

LAWRENCE JACOB  
FREEDA JACOB

IBLA 80-544

Decided July 28, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management, returning, unrecorded, certain documents relating to unpatented mining claims. CO 952 (3833).

Affirmed.

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

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 19, 1979, and the filing fee therefor is not paid to BLM until Feb. 11, 1980, the date of filing for recordation of the notice is Feb. 11, 1980.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Abandonment

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

3. Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

APPEARANCES: Lawrence Jacob and Freeda Jacob, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lawrence Jacob and Freeda Jacob appeal from the decision of February 25, 1980, of the Colorado State Office, Bureau of Land Management (BLM), which returned, unrecorded, certain copies of location notices and an affidavit of labor performed on the claims during the 1979 assessment year. The instruments had been submitted in connection with the Rainbow Nos. 1 through 4 lode mining claims, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). BLM refused to record the claims because the service fees for the instruments were not paid until February 11, 1980, although the instruments had been received before the statutory time period expired October 22, 1979.

The Rainbow Nos. 1 through 4 lode mining claims had been located by appellants on May 27, 1972, on lands in secs. 15, 16, 21, and 22, T. 34 N., R. 11 E., New Mexico principal meridian, Conejos County, Colorado.

The copies of the notices received by BLM October 19, 1979, were returned to appellants with advice that a service fee of \$5 per claim was required by the applicable regulation, 43 CFR 3833.1-2(d). The copies of the notices and the affidavit of assessment work for 1979 were returned to BLM February 11, 1980, together with the required service fees of \$20. The documents were again returned to appellants with notice that they had been submitted too late to be recorded under section 314 of FLPMA, supra.

[1] Regulations implementing section 314 of FLPMA, supra, are contained in 43 CFR Subpart 3833. Section 3833.1-2(a) requires that for mining claims located prior to October 21, 1976, a copy of the official record of the notice of location must be filed in the proper office of BLM on or before October 22, 1979. "Filed" means being received and date stamped by BLM. Section 3833.1-2(d) states that each claim recorded with BLM shall be accompanied by a \$5 service fee. Without payment of the full service fee, there is no recordation of the mining claim. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah, 1979); Phyllis Wood, 46 IBLA 309 (1980); Joe B. Cashman, 43 IBLA 239 (1979). Thus, as the full service fee of \$20 was not tendered until February 11, 1980, it must be held that the filing for recordation of the four claims with BLM cannot be considered to have occurred earlier than that date.

[2] 43 CFR 3833.4 provides that failure to file any instrument required by §§ 3833.1-2(a), (b) and 3833.2-1 within the time prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

[3] Appellants assert that, although BLM advised them as to the required documents, no information had been given relative to the need for a service fee. 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); Robert W. Hansen, 46 IBLA 93 (1980). Appellants' excuse provides no exception to this rule. The statute, FLPMA, gives no authority for waiving the effect of claimants' failure to meet the requirements, nor do we know of any other source of such authority. As appellants did not comply with the regulatory requirements relating to recordation of unpatented mining claims, the subject claims are void.

We point out that appellants may relocate these claims and file the proper notices as required by 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming that the land is open to location of mining claims.

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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Douglas E. Henriques  
Administrative Judge

We concur.

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Edward W. Stuebing  
Administrative Judge

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James L. Burski  
Administrative Judge

