

RAND MINING CO.

IBLA 95-399

Decided December 30, 1997

Appeal from Decisions of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to file notices of assessment work performed or intention to hold. CAMC 48415, CAMC 48455, and CAMC 48374.

Affirmed in part, reversed in part.

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 of Affidavit of Assessment Work or Notice of Intention to Hold

Under section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the BLM. There is no provision for waiver of this mandatory requirement and where a notice of intention to hold or evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

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

Where it appears that a specifically identified mining claim has been recorded with BLM on two occasions and given two mining recordation serial numbers, the files should be merged. In such a situation, if, on a combined basis, all requisite filings have been made, the claim should not be deemed to be abandoned pursuant to section 314, and BLM's determination will be reversed.

APPEARANCES: Steven S. Stillar, Vice President and General Manager, Rand Mining Company, Randsburg, California.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Rand Mining Company 1/ has appealed from two March 23, 1995, Decisions of the California State Office, Bureau of Land Management (BLM or Bureau), declaring the Star No. 9 placer mining claim (CAMC 48415), the Uranium No. 12 lode mining claim (CAMC 48455), and the Felix No. 1 placer mining claim (CAMC 48374), 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 (1994).

In one Decision, BLM declared the Star No. 9 (CAMC 48415) void because the annual filing was not received during the 1987 calendar year. In the second, BLM declared the Uranium No. 12 (CAMC 48455) void because no annual filings were received for the years 1987 through 1992 and the Felix No. 1 (CAMC 48374) void because filings were not received for the calendar years 1989 through 1992. 2/

[1] Section 314 of FLPMA and 43 C.F.R. § 3833.2 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. Failure to make the required filing within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1994); 43 C.F.R. § 3833.4; see United States v. Locke, 471 U.S. 84 (1985); Lynn Keith, 53 IBLA 192 (1981).

The Bureau stated in the first Decision that it has no record that annual filings were received in 1987 for the Star No. 9 (CAMC 48415) claim. It reported in the second Decision that it has no record that annual filings were received during the calendar years 1987 through 1992 for the Uranium No. 12 (CAMC 48455) claim. Our review of the record confirms that

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1/ Mines Exploration, not Rand Mining, is the claimant of record for the mining claims at issue here. Although Rand Mining does not elucidate the grounds for its appearance, we find that in several affidavits of labor Rand Mining attests that these mining claims are "held \* \* \* by right of lease." See 1991 and 1992 Affidavits.

2/ The Bureau also remarked that the claimant failed to pay rental or maintenance fees on this claim pursuant to the Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374 (Oct. 5, 1992) and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 405 (1993), 30 U.S.C. § 28f (1994).

no annual filing was made for either of these claims in 1987, a fact which Appellant does not rebut. As noted above, that single failure constituted a conclusive abandonment of the claims. <sup>3/</sup>

We note that BLM first referred to the failure to file on these claims in 1987 in an August 8, 1988, letter to the Echo Bay Management Corporation (Echo Bay), which had filed copies of the 1987 affidavit of labor for other claims on behalf of the claimant. However, the record does not reflect that a decision was issued prior to the one under review here, and the claimant, through its various agents, has continued to file annually for this claim. It is unfortunate that BLM failed to take more timely action to notify the claimholders of the consequences of the failure to file in 1987. However, as noted by the Supreme Court in Locke, supra, at 100, section 314 is self-executing. Thus, the claims became abandoned and void when the 1987 annual filings were not timely made, not upon BLM's official declaration of the fact. The Bureau has no affirmative obligation to inform a claimant of his claim's invalidity within any specific time frame. See 43 C.F.R. § 3833.5(f). Nor may BLM be estopped from declaring an unpatented mining claim abandoned and void for failure to file an affidavit of assessment work merely because BLM has delayed issuing such a declaration for a number of years, see John Robert Maytag, 95 IBLA 128 (1987).

The record shows that annual filings were received in 1987 for the several groups of mining claims with which the Star No. 9 (CAMC 48415) and Uranium No. 12 (CAMC 48455) had been previously identified for reporting purposes. On August 1, 1988, Echo Bay filed a copy of a "Corrected Affidavit of Labor and Improvements" for the assessment year ending September 1, 1987, with the following reasons cited therein:

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<sup>3/</sup> We note that the record does contain annual filings in 1988 listing Star No. 9 (CAMC 48415) and Uranium No. 12 (CAMC 48455). However, given the failure to file in 1987, that fact is irrelevant.

Some of those filings were also made in support of relocations of the claims. The copy of the Affidavit of Labor and Improvements filed in San Bernardino on Aug. 19, 1988, by Echo Bay indicates that Mines Exploration relocated the subject lands of the Star No. 9 and the Uranium No. 12 claims in 1988. The Bureau assigned the several locations made in replacement of Star No. 9, called Star No. 9A (Relocated) through 9H (Relocated), serial numbers CAMC 206014 through CAMC 206021 and the replacement for Uranium No. 12, called Uranium No. 12 (Relocated), serial number CAMC 206022.

These later relocations do not relate back to the locations of the abandoned claims. Wayne J. Brewer, 132 IBLA 220, 223 (1995). Nor is the question of the validity of the relocated claims presented by this appeal.

THAT [Echo Bay] makes this Corrected Affidavit of Labor and Improvements because Exhibit "A" to the Affidavit as originally filed did not include on the bottom of Page 3, the Star #9 claim, and the bottom of Page 4, the Uranium No. 12 claim and the Uranium Fraction Amended Claim because the photocopy machine of [Echo Bay] did not copy this last line, as is evident from the face of Exhibit "A".

