

INTERIOR BOARD OF LAND APPEALS

Hi-Tech Synfuels Corporation, Inc.

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HI-TECH SYNFUELS CORPORATION, INC.

IBLA 93-337

Decided April 30, 1998

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring 20 oil shale placer mining claims abandoned and void. CMC-56478 through CMC-56487, CMC-139756 through CMC-139765.

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

Section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1994), and 43 C.F.R. § 3833.2-2, require that the owner of an unpatented mining claim, located on public land prior to Oct. 21, 1976, and recorded in the proper BLM office between Jan. 1, 1978, and on or before Oct. 22, 1979, must file, with the local recording office where the claim is recorded and with the proper BLM office, on or before Oct. 22, 1979, and on or before Dec. 30 in each calendar year after 1979 either evidence of annual assessment work or a notice of intention to hold the claim. Failure to file one of the two documents timely in either office results in a conclusive presumption that the claim has been abandoned and renders the claim void. 43 U.S.C. § 1744(c) (1994); 43 C.F.R. § 3833.4(a).

Where BLM declares mining claims null and void for failure to timely file one of the two required documents in the local recorder's office, but the case file reveals that the document may in fact have been filed, the decision will be set aside to allow an inquiry as to the status of the filing.

APPEARANCES: Richard H. Shaw, Esq., and Jacques S. Ruda, Esq., Denver, Colorado, for Appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE TERRY

Hi-Tech Synfuels Corporation, Inc. (Hi-Tech) has appealed a March 23, 1993, Decision of the Colorado State Office, Bureau of Land Management (BLM), declaring 20 oil shale placer claims abandoned and void for failure to timely file proof of labor with the county recording office for the 1979 assessment year.

The list of claims in the Decision on appeal contains several errors. On the certificates of location, the Blue Bird Nos. 2, 3, 5, and 7 claims (located in 1917), are assigned serial numbers CMC-56478 through CMC-56481 rather than CMC-56480 through CMC-56483, as identified in the Decision. Also, the location certificates show the name of the "Bluebird" claims to be "Blue Bird." The location certificates for the "Pueblo Oil Shale" Nos. 1 and 2 (located in 1917), show that they are serialized as CMC-56482 and CMC-56483 rather than CMC-56478 and CMC-56479, as in the Decision. The location certificates for the "Claibell" claims (CMC-139756 and CMC-139757 identify the claims as the "Claribell-No 1-Oil Shale" and the "Claribeel No. 2 Oil Shale Placer Mining Claim," but they are generally referred to in other documents as the "Claribel Nos. 1 and 2."

The other claims involved are the Panther Nos. 1-4 (CMC-56484 through CMC-56487), the Lyceum (CMC-139758) and the Pickup Nos. 1-7 (CMC-139759 through CMC-139765). All claims at issue were located in 1917, 1919, and 1920. The Blue Bird, Pueblo, and the Panther claims were filed with BLM on October 20, 1978. The Claribel Nos. 1 and 2, the Lyceum, and the Pickup Nos. 1 through 7 claims were filed with BLM on October 22, 1979.

[1] Under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 C.F.R. 3833.2-2, the owner of a mining claim located on or before October 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before October 22, 1979, and prior to December 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the BLM. This requirement is mandatory. Crownite Corp. American Pumice Products, Inc., 76 IBLA 236, 238 (1983). The filing with BLM must be a copy of what was or will be recorded with the local recording office. 43 U.S.C. § 1744(a)(2) (1994); 43 C.F.R. § 3833.2-2, 2-3. See Barodynamics, Inc., 135 IBLA 352, 353 (1996). 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 Decision on appeal recites the requirements of FLPMA and states:

Review of Garfield County records for the below listed oil shale placer mining claims indicates that statutory requirements

were not met. No evidence of assessment work, notice of intention to hold or report was timely filed with that office. The documents indicate that they were filed on December 10, 1979.

The BLM issued the Decision after Hi-Tech responded to a December 23, 1992, Notice sent to Harlan H. and Dorothy D. Hugg of Boulder, Colorado, the previous owners of the claims, <sup>1/</sup> requiring them to "submit to this office within 30 days of receipt of this notice, copies of documents that were filed in Garfield County prior to October 22, 1979."

The documents to which BLM's Decision refers are affidavits of assessment work date-stamped December 10, 1979, by the Garfield County recorder. The case files contains additional copies of the affidavits date-stamped as received by BLM on October 22, 1979, but bearing no county recorder date-stamp.

Hi-Tech argues, that the filing requirements of FLPMA were met in any case, that there was substantial compliance, and that BLM is estopped to declare the claims abandoned and void. Hi-Tech has also requested a hearing.

