

VERN W. SIMMONS, JR.

IBLA 82-640

Decided May 24, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 52862 through N MC 52864.

Reversed.

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

It is error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit an affidavit of assessment work after having sent the claimant a notice that the affidavit has been received.

APPEARANCES: Vern W. Simmons, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Vern W. Simmons, Jr., appeals the decisions dated March 2, 1982, wherein the Nevada State Office, Bureau of Land Management (BLM), declared the unpatented Rico, Gold Sovereign, and Link lode mining claims, N MC 52862 through N MC 52864, abandoned and void because no evidence of assessment work had been received on or before December 30, 1981, as required by 43 CFR 3833.2.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires that evidence of assessment work or a notice of intention to hold must be filed for each unpatented mining claim on public land on or before December 30 of each calendar year.

The claims at issue were located during or prior to 1960. Copies of the notices of location were recorded with BLM April 20, 1979, as required by FLPMA.

Appellant asserts that the required evidence of assessment work had been timely filed with BLM in 1981, and submitted copies of form 3830-1, Mining Claim Annual Recordation Requirements (43 CFR 3833.2), indicating that BLM had received the evidence of assessment work on October 2, 1981, for the Rico claim, N MC 52862; Gold Sovereign claim, N MC 52863; and Link claim, N MC 52864.

Examination of the case files discloses a copy of the 1981 assessment work evidence in each, but each bearing a BLM date stamp of February 5, 1982. No explanation has been given by BLM for the absence of the proofs of labor for which it issued notices of receipt on October 2, 1981.

As the evidence submitted by appellant supports his contentions, we believe appellant has established, by a preponderance of the evidence, that the proofs of labor were timely filed. See L. E. Garrison, 52 IBLA 131 (1981). Therefore, the decisions of BLM must be reversed. Cf. Parish Chemical Co., 57 IBLA 240 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed, and the cases remanded to BLM with instructions to reinstate the mining claims in issue.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

James L. Burski  
Administrative Judge

