

W. VERNE KIGHT
EVA M. KIGHT

IBLA 79-359

Decided May 21, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claims void for failure to file evidence of annual assessment work or notice of intention to hold a mining claim. (OR MC 3130-OR MC 3136 inclusive.)

Affirmed in part; reversed and remanded in part.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Affidavit of Assessment Work or Notice of Intention to Hold Mining
Claim -- Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment -- Mining Claims:
Recordation

The owner of an unpatented mining claim located prior to Oct. 21,
1976, must record the location on or before Oct. 22, 1979.
Recordation is effected by filing a copy of the location notice or
certificate with the proper BLM Office.

2. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Affidavit of Assessment Work or Notice of Intention to Hold Mining
Claim -- Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment -- Mining Claims:
Recordation

The owner of an unpatented mining claim located prior to Oct. 21,
1976, and recorded with BLM in the calendar year 1977, must file
affidavit of assessment work or notice of intention to hold the

claim on or before Dec. 30 of the calendar year following the calendar year in which the claim was recorded with BLM and failure to comply with the regulations governing recordation of such instruments must result in a conclusive finding that the claim has been abandoned.

3. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation -- Fees

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

APPEARANCES: Dorothy J. Littleton (formerly Dorothy J. McGrath), Guardian; Jeanette Marshall, Esq., Medford, Oregon; David C. Silven, Esq., Silven, Young & Schmeits, Baker, Oregon, attorneys for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

W. Verne Kight and Eva M. Kight appeal from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 29, 1979, holding mining claims OR MC 3130 through OR MC 3136 ^{1/} void for failure to file assessment statements or notices to hold the claims prior to December 31 as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and regulation 43 CFR 3833.2-1.

On October 28, 1977, appellants filed a letter with BLM indicating that they wanted to record their claims. Enclosed with this letter was a service fee of \$10. BLM responded by letter stating that appellants' mining claim filings were not complete for recording by BLM. BLM requested that appellants file a statement giving the

^{1/} See attachment for list of claims and appropriate number.

description of the land embraced by the claims and a map depicting the location of the claims. BLM also stated that the \$10 service fee submitted by appellants had been applied to the Huckleberry and Jensen claims. BLM noted that there were five additional claims and directed appellant to submit an additional \$5 service fee for each of these claims. BLM allowed appellant 30 days to submit the requested information and fees. Subsequently, appellant requested and was granted additional time in which to file a description for each claim and a map depicting the location of the claims. These documents were received by BLM on August 31, 1978. The service fee for the other 5 claims was submitted on May 3, 1978.

On March 29, 1979, BLM issued its decision holding the mining claims void for failure to file assessment statements or notices to hold the claims by December 31, 1978, as required by 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1.

In their appeal appellants contend that each of the claims involved was located prior to October 21, 1976, and that therefore proof of performance of annual assessment work for 1978, the filing of such proof, and the filing of notice stating intention to hold the mining claims, if required at all, did not have to be filed until October 21, 1979, a date in the future from the time the appeal was filed.

On November 14, 1979, Harold H. Berends, Chief, Branch of Lands and Mineral Operations, filed a memorandum with the Board in which he stated:

The claims involved in the subject appeal were filed for record in this office on October 18, 1979, by Eva M. Kight, apparently on behalf of all owners, and were given serial numbers OR MC 26093 through OR MC 26099. Enclosed are a copy of Mrs. Kight's letter and list of claims. She also enclosed copies of proof of labor for all seven claims for assessment years 1977, 1978, 1979, and 1980. Information has been abstracted from notices of location and is enclosed.

[1, 2] The pertinent regulation, 43 CFR 3833.1-2(a), provides in relevant part:

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

Once the claim is recorded with BLM, 43 CFR 3833.2-1(a)(1) is applicable, which provides as follows:

When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

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

We affirm BLM's decision as to the Huckleberry and Jensen claims. The owner of an unpatented mining claim located prior to October 21, 1976, must record the location on or before October 22, 1979. 43 CFR 3833.1-2(a). Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office, together with the required service fee. 43 CFR 3833.1-2(a). H. L. Smith, 46 IBLA 62 (1980).

Having submitted the required documents on October 28, 1977, including \$10 service fees, appellants were required to file either evidence of annual assessment work performed or a notice of intent to hold the claims on or before December 30, 1978. 43 CFR 3833.2-1(a). H. L. Smith, supra. Under that regulation, appellants must file such information on or before December 30 of each subsequent year following the year of recordation. Failure to comply with the regulations governing recordation of information relating to mining claims must

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 (April 5, 1979).

result in a conclusive finding that the claims have been abandoned. H. L. Smith, supra; Josephine M. Buchen, 46 IBLA 298 (1980).

As for the other five claims, we reverse BLM's holding that they are void for failure to file an affidavit of assessment work or notice of intention to hold the claims. The fees for those claims were not paid until May 3, 1978. The applicable regulation, 43 CFR 3833.1-2(d) specifically provides: "Each claim or site filed shall be accompanied by a \$5 service fee which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner." This is a mandatory requirement. Without payment of the filing fee, there is no recordation. Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 316 (D. Utah 1979); Phyllis Wood, 46 IBLA 309 (1980); Nevada Pacific Co, Inc., 46 IBLA 208 (1980); Joe B. Cashman, 43 IBLA 239 (1979). Therefore these claims were not recorded as of October 28, 1977 as were the Huckleberry and the Jensen. Rather their recordation was effective on May 3, 1978, and appellants were not required to file assessment work proof until October 22, 1979.

The letter from Harold A. Berends states that these claims were filed for record on October 18, 1979. In other words, these claims were refiled and given new serial numbers. 43 CFR 3833.1-2(a) prescribes that claims located on or before October 21, 1976, shall file on or before October 22, 1979, a copy of the official record of the notice or certificate of location of the claim with BLM and the annual statement of assessment work. Appellants filed these documents with BLM on October 18, 1979, and were therefore in compliance with the regulations.

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 as to the Huckleberry and Jensen mining claims and reversed as to the Snow Shoe, Old Maid, War Eagle, Elk Track, and Honeymoon mining claims.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

Attachment

Present Serial Number OR MC	Formerly Recorded Name of Claim	Under Serial Number OR MC
26093	Huckleberry	3130
26094	Jenson	3131
26095	Snow Shoe	3132
26096	Old Maid	3133
26097	War Eagle	3134
26098	Elk Track	3136
26099	Honeymoon	3135

47 IBLA 356