The BLM argues that the Huggs, claim owners prior to Hi-Tech, failed to meet the requirements of FLPMA and the regulations in neglecting to file, with the Garfield County recorder their affidavits of assessment work between October 21, 1976, and October 22, 1979.

The issue presented by this appeal is whether the Huggs, Hi-Tech's predecessors in interest, in fact timely filed their affidavits of assessment work or notice of intent to hold, not whether the December 10, 1979, filing meets statutory and regulatory requirements. The fact that the affidavits recorded with Garfield County on December 10, 1979, did not satisfy 43 U.S.C. § 1744(a)(1) (1994), does not resolve that issue, and the presence in the file of two pieces of correspondence raises the possibility that the filing requirement in the local recording office may have been met.

First, an October 12, 1978, letter from the Colorado State Office to Harlan Hugg states:

We received you[r] letter of September 28, 1978, where you sent copies of assessment work affidavits of your oil shale mining claims. The Federal Land Policy and Management Act of October 21, 1976, as implemented by the regulations at 43 CFR 3833.1-2, require[s] that all unpatented mining claims location

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<sup>1/</sup> The record before the Board includes a letter dated May 9, 1983, from the law firm of Shaw, Spangler & Roth informing BLM that the Huggs had transferred their interests in the claims to Hi-Tech and that future notices should be sent both to Hi-Tech and to the law firm as its agent.

certificates must be filed with the Bureau of Land Management before October 21, 1979, or they will be conclusively presumed to be abandoned and would be null and void. For exception to the recordation requirements see 43 CFR 3833.1-3.

(Emphasis supplied). Second, an April 4, 1979, letter from Harlan Hugg received by BLM April 6, 1979, states:

With further reference to the Location Notices filed in your office Oct. 20th, 1978 on the following Oil Shale Placer Mining Claims \* \* \* which you called me about, I am enclosing an, "Intention to Hold Oil Shale Placer Mining Claims", filed of record in the Recorder's Office, Garfield County Court House, Glenwood Springs, Colo. Reception No. 198033, filed on page 193, of book No. 301, and which covers these claims as well as others that I own \* \* \*.

(Emphasis supplied). Neither the affidavits of assessment work acknowledged in BLM's October 12, 1978, letter, nor the notice of intent referred to in Hugg's April 4, 1979, letter are included in the case files, although an annotated map of various claims date-stamped as received April 6, 1979, is present. Huggs not only stated that he was "enclosing" an intention to hold, he cited the book, page, and reception number identifying that document in the recorder's office. This citation would have been impossible, had the document not in fact been recorded in the local recorder's office prior to the date of his letter to BLM, April 4, 1979.

This correspondence suggests that additional documents were filed with BLM which may also have been recorded with the Garfield County recorder. Thus BLM's assertion that required documents were not recorded with the county until December 10, 1979, may not be correct.

Under these circumstances, the appropriate course of action is to set aside the March 23, 1993, Decision and remand the case files to BLM so that it may review its records to attempt to locate the documents and also allow Hi-Tech an opportunity to provide additional documentation, including copies of Garfield County records. Furthermore, it is apparent that the claims cannot be reviewed as a single group. The requirements of 43 U.S.C. § 1744(a) (1994), to file one of the three documents both locally and with BLM "within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter" apply differently to the claims filed with BLM October 20, 1978, and those filed October 22, 1979.

Depending upon the documents found or provided, a variety of issues may be presented concerning the requirements of 43 U.S.C. § 1744 (1994). The affidavits recorded with Garfield County December 10, 1979, did not satisfy 43 U.S.C. § 1744(a)(1) (1994), for the mining claims filed with BLM in 1979, but they possibly could qualify as affidavits which "will be filed for record" in regard to the claims filed in 1978. See 43 U.S.C. § 1744(a)(2) (1994); 43 C.F.R. § 3833.2-2 (1979); Bernice Sheldon, 87 IBLA 161, 163 (1985); Precious Minerals Unlimited, Inc., 61 IBLA 136 (1982). It

is also possible that the affidavits referred to in BLM's October 12, 1978, letter met the requirements of 43 U.S.C. § 1744(a) (1994). See Jay Edwin Collier, 70 IBLA 283 (1983). Indeed, the letters themselves may have some bearing on the status of the claims. See International Metals & Energy, 114 IBLA 221, 223 (1990). Other issues may arise as BLM examines its records and any documentation submitted by Appellant.

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 March 23, 1993, Decision of the Colorado State Office is set aside and remanded and Hi-Tech's request for a hearing is denied.

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James P. Terry  
Administrative Judge

I concur.

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John H. Kelly  
Administrative Judge