

JOHN T. CONNER

IBLA 82-485

Decided April 5, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. N MC 119014.

Vacated; appeal dismissed without prejudice.

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: Recordation

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1, and on or before Dec. 30. The date of filing with the Bureau of Land Management is the critical date, and the assessment year recited in the proof is secondary.

APPEARANCES: John T. Conner, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The Nevada State Office, Bureau of Land Management (BLM), by its decision of January 21, 1982, declared the ERV #15 lode mining claim, N MC 119014, abandoned and void because no proof or notice of intention to hold the claim had been filed with BLM by December 30, 1979, as required by 43 CFR 3833.2. 1/ John T. Conner, owner of the claim, appeals.

The record shows that the ERV #15 lode mining claim is one of some 245 claims located in December 1971, under the apparent direction of the

1/ The BLM decision erred in using Dec. 30, 1979, as the date before which the proof of labor was required. The correct date for submission of such proof of labor for a pre-FLPMA mining claim was Oct. 22, 1979. In light of our disposition of this appeal, we consider it unnecessary to modify the BLM decision.

Eagle Exploration Services, Inc., which submitted the copies of the location notices and the requisite service fees to BLM on October 19, 1979, as well as subsequent proofs of labor.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owners of unpatented mining claims located on public land before October 21, 1976, to file a copy of the recorded notice of location of the claim and evidence of assessment work or a notice or intention to hold the claim in the proper office of BLM within 3 years after the date of its enactment, *i.e.*, by October 22, 1979, and a proof of labor or notice of intention to hold the claim prior to December 31 of each calendar year thereafter.

The record file transmitted with the appeal contains the copy of the location notice for the ERV #15 lode mining claim, and a proof of labor received by BLM October 19, 1979, for, *inter alia*, the ERV #1 through ERV #19 claims, N MC 119000 through N MC 119018. Similar proofs of labor were received by BLM August 26, 1980, and September 1, 1981. The evidence in the file belies the reason set forth in the BLM decision to support its holding that ERV #15 lode mining claim is abandoned and void. The record clearly shows that a proof of labor was received by BLM relative to the ERV #15 lode mining claim during each calendar year, 1979, 1980, and 1981. These filings satisfy the requirements of section 314 of FLPMA.

BLM apparently has taken the position that if a proof of labor indicates that it is for a specific assessment year, it cannot be construed as satisfying the requirements of FLPMA for a different year. That position is contrary to the holdings of this Board.

Section 314 of FLPMA is not an assessment work statute; it is a recordation statute. 30 U.S.C. § 28 (1976) sets forth the assessment requirements. Section 314 of FLPMA does not change the type of work that can be done to fulfill the assessment requirements of the mining laws. The purpose of 30 U.S.C. § 28 (1976) is to assure development of the mining claims and to prevent thwarting of that purpose by the mere location of claims that tie up land and let it stay idle. Powell v. Atlas Corp., 615 P.2d 1225 (Utah 1980). The purpose of section 314 of FLPMA is to inform the Department of those claims existing on public lands and of continued interest of the claimants in such claims. James V. Joyce (On Reconsideration), 56 IBLA 327 (1981). Thus, section 314 of FLPMA requires the filing of the notice of location and of ancillary information sufficient to locate the claim on the ground. See Marvin E. Brown, 52 IBLA 44 (1981). Section 314 requires the filing of either a notice of intention to hold the claim or a proof of labor performed each year following the location (post-FLPMA) or the recordation of the claims. These filings are designed to keep the Department apprised of the fact that the claims are still active. James V. Joyce (On Reconsideration), *supra*.

In Nellie McLaughlin, 61 IBLA 347 (1982), the Board held that a proof of labor filed in calendar year 1979 satisfied the requirement of FLPMA for that year, even though the proof of labor recited it was for the assessment year ending September 1, 1980, and that without another proof of labor or

notice of intention to hold being filed during calendar year 1980, the claims were properly deemed to be abandoned and void. Section 314 of FLPMA does not define the instrument required for recordation beyond saying that a proof of labor or a notice of intention to hold must be filed in each calendar year. The more specific requirements are set forth only in the regulations, and, as was held in Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), deficiencies in recordation required only by the regulations do not compel the same consequences that attend failure to comply with the statutory requirements of section 314 of FLPMA.

So in this case, where an acceptable proof of labor was recorded in the proper county recording office and with BLM during each calendar year, 1979, 1980, and 1981, it was error for BLM to declare the ERV #15 lode mining claim 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 BLM decision of January 21, 1982, relating to the ERV #15 lode mining claim is vacated, the appeal of John T. Conner is dismissed, without prejudice, and the file returned to BLM for further appropriate action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

