labor were filed (column f); and the number of consecutive years when nothing was filed (column i). In general, the table demonstrates a compelling pattern of lack of compliance for each claim. Thus, with respect to 122 of the claims, nothing was filed for at least 38 consecutive years out of 72 to 74 assessment years; 85 of those claims had additional periods in which nothing was filed, ranging from periods of 2 to 13 consecutive years. For another 9 claims, nothing was filed for 35 consecutive years. As to another 19 claims, nothing was filed for a consecutive period of 16 years; 11 of those claims had an additional period of consecutive years when nothing was filed, typically a 2-year period.

For a third group of 6 claims, nothing was filed for at least one consecutive period of 12 years; typically, however, there were at least two such 11- or 12-year periods, plus two other periods consisting of 8 or 10 consecutive years, thus demonstrating a pattern in which the failure to file proofs of labor was punctuated by brief episodes of compliance for 2 to 4 years, followed by significant periods in which no proof of labor was filed. For example, on UMC 65916, which was located in 1918, there was no assessment work performed from 1920 to 1930, affidavits of annual labor were filed for a 2-year period, followed by a lapse of 8 years, in turn followed by 4 years when assessment work ostensibly was performed, and so on, concluding with a final lapse of 12 consecutive years before appellants or their predecessors began to regularly file affidavits, beginning with the 1970-71 assessment year. Clearly, the 156

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<sup>9/</sup> (...continued)

assessment years. See 30 U.S.C. § 28 (2000). By its terms, the rental fee applied to unpatented oil shale claims as well, since the statute did not exclude them or make different provision for them. In addition, Congress provided for a waiver of the rental fee for persons who qualified as small miners. The rental fee for both assessment years was due on or before Aug. 31, 1993. If a mining claimant failed to timely pay the rental fees, the claim was conclusively deemed abandoned. See, e.g., Jerry D. Grover d.b.a. Kingston Rust Development (Grover IV), 160 IBLA 261, 265-66 (2003).

<sup>10/</sup> If NOI's were filed, they were filed for 1-, 2-, 5-, 7-, or 20-year periods. FLPMA provides that the failure to file certain documents, including an NOI, conclusively constitutes an abandonment of the claim. 43 U.S.C. § 1744(c) (2000).

oil shale claims in this case are a far cry from the single year of non-compliance at issue Krushnic and Virginia-Colorado, and accordingly, we find that the instances of sustained non-compliance over decades, with or without brief interludes of compliance, constitutes nothing more than token assessment work, and does not substantially satisfy the requirements of 30 U.S.C. § 28 (2000).<sup>11/</sup> BLM therefore properly declared the claims null and void on this basis.

[7] Appellants have vigorously argued that a contest should have been initiated to provide a hearing. They are mistaken. The Government may initiate a contest for any cause affecting the legality or validity of any entry or settlement or mining claim. 43 CFR 4.415-1. However, no contest pursuant to 43 CFR 4.451-1 or hearing pursuant to 43 CFR 4.415 is necessary where the material facts are undisputed. Taylor Energy Co., 148 IBLA 286, 295 (1999), and cases cited; Robert C. LeFavre, 141 IBLA 310, 315 (1997); Daniel D. Draper, 109 IBLA 85, 87 (1989); H.B. Webber, 34 IBLA 362, 372 (1978).

Lastly appellants' arguments regarding laches and estoppel also must be rejected. Laches is not applicable in this case. "The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by the acquiescence of its officers or their laches, neglect of duty, failure to act, or delays in the performance of their duties." 43 CFR 1810.3(a); United States v. California, 332 U.S. 19, 40 (1947); Ametex Corp., 121 IBLA 291, 294 (1991); Joseph A. Barnes, 78 IBLA 46, 60, 90 I.D. 550, 558 (1983), aff'd, Barnes v. Hodel, 819 F.2d 250 (9th Cir. 1980), cert. denied, 484 U.S. 1005 (1988). Nor is this a proper case for estoppel, as there was no affirmative misconduct by BLM, the essential predicate to invoking that equitable doctrine. See Schweiker v. Hansen, 450 U.S. 785, 788-89 (1981); United States v. River Coal Co., 748 F.2d 1103, 1108 (6th Cir. 1984); McNabb Coal Co. v. OSM, 105 IBLA 29, 37 (1988). As we have repeatedly held, to invoke estoppel, a party must show detrimental reliance on a written decision issued by an authorized officer, Jesse Hutchings, 147 IBLA 357, 360 (1999); Steve E. Cate, 97 IBLA 27, 32

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<sup>11/</sup> Further, we reject appellants' argument that their completion of \$500 worth of assessment work required for issuance of patent for oil shale claims satisfies the requirement of "substantial compliance" with the assessment work requirements of the mining law. Since the decision in Benson Mining & Smelting Co. v. Alta Mining & Smelting Co., 145 U.S. 428 (1892), it has been clear that only issuance of a final certificate relieved the claimant of performing assessment work. More recently, this argument was considered and rejected in Exxon Mobil Corp. v. Norton, 206 F.Supp. 2d at 1091; it was rejected by implication in Cliffs Synfuel Corp. v. Norton, 291 F.3d at 1251. See also Jerry D. Grover d.b.a. Kingston Rust Development, 139 IBLA 178, 181-82 (1997), and cases cited therein.

(1987), or a crucial misrepresentation and/or concealment of material facts, United States v. Ruby Co., 588 F.2d 697, 703-04 (9th Cir. 1978); Salmon Creek Association, 151 IBLA 369, 373 (2000); D.F. Colson, 63 IBLA 221, 224 (1982); Arpee Jones, 61 IBLA 149, 151 (1982).

All other arguments advanced by appellants not specifically addressed herein have been considered and rejected.

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.

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T. Britt Price  
Administrative Judge

I concur:

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James F. Roberts  
Administrative Judge