

THOMAS A. ALEXANDER

IBLA 87-514

Decided May 12, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented mining claims CAMC 019641 through CAMC 019642, CAMC 019644 through CAMC 019647, and CAMC 019651 through CAMC 019654 abandoned and void.

Reversed.

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

Where a mining claimant files timely an affidavit of assessment work with BLM as required by sec. 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. | 1744(a) (1982)), which is not the affidavit of assessment required to be filed under 43 CFR 3833.2-1, it is a curable defect, and a mining claimant is entitled to notice and a reasonable opportunity to submit the precise instrument.

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

Where an affidavit of assessment work timely filed with BLM does not include BLM serial numbers as required by 43 CFR 3383.2-2(a)(1), the failure to provide such is curable pursuant to 43 CFR 3833.4, and will not be deemed to invalidate an otherwise sufficient filing under 43 U.S.C. | 1744(a)(2) (1982), absent a showing that the claimant has been given notice and 30 days within which to cure the defect.

APPEARANCES: Thomas A. Alexander, Redding, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Thomas A. Alexander appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated May 7, 1987, declaring unpatented mining claims CAMC 019641 through CAMC 019642, CAMC 019644 through CAMC 019647, and CAMC 019651 through CAMC 019654 abandoned and void. BLM

has declared appellant's claims abandoned and void for failure to comply with filing requirements pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), and its implementing regulations at 43 CFR 3833, requiring owners of unpatented lode or placer mining claims to file annually with BLM proof of assessment work thereon, or other notice of intent to hold the claim.

In its May 7, 1987, decision, BLM determined that appellant's December 30, 1985, filing of an affidavit showing proof of labor for the preceding assessment year does not satisfy the section 1744 requirement to file. 1/ Further, as sufficient reason to nullify his claims, BLM cited appellant's failure to strictly comply with regulations implementing section 1744 which require claims to be identified by BLM serial number and claim name. 2/

[1] Appellant's 1985 filing, postmarked December 30, 1985, is an affidavit showing proof of labor that occurred in assessment year 1983-84. While appellant had, on November 18, 1985, recorded an affidavit showing proof of labor for assessment year 1984-85 in Shasta County, where the claims are located, he neglected to file an exact duplicate of this affidavit with BLM. Instead, on December 30, 1985, appellant mailed BLM a duplicate of his affidavit showing proof of labor for assessment year 1983-84. BLM received the document on December 31, 1985.

The filing made by Alexander with BLM in both 1984 and 1985 is a copy of Cowdry's Form No. 60--Proof of Labor Upon Mining Claim--(Rev. 1983). The form notes that the mining claims are situated in the Backbone Mining District, County of Shasta, State of California. An attachment to the document entitled "Attachment to Proof of Labor for the Akers Group of Mines" identifies the location of mining records, both originally and as last amended, in the Shasta County Courthouse. At the end of the list are subscribed the words, "Vol 14 of Patents, page 334."

1/ Under 43 CFR 3833.0-5(n), computation of assessment years pursuant to section 1744 commences at 12 noon on Sept. 1 of each year. Filing years pursuant to FLPMA run from Jan. 1 through Dec. 30. 43 U.S.C. | 1744(a) (1982); United States v. Locke, 471 U.S. 84 (1985).

2/ The decision by BLM, at page 1, reveals that the claims were originally located between 1903 and 1915, and are assigned serial or claim numbers CAMC 19641 through CAMC 19642, CAMC 19645 through CAMC 19647, and CAMC 19651 through CAMC 19654. The decision lists a claim name by each serial number. The claims in dispute are identified and described as follows: CAMC No. 19641, Star of Hope, Misc. Book 25, Page 592; CAMC No. 19642, Scott, Misc. Book 25, Page 591; CAMC No. 19644, Stanto, Misc. Book 39, Page 85; CAMC No. 19645, Ely, Misc. Book 39, Page 84; CAMC No. 19646, War Eagle, Misc. Book 37, Page 412; CAMC No. 19647, Last Chance, Misc. Book 31, Page 598; CAMC No. 19651, Dixie, Misc. Book 32, Page 474; CAMC No. 19652, Cadillac, Misc. Book 37, Page 410; CAMC No. 19653, Otis, Misc. Book 32, Page 473; CAMC No. 19654, Pine Tree, Misc. Book 25, Page 593.

