

URANUS, INC.

IBLA 81-901

Decided September 25, 1981

Appeal from decision of Utah State Office, Bureau of Land Management, deeming unpatented mining claims abandoned and void. U MC 82216 through U MC 82260.

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-- National Park Service.

Pursuant to sec. 314 of FLPMA and 43 CFR 3833.2-1(b), the owner of unpatented mining claims situated within any unit of the National Park System must file in the proper office of BLM a notice of intention to hold the claims on or before Dec. 30 of each year following the year in which the claims were recorded with the National Park Service as required by the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), and 36 CFR 9.5. Where a permit to do assessment work has been issued by NPS, the owner of the claims may file evidence of assessment work in lieu of the notice of intention to hold the claims. Failure to file either a notice of intention to hold the unpatented mining claims or evidence of assessment work with the proper BLM office within the time period prescribed conclusively constitutes abandonment of the claims.

APPEARANCES: John L. Andersen, Secretary, Uranus, Inc.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Uranus, Inc., appeals the June 29, 1981, decision of the Utah State Office, Bureau of Land Management (BLM), which deemed the unpatented Dolly Varden Nos. 1 through 20, Power Wagon Nos. 1 through 15, and Sheetzes Gulch Nos. 1 through 10 lode mining claims, U MC 82216 through U MC 82260, abandoned and void because no notice of intention to hold the claims was filed for the year 1979, as 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(b)(1).

All of the subject claims were located in 1967 and all are within the expanded Capital Reef National Park. Copies of the notices of location were timely filed with the National Park Service (NPS), as required by section 8 of Mining in the Parks Act, 16 U.S.C. § 1907 (1976). On January 30, 1978, pursuant to section 314 of FLPMA, supra, NPS forwarded to BLM copies of all documents filed by Uranus with NPS.

The record indicates that copies of the location notices also had been filed with BLM on September 28, 1977.

By letters dated December 12, 1980, NPS advised Uranus that NPS had no record of the required annual notices for the Dolly Varden, Power Wagon, and Sheetzes Gulch groups of claims for 1978 or 1979. In response to an inquiry from Uranus, BLM reiterated that BLM had no record of the required notices for 1978 or 1979, and solicited a proof of receipt on Form 3830-1 which BLM uses to acknowledge receipt of documents filed annually pursuant to FLPMA.

As no response was submitted by Uranus, BLM issued its decision of June 29, 1981. This appeal followed.

Appellant states, without submitting proof, that it had filed appropriate proofs of labor for all the claims, and suggests that the proofs had been lost or misfiled by BLM. Appellant also suggests that BLM had changed the serial identification of the claims, so that its proofs might have been filed with the discarded numbers.

Examination of the case files shows that the claims were duly recorded in the records of Garfield County, Utah. A proof of labor for 1980, naming all the claims, indicates it was recorded in the records of Beaver County, Utah. There is no evidence in the files to indicate that NPS had ever issued a permit to do assessment work on any of these claims.

[1] Although under section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), the owner of a mining claim located on or before October 21, 1976, must file a notice of intention to hold the claim or evidence of the performance of annual assessment work on or for the benefit of the claim in the proper BLM office on or before October 22, 1979, and prior

to December 31 of each year thereafter, the owner of mining claims within any unit of the National Park System must specifically file a notice of intention to hold the claims annually on or before December 30 of each year following the year in which the claims were recorded with NPS. <sup>1/</sup> Since this requirement to file an annual notice is mandatory, failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner, and the claim is rendered void. 43 U.S.C. § 1744(c) (1976). The conclusive presumption of abandonment is imposed by the statute itself as a matter of law, and the statute does not invest the Secretary of the Interior with authority to waive noncompliance nor to afford claimants relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant was required to file annual notices of intention to hold his claims beginning in 1978. Although appellant claims that he filed proof of labor for the claims, he has presented no evidence substantiating his assertion that BLM received the filings in question. The burden of insuring that BLM receives a filing is on the person filing and that person must bear the consequences of nonreceipt. Everett Yount, 46 IBLA 74 (1980). See Verla Rhoads, 52 IBLA 393 (1981). As the required documents were not filed with the proper BLM office for 1978 or 1979 within the time limits established by statute, BLM correctly declared the mining claims to be abandoned and void.

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.

Douglas E. Henriques

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Bruce R. Harris  
Administrative Judge.

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<sup>1/</sup> The regulation in effect in 1978, the year following the year of appellant's recordation of his claims with NPS, required that the annual filing be made with NPS, which would then send copies to BLM. 43 CFR 3833.2-1(a)(3) (1978); 36 CFR 9.5(d) (1978). The regulations in effect for annual filings made since April 1979 require that the annual filings be made with BLM which forwards copies to NPS. 43 CFR 3833.2-1(b).

