

DAVID V. UDY

IBLA 79-400

Decided February 13, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting affidavits of assessment work for mining claims NMC-17688 through NMC-17691.

Affirmed as modified.

1. Regulations: Binding on the Secretary -- Regulations: Force and Effect as Law

The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

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

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

APPEARANCES: David V. Udy, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

David V. Udy appeals from the decision dated April 11, 1979, of the Nevada State Office, Bureau of Land Management (BLM), rejecting his affidavits of assessment work for the White Cliff Nos. 1 through 4 lode mining claims. The claims, situated in secs. 14 and 23, T. 16 S., R. 66 E., Mount Diablo meridian, Clark County, Nevada, were recorded with BLM on March 30, 1978. The notice of location of the claims indicated the claims were located on December 16, 1977.

Appellant's affidavit of assessment work for the claims was received in the BLM State Office January 2, 1979. 1/ On January 18, 1979, BLM returned the document, informing him that regulation 43 CFR 3833.2-2(a)(1) requires the document to "bear the County Recorder's stamp, book and page or other county reference and the serial number(s) assigned to each claim at the time of recordation." 2/ BLM informed appellant that he could resubmit the documents, with the required information, and they would be accepted as timely filed. Appellant received this notice on January 24, 1979, but failed to respond. On April 11, 1979, BLM issued the decision stating that the claims filings were rejected and the cases would be closed.

1/ December 30, 1978, the last day to timely file the documents, was a Saturday. Under 43 CFR 1821.2-2(e), if the BLM State Office is closed on the due date, the document is deemed to be timely filed if it is received on the next day the office is open to the public, that day being January 2, 1979, in this instance. Therefore, the filing was timely.

2/ Amendments to 43 CFR 3833 were published in 44 FR 9720 (Feb. 14, 1979), and in 44 FR 20428 (Apr. 5, 1979). These amendments would not affect this case in any event as they retain the requirement that the serial number be furnished. See 43 CFR 3833.2-2, as amended. The document was filed pursuant to the old regulation. Although there have been some changes, the language referring to the serial number remains the same. The old regulation provides in pertinent part:

"§ 3833.2-2 Form-evidence of assessment work.

"Evidence of annual assessment work shall be in the form of either:

"(a) An official copy of the affidavit of assessment work performed filed in the local jurisdiction of the State where the claim or group of contiguous claims are located setting forth the following information:

"(1) The serial number assigned to each claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location or patent application in the proper BLM office."

Appellant appeals the decision "because we did indeed file our proof of labor forms in the proper offices. However, I guess we neglected to put the County recorder office's book number and page on your affidavit. We wish to do that at this time * * *." The county recorder numbers were submitted; however, the BLM serial numbers of the claims were not provided.

Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires that a mining claimant, for claims located after October 21, 1976, file either a notice of intention to hold the claim, an affidavit of assessment work or a detailed report pursuant to the Act of September 2, 1958, 30 U.S.C. § 28-1 (1976). The statute does not specifically require serial number of the recorded claim; however, 43 CFR 3833.2-2(a)(1) requires the evidence of assessment work to include the serial number assigned the claim when the claim is located.

We first note that neither the statute nor the regulations require the mining claimant to include the county recorder's book and page number where the proof of labor was filed. It was error for BLM to reject appellant's filing on this ground, and to the extent that the decision rested on this, it is modified. However, appellant did not meet the regulatory requirement of supplying the serial number and the rejection must stand.

[1] While the statute itself does not require the serial numbers, Congress has entrusted the Department with the responsibility of administering and enforcing the statutory provisions. To this end, regulations are promulgated which the Department is bound to follow. Such regulations have the force and effect of law. Vitarelli v. Seaton, 359 U.S. 535 (1959); Accardi v. Shaughnessy, 347 U.S. 260 (1954); Chapman v. Sheridan Wyoming Co., 338 U.S. 621, 629 (1950); Electronic Components Corp. of N.C. v. N.L.R.B., 546 F.2d 1088 (4th Cir. 1976); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Wilfred Plomis, 34 IBLA 222 (1978); Arizona Public Service Co., 20 IBLA 120 (1975).

[2] Section 314 of FLPMA was enacted to establish a Federal recording system for mining claims to facilitate Federal land use planning and management. The yearly filing requirements are an integral part of this system, designed to keep records current. Failure to comply with the mandatory filing requirements constitutes abandonment of the claims and the land reverts to the status of public domain. Solicitor's Opinion, M-36889, 84 I.D. 188 (May 17, 1977); Phillip Sayer, 42 IBLA 296 (1979); Al Sherman, 38 IBLA 300 (1979). Without the serial numbers, a tremendous burden is placed on State Office personnel to locate the record in which the affidavit of assessment work is to be filed. When a mining claim notice of location is first filed, a copy of the collection voucher is given or sent to the mining claimant. This voucher contains the serial number

assigned the claim. It is not unreasonable to require the claimant to refer to these numbers in future correspondence concerning the claims. Appellant failed to do so, even after BLM informed him of the requirement. This failure rendered the filing unacceptable.

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 as modified.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

