

HOMER F. WILSON

IBLA 86-645

Decided January 29, 1988

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring lode mining claims, CMC-186081 through CMC-186122, abandoned and void for failure to file timely affidavits of assessment work.

Reversed.

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

The regulation at 43 CFR 3833.2-1(a)(1) governing the filing of an affidavit of assessment work pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1744(a) (1982), provides that the affidavit should reflect the BLM serial numbers of the claims covered by the affidavit. A typographical error in one of the serial numbers of a series of claims identified in a timely filed affidavit will not support a finding of abandonment where the book and page of recordation of the claims previously provided to BLM is also identified in the affidavit and is adequate to identify the claims described.

APPEARANCES: Homer F. Wilson, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Homer F. Wilson appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated March 3, 1986, which declared his mining claims, the Blue Boy Nos. 6 through 14 and 16 through 48, CMC-186081 through CMC-186122, abandoned and void. The reason stated by BLM for its decision was that no affidavit of assessment work or notice of intention to hold the claims had been timely filed with BLM on or before December 30, 1982, as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744(a) (1982).

In his statement of reasons on appeal, appellant states that his failure to include the Blue Boy lode claims on the affidavit of assessment work was a typographical error. Appellant has also submitted copies of his affidavits of annual labor for the years 1982 through 1985. Each affidavit bears the date stamp of the Moffat County recorder. The affidavit bearing

the Moffat County recorder's datestamp of August 31, 1982, which was filed timely with BLM on October 5, 1982, states: "Blue Boy Load [sic] Claims #1-#5, Book 501, pages 893-939, CMC#18607 thru 186122."

It appears from the record that when appellant's Blue Boy Nos. 1 through 14 and 16 through 48 lode mining claims were recorded with BLM pursuant to section 314(b) of FLPMA, 43 U.S.C. | 1744(b) (1982), they were assigned sequential serial numbers commencing with CMC-186076 and ending with CMC-186122. The apparent basis of the BLM decision was the fact that the affidavit of assessment work filed in 1982 with BLM and with the Moffat County recorder's office named only the Blue Boy Nos. 1 through 5 lode claims (as well as certain placer claims not at issue here). However, the affidavit also identified the claims for which it was filed by BLM serial recordation number and by identification of the book and page of the county records at which the certificate of location of each of the claims is recorded.

As appellant notes, it appears there was a typographical error in that the initial BLM serial number was shown as "18607" rather than "186076." However, in view of the identification on the affidavit of assessment work of the book and page number of the county records at which the certificates of location were recorded, which book and page number is also clearly reflected on the certificates of location recorded with BLM and on the BLM computer printout for these claims, it is clear there was no confusion as to the claims identified in the affidavit. Indeed, it appears that someone, presumably a BLM employee, corrected the typographical error on the affidavit filed with BLM by manually inserting the missing digit "6."

[1] Section 314(a) of FLPMA, 43 U.S.C. | 1744(a) (1982), and the regulation at 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year following the year in which the claim was located. Further, section 314(c) of FLPMA and its implementing regulations provide that failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. | 1744(c) (1982); 43 CFR 3833.4.

Section 314(a) of FLPMA requires that the copy of the affidavit of assessment work filed with BLM give "a description of the location of the mining claim sufficient to locate the claimed lands on the ground." 43 U.S.C. | 1744(a)(2) (1982). The regulations promulgated pursuant to this statutory provision state that the evidence of assessment work filed with BLM shall identify "The [BLM] serial number assigned to each claim upon filing of the notice, certificate of location in the proper BLM office." 43 CFR 3833.2-2(a)(1). In the present case, the identification of the serial number of the claims embraced in the affidavit of assessment work contained a typographical error--the last digit of the lead claim in the series was omitted.

Thus, the issue presented is whether the typographical error in one of the serial numbers identified on appellant's affidavit of assessment work filed with BLM is such a defect as to justify a finding that the claims are properly deemed abandoned and void under section 314 of FLPMA. In this case, any ambiguity created by the typographical error in the BLM serial number referred to is readily resolved by reference to the book and page of recordation of the certificate of location for the claim as stated in the affidavit of assessment work, which information has been previously disclosed in the recordation of the claim with BLM. In these circumstances, we must conclude that a filing has been made in compliance with statute and regulation.

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 reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

R. W. Mullen
Administrative Judge