



## Arizona Department of Mines and Mineral Resources

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### Annual Assessment Work Requirements Under Arizona Statute

Circular 56, July, 1994

*John C. Lacy, with the law firm of DeConcini McDonald Brammer Yetwin & Lacy, was asked by the Department to discuss the recent changes in the mining law. The following response from Mr. Lacy may answer some questions concerning assessment work on lands where the mineral rights are owned by the federal government.*

You have recently indicated to me that the department has been receiving questions regarding what documents, if any, need to be filed in conjunction with the payment of the rental fees to the federal government as required under federal law.

The Arizona statute dealing with the performance of annual assessment work specifies in A.R.S. § 27-208 that an affidavit may be filed before December 31, in "any year in which performance of annual labor or making improvements upon a mining claim is required..." and that any person "may make and record in the office of the County Recorder" an affidavit describing the nature of the work performed. This affidavit, when recorded, constitutes *prima facie* evidence of the performance of the labor and improvement.

Since the federal statute applicable for assessment years through 1998 specifies that annual work is not required except under special circumstances where a claimant has ten or fewer claims, it is my view that no county filing requirement presently exists unless the claimant is performing exploration or mining work on ten or fewer claims under the specifics recognized by the federal statute. It is however, my recommendation that some document be recorded in the applicable county records indicating the payment of the fee to provide record notice that such action has been taken and to assist title examiners in verifying record title and compliance with law in the future.

When the current filing system was established by the Federal Land Policy and Management Act in 1976 the purpose was stated as providing the Bureau of Land Management with records for its own use as a part of its management authority. The law and regulations were seemingly quite clear that it was not the intention of the Congress to establish a records repository within the Bureau of Land Management and thus the official records were presumably to be continued at the

county level. This being the case, it appears to me that the sound practice would be to record a document at the county level evidencing either the payment of the rental fee prior to, on, or before the close of business on December 30 as specified in the statute or a copy of the form that the BLM has suggested for the 10-claim exemption.

I have enclosed a form that I prepared on behalf of some of my clients to evidence the payment of the rental fee for recording at the county level. Please also note, that where the rental fee has been paid and some assessment work has also been done, it is probably a good idea to state that such work has been performed. If this is done, however, the claimant should be sure that the recited activities have either been permitted under a *Plan of Operations* or were otherwise included within a *Notice of Intent to Operate* that has been previously filed by the claimant.

Where the 10 claim exemption is being claimed, the owner should use the forms provided by the Bureau of Land Management and also record the document in the official records of the county in which the claims are situated. I would caution against using the exemption permitting the performance of "exploration work to discover mineralization" because this statement would appear to suggest that no discovery exists within the claim. Thus, if the owner has identified mineralization that is believed to constitute a discovery, the use of the exemption might result in an assertion that the claiming of the exemption amounted to a declaration that no discovery existed as of September, 1993, and any "existing rights" that could exist under new changes to the mining laws thereby denied.

John C. Lacy