MINERALS ENGINEERING CO.

IBLA 83-240 Decided March 31, 1983

Appeal from decision of the Colorado State Office, Bureau of Land Management, denying petition for deferment of assessment work on mining claims.

Affirmed.

1. Mining Claims: Assessment Work

A petition for deferment of assessment work may only be granted pursuant to 43 CFR 3852.1, where "legal impediments" exist which affect the right of a mining claimant to enter upon the claim. A petition will not be granted where a claimant alleges that it would be financially impractical because of pending legislation or alleges that public sentiment is against such entry.

APPEARANCES: John R. Beeder, Vice President-Exploration, Minerals Engineering Co., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Minerals Engineering Company appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 12, 1982, denying its petition for deferment of annual assessment work on 92 mining claims located in T. 7 S., R. 82 W., sixth principal meridian, Eagle County, Colorado. 1/ These claims, located and the notices of location filed in 1978 and 1979, are within the Holy Cross Wilderness Area, created in 1980, and the White River National Forest. Appellant filed its petition for deferral of assessment work on July 28, 1982, because it considered it "impractical at this time to expend large sums of money in further study of the mineralization on these claims." Appellant referred to the Wilderness Act of 1964 and pending legislation concerning wilderness protection to emphasize the nature of its situation. BLM based its decision to deny the petition on appellant's failure to offer any reasons that would satisfy the requirements for deferment

1/ The 92 mining claims are listed as CMC-53576 to CMC-53615, CMC-64090 to CMC-64100, and CMC-103214 to CMC-103254.

under 43 CFR 3852.1 and cited Charlestone Stone Products, 32 IBLA 22 (1977), and Oliver Reese, 34 IBLA 103 (1978) as supporting authority.

In its statement of reasons, appellant argues that the cited authority in BLM's decision considered only cases where there was a possibility that access may be denied or restricted in the future and that it is currently impeded from performing the annual assessment work. Appellant states, "We believe the mood of the public, the general lack of knowledge of the laws and the unfounded implication of widespread and environmental damage by the press, etc., constitute a serious impediment to our legal rights," and requests that deferment of assessment be arranged so that it would have to perform the work every other year. 2/

[1] The governing regulation pursuant to the Act of June 21, 1949, 30 U.S.C. § 28(b)(1976), 43 CFR 3852.1, sets forth the conditions under which deferment may be granted:

> The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

The purpose of the statute and regulation is to protect a claimant whose right of access to his mining claim has been impeded or denied. John W. MacGuire, 35 IBLA 117, 118 (1978). No right-of-way is involved here, but appellant asserts that conditions exist which impede its legal rights to access. We have repeatedly emphasized that a deferment may only be granted where "legal impediments" exist which affect the right of the claimant to enter upon the surface of the claims and physical access to the claims has been interdicted. A. J. Maurer, Jr., 36 IBLA 4 (1978); Oliver Reese, supra. Such legal impediments have included judicial injunctions which prohibited entry upon the mining claims and actual activities of Government officials which barred entrance. American Resources, 44 IBLA 220 (1979); Continental Oil Co., 36 IBLA 65 (1978). However, we have specifically ruled that pending litigation involving mining claims does not constitute a "legal impediment"

2/ Appellant has made inquiry, in view of this appeal, concerning the time limit for completing the 1982 assessment work. A minimum of $100 worth of labor shall be performed or improvements made on a mining claim every year after location of the claim and prior to patent thereof. 30 U.S.C. § 28 (1976); 43 CFR 3851.1. Failure to perform the annual assessment work may subject the claim to loss through relocation by another party or, unless there has been substantial compliance with the assessment work, forfeiture to the United States. See Hickel v. Oil Shale Corp. (TOSCO), 400 U.S. 48 (1970). The claimant is required to file "prior to December 31 of each year" either a formal notice of intention to hold the mining claim or an affidavit of notice of assessment work thereon. 43 U.S.C. § 1744(a)(1976); 43 CFR 3833.2-1. Failure to file such instruments "shall be deemed conclusively to constitute an abandonment of the mining claim." 43 U.S.C. § 1744(c)(1976); 43 CFR 3833.4.

within the meaning of the law and the regulation. Where a claimant is not precluded access to the mining claim by virtue of the litigation, but rather is unwilling to invest time and money for assessment work which may later be lost if a court decision is unfavorable, we have held that the petition for deferment is properly denied. Charlestone Stone Products, supra; Portland General Electric Co., 29 IBLA 165 (1977).

It is clear that "other legal impediments" which affect appellant's right to enter upon the claims do not exist in this case. The Wilderness Act of 1964 does not contain restrictions or prohibitions which would prevent appellant's access to its claims which were established prior to withdrawal of these national forest lands for wilderness protection. See 16 U.S.C. §§ 1132, 1133 (1976). Appellant's financial apprehension regarding pending legislation is of no greater magnitude or certainty than those encountered by claimants facing the outcome of pending litigation.

Appellant raises the allegation that unfavorable publicity prevents its access to the claims in question in that it risks adverse public sentiment every time it performs the activities involved in doing the annual assessment work. This also does not constitute a "legal impediment." The request for a deferral in Don Hesselgesser, 39 IBLA 75 (1979), was not considered meritorious despite allegations than an attempt to enter upon the mining claims might subject the appellant to possible physical harm inflicted by "squatters." It is appellant that has decided where to locate its mining claims and it must take the responsibility for its decision. The record here does not support a finding that appellant is prevented from entering upon the mining claims. This is particularly evidenced by the fact that appellant has performed the necessary assessment work in 1979 through 1981. BLM correctly concluded that appellant did not present any reasons recognizable as satisfying the requirements of 43 CFR 3852.1.

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.

Edward W. Stuebing
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Gail M. Frazier
Administrative Judge