

SILICA SAND CORP.

IBLA 81-736

Decided August 21, 1981

Appeal from decision of Utah State Office, Bureau of Land Management, deeming unpatented mining claims abandoned and void. U MC 87322 through U MC 87361, U MC 94419.

Reversed and remanded.

1. Federal Land Policy and Management Act of 1976: Assessment Work  
-- Mining Claims: Assessment Work

Where the owner of unpatented mining claims located before Oct. 21, 1976, submits copies of the location notices and proof of labor to BLM in June and Aug. 1979, and submits another proof of labor to BLM in Nov. 1980, it has satisfied the current recording requirements of both the Federal Land Policy and Management Act of 1976, and the regulations in 43 CFR Subpart 3833.

APPEARANCES: Harold D. Mitchell, Esq., Springville, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Silica Sand Corporation appeals from the Utah State Office, Bureau of Land Management (BLM), decision of May 6, 1981, which declared and conclusively deemed the unpatented White Sands, White Sand No. 1, and White Sands Nos. 1 through 39 placer mining claims, U MC 87322 through U MC 87361 and U MC 94419, abandoned and void because no additional evidence of assessment work performed or notice of intent to hold the claims was filed with BLM on or before October 22, 1979, as BLM determined was required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a). The mining claims were located between 1960 and 1965.

Section 314 of FLPMA provides, pertinently, as follows:

Sec. 314. (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of the approval of this Act 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, [or] \* \* \* a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(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.

(b) The owner of an unpatented lode or placer mining claim \* \* \* located prior to the date of approval of this Act shall, within the three-year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground. \* \* \*

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; \* \* \*.

[1] Examination of the case files discloses that copies of the location notices for all the claims except White Sands No. 8 were filed for recordation with BLM on June 26, 1979. A copy of the location notice for White Sands No. 8 was filed with BLM on August 2, 1979. A copy of a proof of annual labor for the 1978 assessment year for all 41 claims was filed with BLM on June 26, 1979. Prior to December 31, 1980, the first year after the year of recordation with BLM, a proof of annual labor for the 1980 assessment year was filed with BLM on November 28, 1980. These recordations satisfied the recording requirements set forth in section 314 of FLPMA, and 43 CFR 3833.1-2 and

3833.2-1. Appellants contend they did mail a copy of their proofs of labor for the 1979 assessment year to BLM in September 1979, but BLM has no record of receiving them.

The regulation implementing the statutory provision requires filing of notice of intention to hold or evidence of assessment work "performed during the preceding assessment year," 43 CFR 3833.2-1(a). At the time evidence of assessment work for these claims was filed with BLM in 1979 and 1980, the evidence filed was for the preceding assessment year in each case, and thus, the requirements of statute and regulation were complied with. The discrepancy between the dates of the assessment year, from September 1 to September 1, and the dates of the calendar year, January 1 to December 31, can lead to the anomalous result that a filing may be accomplished in compliance with FLPMA and the regulation in a case where no proof of assessment work for a specific year was filed with BLM, such as this case where no proof of assessment work for the 1979 assessment year was filed with BLM. See Perry Johnson, 57 IBLA 20 (1981).

The BLM decision adverts to John Schnabel, 50 IBLA 201 (1980), and A. W. Jose, 48 IBLA 225 (1980), as support for its action in adjudging these claims abandoned and void. Those cases can easily be distinguished from the issue now before us, in that in those two cases no evidence of assessment work was filed with BLM within the prescribed time limits.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the cases remanded for further action consistent with this decision.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

