

TIMM ANDERSON

IBLA 80-187

Decided May 21, 1980

Appeal from decision of Oregon State Office, Bureau of Land Management, holding the Next Door claim abandoned and void.

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 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

The "proper BLM office" is defined in 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). Where this latter regulation designates the Oregon State Office as the proper office, filing in a local Oregon office is not sufficient.

2. Estoppel -- Federal Employees and Officers: Authority to Bind  
Government

Reliance on erroneous information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: Timm Anderson, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Timm Anderson appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated October 26, 1979, declaring the Next Door claim, located on July 19, 1978, abandoned and void.

BLM stated in its decision that the service fee and filing for the above named mining claim are returned since they were not received by the State Office within 90 days after the date of location of the claim, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b). BLM cited 43 CFR 3833.4(a) which provides that failure to file such instruments within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

In his statement of reasons, appellant asserts that he was told by BLM in the local Grants Pass, Oregon Office, that he could file a copy of his notice of location at that office, which he did. Subsequently, he learned of his mistake and filed with the State Office on October 18, 1979.

[1] Section 314(b), FLPMA, 43 U.S.C. § 1744(b) (1976), 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 for the claim in the BLM office designated by the Secretary of the Interior within 90 days after the date of location of such claim. 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(b) reads as follows:

(b) 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 of the claim or site filed under state law or, if the 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.

[2] The above quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. The "proper BLM office" is defined in 43 CFR 3833.0-5(g) as the BLM office which

has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). The latter section states in turn that the office having jurisdiction over lands located in Oregon is BLM's Oregon State Office in Portland. The documents had to be received and date stamped by the Oregon State Office by October 17, 1978, in order to be filed timely. John Sloan, 47 IBLA 146 (1980); C. F. Linn, 45 IBLA 156 (1980). The documents were not date stamped by the State Office until October 18, 1979. Failure to comply must result in a conclusive finding that the claim has been abandoned and is void.

Appellant's argument that he filed in the local office because he was told to do so by a BLM employee is without merit. Reliance upon information or opinion of any officer, agent, or employee cannot operate to vest any right not authorized by law. 43 CFR 1810.3. Nevada Pacific Co., Inc., 46 IBLA 208 (1980). Cf. Union Oil Company of California v. Morton, 512 F.2d 743, 748 (9th Cir. 1975). The courts are particularly reluctant to apply estoppel against the Government in public land matters. (See INS v. Hibi, 414 U.S. 5, 8 (1973)).

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.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Frederick Fishman  
Administrative Judge

