

PITTSBURGH PACIFIC CO.

IBLA 82-658

Decided June 8, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. M MC 9670 (SD) and M MC 9671 (SD).

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: Recordation

Where the requirement of filing proof of assessment work or a notice of intention to hold a mining claim applies, a filing must be made within each calendar year, *i.e.*, on or after Jan. 1, and on or before Dec. 30, in both the county recording office and the proper office of the Bureau of Land Management.

APPEARANCES: Horace R. Jackson, Esq., Rapid City, South Dakota, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Pittsburgh Pacific Company appeals the March 9, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), which declared the Magnetic Fraction and the Spec Fraction lode mining claims, M MC 9670 (SD) and M MC 9671 (SD), abandoned and void because no proof of labor or notice of intention to hold the mining claims was filed with BLM during the calendar year 1981 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located January 26, 1978. The case record shows that a proof of labor was filed January 2, 1979, a notice of intention to hold January 10, 1980, and a proof of labor December 29, 1980. There is no record that BLM received either a proof of labor or notice of intention to hold during calendar year 1981.

Appellant states the assessment work for the assessment year ending September 1, 1981, was performed in December 1980 and proof was mailed to BLM December 23, 1980, for holding the claims for the assessment year ending September 1, 1981. As the next assessment year will not expire until September 1, 1982, a date not yet reached, proof of the assessment work would

be filed well in advance of September 1, 1982. Appellant contends there has been no failure to perform the required assessment work each year nor to file timely evidence of such work with BLM. Appellant argues that it filed with BLM evidence of the assessment work for the assessment year ending September 1, 1981, prior to December 30, 1981.

[1] The Board has interpreted section 314 of FLPMA as requiring the owner of an unpatented mining claim to file either a proof of labor or a notice of intention to hold within each calendar year, *i.e.*, on or after January 1, and on or before December 30. Nellie McLaughlin, 61 IBLA 347 (1982); James V. Joyce (On Reconsideration), 56 IBLA 327 (1981).

In Nellie McLaughlin, *supra*, the claimants had performed assessment work after September 1, but before December 31, and had filed the proof of such labor with BLM prior to December 31 of that year, and then failed to file any proof of labor or notice of intention to hold during the next calendar year, prior to December 31. The Board stated:

[A]ppellants herein are seeking to have their October 5, 1979, filing of evidence of assessment work do double duty. First, they contend that it complies with the requirement that, for claims located prior to October 21, 1976, a copy of evidence of assessment work be filed no later than October 22, 1979. Second, they argue that this somehow simultaneously fulfills the requirement that they file a proof of labor "prior to December 31 of each year thereafter." (Emphasis added.) Appellants cannot have it both ways. Inasmuch as the "thereafter" refers to the initial filing of the evidence of assessment work (see Harvey A. Clifton, 60 IBLA 29 (1981)), it is difficult to comprehend how one filing can be made "thereafter" itself.

61 IBLA at 352.

So in this case, appellant appears to be trying to use the proof of labor received by BLM December 29, 1980, to satisfy the recording requirement for both 1980 and 1981 calendar years. The single filing cannot do this. Nellie McLaughlin, *supra*; James V. Joyce (On Reconsideration), *supra*.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

