

ANDY SYNDBAD

IBLA 80-129

Decided May 29, 1980

Appeal from decision of the Arizona State Office, Bureau of Land Management, returning an affidavit of labor performed and improvements made, map, and fee for certain mining claims and declaring those claims 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: Andy Syndbad, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Andy Syndbad appeals from the letter decision of the Arizona State Office, Bureau of Land Management (BLM), dated November 20, 1979, returning his affidavit of labor performed and improvements made, map and \$30 fee for the Dacite and Dacite-Cliff mining claims.

The documents were returned because the location notices for the claims had not been filed as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and Departmental regulations. The decision also stated that

"[t]he deadline of October 22, 1979 has past for filing claims located before October 21, 1976. Only those location notices filed within 90 days from the date of location will be accepted."

In his statement of reasons, appellant argues that his mining claim documents were mailed on October 19, 1979, in order that they would be timely received by BLM on October 22, 1979. We note that the case record reflects that BLM did receive the documents on October 22, 1979.

[1] However, timely receipt of these documents is not the issue here. 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] containing the information in paragraph (c) of this section shall be filed. [1/]

Appellant's claims were located on September 10, 1958. Under FLPMA and the regulations, the requirements for recordation are clear. None of the documents submitted by appellant, though timely, were copies of the notices of location for the Dacite and Dacite-Cliff claims. Appellant does not contend that a notice of location was filed with BLM, for any of the six claims. Failure to timely file the required notices of location constitutes abandonment of the claims under FLPMA.

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).

We wish to point out that the affidavit filed 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 notices of location.

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:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge