

SUNRISE MINING & EXPLORATION CO.

IBLA 90-299

Decided February 12, 1991

Appeal from a decision of the Idaho State Office, Bureau of Land Management, denying petition for deferment of annual assessment work. I-27368.

Affirmed.

1. Mining Claims: Generally--Mining Claims: Assessment Work

To be entitled to a deferment from the requirement to perform annual assessment work on mining claims, a petitioner must comply with 43 CFR Subpart 3852. Failure to conform to requirements established by 43 CFR 3852.2, that a petition for deferment be filed with the state official where mining claim locations are required to be filed, state the requested term of deferment, be accompanied by a \$25 filing fee, and describe in detail the reasons why the deferment is sought, subjects a petition to denial.

APPEARANCES: Dwaine Nef, President, Sunrise Mining Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Sunrise Mining Company has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated March 13, 1990, denying a petition for deferment of annual assessment work for the Sunrise #3 through #23 mining claims, IMC 54167 through IMC 54189. The petition states that the company seeks "deferment on claims Sunrise #3 thru #23. We walk over these areas & check staking & claim markers but are denied vehicle access from the Chalis National Forest Service" (Petition dated Dec. 19, 1989, at 2.

In response to appellant's petition, BLM requested additional information, in conformity to Departmental regulation 43 CFR Subpart 3852, requiring that appellant state the location date for each claim, file the petition for deferment in duplicate, file proof the petition was recorded with the county recorder's office where the claim was located, provide the beginning date for the sought-after deferment, file a \$25 filing fee, and give the reason the deferment was requested "which must be a legal impediment" (Letter from BLM dated Jan. 17, 1990). Following this request,

appellant provided filing fees for filing annual affidavits of assessment work for the subject claims, pursuant to 43 U.S.C. § 1744 (1988) and 43 CFR 3833.2-1. The \$25 filing fee and information requested by BLM were not supplied.

On March 13, 1990, BLM denied appellant's petition for deferment because it "was deficient on its face for lack of complete information as required by 43 CFR 3852.2, and because the claimant did not provide the necessary information to cure the deficiencies." On appeal to this Board, appellant explains that "we have a restriction & barrier denying vehicle access at the entrance to the mining road. We are required to post bond and install locked device before vehicles can enter the road to the prospect. * * * We are prepared to post bond & comply with Forest Service rules." Appellant also explains that "Our work plan for 1990 has been extended from 1989 and we have the written approval of the Challis National Forest Supervisor."

The regulation cited by BLM's decision provides, pertinently, concerning petitions for deferment:

In order to obtain temporary deferment, the claimant must file with the authorized officer of the proper office, a petition in duplicate requesting such deferment. * * * the applicant must attach to one copy thereof a copy of the notice to the public required by [30 U.S.C. § 28e (1988)] which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded. The petition and duplicate * * * shall give the * * * dates of location, and the date of the beginning of the one-year period for which deferment is requested. Each petition shall be accompanied by a \$25 nonrefundable service charge.

(43 CFR 3852.2(a)).

[1] It is clear on the record before us that appellant has not conformed the petition for deferment to regulatory requirements concerning payment of fee, filing with the local recorder, providing date of location, or stating the time for which deferment is sought. These deficiencies require denial of the petition, for, because of them, there was not enough information before BLM to permit an informed decision on the merits of the petition in conformity to the provisions of 43 CFR Subpart 3852. Because, moreover, of this failure to comply with Departmental regulations, it has not been shown that appellant is entitled to the benefit of the statute, 30 U.S.C. §§ 28b through 28e (1988), which creates and defines the right to defer annual assessment work.

The quoted Departmental regulation implements 30 U.S.C. § 28e (1988), which requires that a petition for deferment be filed with the "office where the notice or certificate of location * * * is filed or recorded." *Id.* On the record before us, consequently, it is not clear that this statutory requirement has been met by appellant. The burden to prove entitlement to a claimed right to deferment rests with the claimant.

Wheaton D. Blanchard, 112 IBLA 261 (1990); Sadie Schoonover, 83 IBLA 133 (1984). By failing to comply with the regulatory and statutory requirements for petitions for deferment, appellant has subjected his petition to denial because there is not enough information supplied to permit BLM to grant the request. Cf. Add-Ventures, Ltd., 95 IBLA 44 (1986), holding that notice of intent to hold mining claim must conform to statutory requirements, including requirement for filing with state recorder of mining documents.

Moreover, the ultimate requirement for any such petition, that there be "evidence * * * that such * * * group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied * * * or that other legal impediments exist which affect the right of the claimant to enter" is not shown by the explanation provided by appellant. See 30 U.S.C. § 28b (1988). Neither the petition for deferment nor the statement of reasons to this Board explains how or when the limitation on vehicular entry described by appellant prevented performance of assessment work. Annual assessment work affidavits for all the claims were apparently timely filed for 1989. While access by motor vehicle was limited at some time, appellant states that other access was always allowed. How long the limitation on vehicular access was in effect or whether it continues is not explained. Nor is it clear that this circumstance alone would prevent performance of the statutory requirement of annual labor on the claims. Any petition filed must, in addition to meeting the requirements established by 43 CFR 3852.2(a), establish that one of the impediments listed in 30 U.S.C. § 28b (1988) prevents access to the claims for purposes of performance of assessment work. Wheaton D. Blanchard, supra.

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 affirmed.

Franklin D. Arness
Administrative Judge

I concur:

David L. Hughes
Administrative Judge