THAT the following information was included on Exhibit "A" as prepared, but not as copied and filed[.]

Section 314 of FLPMA requires that each annual filing submitted to BLM include "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) (1994). The implementing regulation, 43 C.F.R. § 3833.2-2(a)(1), provides that the evidence of assessment work may employ as a means of describing the location "[t]he Bureau of Land Management serial number assigned to each claim upon filing of the \* \* \* certificate of location in the proper BLM office." The Board in Philip Brandl, 54 IBLA 343 (1981), expanded the types of acceptable descriptions to include "the proper identification of the claim by name."

The statutory requirement for specificity in claim identification is necessary because there is no discretion under the statute for BLM to determine that a claim has been abandoned; speculation that a claimant intended to include a claim in a properly submitted document is outside the authority of the Department. Douglas C. Liechty, 108 IBLA 247, 248-49 (1989). When a mining claimant inadvertently omits the name or the serial number of unpatented mining claims from a group affidavit of assessment work or a notice of intention to hold, and there is no other means of ascertaining that the document pertains to those claims, BLM properly declares them abandoned and void for failure to comply with 43 C.F.R. § 3833.2. See George M. Wilk Wilkinson, 103 IBLA 121, 122 (1988). A late submission of the name and serial number of a claim inadvertently omitted from an affidavit or notice for a group of claims can have no effect. Id. Hence, BLM's determination as to these two claims was correct and is affirmed.

Rand Mining argues that it did not control the Uranium No. 12 Lode (CAMC 48455) during the period indicated by BLM that the annual filing was not received. As noted, a claim for which timely filings are not made is extinguished by operation of law notwithstanding the claimant's intent to hold the claim. See United States v. Locke, *supra*. As Congress did not provide for waiver of this requirement, the Department is without authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. See Lynn Keith, *supra*, at 196. Accordingly, the Board may not consider special facts or provide relief in view of mitigating circumstances. Where an annual filing is not

timely received, for whatever reason, the consequences must be borne by the claimant. Thus, whether Rand Mining assumed an interest in this claim after it became void will not mitigate the result.

The Bureau declared the Felix No. 1 (CAMC 48374) abandoned because filings were not received for the calendar years 1989 through 1992. Our review of the record does not support that finding.

First, our review of the record shows that copies of proofs of labor were filed for the Felix No. 1 (CAMC 48374) claim in 1989 and 1990. A decision declaring a mining claim to be abandoned and void pursuant to section 314 of FLPMA will be reversed if an affidavit of assessment work was filed that sufficiently identifies the specific claim. Havilah Gold Co., 112 IBLA 160, 163 (1989); Philip Brandl, *supra*, at 344.

Second, a copy of an amended notice of location for the Felix No. 1 placer mining claim was filed with BLM on October 12, 1990. The purpose of the amended location appears to have been to reduce the acreage of the claim. At that time, BLM assigned serial number CAMC 283930 to this claim. <sup>4/</sup> Thereafter, the claimants continued to identify the claim as "Felix No. 1," but used the new serial number (CAMC 283930) in the 1991 and 1992 FLPMA filings and for purposes of the fees paid in 1993 and 1994.

An amended location is a location made in furtherance of an earlier valid location and relates back to the date of the original location as long as no adverse rights have intervened. Jack J. Swain, 137 IBLA 235, 240 (1996); Patsy A. Brings, 119 IBLA 319, 325 (1991). Amended locations may be used to reduce the size of the area being claimed (so long as the original discovery point is preserved). See R. Gail Tibbetts, 43 IBLA 210, 219-20 (1979). A relocation, by contrast, is adverse to an original location, and does not relate back to the date of the original location. United States v. Johnson, 100 IBLA 322, 337 (1987); American Resources, Ltd., 44 IBLA 220, 223 (1979).

[2] Where a single mining claim has been recorded with BLM on two occasions and given two mining recordation serial numbers, the files should be merged and one of the serial numbers canceled. International Metals & Energy, 114 IBLA 221, 222 (1990), and cases cited. Accordingly, the filings received for Felix No. 1 which were placed in case file CAMC 238930

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<sup>4/</sup> Felix No. 1 as originally located was a 160-acre association placer claim encompassing the SE<sup>1/4</sup> of sec. 13, T. 30 S., R. 41 E., Mount Diablo Meridian. The amended location embraces only the 20 acres described as the N<sup>1/2</sup>SW<sup>1/4</sup>SE<sup>1/4</sup> of sec. 13. When Mines Exploration filed with BLM a copy of the amended location notice for Felix No. 1, it also submitted copies of location notices for the Mayday Nos. 1-7 placer claims, which individually contain only 20 acres but collectively enclose the remaining 140 acres of SE<sup>1/4</sup> of sec. 13. The latter claims were assigned serial numbers CAMC 238931 through CAMC 238937.

should have been assigned to the case file CAMC 48374, presuming that the purpose of the amended location was for a legitimate purpose, such as reducing acreage, and that the amendment was not adverse to the original claim.

In such a situation, if, on a combined basis, all requisite filings have been made, the claim should not be deemed to be abandoned. See id.; Michael R. Flynn, 92 IBLA 327, 329 (1986). As all the necessary documents were filed for this claim, we reverse BLM's holding that the Felix No. 1 placer mining claim (CAMC 48374) should be deemed abandoned and void.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decisions appealed from are affirmed in part and reversed in part.

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David L. Hughes  
Administrative Judge

I concur.

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James P. Terry  
Administrative Judge

