

PALMYRA MINES, INC.

IBLA 80-702

Decided March 2, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring 14 mining claims NMC 111606 through NMC 111619 abandoned and void.

Affirmed.

1. 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 sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, and recorded with the Bureau of Land Management in 1979, must file in the proper Bureau of Land Management Office evidence of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

2. Administrative Authority: Estoppel -- Estoppel -- Federal Employees and Officers: Authority to Bind Government

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

APPEARANCES: James M. Copenhaver, Esq., Vaughan, Hull & Copenhaver, Ltd., Elko, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Palmyra Mines, Inc., appeals from the decision of April 28, 1980, wherein the Nevada State Office, Bureau of Land Management (BLM), declared the Sunset, Sunset No. 1 through 9, Laphroaig, Pinwinnie, 100 Pipers, and Old Orkney lode mining claims, NMC 111606 through NMC 111619, abandoned and void for failure to file evidence of annual assessment work with BLM prior to October 22, 1979, as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976).

The claims were located in 1966, 1967, and 1968, and certificates of location were filed with BLM on October 17, 1979. The evidence of annual assessment work was received by BLM on October 26, 1979. In the statement of reasons appellant states that the individual who performed the assessment work was out of the country when the certificates of location were filed and the proof of labor was delayed in the mail causing it to be filed with BLM after October 22, 1979. Appellant further states that the president of the company informed BLM of this and an employee of BLM advised her that under the circumstances the late filing of the evidence of assessment would be acceptable.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976) requires that an owner of an unpatented lode or placer mining claim located prior to October 21, 1976, make various filings with both state and Federal authorities by October 22, 1979. One of the filing requirements relates to the filing with BLM of evidence of annual assessment work, or where appropriate, notice of intention to hold the mining claim. See 43 U.S.C. § 1744(a) (1976). The implementing regulation, 43 CFR 3833.2-1(a) provides:

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.

Since the mining claims which are the subject of this appeal were located prior to October 21, 1976, the requirements of 43 CFR 3833.2-1(a) apply, and appellant had until October 22, 1979, to file evidence of annual assessment. Joseph V. Dodge, 50 IBLA 394 (1980); Kenneth K. Parker, 48 IBLA 129 (1980). The effect of failure to file

is set forth in 43 CFR 3833.4(a) which 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." Because appellant failed to file the evidence of assessment on or before October 22, 1979, the claims were properly declared abandoned and void.

[2] Appellant acknowledges that the required documents were not timely filed but contends that a BLM employee advised that they would be accepted late. Appellant, however, could not rely on such a statement to suspend the filing requirements. Erroneous or incomplete information or opinions provided by an officer, agent, or employee of the Department cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c); Energy Trading Inc., 50 IBLA 9 (1980). Neither FLPMA nor the regulations provide any leeway in the application of the penalty for failure to file the evidence of annual assessment. Kenneth K. Parker, *supra*.

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.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

