

MELVIN E. VILES

IBLA 80-517

Decided October 30, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring mining claims abandoned and void. 3833 (OR).

Affirmed.

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

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (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 or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void.

APPEARANCES: Melvin E. Viles, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated February 12, 1980, by the Oregon State Office, Bureau of Land Management (BLM), declaring certain unpatented mining claims 1/ abandoned and void because appellant failed

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1/ The claims are: Lost Claim, Green Back, Columbia, Eastern Star, Cosmopolitan, Princess, Commodore, Aetna, Ajax, Aztec, Cornucopia, and Jewel, located in Crook County, Oregon.

to comply with recording requirements under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and the regulations in 43 CFR Subpart 3833.

All claims in question were located prior to October 21, 1976.

The decision appealed from states that "no location notices, or secondary evidence in the form of a statement explaining that the claim records were lost or destroyed, or that the claims were established by occupancy" were received for these claims.

[1] Departmental regulation, 43 CFR 3833.1-2(a), implementing 43 U.S.C. § 1744 (1976), states in part:

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.

In the event of failure to file, 43 CFR 3833.4(a) provides: "The failure to file an instrument required by §§ 3833.1-2 (a), (b), and 3833.2 -1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void."

Appellant states on appeal that the location notices in question were mailed to BLM in Portland but must have been lost either in the mail or by BLM personnel. Appellant mailed a package from Prineville, Oregon, which was received by BLM on October 20, 1979. That package included a payment of \$ 180, sufficient for payment for 36 claims, but location notices for only 24 claims. BLM wrote appellant to that effect on February 12, 1980. Appellant thereupon mailed the 12 location notices which were received and date stamped March 11, 1980.

[1] The statutory and regulatory mining recordation requirements are mandatory and failure to comply therewith must result in a finding that the claims are void. Robert Alameda, 48 IBLA 178 (1980); John Walter Chaney, 46 IBLA 229 (1980). There is no evidence in the record to support appellant's speculation that BLM may have lost his 12 location notices assertedly sent with the package received by BLM on October 20, 1979. Mere conjecture is insufficient to rebut the presumption that BLM officials have properly discharged their duties. Henry D. Friedman, 49 IBLA 97 (1980). Moreover, the Board has repeatedly held that the mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. G. R. Marquardson, 49 IBLA 114 (1980), and cases therein cited.

The mining claims may be relocated for locatable minerals in the absence of an intervening closure to mining or other adverse appropriations.

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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Frederick Fishman  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

