

ELKINS REAL ESTATE

IBLA 82-709

Decided May 24, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. NM MC 26725 through NM MC 26727 and NM MC 26730 through NM MC 26856.

Affirmed as modified.

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

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2, the owner of an unpatented mining claim must file for record before December 31 of each calendar year, in the office of local jurisdiction where the location notice of the claim is recorded, evidence of assessment work performed on the claim or a notice of intention to hold the claim, and must also file in the proper Bureau of Land Management office a copy of the instrument filed in the local jurisdiction. Failure to make both filings of the same instrument is deemed to be an abandonment of the claim.

APPEARANCES: George W. Kozeliski, Esq., Gallup, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Elkins Real Estate 1/ appeals the New Mexico State Office, Bureau of Land Management (BLM), decision of March 8, 1982, which declared the unpatented Elkins Nos. 1 through 130 lode mining claims, NM MC 26725 through NM MC 26727 and NM MC 26730 through NM MC 26856, abandoned and void because

1/ Elkins Real Estate was formerly known as Elkins Ranch, Inc. The recordation of the claims was made by Elkins Ranch, Inc.

no evidence of assessment work or notice of intention to hold the claims was filed with BLM on or before December 30, 1981, as required by 43 CFR 3833.2-1. 2/

Appellant states that Elkins Real Estate was attempting to maintain the properties of Elkins Ranch, Inc., during December 1981, pending dissolution of Elkins Ranch, Inc., and transfer of the assets to Elkins Real Estate. In an attempt to satisfy the recordation requirements for 1981, a notice of intention to hold the claims was submitted to BLM on February 1, 1982, but BLM refused to accept the instrument.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires that there be filed in the office where the location notice of the unpatented mining claim is of record either a notice of intention to hold the mining claim, or an affidavit of assessment work performed thereon, or a detailed report provided by the Act of September 2, 1958, 30 U.S.C. § 28-1 (1976), and a copy of the instrument filed in the county must be filed in the proper office of BLM prior to December 31.

Examination of the case files shows the initial recording of the notices of location with BLM on July 7, 1978, by Elkins Ranch, Inc. Thereafter, on December 31, 1979, 3/ Elkins Ranch, Inc., filed an instrument styled "Notice of Intent to Hold on Mining Claim" stating its purpose was "To comply with mining claim annual recordation requirements on:

Name or number of claim Elkins #1 through Elkins #130 (130 claims)

Serial number: NM MC 26725 thru NM MC 26856

Recorded in BLM office, Santa Fe, N.M. July 7, 1978

2/ The BLM decision stated the claims had been located May 1, 1976, and filed for record with BLM May 1, 1976. Actually, the location notices state the claims were located during the period from Apr. 8, 1978, through May 5, 1978. Copies of the location notices were filed with BLM July 7, 1978.

3/ Although the statutory requirement is for the filing of notices of intention to hold mining claims or evidence of assessment work prior to Dec. 31 of each calendar year, 43 CFR 1821.2-2(e) provides that any document required by law, regulation or decision to be filed within a stated period, the last day of which falls on a day the office is officially closed, shall be deemed to be filed as of the day and hour the office next opens to the public. Dec. 31, 1979, was a Monday. The BLM office was closed Dec. 29 and 30, so the receipt of the instrument Dec. 31 is considered timely. The envelope containing the instrument bears a postmark of Dec. 27, 1979.

Annual assessment work completed and Proof of Labor Forms were filed with McKinley County Clerk on the following claims:

Elkins #1 thru Elkins #36, * * * Sec. 14, T. 14 N., R. 12 W.

Elkins #37 thru Elkins #54, * * * Sec. 22, T. 14 N., R. 12 W.

Elkins #55 thru Elkins #90, * * * Sec. 10, T. 14 N., R. 12 W.

Elkins #91 thru Elkins #126, * * * Sec. 12, T. 14 N. R. 12 W.

Elkins #127 thru Elkins #130, * * * Sec. 24, T. 14 N., R. 12 W.

