

BETTY NORTON

IBLA 79-495

Decided June 9, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. CA MC 5375 and CA MC 5376.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Under 43 CFR 3833.2-1(a) and 3833.4(a), the owner of an unpatented mining claim located before Oct. 21, 1976, notice of which is recorded with BLM in the calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the claim on or before Dec. 30 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned.

APPEARANCES: Betty Norton, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Betty Norton has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated June 15, 1979, declaring the Etidorpha Lode CA MC 5376 and the Etidorpha Extension Lode CA MC 5375 mining claims abandoned and void for failure to file an affidavit of annual assessment work or a notice of intention to hold the mining claims.

In her statement of reasons for appeal, appellant explains that the duty of filing evidence of assessment work was entrusted to Lawrence Martin, joint owner of the claims, and that she was under the impression that all the necessary papers had been filed.

[1] Departmental regulation 43 CFR 3833.2-1(a) requires that the owner of an unpatented mining claim located prior to October 21, 1976, shall on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year in which the claim was recorded with BLM, whichever is sooner, file with the designated BLM office evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the mining claim and renders the claim void. 43 CFR 3833.4(a). The regulations have been held to be reasonable under 43 U.S.C. § 1744 (1976). Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979).

The claims herein were located, respectively, in 1911 and 1927, and recorded with BLM on September 7, 1977. Appellant filed neither of the documents on or before December 30, 1978, the year following the calendar year in which she recorded copies of the notices of location with BLM. Accordingly, despite the difficulties related by appellant, under the mandate of the regulations the claims must be deemed abandoned and void. E. Joe Swisher, 44 IBLA 44 (1979); Clair R. Caldwell, 42 IBLA 139 (1979).

If the land is still open for location, and assuming the absence of intervening rights, appellant may relocate the claims for locatable minerals and record them with the BLM State Office.

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.

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Joseph W. Goss  
Administrative Judge

I concur:

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Edward W. Stuebing  
Administrative Judge

## ADMINISTRATIVE JUDGE FISHMAN CONCURRING:

The result revealed in the main opinion is absolutely required by 43 CFR 3833.2-1(a) and 43 CFR 3833.4. However, the first cited regulation goes beyond 43 U.S.C. § 1744(a) (1976), which clearly and unequivocally allows for mining claims located prior to October 21, 1976, three years within which to file with the appropriate BLM office a copy of the notice of intention to hold or a copy of the affidavit of assessment work, recorded in the local recorder's office. Under the statute appellant would have had until October 22, 1979, within which to comply.

The Board, however, is constrained to follow a duly promulgated regulation of the Department regardless of whether it comports with the applicable statute. See John R. Anderson, 46 IBLA 123 (1980), citing Sombrero Ranches, Inc., 38 IBLA 327 (1978); Tucker and Snyder Exploration, Inc., 43 IBLA 235 (1979).

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Frederick Fishman  
Administrative Judge