

SHELDON MARGEN

IBLA 80-366

Decided April 28, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 61468 and 61469.

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

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. 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 an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, failing which the claim is properly deemed abandoned and void.

APPEARANCES: Judith R. Epstein, Esq., Crosby, Heafey, Roach, and May, Oakland, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Sheldon Margen appeals from a decision dated December 26, 1979, by the California State Office, Bureau of Land Management (BLM), declaring his placer mining claims null and void because the location

notices for these claims were not filed on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of (1976), 43 U.S.C. § 1744 (1976), and implementing regulation, 43 CFR 3833.1-2(a).

These claims were located in 1940 and 1945. Appellant has owned the claims since 1961. BLM received copies of the notices of location on November 13, 1979. The pertinent regulation, 43 CFR 3833.1-2(a), provides in relevant part:

The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, \* \* \* shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed.

In the event a mining claimant fails to comply with the recordation requirements, the regulations further provide:

Section 3833.4 Failure to file.

(a) The failure to file such instruments as are required by §§ 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void. [Emphasis supplied.]

In his statement of reasons, appellant concedes that he failed to meet the filing requirements. Appellant asserts that the press of professional commitments prevented him from complying with the filing requirements.

[1] The mining recordation regulations are mandatory and failure to comply therewith must result in a finding that the claim has been abandoned. Walter T. Paul, 43 IBLA 119 (1979); Dale C. Delor, 40 IBLA 88 (1979); Roy W. Byram, 39 IBLA 32 (1979); R. Wade Holder, 35 IBLA 169 (1978). The fact that appellant inadvertently neglected to attend to his filing requirements because of the press of business cannot excuse him from compliance with the law. Although appellant requests relief from the requirements and strictures of FLPMA, it cannot be granted. See Solicitor's Opinion, M-36889, 84 I.D. 188 (1977).

Appellant may, however, relocate his claims and file the notices required by 43 CFR 3833.1, subject to any intervening rights of third parties and assuming no intervening closure of the land to mineral location.

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.

Frederick Fishman  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Joseph W. Goss  
Administrative Judge

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