A similar notice of intent to hold was filed with BLM December 23, 1980. On February 1, 1982, a similar instrument was filed with BLM in an attempt to satisfy the recordation requirement for 1981.

There is no indication in the file that any of the "Notices of Intent to Hold" was recorded in McKinley County, New Mexico.

Appellant contends that annual assessment work on the Elkins claims was performed and duly recorded in the records of McKinley County, New Mexico. Filing with the McKinley County Recorder may satisfy certain State requirements, but it fails to meet the requirements established by FLPMA, for reasons discussed below.

Appellant contends that the intent to hold and maintain the claims was obvious by virtue of its filing of evidence of assessment work in McKinley County. However, the holding of a mining claim, the diligent pursuit of mining activities on it, and the filing of evidence of assessment work on the Elkins claims with the McKinley County Recorder does not relieve the owner of the claims of the obligation imposed by statute to file timely a copy of an affidavit of assessment work or a copy of a notice of intention to hold the mining claim with the proper BLM office. Under the clear terms of the statute, failure to file the required instruments in the proper office within the prescribed time is deemed conclusively to constitute an abandonment of the mining claims. 43 U.S.C. § 1744(c) (1976); see also 43 CFR 3833.4(a).

Elkins has apparently confused the filing of a notice of intention to hold with the filing of evidence of the annual assessment work. Unfortunately, the instruments as submitted to BLM, are insufficient to constitute either. The applicable regulations require that if an individual fails to perform assessment work within the proper calendar year, he or she must file a notice of intention to hold the claims. 43 CFR 3833.2-3. Inasmuch as appellant avers that it had performed the required assessment work, it should have complied with the regulations found at 43 CFR 3833.2-2.

The applicable regulation, 43 CFR 3833.2-2(a) and (b), requires that the mining claimant file either an exact legible reproduction or duplicate copy of the affidavit of assessment work performed filed, or to be filed, in the local jurisdiction of the State where the claim or group of contiguous claims

are located, or an exact legible reproduction or duplicate detailed report concerning geological, geochemical, and geophysical surveys filed in the office of the local jurisdiction in which the claim is located. Appellant clearly did not provide the required documents to the New Mexico BLM office.

Then, too, in order to comply with the filing requirements for notices of intention to hold, a mining claimant must file a notice of intention to hold setting forth, inter alia:

(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 decision on file in the proper BLM office which granted a deferment of the annual assessment work required by 30 U.S.C. 28, so long as the decision is in effect on the date required for filing a notice of intention to hold a mining claim under § 3833.2-1 of this title or a petition for deferment, a copy of which has been recorded with the appropriate local office, which has not been acted on by the authorized officer.

43 CFR 3833.2-3(a)(1)(v) and (2). It is clear, inasmuch as appellant avers that the assessment work was actually performed and filed in the local office, that there was no deferment of annual assessment work herein. Moreover, inasmuch as appellant states that it filed the assessment work evidence with the McKinley County Recorder, no document exists purporting to justify the failure to perform assessment work.

The applicable provisions of the statute, 43 U.S.C. §§ 1744(a)(1) and (a)(2) (1976), require that the mining claimant "file for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim, * * * an affidavit of assessment work performed thereon, or a detailed report provided by section 28-1 of Title 30, relating thereto" and "file in the office of the Bureau * * * a copy of the official record of the instrument filed or recorded." Thus, the regulatory requirements applicable to the instant appeal were mere replications of the statutory provisions, and appellant was required to comply timely therewith.

When appellant failed to file either a copy of the evidence of annual assessment work performed in the BLM State Office, or a notice of intention to hold in the local jurisdiction where the claims were located, the State Office properly held the claims to have been abandoned and declared them void. Robert W. Hansen, 46 IBLA 93 (1980); see Donald H. Little, 37 IBLA 1 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

As none of the instruments filed by appellant in its attempt to comply with the recordation requirements of FLPMA is acceptable, the BLM decision is modified to state that no acceptable evidence of assessment work or notice

of intention to hold the Elkins claims has been filed in 1979, 1980, or 1981, and the claims are therefore considered to be abandoned and void under FLPMA.

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 as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

