

JEAN L. GREENE

IBLA 80-180

Decided May 19, 1980

Appeal from decision of the Arizona State Office, Bureau of Land Management, returning the notice of location and other documents for the El Oro mining claim and declaring the claim abandoned.

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 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

APPEARANCES: Jean L. Greene, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Jean L. Greene has appealed the decision of the Arizona State Office, Bureau of Land Management (BLM), dated November 16, 1979, returning the notice of location and additional documents relating to the El Oro mining claim because they were not filed on or before October 22, 1979, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and corresponding regulation, 43 CFR 3833.1-2(a).

On October 5, 1979, appellant submitted to BLM a quitclaim deed, affidavit of assessment work, and filing fee for her El Oro mining claim in Cochise County, Arizona. By letter dated October 10, 1979, BLM returned these documents indicating that the regulation, 43 CFR 3833.1-2, required a copy of the notice of location of the claim for recordation purposes. BLM enclosed a copy of the regulation and advised appellant that she should be able to get a copy of the location notice from the county recorder's office. On November 15, 1979, BLM received the notice of location as well as the other documents from appellant. Since this was after the close of the statutory filing period, BLM rejected the documents as untimely.

In her statement of reasons, appellant indicates that she was out of town and did not return until November 3, 1979, when she received the BLM letter. Although she was aware of the October 22, 1979, deadline, she resubmitted the documents with the location notice believing that BLM would accept them because "having submitted the papers before [October 22, 1979] and having a letter stating they would accept the papers if I submitted the additional papers (without a deadline stated in the letter) I naturally thought they meant what the letter stated."

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 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(a), reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) 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 1/] containing the information in paragraph (c) of this section shall be filed.

1/ 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).

Appellant's claim was located on March 21, 1971. Under FLPMA and the regulations, the requirements for recordation are clear. The crucial document is the notice of location. Although BLM did not expressly state the deadline date in the letter returning appellant's original submission, BLM did enclose a copy of the regulations which do state the requirements. The responsibility for knowing and complying with the recordation requirements rested with appellant. This Board has no authority to excuse lack of compliance.

We wish to point out that the affidavit of labor performed and improvements made filed timely by appellant does meet the requirements of section 314(a) of FLPMA and 43 CFR 3833.2-1 concerning evidence of assessment work. This fact, however, does not cure the failure to timely file the notice of 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.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

