

Petrol



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(916) 445-8485

August 24, 1978

Mr. Stephen F. Dunbar
Mariposa County Assessor
P. O. Box 35
Mariposa, CA 95338

Dear Mr. Dunbar:

This is in response to your July 20, 1978, letter to Mr. Glenn Rigby concerning the assessment of three mining claims for the 1977-78 fiscal year:

Mr. Moore and Mr. Powell filed a Notice of Location of an unpatented mine on November 10, 1976. On February 18, 1977, they filed their Location Notice with the Bureau of Land Management. An unsecured assessment was made against the claims, and all taxes were paid.

On October 12, 1977, the Bureau of Land Management returned the Location Notice to Messrs. Moore and Powell because it had not been filed within 90 days after the date of location of the claims, as required by the Federal Land Policy and Management Act of 1966 (43 USC, § 1744) and by Bureau of Land Management regulation (43 CFR § 3833.1-2(b)). The Bureau of Land Management letter also noted that 43 CFR, § 3833.4(a) provides that the failure to file instruments required by section 3833.1 within the time period prescribed therein is deemed conclusively to constitute an abandonment. Mr. Powell thereafter requested a refund of taxes claiming he did not own the claims on March 1, 1977.

43 USC, section 1744(b) provides, in part:

"The owner of an unpatented lode or placer mining claim...located after October 21, 1976, shall, within 90 days after the date

of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim... sufficient to locate the claimed lands on the ground."

43 USC, section 1744(c) provides:

"The failure to file such instruments as required by subsections... (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim... by the owner;...."

43 CFR, section 3833.1-2(b) and section 3833.4(a) are to the same effect: the owner of an unpatented mining claim located after October 21, 1976, on Federal land must file, (file meaning being received and date stamped by the proper Bureau of Land Management office), within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site; and the failure to file such an instrument within that time period is deemed conclusively to constitute an abandonment of the mining claim, and the claim shall be void.

Accordingly, when Messrs. Moore and Powell failed to file their Notice of Location within the 90 day period, such failure constituted an abandonment of the mining claims and the claims were void. Thus, neither Mr. Moore nor Mr. Powell had any interest in the claims on March 1, 1977. That the Bureau of Land Management did not notify Messrs. Moore and Powell of this fact until October 12, 1977, is of no consequence since both by statute and by regulation, the claims were deemed abandoned and void because of the untimely February 18, 1977, filing.

Refund then of taxes paid on assessments made against the claims would be proper. If and when Mr. Moore and/or Mr. Powell refile a Notice of Location in a timely manner and the claims become valid, assessment of the claims will be in order.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel