

BOKAN MINING COMPANY, INC.

IBLA 93-548

Decided April 21, 1998

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring mining claims abandoned and void because neither affidavits of assessment work nor the check for service charges were received on or before December 30, 1992. AA-14035, et al.

Affirmed.

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

In accordance with 43 C.F.R. § 3833.1-3 (1992), annual filings for mining claims must be accompanied by a nonrefundable service charge of \$5 for each claim. Annual filings received by BLM on or after Jan. 1, 1991, which are not accompanied by the proper service charges are, according to 43 C.F.R. § 3833.1-4(b) (1992), not to be accepted and are to be returned to the claimant/owner without further action. Thus, there can be no timely annual filing without the accompanying service charge and if the filing deadline passes without proper payment, the claims may be properly declared abandoned and void.

APPEARANCES: S. Anne Erwin, Secretary-Treasurer, Bokan Mining Company, Inc., for Appellant.

OPINION BY ADMINISTRATIVE JUDGE TERRY

The Bokan Mining Company, Inc. (Bokan) has appealed a June 24, 1993, Decision of the Alaska State Office, Bureau of Land Management (BLM),

declaring 28 mining claims ^{1/} abandoned and void because neither affidavits of assessment work nor a check for payment of service charges was received on or before December 30, 1992, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1994).

According to the record, Bokan's affidavits of assessment work were mailed on December 30, 1992, and are BLM date stamped "received" on January 5, 1993. Bokan's service charges were mailed separately. A December 30, 1992, cover letter to BLM from Bokan enclosing Bokan's service charges is BLM date stamped "received" January 7, 1993. According to a receipt for certified mail provided by Bokan on appeal, the letter and check for service charges were mailed on December 30, 1992. The record includes an envelope postmarked December 30, 1992, mailed certified, return receipt bearing \$2.29 postage. It also includes an envelope postmarked December 31, 1992, bearing a \$.29 postage stamp. Although neither envelope identifies the contents which were enclosed, the certified mailing number establishes that the receipt Bokan has provided is for the envelope postmarked December 30, 1992.

The BLM's Decision states that the check to cover the filing fees was "sent after the Affidavits of Annual Labor [and] was postmarked December 31, 1992." The Decision quoted 43 C.F.R. § 3833.1-4(b) (1992), which provides: "Beginning January 1, 1991. Filings that are not accompanied by the proper service charges * * * shall not be accepted and will be returned to the claimant/owner without further action."

In response to the Decision, Bokan explains that the assessment work had been performed by Frank Tillotson, who forgot to enclose the check paying the service charges when he sent the affidavits of assessment work to BLM. Bokan also states that, when Tillotson realized he had omitted the check, he sent it to BLM and that it has not been returned to him.

Pursuant to section 314 of FLPMA, 43 U.S.C. § 1744 (1994), and Departmental regulation 43 C.F.R. § 3833.2-2, a claimant is required to file with the proper office of BLM either evidence of assessment work performed or notice of intention to hold a mining claim on or before December 30 of each calendar year following the calendar year of location. Such filing must be made within each calendar year, i.e., on or after January 1 and on or

^{1/} The claims at issue are the Bokan #7 (AA-14035), the Bokan #8 (AA-14036), the Bokan #15 through #20 (AA-14043 through AA-14048), the Bokan #25 through #30 (AA-14052 through AA-14057), the Bokan Fraction #5 through #9 (AA-14146 through AA-14150), the JJ (AA-64823), the JJ1 (AA-64824), the JJ2 (AA-64825), the JJ3 (AA-64826), the JJ4F1 (AA-64827), the JJ5F2 (AA-64828), the JJ6F2 (AA-64829), the JJ-7 (AA-66273), and the JJ-8 (AA-66274).

before December 30. Ronald Willden, 97 IBLA 40 (1987); Robert C. LeFaivre, 95 IBLA 26 (1986). 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) (1994); 43 C.F.R. § 3833.4.

[1] The applicable regulation regarding this appeal is 43 C.F.R. § 3833.1-3 (1992), which provides that annual filings "shall be accompanied by a nonrefundable service charge of \$5 for each mining claim, millsite, or tunnel site." As already indicated, 43 C.F.R. § 3833.1-4(b) provides that as of January 1, 1991, filings "not accompanied by the proper service charges" are unacceptable and will be returned to the claimant. We observed in M & A Mining, Inc., 130 IBLA 333, 334 (1994) that "[b]ased on those regulations, it is clear that there can be no timely annual filing without the accompanying service charge" citing Norman Filip, 124 IBLA 122 (1992), and Park City Chief Mining Co., 57 IBLA 346 (1981) (recording of a mining claim required to be accompanied by a service fee and there could be no recording without payment of the fee). Moreover, if the annual filing deadline passes without the filing of the service charge, BLM may properly declare the mining claims abandoned and void. Id.

Responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim as Congress mandated that failure to file the proper documents in the proper offices within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. The Supreme Court has upheld the constitutionality of the statute, expressing that 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, 471 U.S. 84 (1985).

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 June 24, 1993, Decision of the Alaska State Office is affirmed.

James P. Terry
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

