

BRUCE J. REISS

IBLA 81-828

Decided August 25, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring an unpatented millsite claim abandoned and void. CA MC 33582.

Reversed and remanded.

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

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976), to file an annual notice of intention to hold the millsite, is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

APPEARANCES: Bruce J. Reiss, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bruce J. Reiss 1/ has appealed the May 27, 1981, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented Section 5 millsite, CA MC 33582, abandoned and void because no notice of intention to hold the claim had been filed with BLM for calendar year 1980 on or before December 30, 1980, as required by 43 CFR 3833.2-1.

Appellant states that proofs of labor for his unpatented mining claims were filed with the county for record, and a copy with BLM as

1/ The appeal is taken in the names of the owners of the millsite: Bruce J. Reiss, Carol A. Reiss, Joane A. Bettosoni, and Phyllis A. Youngman.

required by the statute, and expresses his understanding that the millsite claim was secure so long as the mining claims were properly supported by annual proofs of labor.

Although 43 CFR 3833.2-1(d) requires the owner of an unpatented millsite claim to file a notice of intention to hold the claim on or before December 30 of each year following the year of recording, section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), does not require the filing of more than a notice of location of a millsite claim.

[1] In Mrs. Otis Teaford, 56 IBLA 367 (1981), we held that the failure of a holder of a millsite claim which has been properly recorded under FLPMA to file an annual notice of intention to hold the millsite is a curable defect, and that the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of the deficiency, citing Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), and Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981). So, in this case it must be held to be error for BLM to have declared the Section 5 millsite abandoned and void. Appellant must be afforded an opportunity to comply with the regulatory requirement. See 43 CFR 3833.2-1(d); 43 CFR 3833.2-3.

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 reversed, and the case file is remanded to BLM for further action not inconsistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

