

RICHARD HOLLAND

IBLA 83-440

Decided July 12, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claim and an unpatented millsite abandoned and void. N MC 151281, N MC 151282.

Vacated and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. The filing must be made both in the county where the location notice is recorded and in the proper office of BLM. Where evidence is introduced showing that the notice of intention to hold was recorded timely in the county and with BLM, a BLM decision declaring the unpatented mining claim abandoned and void will be vacated.

2. Millsites: Generally -- Mining Claims: Abandonment -- Mining Claims: Millsites -- Mining Claims: Recordation

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

APPEARANCES: Richard Holland, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Richard Holland appeals the Nevada State Office, Bureau of Land Management (BLM), decision of January 28, 1983, which declared the unpatented Richard's placer mining claim, N MC 151281, and the Holland millsite, N MC 151282, abandoned and void because no proof of labor or notice of intention to hold the claims was properly filed with BLM prior to December 31, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

The claims were located in May 1980. A notice of intention to hold the claims was filed with BLM November 2, 1981, after having been recorded in Humboldt County, Nevada.

On October 25, 1982, appellant filed a letter with BLM indicating his intention to hold the Richard's placer mining claim and the Holland millsite for 1982. By letter dated December 15, 1982, BLM advised appellant that the notice of intention to hold must be recorded in the county where the location notice is recorded. Thirty days were allowed to comply. When no response was timely submitted, BLM declared the claims to be abandoned and void because of failure to comply with the requirements of FLPMA.

Appellant states he thought the county recorder would transmit to BLM a copy of the recorded notice of intention to hold, showing the recordation data, so he felt that the matter was settled when he sent his notice of intention to hold to the county for recordation. With the appeal, he provided a copy of the notice of intention to hold which was recorded in Humboldt County, Nevada, December 22, 1982.

[1] In 1982, regulation 43 CFR 3833.2-3(a) provided that a notice of intention to hold a mining claim shall be in the form of an exact legible reproduction or duplicate of a letter signed by the owner of the claim filed for record pursuant to section 314(a)(1) of FLPMA in the local jurisdiction of the state where the claim is located and recorded, setting forth the serial number assigned to the claim by BLM. Although the notice of intention to hold submitted to BLM by appellant October 25, 1982, did not show that it had been recorded in Humboldt County, situs of the claims, on appeal evidence was produced showing that the notice of intention to hold was filed for record in Humboldt County December 22, 1982. Compliance was thus made with the statutory requirements, as well as those in the regulations. BLM was not correct in declaring the Richard's placer mining claim, N MC 151281, abandoned and void.

[2] As to the Holland millsite claim, N MC 151282, BLM's decision was improper as there is no requirement under either the statute or regulations for filing in the county an annual notice of intention to hold. Cyprus Mines Co., 56 IBLA 160 (1981); Ronald Cole, 56 IBLA 131 (1981). The failure of a holder of an unpatented millsite claim which has been properly recorded under 43 U.S.C. § 1744 (1976) to file with BLM an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency. Harlow H. Oberbillig, 57 IBLA 336 (1981). Appellant has complied with the requirements in this case by filing with BLM.

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 vacated and remanded.

Douglas E. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge