ALLEN J. MAXWELL
MARY A. JANUSZ

IBLA 80-95 Decided May 19, 1980

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting for purposes of recordation the notice of location for placer mining claim CA MC 58118.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

   Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

APPEARANCES: Allen J. Maxwell and Mary A. Janusz, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Allen J. Maxwell and Mary A. Janusz appeal from the decision of the California State Office, Bureau of Land Management (BLM), returning their mining claim location notice for the Silver Hammer placer claim because they had not filed the notice with BLM within 90 days after the date of location as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulation, 43 CFR 3833.1-2(b). The notice indicates that appellants located the claim on July 21, 1978. BLM received a copy of the notice on October 5, 1979.

Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

> The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location * * *.

In their statement of reasons, appellants state that Mr. R. Hammond, a ranger at the Los Padres National Forest headquarters informed them that it was his responsibility to file and record the claim with BLM. They note that they sent Mr. Hammond a letter dated January 7, 1979, stating in part: "We hope that we have covered the neccessary [sic] information needed by [you], for your proper filing with BLM." Appellants argue that Mr. Hammond had a responsibility to inform them of their error as to recordation since that error must have been apparent to him.

[1] Under FLPMA and the regulations, the requirements for filing are clear. The Board has repeatedly held that when a notice of a mining claim is not filed with BLM within 90 days from the date of location, it has no force and effect and must be returned to the appellant. M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978). The claim must be deemed conclusively to have been abandoned under the terms of the statute. 43 U.S.C. § 1744(c) (1976); Phillip M. Gardiner, 41 IBLA 391 (1979).

The fact that appellants may have been misinformed about the recordation requirements does not excuse them from compliance with the law. We note that their January 7, 1979, letter to Mr. Hammond transmitted information with which to make the recordation, but was sent well beyond the 90-day period. Those who deal with the Government are presumed to have knowledge of the law and duly adopted regulations. Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947); Phillip M. Gardiner, supra at 393; Donald H. Little, 37 IBLA 1 (1978). The general rule is that reliance upon erroneous or incomplete information

provided by Federal employees cannot create any rights not authorized by law. Federal Crop Ins. Corp. v. Merrill, supra; Belton E. Hall, 33 IBLA 349 (1978); 43 CFR 1810.3(c). This Board has no authority to excuse the lack of compliance.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Douglas E. Henriques
Administrative Judge