On June 6, 1986, a certified copy of the document filed in Shasta County by Alexander on November 18, 1985, was prepared by the county recorder. According to BLM's decision, at page 2, this certified copy of appellant's 1985 filing was obtained by the "Shasta-Trinity National Forest Supervisor's Office," and forwarded to BLM. The document was received by BLM on February 10, 1987, some 3 months prior to BLM's decision nullifying appellant's claims. While this document establishes proof of labor upon appellant's claims for assessment year 1984-85, it is not the document he mailed to BLM on December 30, 1985.

Section 1744 of FLPMA requires that a mining claimant file with BLM an instrument recorded in the local state offices, be it proof of assessment work, a notice of intention to hold, or a detailed report under 30 U.S.C. | 28-1 (1982), "including a description of the location of the mining claim sufficient to locate the claimed lands on the ground." 43 U.S.C. | 1744(a) (1982).

Subsections 1744(a) and (c) of FLPMA provide:

(a) Filing requirements

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on [sic] a detailed report provided by section 28-1 of title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

* * * * *

(c) Failure to file as constituting abandonment; defective or untimely filing

The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

The regulations implementing section 1744 are found in 43 CFR Subpart 3833. 43 CFR 3833.2-2, entitled "Contents for evidence of assessment work," states:

Evidence of annual assessment work shall be in the form of either;

(a) An exact legible reproduction or duplicate, except micro-film of the evidence of assessment work which was performed under state law and was or will be filed for record pursuant to section 314(a) of the Act in the local jurisdiction of the state where the claim or group of claims is located and recorded setting forth the additional information:

(1) The Bureau of Land Management serial number assigned to each claim upon filing of the notice, certificate of location in the proper BLM office. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim.

43 CFR 3833.4 provides that:

(b) The failure to file the information required in * * * [] 3833.2-2(a) and (b) * * * shall not be deemed conclusively to constitute abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a decision from the authorized officer calling for such information. Failure to file such information within the time allowed by decision shall cause the filing to be rejected by a decision appealable under the procedures of Part 4 of this title. Final affirmance of such rejection for failure to file such information shall be deemed conclusive evidence of abandonment * * *.

In Topaz Beryllium Co. v. United States, 649 F.2d 775, 778 (10th Cir. 1981), the court of appeals considered the regulations in Subpart 3833 and recognized that the provisions regulating filings relating to notices of location require more than does section 1744. With respect to these further filings, the court said:

We conclude that the Secretary has not ignored | 1744 (c) which assumes that even defective filings put the Secretary on notice of a claim, and we hold that once on notice, the Secretary cannot deem a claim abandoned merely because the supplemental filings required only by | 3833 -- and not by the statute -- are

not made. This is also the Secretary's view: failure to file the supplemental information is treated by the Secretary as a curable defect. A claimant who fails to file the supplemental information is notified and given thirty days in which to cure the defect.

If the defect is not cured, "the filing will be rejected by an appealable decision." [Footnote omitted, emphasis in original.]

In Harry J. Pike, 57 IBLA 15 (1981), this Board addressed the issue of what section 1744(a) requires with respect to the filing of proof of assessment work. In that case we determined that

[a] comparison of the statutory and regulatory language reveals that 43 U.S.C. | 1744(a) merely requires the timely filing of an affidavit of assessment, while the Departmental regulation, 43 CFR 3833.2-1, specifically requires the timely filing of an affidavit of assessment for the preceding assessment year. * * *

* * * * *

* * * we hold that where a mining claimant files with BLM an affidavit of assessment work within the prescribed time period which is not the affidavit of assessment for the preceding assessment year, BLM should notify the claimant of the deficiency and allow him an opportunity to submit the precise instrument required by the regulation.

See also Perry L. Johnson, 57 IBLA 20 (1981); Oregon Portland Cement Co. (On Judicial Remand), 84 IBLA 186, 190 (1984).

