

ERWIN TONNE

IBLA 81-867

Decided August 31, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 42156 through CA MC 42160.

Affirmed, as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Erwin Tonne, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Erwin Tonne appeals the California State Office, Bureau of Land Management (BLM), decision of June 1, 1981, which declared five unpatented mining claims, CA MC 42156 through CA MC 42160, abandoned and void because no evidence of assessment work or notice of intention to hold the claims had been filed on or before December 30, 1980, as required by 43 CFR 3833.2-1.

The record shows that on October 1, 1979, appellant submitted a map on which a number of mining claims were outlined. Five of the claims, identified on the map as #11A, #11B, #19A, #19B, and #30, were indicated as property of appellant, for which he submitted a service fee of \$25, being at the rate of \$5 per claim. He indicated he wished the claims recorded as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). There is nothing in the record to show that copies of the notices of location or proof of assessment work were filed with BLM at that time.

Following receipt of the decision of June 1, 1981, on June 30, 1981, appellant submitted copies of proof of labor for the Wayne/Erwin #1, #2, #3, #4, and #7 claims, as recorded August 28, 1979, and June 24, 1980, in the records of Riverside County, California, and an unrecorded proof of labor for the claims executed June 23, 1981. On July 8, 1981, appellant submitted a copy of the location notice for the Wayne/Erwin lode mining claim, with the date of location being shown as November 26, 1959.

Appellant states that all "taxes and forms have been paid and filed since 1960 and they are current also for 1981."

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), required the owner of unpatented mining claims located prior to October 21, 1976, to file with the proper BLM office within 3 years after October 21, 1976, a copy of the official record of a notice of intention to hold or an affidavit of assessment work and a copy of the official record of the notice of location. The statute provides that failure to file the instruments, proof of labor and notice of location, within the time prescribed shall be deemed conclusively to constitute abandonment of the mining claim.

Inasmuch as neither the notices of location nor the proof of labor for these claims were filed with BLM on or before October 22, 1979, as required by FLPMA, there never was a proper recordation of the mining claims, and the claims should have been deemed abandoned and void for that reason. The BLM decision is modified to that extent.

Furthermore, it was error for BLM to have retained the \$25 service fee for recordation of these claims, without the required instruments, proof of labor and notices of location, being filed on or before October 22, 1979. BLM is directed to repay that service fee of \$25 to appellant.

Appellant should confer with BLM about the possibility of relocating the claims.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

