

JAMES T. BRIGGS

IBLA 87-662

Decided November 30, 1989

Appeal from a decision of the Nevada State Office, Bureau of Land Management, finding mining claims to be abandoned and void. N MC 319338 through N MC 319342.

Reversed.

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

Upon receipt in 1986 of an affidavit alleging the performance of labor and improvements as annual assessment work for 1985, BLM should have notified the mining claimant that such affidavit was deficient and allowed the claimant the opportunity to submit a proper document.

APPEARANCES: James T. Briggs, Logandale, Nevada, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

James T. Briggs has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 24, 1987, declaring the LVC Two and LVC Four through Seven mining claims, N MC 319338 through N MC 319342, abandoned and void by operation of law. BLM's action was based upon a finding that appellant had failed to file either an affidavit of assessment work or notice of intention to hold these claims for the 1986 calendar year.

In support of its decision, BLM cited section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744 (1982), and 43 CFR 3833. These provisions require the owner of an unpatented mining claim located on public land to file an affidavit of assessment work or a notice of intention to hold with the proper BLM office prior to December 31 of each year. Failure to file one of these two instruments within the pre-scribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. | 1744(c) (1982); 43 CFR 3833.4.

In the statement of reasons, Briggs states that he cannot explain what happened to copies of the proof of labor that were sent to BLM on December 30, 1986. With his appeal, appellant encloses a copy of the proof of labor that he filed with the Clark County Recorder on December 30, 1986. This proof of labor consists of two documents, 1/ each captioned "Assessment Work Notice" and each bearing the Clark County Recorder's date-stamp indicating recordation on December 30, 1986. The documents recite the performance of labor and/or improvements in the 1986 assessment year. 2/ No evidence exists in the record that these documents were ever filed 3/ with BLM during calendar year 1986, as required by law.

Our review of the case file reveals, however, the existence of a document that compels a reversal of BLM's decision of June 24. On January 6, 1986, appellant filed with BLM an affidavit of annual assessment work stating that he had expended more than \$5,000 for labor and improvements on the claims noted therein "as the annual assessment work for the year 1985." This affidavit lists the LVC Two and LVC Four through Seven claims by name, and further identifies them by serial numbers (N MC 310116 and NMC 310118 through N MC 310121) appearing on the first of two sets of location notices filed by the locators. The first set of notices, reciting a location date of June 1984, were recorded with BLM in July 1984. Serial numbers used in BLM's decision (N MC 319338 through N MC 319342) appear on a second set of location notices, which recite a later location date (September 1984) and bear a date stamp indicating their recordation with BLM in October 1984. The location notices for both sets of claims describe the same lands and list the same locators. There is no explanation why the claims were recorded twice, or what the purpose of the second location was. However, in the absence of clear evidence to show that the later locations were relocations, see R. Gail Tibbets, 43 IBLA 210, 86 I.D. 538 (1979), prior case law discourages the assumption that appellant's affidavit applies only to the earlier locations. 4/ Edward E. Ellis, 101 IBLA 272, 274 (1988). We will, accordingly, construe this affidavit to refer to the above-named claims without regard to date of location.

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1/ The first of these documents addresses the LVC One, LVC Two, LVC Four, and LVC Five mining claims. Appellant's two other claims, LVC Six and LVC Seven, are addressed in the second document.

2/ The 1986 assessment year begins at 12 noon on Sept. 1, 1985, and continues until 12 noon Sept. 1, 1986. 30 U.S.C. | 28 (1982); 43 CFR 3833.0-5(n).

3/ A document is "filed" when it is received and date stamped by the proper BLM office. For the purpose of complying with 43 CFR 3833.2-1, "timely filed" means being filed within the time period prescribed by law, or received by Jan. 19 after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law. 43 CFR 3833.0-5(m).

4/ A review of the case file for the claims designated N MC 309619 and N MC 310116 through 310121 reveals that BLM issued a decision June 6, 1989, declaring those claims abandoned and void for failing to make any filings since 1985. That decision was not appealed.

Appellant's affidavit, which appears to have been filed to satisfy the 1985 calendar year filing duty, 5/ was mailed on January 2, 1986, and received by BLM on January 6, 1986. As such, it was clearly tardy and ineffectual for this purpose, 6/ but it was nevertheless important for 1986. Two cases decided by this Board, Harry J. Pike, 57 IBLA 15, 19 (1981), and Thomas A. Alexander, 108 IBLA 347, 351 (1989), explain why.

[1] In Harry J. Pike, BLM declared appellant Pike's mining claim abandoned and void after Pike submitted to BLM in 1979 an affidavit reciting labor performed during the 1978 assessment year. Appellant alleged that he had filed the proper 1979 affidavit with BLM and enclosed on appeal a copy of this affidavit, which had been filed with state authorities. Reversing BLM, the Board explained that when a mining claimant files with BLM an affidavit of assessment work within the prescribed time period but the affidavit does not recite work performed during the preceding assessment year as required by regulation, 7/ BLM should notify the claimant of the deficiency and allow him to submit the proper document.

A similar misfiling occurred in Thomas A. Alexander. In this case, Alexander submitted to BLM in 1985 an affidavit describing labor performed during the 1984 assessment year. In November 1985, Alexander had also recorded with Shasta County an affidavit reciting labors performed during the 1985 assessment year. Citing Harry J. Pike, the Board reversed BLM's decision, which had invalidated Alexander's claim for failure to satisfy section 314 of FLPMA. The Board held that when a claimant complies with section 314 by filing with BLM an affidavit of assessment work on time, albeit for the wrong year, such error does not, by itself, cause the claim to be deemed abandoned and void. BLM should have afforded the claimant the opportunity to file the correct proof of labor for the 1985 assessment year. 108 IBLA at 351. See also John T. Conner, 63 IBLA 129, 130 (1982).

In the instant case, BLM should have notified appellant Briggs of the deficiency in his 1986 filing before issuing its June 24 decision. Briggs should have been given the opportunity to file the correct affidavits for the preceding assessment year. As noted above, these 1986 affidavits are

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5/ This conclusion is clouded by the fact that the document states that appellant's labors occurred between Jan. 1 and Oct. 30, 1985. Thus, appellant straddled two distinct assessment years, 1985 and 1986, in working during this 10-month period. See Red Top Mercury Mines, Inc., 96 IBLA 391, 394 (1987), aff'd, Red Top Mercury Mines, Inc. v. United States, No. 88-4270 (9th Cir. Oct. 3, 1989), and J. E. Stevens, 86 IBLA 291, 292 n.1 (1985). Having "timely filed" a copy of this document with BLM in 1985, see note 6 infra, it is possible that Briggs sought to refile it in 1986, as suggested by James V. Joyce (On Reconsideration), 56 IBLA 327, 330 n.4 (1981). The document bears the Clark County Recorder's date stamp showing its recordation on Nov. 6, 1985.

6/ Appellant's claims were not invalidated for 1985 filing deficiencies, as a copy of this same document was "timely filed" with BLM in 1985.

7/ See 43 CFR 3833.2-1(b)(1) and Perry L. Johnson, 57 IBLA 20, 21 (1981).

now a part of the appeal documents filed with BLM. No purpose would be served by requiring Briggs to refile these materials.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Nevada State Office is reversed.

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Gail M. Frazier  
Administrative Judge

I concur:

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Bruce R. Harris  
Administrative Judge