

NORTHERN STONE SUPPLY

IBLA 82-92

Decided December 29, 1981

Appeal from a Bureau of Land Management, Idaho State Office, decision declaring unpatented mining claims abandoned and void. I MC 8098 through I MC 8111.

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--Mining Claims: Assessment Work--Mining Claims: Recordation

The owner of an unpatented mining claim must file in each calendar year, on or before Dec. 30, either an affidavit of assessment work performed on the claim or a notice of intention to hold the mining claim. Failure to so file results in a conclusive statutory presumption of abandonment of the claim by the owner.

APPEARANCES: Douglas R. Whipple, Esq., Burley, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of October 9, 1981, the Idaho State Office of the Bureau of Land Management (BLM), declared the unpatented mining claims I MC 8098 through I MC 8111, owned by Northern Stone Supply, abandoned and void for failure to file by December 30, 1980, evidence of assessment work or a notice of intention to hold the claims as required by 43 CFR 3833.2-1. Northern Stone Supply appeals. Some of the unpatented mining claims here in question were located before and some after the enactment date of the Federal Land Policy and Management Act of 1976 (FLPMA), October 21, 1976.

Appellant's statement of reasons states:

Northern Stone Supply, Inc., substantially complied with filing evidence of assessment work at the Cassia County Courthouse, State of Idaho, and the Cassia County, State of Idaho, office of the Bureau of Land Management, by December 30, 1980. Also, evidence of assessment work was sent to the "proper Bureau of Land Management office," section 1821.2-1(d), by depositing evidence thereof in the United States mail, postage prepaid addressed to same.

43 CFR 1821.2-1(d) states that the required evidence must have been filed with the BLM Idaho State Office in Boise, Idaho. However, our review of the case file shows that, contrary to appellant's unsupported assertion, the Idaho State Office, while having received evidence of assessment work for the years 1979 and 1981, has no record of such a submission for the calendar year 1980.

Appellant asserts that the fundamental reason for requiring evidence of assessment work to be filed is to "notify and keep the Bureau of Land Management informed as to who intends to maintain a claim on \* \* \* Federal lands. \* \* \* [Appellant] had maintained its claim for many years, plus was in the process of completing its application for mineral rights on the same land." Therefore, appellant argues, BLM was on notice of appellant's claims, and the purpose of the filing requirement was met. Appellant also asserts that 43 CFR 3833.1-3 and 3833.2-4 are ambiguous and in contradiction.

Under the applicable statute and regulations, mere notice to BLM is insufficient. Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), requires the filing "prior to December 31 of each year" of either a formal notice of intention to hold the mining claim or an affidavit of assessment work performed thereon. Section 314(c) states that "[t]he failure to file such instruments \* \* \* shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner \* \* \*." 43 CFR 3833.2-1 reemphasizes this requirement, and 3833.4 reiterates the conclusive presumption of abandonment upon failure to so file. As we said in N. L. Baroid Petroleum Services, 60 IBLA 90, 93 (1981), "Appellant has made no annual filing for the calendar year [in question], as opposed to a mere defective filing recognized as a curable defect \* \* \* [by] the court's rationale in Topaz Beryllium [Co. v. United States], 649 F.2nd 775 (10th Cir. 1981)]. Therefore, curative action is not an available remedy in this instance." We also point out to appellant that 43 CFR 3833.1-3 and 43 CFR 3833.2-4 respectively state circumstances under which it is not necessary to record with BLM a copy of the official record of the notice or certificate of location of a claim filed under state law, and evidence of annual assessment work performed or a notice of intention to hold a mining claim. Nothing in the record indicates that either of those sections is applicable in this case.

Accordingly, 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.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge

