

DENNIS FORSBERG

IBLA 82-3

Decided October 19, 1981

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 9363 through I MC 9367.

Affirmed.

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.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Assessment Work

A notice of intention to hold mining claims must set forth the information required by 43 CFR 3833.2-3 and be recorded both in the county where the claims are situated and in the proper BLM office to satisfy the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Dennis Forsberg, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dennis Forsberg appeals the September 11, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented DF #1 through DF #5 lode mining claims, I MC 9363 through I MC 9367, abandoned and void because no evidence of assessment work or notice of intention to hold the claims was filed with BLM in 1979 as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations in 43 CFR 3833.2-1.

Appellant contends that a proof of labor or a notice of intention to hold was filed with BLM each year since the location of the claims, and that BLM assured him in 1980 that the claims were valid. He asserts that he sent a notice of intention to hold the claims on November 14, 1979, and that BLM had acknowledged receipt. ^{1/}

The subject claims were located October 30, 1978, and recorded the same date in the records of Lemhi County, Idaho. Copies of the notices of location were filed with BLM January 16, 1979, as required by FLPMA.

Section 314 of FLPMA, supra, requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the official record of the notice of location with BLM within 90 days after the date of location and, prior to December 31 of each year following the calendar year of the location, to file for record in the office where the location notice is recorded a notice of intention to hold the claim or evidence of assessment work performed thereon, and within the same time limits to file a copy of the recorded instrument with BLM. The requirements for the annual filings are set forth in 43 CFR 3833.2-1, 3833.2-2, and 3833.2-3.

FLPMA states that failure to file any of the required instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claims. 43 U.S.C. § 1744(c) (1976). See also 43 CFR 3833.4(a).

Appellant alleges he filed a notice of intention to hold in November 1979 and has submitted a purported copy of his letter to BLM under date of November 14, 1979, which reads as follows: "This is a notice of intent to hold for the DF #1 through DF #5 claims, I MC 9363 through I MC 9367. I am holding the DF claims and continue to develop [sic] them for their valuable minerals."

^{1/} There is no evidence in the case file that the letter of Nov. 14, 1979, was ever received by BLM, nor has appellant provided a copy of BLM's acknowledgement of receipt thereof.

The regulation, 43 CFR 3833.2-3, provides the form in which a notice of intention to hold mining claims shall be presented, as follows:

§ 3833.2-3 Form--notice intention to hold claim or site.

(a) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either (1) an exact legible reproduction or duplicate, except microfilm, of a letter signed by the owner of a claim or his agent filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the notice or certificate of location. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

(iii) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;

(iv) A statement that the owner(s) intend to continue development of the claim; and

(v) The reason that the annual assessment work has not been performed or an affidavit of assessment work performed or a detailed report of geological, geochemical or geophysical survey under § 3833.2-2, has not been filed or (2) * * *.

The copy of the letter submitted by appellant does not satisfy the requirements of the statute or of the regulations. There is no indication that the letter was placed of record in Lemhi County, Idaho, nor is there any explanation why the annual assessment work was not performed. Assuming the letter was received by BLM, it could not be accepted as compliance with the annual recordation requirements of FLMPA. Accordingly, BLM properly deemed the DF claims to be abandoned and void because of noncompliance with the recordation requirements of FLPMA. The failure to file the instruments required by section 314 of FLPMA, supra, and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claims by the owner. Lela J. Fillmore, 56 IBLA 385 (1981); William O. Bahny, 56 IBLA 190 (1981); Walter D. Cosdon, 56 IBLA 112 (1981).

Appellant may wish to consult with BLM about the possibility of relocating these 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.

Douglas E. Henriques

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

