

GREAT WEST LAND & MINING CORP.

IBLA 81-682

Decided May 19, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC-103196, etc.

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 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: Abandonment

A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not automatically result in a claim being declared abandoned and void. However, where the notice does not include a copy of a notice of intention to hold

filed in the local recording office, as required by the statute, a claim is properly declared abandoned and void.

APPEARANCES: James M. Copenhaver, Esq., Elko, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Great West Land & Mining Corporation appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated April 21, 1981, declaring the mining claims listed in the appendix abandoned and void for failure to file either evidence of assessment work or notices of intention to hold the claims by December 30, 1980, as required by 43 CFR 3833.2, issued pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant's claims were located in 1971 and 1972 and filed for recordation with BLM on October 5, 1979, along with the proof of labor for the assessment year ending September 1, 1979. On August 26, 1980, Jay P. Mackenzie of J & M Exploration Company, submitted a letter to BLM which reads as follows: "Please be advised that on behalf of Great Western Land and Mining Corp, I have completed or will complete the assessment work on the following claims, and that Great Western Land and Mining Corp. intends to keep possession of the claims." A list of the claims was included.

On October 8, 1980, BLM sent Mr. Mackenzie a letter informing him that the regulations require that a notice of intention to hold a mining claim must be recorded in the county recorder's office. BLM explained that it was returning the notice so that appellant might comply with the regulations. BLM also stated that a copy of the affidavit of assessment work instead of a notice of intention to hold the claims should be filed with BLM if work had been performed on the claims.

On January 5, 1981, appellant filed with BLM proof of labor for the assessment year ending September 1, 1980.

On appeal, appellant contends that the notice of intention to hold the claims that was filed with BLM on August 26, 1980, meets the requirements for filing a notice of intention set forth in 43 CFR 3833.2(a). Appellant notes that it subsequently filed the proof of labor which had been recorded in the county recorder's office on September 2, 1980. This document, however, was not received by BLM until January 5, 1981.

[1, 2] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), provides in pertinent part that:

Sec. 314. (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within

the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

Thus, claimant is required by statute to file by October 22, 1979, with the local recording office where the notice of location is recorded either a notice of intention to hold the claim or an affidavit of assessment work and, further, to file in the proper BLM office a copy of the instrument filed in the local recording office prior to December 31 of each calendar year thereafter. The notice of intention to hold filed with BLM must be an exact legible reproduction or duplicate of the instrument filed for record in the local jurisdiction of the state where the claim is located and recorded. 43 CFR 3833.2-3; Ronald Willden, 60 IBLA 173 (1981); Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981). A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 ("From -- notice of intention to hold claim or site"), to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not automatically result in a claim being declared abandoned and void. Ronald Willden, *supra*. Ted Dilday, *supra*, and cases cited therein. However, where the notice clearly is not a copy of a notice of intention to hold or proof of assessment work filed in the local recording office, as required by the terms of the statute, a claim is properly declared abandoned and void.

It is not necessary to decide whether appellant should have filed an affidavit of assessment work rather than a notice of intention to hold the claims ^{1/} since its notice of intention did not meet the requirements of the statute and its affidavit of assessment work was not timely filed.

^{1/} For a discussion of this issue see Alaskamin Co., 49 IBLA 43 (1980), and the Board's order in Alaskamin Co., 49 IBLA 49A (1981).

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.

Gail M. Frazier
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

APPENDIX

<u>DATE OF LOCATION</u>	<u>NAME OF CLAIM</u>	<u>N MC NUMBER</u>
June 22, 1971	Silver Queen #1 thru #6	N MC-103196 thru 103201
June 23, 1971	Silver Queen #7 thru #12	N MC-103202 thru 103207
June 27, 1971	Silver Queen #13 thru #21	N MC-103208 thru 103216
June 29, 1971	Silver Queen #22 thru #23	N MC-103217 thru 103218
October 18, 1971	Monte Carlo #1 thru #10	N MC-103219 thru 103228
October 24, 1971	Monte Carlo #11 thru #12	N MC-103229 thru 103230
October 18, 1971	Monte Carlo #13	N MC-103231
November 17, 1971	Monte Carlo #14 thru #19	N MC-103232 thru 103237
November 15, 1971	Monte Carlo #20 thru #22	N MC-103238 thru 103240
November 18, 1971	Monte Carlo #23 thru #32	N MC-103241 thru 103250
November 27, 1971	Monte Carlo #33 thru #46	N MC-103251 thru 103264
November 17, 1971	Monte Carlo #47	N MC-103265
November 27, 1971	Monte Carlo #48	N MC-103266
November 17, 1971	Monte Carlo #49	N MC-103267
November 27, 1971	Monte Carlo #50	N MC-103268
June 29, 1971	Monte #1 thru #4	N MC-103269 thru 103272
July 20, 1971	Monte #5 thru #10	N MC-103273 thru 103278
July 19, 1971	Monte #11 thru #12	N MC-103279 thru 103280
July 28, 1971	Monte #12 thru #18	N MC-103281 thru 103286
July 25, 1971	Monte #19 thru #22	N MC-103287 thru 103290
July 27, 1971	Monte #23 thru #24	N MC-103291 thru 103292
August 4, 1971	Monte #25 thru #28	N MC-103293 thru 103296
August 5, 1971	Monte #29 thru #30	N MC-103297 thru 103298
August 30, 1971	Monte #31 thru 38	N MC-103299 thru 103306
May 15, 1972	Monte Vista #1 thru #5	N MC-103307 thru 103311
May 19, 1972	Monte Vista #6 thru #10	N MC-103312 thru 103316