Therefore, in this case, where appellant complied with the statutory provision by timely filing with BLM a copy of assessment work, but for the wrong year, such error does not, by itself, require a finding that his claims are abandoned and void, and appellant should have been afforded an opportunity to file the correct proof of labor for the preceding assessment year. Since this document has been provided to BLM by the Shasta-Trinity National Forest Supervisor's Office, the error has been cured. No purpose would therefore be served in requiring Alexander to refile the 1985 proof of performance of assessment work pursuant to 43 CFR 3833.4.

[2] The document filed by appellant consists of two parts: the affidavit showing proof of labor for the prior year, and a list showing book and page numbers where the location notices of the "Akers Group of Mines" are found. The attachment lists the local miscellaneous recordation book and page numbers where the location notices for the Akers group of mines are found.

A review of BLM's file indicates that, with his affidavit of proof of labor, Alexander has, since December 7, 1978, annually filed a copy of this attachment indicating the mineral location notices by book and page number in the county courthouse. This information, standing alone, is of little use to BLM as a description of appellant's claims, as BLM would necessarily be required to trace the notices back to the local recording office for

descriptions, which is precisely what the statute is designed to circum-vent. BLM's file, however, contains copies of all original and amended location notices, presumably supplied by Alexander, with sketches and maps, to satisfy the original recordation of his claims made under section 1744 on December 7, 1978. These location notices contain property descriptions, and corroborate by book and page number the list provided by Alexander with his proof of labor filings.

Section 1744(a)(2) provides that, with a copy of the original notice of intent or proof of performance of assessment work, an owner of an unpat- ented mining claim must submit a description of the location of the claim "sufficient to locate the claimed lands on the ground." Had Alexander misidentified a claim or claims, as occurred in Philip Brandl, 54 IBLA 343 (1981), then the requirement that a description be sufficient to locate the claim on the ground could not be established. In Philip Brandl, the claimant had misidentified a claim by mistating the name of the mine on every filing since 1976. Since the claim could not be identified by description, it was declared abandoned and void.

In this case, BLM has on file copies of original and amended location notices which verify appellant's notice by book and page number. These copies of original and amended location notices contain descriptions suffi- cient to locate the claim on the ground. As section 1744(a) requires that the locator file a sufficient description, and 43 CFR 3833.2-2(a)(1) per-mits the BLM serial number to be filed in lieu of the description, we find the information included with appellant's filings sufficient to meet the notice requirements of section 1744(a). We reaffirm our statement in Philip Brandl, supra at 344, that "[w]e are of the opinion that [the sec-tion 1744(a) requirements] could be fulfilled by proper identification of the claim by name or by BLM recordation number. See 43 CFR 3833.2-2(a)(1). Where this information is not supplied, * * * a description of the claim sufficient to identify it would also suffice." (Emphasis added.) Under these circumstances, we deem appellant's document labeled "Akers Group of Mines," listing local recordation notices by book and page number, suffi- cient to identify his claims, and thus adequate to satisfy the notice provisions of section 1744(a)(2). 3/

The documents filed by appellant do not comply with the additional requirement to identify claims by BLM serial number set forth in 43 CFR 3833.2-2(a)(1). Under 43 CFR 3833.4, BLM may properly declare appellant's

3/ The list supplied by Alexander denotes 14 locations; BLM has on record that Alexander holds claims for 10 locations. By letter dated Feb. 24, 1981, BLM informed appellant that four of his claims had been declared null and void by decision of June 23, 1943, "as the lands are in a First Form of Bureau of Reclamation Withdrawal." Alexander's description is thus overinclusive by four locations. Under the circumstances, however, this overinclusion is insufficient to invalidate his claims on the ten locations not determined to be null and void in 1943. While Alexander has continued to include the four void claims in his list of "Akers Group of Mines," BLM certainly has knowledge of which claims on the list are null and void.

claims void after granting appellant thirty days' notice within which to cure this defect. See Topaz Beryllium Co. v. United States, supra. Appellant is hereby placed on notice that, under the procedures set forth in 43 CFR 3833.4 granting a claimant 30 days within which to cure a filing defect after receipt of notice from BLM, his claims may be jeopardized by a continued failure to identify each of his claims by BLM serial number as required by 43 CFR 3833.2-2(a)(1). 4/

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 reversed.

Franklin D. Arness
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

4/ See note 2 supra.