

CARL A. BORGSTROM

IBLA 80-411 Decided May 13, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 62455.

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 and is void. 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 prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, accompanied by the proper fee.

APPEARANCES: Carl A. Borgstrom, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Carl A. Borgstrom has appealed from a decision dated February 4, 1980, by the California State Office, Bureau of Land Management (BLM), declaring his unpatented mining claims, Southview Mines Nos. 1, 2, and 3, abandoned and void for failure to comply with the filing requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.

Appellant's claims were located in 1955. However, appellant did not file certain maps, location notices, and filing fees with BLM until January 1980. 1/

Appellant, who resides in Hawaii, states that he experienced difficulties and delays in obtaining certain of the required documents for submittal to BLM. 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 [2/] containing the information in paragraph (c) of this section shall be filed.

43 CFR 3833.1-2(c)(6) requires a claimant to furnish a map, narrative, or sketch. Section 3833.1-2(d) requires that the filings be accompanied by a one time \$5 service fee for each mining claim, which is not returnable.

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

§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void. [Emphasis supplied.]

[1] Appellant's materials, with the requisite fee of \$5 for each claim were not timely received by BLM and were therefore properly

1/ Appellant asserts that he made a filing in September 1979, which was not accompanied by the appropriate filing fees and therefore could not be recognized as a proper submittal until the deficiency was cured.

2/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

rejected. The mining recordation regulations are mandatory and the Board is without authority to excuse lack of compliance, which must result in a finding that the claims have been abandoned and are void. Walter R. 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).

Appellant may, however, relocate his claim and file the notices required by 43 CFR 3833.1, subject to any intervening rights of third parties and assuming the land is still open to mineral location.

Accordingly, 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 L. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge.

