

FRANK J. TARANTINO

IBLA 83-962

Decided December 5, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 96312 and N MC 96313.

Decision vacated.

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 evidence submitted by an appellant preponderates, a decision declaring unpatented mining claims abandoned and void for failure to comply with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be vacated.

APPEARANCES: Frank J. Tarantino, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frank J. Tarantino appeals the Nevada State Office, Bureau of Land Management (BLM), decision of August 15, 1983, which declared the unpatented #3 Lode and Red Dog lode mining claims, N MC 96312 and N MC 96313, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM by October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

Appellant asserts that he filed a proof of labor at the same time as he filed copies of the location notices on September 26, 1979. With the appeal, appellant submitted a copy of a receipt for \$6, dated September 26, 1979, from the County Recorder of Washoe County, Nevada, for copies of mining maps and location notices.

BLM has reported that Washoe County charges \$1.50 for copies of mining claim location notices (front and back), \$1 for a location map, and \$1 for a copy of a proof of labor. The \$6 receipt from the county recorder could have included the location notices of the two claims involved (front and back), two location maps, and a copy of the 1979 proof of labor. The likelihood

that Tarantino filed the documents as he asserts is increased by the fact that the location maps are date-stamped by BLM at the same time as copies of the location notices, September 26, 1979, 11:32 a.m. BLM also stated that, over the years, there have been instances of documents being surreptitiously removed from case files. At least two persons have examined the files of the subject mining claims. BLM states that, in this case, based on the physical documentation, there is room to give the claimant the benefit of the doubt.

Accordingly, we find that evidence from the claimant has preponderated.

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 the cases are remanded to BLM for reinstatement of the subject mining claims.

---

Douglas E. Henriques  
Administrative Judge

We concur:

---

Edward W. Stuebing  
Administrative Judge

---

Wm. Philip Horton  
Chief Administrative Judge

