

CENTURY XXI MINING, INC.

IBLA 80-698

Decided July 30, 1980

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting mining claims IMC-16015 through 16017.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Assessment Work – 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: Assessment Work

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold on or before Oct. 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void.

APPEARANCES: Charles W. Shannon, EM, Midvale, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Century XXI Mining, Inc., appeals from the May 19, 1980, decision of the Idaho State Office, Bureau of Land Management (BLM), rejecting the Blue Gravel Nos. 1 through 3 mining claims.

The claims were located August 10, 1954, by Charles M. Andrus and Bob Lawrence. Century XXI Mining, Inc., is stated to be lessee and Jim Kawano lessor of claim IMC 16015; the record is not complete as to the status of the other claims. The location notices were filed with BLM on July 27, 1979. No affidavit of annual assessment work or notice of intention to hold was received by BLM on or before

October 22, 1979, as required by 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1. BLM "rejected" the claims and cited failure to file evidence of assessment work/notice of intention to hold claim.

Appellant contends that "the act of filing, in itself, shows the intent to comply with regulations and the intent to hold the claims." It states that the Idaho State Office should have notified claimant sooner of the omission, and that relocation will result in unnecessary work for claimant and governmental agencies.

[1] The requirements of 43 U.S.C. § 1744 (1976) are clear and mandate the following:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976 and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection * * *.

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, * * *.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

The applicable regulation, 43 CFR 3833.2-1(a), states:

§ 3833.2-1 When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

The statute and regulation thus require that in addition to the recording of location certificates, evidence of annual assessment work or a notice of intention to hold must be filed on or before

October 22, 1979. The effect of failure to file is set forth in 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a). Section 3833.4(a) provides:

(a) The failure to file an instrument required by §§ 3833.1-2(a), (b) and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

While the act of filing may indicate an intent to hold the claim as of the filing date, the statute and regulations are clear. The Department has no authority to excuse noncompliance. ^{1/} The failure to file required instruments is deemed an abandonment of the claims and they are held to be void. Kenneth K. Parker, 48 IBLA 129 (1980); Sheldon Morgen, 47 IBLA 118 (1980). In this connection, the BLM decision instead of rejecting the claims, should itself have held the claims to be abandoned and 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 as modified.

Joseph W. Goss
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

^{1/} It was of course impossible for BLM to know before the deadline whether or not the required filings would be made on time.

