

RONALD L. NORDWICK

IBLA 78-305

Decided August 14, 1978

Appeal from decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. M MC 1010 et al.

Affirmed.

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

The owner of an unpatented mining claim located after Oct. 21, 1976, but in the calendar year 1976, must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1977, or the claim will be conclusively deemed to have been abandoned.

2. 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: Assessment Work -- Mining Claims: Location -- Mining Claims: Recordation

For the purposes of filing affidavits of assessment work or notices of intention to hold a mining claim, the date of location is the date as defined in the pertinent regulation, 43 CFR 3833.0-5(h).

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Federal Land Policy and Management Act of 1976: Recordation of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work -- Mining Claims: Recordation

A notice of location or certificate of location of a mining claim is a separate and distinct document from an affidavit of assessment work or a notice of intention to hold a mining claim and the filing of the one does not satisfy the requirement that the other be filed.

APPEARANCES: Ronald L. Nordwick, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ronald L. Nordwick has appealed from a decision dated February 8, 1978, of the Montana State Office, Bureau of Land Management (BLM), holding each of the Aurora mining claims listed therein to have been abandoned for failure to file an affidavit of assessment work or notice of intention to hold each such claim, as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1744 (1977 Supp.), and the pertinent regulation, 43 CFR 3833.2-1(b).

The mining claims were located at various dates in December 1976. 1/

Copies of the location notices were filed with the State Office on April 5, 1977. 2/ Sections 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976, supra, and the pertinent regulation, 43 CFR 3833.2-1(b)(1), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was

1/ The State Office numbers and location dates of the Aurora claims are:

M MC 1010	Aurora #8	December 28, 1976
M MC 1012	Aurora #10	December 30, 1976
M MC 1013	Aurora #12	December 28, 1976
M MC 1014	Aurora #14	December 28, 1976
M MC 1015	Aurora #15	December 23, 1976
M MC 1016	Aurora #16	December 23, 1976
M MC 1017	Aurora #17	December 23, 1976
M MC 1018	Aurora #18	December 23, 1976
M MC 1019	Aurora #19	December 28, 1976
M MC 1020	Aurora #20	December 30, 1976

2/ While this date is well past the 90-day period after the date of location, appellant had made an earlier submission of microfilm copies which were held not to meet the requirement. However, upon the filing of paper copies, BLM treated the filing of the microfilm copies as timely. The propriety of so doing is not at issue in this appeal.

located, file with the State Office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is deemed conclusively to constitute an abandonment of the mining claim. Section 314(1)(c), supra; 43 CFR 3833.4(a). Since these claims were located in calendar year 1976, and after October 21, one or the other of the documents had to be filed prior to December 31, 1977.

[1] When appellant failed to file either an affidavit or notice of intention, the State Office properly held the claims to have been abandoned and declared them void.

In his statement of reasons appellant contends that his location was not completed in 1976 and therefore, he was not required to file by December 31, 1977. Citing a BLM information pamphlet he states that four essential acts including recording of the location notice at the appropriate local recorder's office are required before the location is completed. He also says that Montana law does not require recordation of assessment work until "90 days after September 31, 1978."

[2] Appellant's own interpretation of the location requirements is incorrect. The regulations in 43 CFR 3833.0-5(h) specifically define "Date of location" as the date indicated on the notice of location or discovery posted on the unpatented mining claim. In this instance appellant's certificates of location state that each claim had been located in late December of 1976, and that copies of these notices of location were duly posted, conspicuously, at the point of discovery on each claim. Appellant's claim were clearly located in the calendar year 1976.

The fact that Montana State law may not require recordation of assessment work until 1978 does not relieve appellant of the strict requirements of section 314, supra, and the governing regulations. Therefore, for the purposes of compliance with these sections, each of the claims was located in 1976 and the required notice or affidavit had to be filed in 1977, the following calendar year. Appellant's failure to file the required instruments was properly viewed as an abandonment of the claims under the law.

[3] Appellant also asserts that if these claims were located in 1976, his act of good faith of paying \$5 per claim to have the claims recorded with the BLM constitutes a de facto notice of intent to hold these mining claims prior to December 31, 1977. The notice of location and the notice of intent to hold are two separate documents. The regulation in 43 CFR 3823.2-3, sets out in detail the information that must be set out in a notice of intention to hold a mining claim, which is different from that stated in a notice of location. Thus,

the one form cannot serve both purposes. Paul S. Coupey, 35 IBLA 112 (1978).

Appellant's other arguments raised with this appeal are (1) that prior locations by others of this land as tunnel site claims excuse the filing for the Aurora claims until October 22, 1979; (2) that Anaconda Company has filed a suit alleging the invalidity of the subject regulations and no decision should be made in this case pending the outcome of that litigation; and (3) that evidence of abandonment does not void a claim, as this can only be done by another claimant in a contest proceeding, and not by the Federal Government. These arguments are without merit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

James L. Burski
Administrative Judge

