

JOHN F. SHERWOOD

IBLA 80-494

Decided June 9, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management, holding the Jim Tree and East Rock mining claims abandoned and void. CMC 154309.

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 on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, 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.

2. 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

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of

recording with BLM, 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.

3. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

4. 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

Section 314 of the Federal Land Policy and Management Act, 43 U.S.C. § 1744 (1976), gives no authority to the Department of the Interior to accept for mining claim recordation documents submitted after the statutory time requirements as if they were timely filed in order to avoid the consequences of the statute.

APPEARANCES: John F. Sherwood, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

John F. Sherwood appeals from a decision, dated February 1, 1980, of the Colorado State Office, Bureau of Land Management (BLM), declaring the Jim Tree and East Rock lode mining claims abandoned and void for failure to file timely a notice or certificate of location and an affidavit of assessment work (proof of labor) or notice of intention to hold the claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

BLM received appellant's submission of maps and filing fees for the subject claims on October 22, 1979. The State Office returned them to the appellant with the decision declaring the claims abandoned and void because of appellant's failure to include the necessary documents. The timely appeal was received by BLM on March 24, 1980.

Appellant asserts on appeal that the filing of the location maps and payment of the filing fees was sufficient action on his part to warrant a request, by BLM, for further information regarding the claims. Appellant also contends that it is unfair to refuse recordation of mining claims where the prospective registrant misunderstands the filing procedure.

[1, 2] The pertinent regulations, 43 CFR 3833.1-2(a) and 43 CFR 3833.2-1(a), implementing section 314 of FLPMA, provide 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.

* * * * *

§ 3833.2-1 When filing is 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.

Appellant did not file a copy of the official record of the notice or certificate of location as required by 43 CFR 3833.1-2. Nor did appellant file evidence of annual assessment work as required by 43 CFR 3833.2-1. Copies of location maps and filing fees sent to the State Office do not meet the requirements of the above-referenced regulations. Failure to file the required documents timely must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a).

[3] Appellant states that he misunderstood the filing requirements. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Floyd Zaiger, 47 IBLA 204 (1980); Willene Minnier, 45 IBLA 1 (1980).

[4] With his appeal appellant has submitted copies of the location certificates and an affidavit of labor and requests this Board to "allow acceptance for recordation of these claims." Section 314 of FLPMA gives no authority for this Department to accept late filed submissions for recordation, as if they were timely filed, in order to

avoid the consequences of the statute. Thus, this Board cannot grant appellant's request. If the lands remain open to mineral location, and subject to intervening rights, including those of the Government, appellant may relocate claims for minerals still locatable under the mining laws, and meet the recordation requirements thereafter.

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.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge