

ROBERT WILLING ET AL.

IBLA 80-350

Decided May 29, 1980

Appeal from the decision of the California State Office, Bureau of Land Management, returning as untimely filed for purposes of recordation notices of location and proof of labor for certain mining claims, 1/ CA MC 61529-61534.

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 -- Mining Claims: Assessment work

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location and related material for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. File means being received and date stamped by the proper BLM office. Failure to so file is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

1/ The names of the claims, their dates of location, and the BLM case file designations are as follows:

<u>Name of Claim</u>	<u>Location Date</u>	<u>BLM Designation</u>
Alluvial Fan Placer	October 3, 1975	CA MC 61534
Bargainer I Placer	October 4, 1975	CA MC 61529
Bargainer II Placer	October 4, 1975	CA MC 61530
Bargainer III Placer	October 4, 1975	CA MC 61531
Bargainer IV Placer	October 10, 1975	CA MC 61532
Hornblende DG 1 Placer	October 21, 1975	CA MC 61533

APPEARANCES: Robert Willing, Edward F. Stroehlein, and Algimantas Kazakevicius, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Robert Willing, Edward F. Stroehlein, and Algimantas Kazakevicius appeal from the decision of the California State Office Bureau of Land Management (BLM), dated December 26, 1979, declaring mining claims, CA MC 61529-61534, 2/ abandoned and void for failure to timely file copies of the notices of location for the claims pursuant to section 314 of the Federal Land Policy and Management Act of 1976, (FLPMA), 43 U.S.C. § 1744 (1976), and Departmental regulations at 43 CFR 3833.1-2(a).

BLM received the copies of appellants' notices of location and proof of labor for the claims on October 24, 1979. Since each of the claims was located before October 21, 1976, the deadline for filing was on October 22, 1979. In their statements of reasons, appellants assert that their filing was mailed on October 22, 1979, the postmark should establish the date of filing, the filing was received during the 10-day grace period allowed by 43 CFR 4.422(a) and that a BLM "Notice to Mining Claim Owners" did not state that the required filing had to be received by October 22, 1979. Appellants also note that a corporation has top-filed their claims so relocation is not possible.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (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 and evidence of assessment work 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 corresponding regulations, 43 CFR 3833.1-2(a) and 3833.2-1(a), read 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

2/ Robert Willing was the sole locator of the Bargainer I to IV placer mining claims, CA MC 61529-61532. Robert Willing, and Edward F. Stroehlein were the locators of the Horneblende DG 1 placer mining claim, CA MC 61533. Robert Willing, Algimantas Kazakevicius, and 6 other persons were the locators of the Alluvial Fan placer, CA MC 61534.

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. [Emphasis added.]

§ 3833.2 Evidence of assessment work-notice of intention to hold a claim or site.

§ 3833.2-1 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.

Those who deal with the Government are presumed to have knowledge of the law and the regulations duly adopted pursuant thereto. Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). Under FLPMA, the responsibility for complying with the recordation requirements rests with appellants. The pertinent regulation, 43 CFR 3833.1-2(a), clearly states that filing means being received and date stamped by the proper BLM office. The Board is fully aware that in other situations a postmark on the filing date is sufficient or a grace period is provided. Section 314 of FLPMA does not so provide and this Board has no authority to excuse compliance. The regulation cited by appellants, 43 CFR 4.422(a), applies to documents relating to hearings and appeals. The "Notice" referred to by appellants does not purport to completely detail the recording requirements and advised that complete instructions could be obtained from BLM. BLM properly declared the claims abandoned and void.

Although appellants note that their claims have been top-filed, relocation may still be warranted unless appellants are sure that the other claimants have fully complied with State law and FLPMA.

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.

James L. Burski
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Frederick Fishman
Administrative Judge