

LELA M. OSBORN

IBLA 80-592

Decided July 30, 1980

Appeal from decisions of Nevada State Office, Bureau of Land Management, returning, unrecorded, mining claim location notices and declaring the claims abandoned and void. NMC 142710 through 142736, NMC 142817 through 142826.

Affirmed.

1. 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.

APPEARANCES: Lela M. Osborn, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lela M. Osborn, acting for Our Creator's Temple, appeals the Nevada State Office, Bureau of Land Management (BLM), decisions of March 25, 1980, which rejected her filings of copies of location notices for unpatented mining claims 1/ NMC 142710 through 142736 and

1/ Location notices filed March 7, 1980.

<u>Name of claim</u>	<u>Location date</u>	<u>BLM serial</u>
Gold Star Placer	June 30, 1965	NMC 142710
Blue Sky	June 30, 1965	NMC 142711
Vina	June 30, 1965	NMC 142712

N MC 142817 through 142826, because the certificates of mining claim locations were not filed with BLM on or before October 22, 1979, as required by section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation 43 CFR 3833.1-2(b). Pursuant to 43 CFR 3833.4(a), the mining claims were declared abandoned by the owner and void.

Appellant contends the mining claims declared void are part of a large group of claims, for all of which she had obtained the necessary copies of certificates of location, proofs of labor, and location maps from the Recorder of Pershing County, Nevada, in adequate time to be filed with BLM before October 22, 1979, for the express purpose of complying with the recording requirements of FLPMA. She suggests that perhaps inefficiency in the BLM office might have contributed to the present situation.

The subject claims are in two groups: one containing 27 locations shows a BLM receiving stamp of March 7, 1980, and receipt 108629 for \$135 service fee paid by Our Creator's Temple; the other containing 10 locations shows a BLM receiving stamp of March 12, 1980, and receipt 108729 for \$50 service fee and overpayment of \$18.75 paid by Lela M. Osborn.

There is no evidence in the record which clearly indicates that the subject location notices were submitted to BLM in October 1979; rather the evidence indicates submission on March 7 or March 12, 1980.

[1] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim

Popcorn	June 30, 1965	N MC 142713
Rex	June 30, 1965	N MC 142714
L & M	September 17, 1974	N MC 142715
L & M #1 through #12	September 17, 1974	N MC 142716 through 142727
Denise #1	July 24, 1969	N MC 142728
John Duffy	July 24, 1969	N MC 142729
John Duffy #1	August 2, 1969	N MC 142730
John Duffy #2 and #3	August 6, 1969	N MC 142731 through 142732
Limerick #2 and #3	July 24, 1969	N MC 142733 through 142734
G.D.D.	August 25, 1966	N MC 142735
Limerick #1	July 24, 1969	N MC 142736
Location notices filed March 12, 1980.		
L & O #1 through #4	September 17, 1974	N MC 142817 through 142820
L & O #5 through #9	September 18, 1974	N MC 142821 through 142825
Goldzone Fraction	September 17, 1974	N MC 142826

located prior to October 21, 1976, to file a copy of the official record of the notice or certificate 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 file such material timely shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2, reads in part 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. * * *

* * * * *

(d) Each claim or site filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner.

If the present claims had been included in an earlier submission to BLM, there would have been an overpayment of service fees for the missing location notices. This overpayment would have been refunded by BLM to the remitter in due course. Appellant does not assert that the fees were submitted to BLM before March 7 or March 12, 1980, or that she received any refund for overpayment of fees for recordation of location notices filed at any earlier date.

In the absence of satisfactory evidence that the subject location notices were filed with BLM (filed means being received and date stamped in the proper BLM office) before the March 1980 dates shown on the copies of the location notices, the decision of BLM to return the location notices unrecorded and to declare the claims to be abandoned by the owner and to be void must be upheld.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge

