

WILLIAM N. BARBAT

IBLA 81-199

Decided July 8, 1981

Appeal from decision of Wyoming State Office, Bureau of Land Management, declaring mining claims abandoned and void. W MC 177129 through W MC 177357.

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, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

APPEARANCES: William N. Barbat, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

William N. Barbat has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated November 28, 1980, declaring appellant's 229 mining claims abandoned and void for failure to file timely in accordance with section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833. The basis for the decision was the failure to submit either evidence of annual assessment work or notices of intention to hold the claims.

Appellant's mining claims were all located prior to October 21, 1976, and filed for recordation with BLM on October 19, 1979. See Appendix A. There is no evidence that appellant submitted either evidence of annual assessment work or notices of intention to hold the claims in 1979. ^{1/}

In his statement of reasons for appeal, appellant contends that the certificates of location filed with BLM "after Sept. 1, 1979" were "prima facie evidence that the required assessment work had been performed" and that this filing was "of itself a notice of intention to hold the mining claims." (Emphasis in original.) Appellant argues that declaring claims abandoned and void on such technicalities does not comport with Congressional intent. Moreover, he states that he may have been denied equal treatment under the law, due to prejudice on the part of BLM.

[1] The applicable regulation, 43 CFR 3833.2-1(a), provides that:

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, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis added.]

See 43 U.S.C. § 1744(a) (1976).

Pursuant to this regulation, appellant was required to file "on or before October 22, 1979," as this date was "sooner" than December 30, 1980, i.e., "December 30 of [the] calendar year following the calendar year of recording." 43 CFR 3833.2-1(a). 43 CFR 3833.4 provides the penalty for failure to satisfy the filing requirement of 43 CFR 3833.2-1(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." See 43 U.S.C. § 1744(c) (1976).

Appellant never filed evidence of annual assessment work or notices of intention to hold on or before October 22, 1979. Accordingly, BLM properly declared the claims abandoned and void. Robert Keough, 54 IBLA 337 (1981); L. E. Garrison, 52 IBLA 131 (1981).

^{1/} On Dec. 15, 1980, appellant filed "Affidavit of Assessment Work" for the 229 claims.

The applicable regulations, 43 CFR 3833.2-2 and 3833.2-3, specify the required form for evidence of annual assessment work and a notice of intention to hold. A certificate of location will not suffice in either regard. Don Sagmoen, 50 IBLA 84 (1980); Paul S. Coupey 35 IBLA 112 (1978).

The applicable regulations merely mirror the statute and, to the extent that they have been considered by the courts, they have been upheld. See Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. (1981)); Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), *aff'd*, Topaz Beryllium Co. v. United States, Civ. No. 79-2255 (10th Cir. May 21, 1981); Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979).

Moreover, in enacting the filing requirements of section 314 of FLPMA, *supra*, Congress did not invest the Secretary of the Interior with authority either to waive or excuse compliance with the statute or to afford mining claimants any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Finally, we cannot discern how appellant has been unequally treated under the law. He has merely received the same, albeit strict, treatment that all other owners of unpatented mining claims have received in similar circumstances. 2/

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.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

2/ Appellant states on appeal that because he received the BLM decision "at the beginning of the severest winter months," he was effectively foreclosed from exercising "the 90-day relocation option." Appellant apparently misunderstood the language in the BLM decision which informed appellant that "[b]ased on new location date(s), new filings must be made within ninety days as provided for by law and regulation." This did not mean that appellant was limited to only 90 days to make new locations. The law merely requires that a mining claimant file for recordation with BLM within 90 days after the date of location of a claim located after Oct. 21, 1976. See 43 CFR 3833.1-2(b).

APPENDIX A

<u>Mining Claim</u> <u>Serial Number</u>	<u>Claim Name</u>	<u>Date Located</u>	<u>Date Recorded</u>
W MC 177129-177131	Dot #1-3	10-30-73	10-19-79
W MC 177132	Eve #1	10-30-73	10-19-79
W MC 177133	Eve #3	10-30-73	10-19-79
W MC 177134-177137	Eve #5-8	10-30-73	10-19-79
W MC 177138	Eve #10	10-30-73	10-19-79
W MC 177139	Kay #1	11-3-73	10-19-79
W MC 177140	Kay #3	11-3-73	10-19-79
W MC 177141	Kay #5	11-3-73	10-19-79
W MC 177142-177147	Lu #1-6	11-3-73	10-19-79
W MC 177148	Lu #8	11-3-73	10-19-79
W MC 177149	Lu #10	11-3-73	10-19-79
W MC 177150	Lu #12	11-3-73	10-19-79
W MC 177151-177152	Ola #1-2	2-11-76	10-19-79
W MC 177153	Ola #4	2-11-76	10-19-79
W MC 177154	Ola #6	2-11-76	10-19-79
W MC 177155-177158	Ola #15-18	2-11-76	10-19-79
W MC 177159-177182	Ursa #1-24	10-13-76	10-19-79
W MC 177183-177204	Ursa #25-46	10-15-76	10-19-79
W MC 177205-177224	Ursa #47-66	10-15-76	10-19-79
W MC 177225-177230	Ursa #67-72 <u>3/</u>	10-16-76	10-19-79
W MC 177231-177237	Val #1-7	10-9-76	10-19-79
W MC 177238	Val #7A	10-9-76	10-19-79
W MC 177239	Val #8	10-9-76	10-19-79
W MC 177240-177249	Val #9-18	10-5-76	10-19-79
W MC 177250-177257	Val #19-26	9-2-76	10-19-79
W MC 177258-177275	Val #27-44	9-3-76	10-19-79
W MC 177276-177285	Val #45-54	9-4-76	10-19-79
W MC 177286-177317	Wilma #1-32	9-2-76	10-19-79
W MC 177318-177321	Wilma #33-36	10-3-76	10-19-79
W MC 177322-177331	Xena #1-10	9-2-76	10-19-79
W MC 177332-177349	Xena #11-28	10-4-76	10-19-79
W MC 177350-177357	Xena #29-36	10-3-76	10-19-79

3/ The claim names, Ursa 67-71, were apparently inadvertently omitted from the list of claims appended to the BLM decision.