

GEOMET EXPLORATION, INC.

IBLA 79-247

Decided April 30, 1980

Appeal from decision of Wyoming State Office, Bureau of Land Management, declaring mining claims abandoned and void. W MC 14355-14368, etc.

Affirmed.

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

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1977, fails to file an affidavit of assessment work or notice of intention to hold the claim prior to Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

APPEARANCES: John T. MacWaters, Vice President, Geomet Exploration, Inc., and John J. Flynn, Jr., Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Geomet Exploration, Inc., appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated February 2, 1979, holding certain mining claims (see Attachment A) void for failure to file assessment statements or notices to hold the claims as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), hereafter FLPMA.

The claims involved in this appeal were located between July 8, 1977, and August 11, 1977 (see Attachment A). The decision appealed from states that no assessment statement (proof of labor) or notice of

intention to hold the claims was received by BLM prior to December 31, 1978, as required by FLPMA, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

In its statement of reasons appellant contends that on October 19, 1978, it sent its affidavits of assessment work performed to be filed in the Carbon County courthouse as required by 43 CFR 3833.2-2(a). When these were not returned by late December appellant submitted a copy without the book and page number, which was received by BLM on January 8, 1979. Appellant adds that the affidavits of labor for these claims never reached the county courthouse as they were lost in the mail. Appellant says that the reason it did not notice that the documents had not reached the courthouse was because Carbon County is historically several months behind in returning documents. Enclosed with the statement of reasons is a copy of a check stub dated October 18, 1978, which appellant alleges recorded the check sent to Carbon County to cover filing fees for the affidavits.

Appellant states that it has spent more than \$131,000 drilling on the claims and has submitted invoices for drilling expenses. In conclusion it cites the following from Circular No. 2289, section 3851.3: "Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation unless the original locators \* \* \* have resumed work after such failure and before relocation."

On April 30, 1979, appellant filed a supplemental statement of reasons. It contends that 43 CFR 3844.4(a), in providing that failure to file shall make the claims void, is broader than the statute 43 U.S.C. § 1744 (1976) which states that failure to file "shall be deemed conclusively to constitute an abandonment of the mining claim." Appellant contends that such a regulation cannot be sustained.

[1] Section 314(a)(1) and (2) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), 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 located, file with BLM 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 conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). These claims were located after October 21, 1976, in calendar year 1977. Thus, one or the other of the documents had to be filed prior to December 31 of 1978, the year following the calendar year in which the claims were located, in order to meet the requirements of the law.

When appellant failed to file timely either an affidavit or notice of intention, BLM properly held the claims to have been abandoned and declared them void. Northwest Mining & Mercantile, Inc.,

46 IBLA 360 (1980); Willene Minnier, 45 IBLA 1 (1980); Juan Munoz, 39 IBLA 72 (1979); Public Service Co. of Oklahoma, 38 IBLA 193 (1978); John R. Caurruthers, 38 IBLA 77 (1978); Donald H. Little, 37 IBLA 1 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

Appellant's assertions that it sent the affidavits to Carbon County and that they were lost in the mail are to no avail. John Newkirk, 42 IBLA 292, 293 (1979). The procedures established by 43 U.S.C. § 1744 (1976) are mandatory and therefore may not be waived. Lo Lo M. Cosby, 46 IBLA 363, 364 (1980); Donald H. Little, 37 IBLA 1, 3 (1978). Also, the provision from Circular No. 2289 is inapplicable as recordation of mining claims is governed by 43 U.S.C. § 1744 (1976).

Appellant's argument that the terms of the regulation are broader than those of the statute is without merit. An abandonment of the claim means an absolute end to the claim and there is no rebuttal. "Abandonment" is therefore equivalent to "void."

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.

Anne Poindexter Lewis  
Administrative Judge

I concur:

Douglas E. Henriques  
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

The statute requires the assessment affidavits be timely filed for record in the office where the location certificate is recorded; this is the responsibility of the mining claimant. 43 U.S.C. § 1744(a)(1) (1976). Appellant alleges in its statement of reasons:

The reason that we did not notice that the affidavits had not reached the courthouse was because Carbon County is historically several months behind in returning documents. In the past there have been instances when we have had to make a personal trip from Boulder, Colorado to Rawlins, Wyoming to retrieve claim documents that were slow in being recorded in order to send them to the BLM within their 90 day time limit. We did not have the time and personnel to make a special trip in this instance.

If the facts are as stated, appellant was on notice of potential problems, and was required to make certain that proof of recordation was timely furnished. Under these facts, it cannot be said that appellant has substantially complied with statute and regulation.

Appellant's difficulty is the result of unfortunate oversight. It is therefore not clear that the problem would have been avoided even if the 1979 amendment to 43 CFR 3833.2-2 had been in effect. 1/

Joseph W. Goss  
Administrative Judge

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1/ Since the claims herein were presumptively abandoned, 43 CFR 3833.2-2 (1979) has been amended to permit timely filing with BLM of the affidavit which was or will be filed for record in the local jurisdiction where the claim is recorded. Under the regulation, the harsh consequences can be avoided if timely action is taken.

Attachment A

<u>Mining Claim</u> <u>Serial Number</u>	<u>Claim Name</u>	<u>Date Located</u>	<u>Date Recorded</u>
W MC 14355-14368	Gem 100-113	7-8-77	10-5-77
W MC 14369! 14378	Gem 114! 123	7! 15! 77	10! 5! 77
W MC 14379	Gem 124	7! 18! 77	10! 5! 77
W MC 14380	Gem 125	7! 15! 77	10! 5! 77
W MC 14381	Gem 126	7! 18! 77	10! 5! 77
W MC 14382	Gem 127	7! 15! 77	10! 5! 77
W MC 14383-14396	Gem 128-141	7-18-77	10-5-77
W MC 14397-14403	Gem 142-148	7-15-77	10-5-77
W MC 14404-14405	Gem 149-150	7-17-77	10-5-77
W MC 14406	Gem 151	7-15-77	10-5-77
W MC 14407-14412	Gem 152-157	7-17-77	10-5-77
W MC 16382-16450	G.E. 100-168	8-11-77	11-4-77
W MC 16451-16476	G.E. 100-125	8-11-77	11-4-77

