

INTERIOR BOARD OF LAND APPEALS

Harris A. Hansen

137 IBLA 64 (November 26, 1996)

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HARRIS A. HANSEN

IBLA 93-526

Decided November 26, 1996

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented mining claims CAMC 192529 through CAMC 192532 abandoned and void.

Set aside and remanded.

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: Abandonment

A decision declaring a mining claim to be abandoned and void pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994), will be reversed if the mining claimant had filed an affidavit of assessment work or notice of intention to hold for a group of claims that sufficiently identifies that claim.

APPEARANCES: Harris A. Hansen, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

Harris A. Hansen has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated June 8, 1993, declaring unpatented mining claims CAMC 192529 through CAMC 192532 abandoned and void. BLM 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 (1994), 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.

BLM's decision states: "Review of the records of [unpatented mining claims CAMC 192529 through CAMC 192532] \* \* \* indicate(s) that an affidavit of assessment work or notice of intention to hold was untimely filed or not received in this office between the dates of January 1 and December 30 for the year(s) 1988 through 1990, and 1992."

A review of the location notices found in BLM's case file reveals that the four claims declared null and void are named the China Ridge Paleozoic Nos. 1 through 4, and are assigned BLM serial numbers 192529 through

192532, respectively. These claims were located on May 6, 1987, and the location notices were stamped as received by BLM on June 3 and June 5, 1987.

Every December from 1987 through 1992, BLM received from Hansen a notice of intention to hold the China Ridge Paleozoic claims, among a number of other claims. In all notices, claims were identified by both name and serial number. In all notices except the 1991 notice, however, Hansen had misidentified the serial numbers for the China Ridge Paleozoic Nos. 1 through 4 as CAMC 186575 through CAMC 186578, instead of correctly identifying them by their assigned serial numbers. In all notices the claims were identified by name. <sup>1/</sup>

In his notice of appeal and statement of reasons, Hansen claims, "[t]he problem obviously lies with a typographical error as shown on the corrected sheet of notice of intent to hold 92, acct #1931474." He has resubmitted the 1992 notice of intention to hold, with the typed incorrect serial numbers marked through and the correct serial numbers handwritten in beside them. He requests BLM to "please correct the records and advise."

[1] Section 314 of FLPMA requires that a mining claimant file with BLM an instrument recorded in the local state offices, be it proof of assessment work undertaken on the claim, a notice of intention to hold the claim, or a detailed report under 30 U.S.C. § 28-1 (1994), "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) (1994). Failure to so file is statutorily considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744 (c) (1994), and 43 CFR 3833.4. United States v. Locke, 471 U.S. 84 (1985); See Lynn Keith, 53 IBLA 192, 88 ID. 369 (1981).

This case, however, presents a factual situation where appellant's notice of intention to hold has correctly identified four of his claims by name, but has incorrectly listed their serial numbers. Contrary to BLM's decision, this situation does not present us with a "failure to file," but rather with a situation where appellant has submitted incorrect and therefore incomplete information.

This Board has previously addressed the question of whether filings which satisfy the requirements of section 314 of FLPMA, but do not conform with BLM's regulatory requirement to identify claims by claim name and serial number (see 43 CFR 3833.2 (1992)) <sup>2/</sup> are abandoned and void as a

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<sup>1/</sup> The 1992 notice misspelled the claim names, listing them as "China Ridge Palieozoic." There can be no mistake from this misspelling, however, concerning the claims to which Hansen intended to refer.

<sup>2/</sup> 43 CFR 3833.2-5(b)(1) (1992) provided in relevant part as follows:

"(b) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either:

"(1) An exact legible reproduction or duplicate, except microfilm, of an instrument, signed by the owner of the claim or his/her agent, which was

matter of law. See Havilah Gold Co., 112 IBLA 160 (1989); Thomas A. Alexander, 108 IBLA 347 (1989); Arley R. Taylor, 90 IBLA 313, 314 (1986); Arley R. Taylor, 86 IBLA 283 (1985); Philip Brandl, 54 IBLA 343 (1981).

We have generally held in those cases that a decision declaring a mining claim to be abandoned and void pursuant to section 314 of FLPMA will be reversed if the mining claimant has filed an affidavit of assessment work for a group of claims that sufficiently identifies the specific claim, and that listing a claim by name on an affidavit of assessment work is sufficient identification. Havilah Gold Co., *supra* at 163; Arley R. Taylor, 90 IBLA at 314; Arley R. Taylor, 86 IBLA at 284; Philip Brandl, *supra* at 344.

This scenario has arisen under various fact situations. Where claims were identified as a group, e.g., "Last Chance Lode Claims," and two serial numbers were inadvertently omitted, and appellant's affidavit contains no other means of identifying the two claims, the Board has held that they will be declared abandoned and void. Arley R. Taylor, 86 IBLA at 284. In Philip Brandl, the claimant identified his claims by name only, and incorrectly stated one of the names. The Board held that claim to be abandoned. In Thomas Alexander, *supra*, Alexander had identified his claims on the affidavit showing proof of labor by listing the local miscellaneous recordation book and page numbers where the location notices for his claims were found. BLM found the claims abandoned and void, among other reasons, because Alexander failed to identify his claims by BLM serial number and claim name as required by 43 CFR 3833.2-2 (1988).

In that case, the Board called attention to 43 CFR 3833.4(b), which provides:

The failure to file the information required in \* \* \* [43 CFR] 3833.2-2(a) and (b) [(1988), requiring the filing of claim names and serial numbers] \* \* \* 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 \* \* \*.

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fn. 2 (continued)

or will be filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

"(i) The Bureau of Land Management serial number assigned to each claim upon filing in the proper BLM office of a copy of the notice or certificate of location. Citing the serial number shall comply with the requirement in the Act to file an additional description of the claim."

In this case, as Hansen has correctly identified the claims by name, we would not hesitate to reverse BLM's decision, except that an ambiguity has been created by the fact that he has also identified them by serial numbers which cannot be accounted for. We cannot judge from the record before us whether the China Paleozoic claims were relocated and Hansen has simply listed them by the four serial numbers previously assigned, whether the serial numbers actually represent other claims held by Hansen, or whether they bear no relationship to any claim.

Moreover, we have no record before us concerning whether Hansen has continued to pay rental or maintenance fees on these four claims pursuant to the Department of the Interior and Related Agencies Appropriation Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374 (Oct. 5, 1992), and the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, 107 Stat. 405 (1993), 30 U.S.C. § 28f (1994), (respectively). If Hansen has not complied with these later statutes by paying the required fees necessary to hold the claims, the question of whether he has sufficiently identified them in his earlier notices of intention to hold is moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we set aside and remand BLM's decision with instructions to BLM to ascertain, first of all, whether Hansen has continued to hold the China Ridge Paleozoic Nos. 1-4 claims pursuant to requirements enacted by the Acts of October 5, 1992, and August 10, 1993, and secondly, to determine whether these claims are unambiguously identified by serial number in the 1988, 1989, 1990, and 1992 notices of intention to hold. If they are not, BLM shall grant appellant time within which to supply the accurate serial numbers in his notices of intention to hold, as permitted by 43 CFR 3833.4(b).

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James L. Byrnes  
Chief Administrative Judge

I concur:

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James F. Roberts  
Acting Administrative Judge